

FINAL REGULATION ORDER
Small Containers of Automotive Refrigerant

Amend title 17, California Code of Regulations, sections 95362, 95365, 95366, 95367, and 95368 to read as follows:

(Note: The amendments below are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions.)

Subchapter 10. Climate Change

Article 3. Fees for Greenhouse Gas Emission Sources
[Reserved]

Article 4. Regulations to Achieve Greenhouse Gas Emission Reductions

Subarticle 5. Small Containers of Automotive Refrigerant

§ 95362. Certification Procedures for Small Containers of Automotive Refrigerant.

- (a) Except as provided in sections 95363 or 95364, on or after January 1, 2010, no person may sell, supply, offer for sale, or manufacture for sale in California automotive refrigerant in a small container unless that automotive refrigerant in a small container has been certified for use and sale by the Air Resources Board and is covered by an Executive Order issued pursuant to this subarticle.
- (b) The criteria for obtaining certification, including all procedures for determining compliance with applicable test procedures, are set forth in “Certification Procedures for Small Containers of Automotive Refrigerant”, adopted on July 20, 2009, and last amended on January 5, 2010, which is incorporated by reference herein.
- (c) Any modification to the design or specifications of a small container of automotive refrigerant that has been issued an Executive Order pursuant to these procedures must be disclosed to ARB before any modified small container of automotive refrigerant may be sold, supplied, offered for sale, or manufactured for sale in California. The Executive Officer will exercise good engineering judgment to determine if said change(s) constitute a significant difference to the design or specification of a previously certified small container of automotive refrigerant. If the Executive Officer determines that said change(s) constitute a significant difference to the design or specification of a previously certified small container of automotive refrigerant, the manufacturer must then request that the

modified small container of automotive refrigerant be issued a new Executive Order pursuant to the provisions of this subarticle.

Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.

§ 95365. Container Disposal or Destruction.

- (a) On or after January 1, 2010, no person shall dispose of or destroy any small container of automotive refrigerant that is subject to the requirements of this subarticle unless the disposal or destruction is performed in accordance with the procedures specified in this section.
- (b) A manufacturer or its designated recovery facility must evacuate small containers of automotive refrigerant to less than atmospheric pressure, unless the containers are breached or damaged to an extent that precludes recovery of the refrigerant. All other persons must return small containers of refrigerant that contain any quantity of refrigerant to the retailer, the manufacturer, or the manufacturer's designated recovery facility.
- (c) Refrigerant recovery facilities must be registered with the ARB as described in "Certification Procedures for Small Containers of Automotive Refrigerant" adopted on July 20, 2009, and last amended on January 5, 2010, which is incorporated by reference herein.
- (d) Small containers of automotive refrigerant that are breached do not count as recycled small containers of automotive refrigerant for the purpose of calculating the recycle rate.

Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.

§ 95366. Container Deposit and Return Program Requirement.

- (a) Except for small containers of automotive refrigerant exempted under section 95363 or section 95364 of this subarticle, on or after January 1, 2010, and subject to the provisions of section 95367, a retailer of automotive refrigerant in a small container that is subject to the requirements of this subarticle must:

- (1) Collect a deposit from the consumer or charge the consumer's account for each small container of automotive refrigerant at the time of sale.
 - (2) The amount of deposit on each small container is initially set at \$10, and can be increased in \$5 increments as described in section 95367(d)(1) or decreased in \$5 decrements as described in section 95367(d)(2), but in no event shall the deposit amount of section 95366(a) be reduced below \$5.
 - (3) Return the deposit to the consumer, or credit the consumer's account when the consumer returns a used small container of automotive refrigerant to the retailer, provided that the consumer returns the used container of refrigerant to the retailer where purchased within 90 days of purchase, submits proof of purchase (e.g., cash register receipt), and provided that the container has not been breached. A retailer may return the deposit at his discretion if more than 90 days have elapsed, the consumer does not have a receipt, if the consumer returns the container to a location other than the place of purchase, or if the container has been breached.
 - (4) Accumulate and store any used small container of automotive refrigerant for transfer to the manufacturer or its designee, and may segregate breached returned small containers from non-breached returned small containers. The manufacturer will, along with each participating retailer/distributor, identify or provide collection bins, totes or boxes that work in a complementary fashion within each retailer/distributors' current established distribution best practice for like merchandise, facilitating their ability to segregate breached small containers. Likewise, it will be the manufacturer's responsibility to identify each retailer/ distributor's most complimentary manner of transport and return of returned small containers of automotive refrigerant to the recovery/recycle facilities.
- (b) Except for small containers of automotive refrigerant exempted under section 95363 or section 95364 of this subarticle, on or after January 1, 2010, and subject to the provisions of section 95367, a manufacturer or its designated return agency must:
- (1) Collect a deposit on each small container of automotive refrigerant at the time of sale to a distributor or retailer.
 - (2) Accept from a retailer or distributor used small containers of refrigerant certified under section 95362.

- (3) Maintain a log of returned used containers by SKU, retailer, and return date.
 - (4) Refund to the retailer or distributor the full amount of the deposits collected under section 95366(b)(1) for all used small containers of automotive refrigerant certified under section 95362 that were returned. A manufacturer or designated return agency must count and record the number of small containers of automotive refrigerant that have been breached.
 - (5) All deposits not returned by manufacturers to retailers in exchange for used small containers of automotive refrigerant will accrue to an account managed by the manufacturer to be used solely as described in section 95366(b)(6) for the purpose of enhancing the consumer education program. The manufacturer must report and account for how these account funds are spent in accordance with section 95367(a)(5) of this subarticle.
 - (6) Separately account for any funds attributable to unclaimed deposits, expend those funds only on enhanced educational programs approved by the Executive Officer, that are designed to inform consumers of measures to reduce GHG emissions associated with do-it-yourself recharging of MVAC systems, and provide to ARB an accounting of the collection and expenditures of these funds as described in section 95367(a)(5). Examples of enhanced education programs include, but are not limited to: improved Internet website support, development of additional educational materials, training and outreach to the consumer via retailers, and development and usage of videos and other means of demonstrations at retail sites. A manufacturer must provide a description of any proposed enhanced educational programs in its application for certification of small containers of automotive refrigerant, and must obtain the Executive Officer's approval before it can expend funds attributable to unclaimed deposits on that enhanced educational program.
- (c) A manufacturer may designate an additional facility to receive and store returned used small containers of automotive refrigerant and to pay consumer refunds specified in section 95366(a) and (b) at the time a container is returned. Such a facility may be either a retail store or an entity that is not affiliated with a retail store.
 - (d) A manufacturer or its designee must coordinate the collection of used small containers of automotive refrigerant from retailers and any designated return agencies. To reduce the burden on the retailer, the manufacturer shall, along with each participating retailer/distributor,

identify or provide collection bins, totes or boxes that work in a complementary fashion within each retailer/distributors' current established distribution best practice for like merchandise. Likewise, it shall be the manufacturer's responsibility to identify each retailer/distributor's most complementary manner of transporting returned small containers of automotive refrigerant to the recovery/recycle facilities.

- (e) A manufacturer or its designee must recover any refrigerant remaining in the returned small containers at a facility registered with the ARB as described in "Certification Procedures for Small Containers of Automotive Refrigerant" adopted July 20, 2009, and last amended on January 5, 2010, which is incorporated by reference herein. The facility must employ good engineering practices to avoid loss of refrigerant to the atmosphere. The refrigerant must be recovered, recycled, reclaimed, or removed to a licensed waste disposal facility.

Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.

§ 95367. Recycling Reporting Requirements.

- (a) Reports to the Executive Officer are due March 1 every year starting March 1, 2011. Each annual report documents monthly data for small containers of automotive refrigerant sold and returned during the prior calendar year, January 1 though December 31. Reports must be submitted as follows:
 - (1) Upon request from ARB, each retailer must report sales data of the number of small containers of automotive refrigerant sold and the number of used small containers of automotive refrigerant returned by consumers. The sales data and returned can data must be reported for each SKU, for each manufacturer, distributor, for each month, and as totals for each reporting period. The data must be reported separately for the following categories: returned unused, returned for recycle, returned breached, to the extent that the retailer has segregated breached cans pursuant to section 95366(a)(4).
 - (2) Each distributor must report sales data of small containers of automotive refrigerant. The sales data must be reported for each SKU for each retailer, manufacturer, and for each month.
 - (3) Each manufacturer must report sales data of the number of small containers of automotive refrigerant sold to each retailer or distributor within the State and the number of small containers of automotive refrigerant returned for recycling by each retailer or

distributor within the State. The sales data must be reported for each SKU, for each distributor, retailer, or other outlet, for each month and as totals for each reporting period.

- (4) Each manufacturer or recycler of small containers of automotive refrigerant must report the number of small containers received for recycling. The returned container data must be reported for each SKU, for each retailer or other source of return, for each month, and as totals for each reporting period. The data must be segregated according to reason for the can return: returned unused, returned for recycle, returned breached. The refrigerant amount recovered must be reported for each manufacturer, and for each month.
 - (5) Each manufacturer of small containers of automotive refrigerant must report the amounts of unclaimed deposits retained, and an accounting and description of how those funds were spent to enhance consumer education. The report must highlight each component of an educational program and funds spent for that component.
 - (6) Each recycler of refrigerant from small containers of automotive refrigerant must report the amount of refrigerant recovered, along with the amount of that refrigerant recycled, reclaimed, or disposed of. The refrigerant amounts must be reported for each manufacturer, and for each month.
- (b) Starting 2011, the ARB will calculate and publish the annual return rate for containers of refrigerant subject to the requirements of this subarticle based on reports submitted to ARB by the manufacturers, distributors, and the retailers. The return rate of containers will be published by May 31 each year and calculated as the number of containers of refrigerant returned, divided by the number of containers sold to consumers during the period under consideration. The return rate will exclude returned small containers of automotive refrigerant that are breached (i.e., the number of returned small containers that are breached will be excluded from the numerator, but will be included in the denominator).
 - (c) Between January 1, 2010 and December 31, 2011, the target return rate for small containers is 90%. For periods beginning January 1, 2012 and thereafter, the target return rate for containers is 95%.
 - (d) Every two years beginning 2012, ARB will evaluate the return rates, as described in section 95367(b), based on data from the prior two calendar years compared to the target rates, as described in section 95367(c).

- (1) If the two calendar year average return rate does not meet or exceed the applicable target return rate specified in section 95367(c), the Executive Officer or his or her designee shall increase the deposit amount of section 95366(a) by an additional \$5 unless manufacturers and retailers submit information that demonstrates either that the applicable annual return rate, as described in section 95367(b) was not calculated correctly, or that the underlying sales or returned can data, as described in sections 95367(a)(1) through (a)(4), did not accurately reflect the true return rate of used containers. Manufacturers or retailers must submit such information by March 1 of the calendar year in which the two calendar year average return rate does not meet or exceed the applicable target return rate specified in section 95367(c), and the Executive Officer or his or her designee shall decide by May 31 of that calendar year either to increase the deposit amount of section 95366(a) by an additional \$5 or leave the deposit amount of section 95366(a) unchanged.
- (2) If the two calendar year average return rate exceeds its the applicable target return rate specified in section 96367(c) by at least 2.5 percent for two consecutive reporting periods within a four year period of time, a manufacturer or retailer may request that the Executive Officer or his or designee reduce the deposit amount of section 95366(a) by \$5, but in no event shall the deposit amount of section 95366(a) be less than \$5. A manufacturer or retailer must make this request by March 31 of a calendar year, and the Executive Officer or his or her designee shall reduce the deposit amount of section 95366(a) by \$5 by May 31 of that calendar year, unless the Executive Officer or his or her designee has information that demonstrates either that the applicable annual return rates, as described in section 95367(b) were not calculated correctly, or that the underlying sales or returned can data, as described in sections 95367(a)(1) through (a)(4), did not accurately reflect the true return rate of used containers.
- (e) If the Executive Officer or his or her designee increases the deposit amount of section 95366(a) as described in section 95367(d)(1), or decreases the deposit amount of section 95366(a) as described in section 95367(d)(2), all small containers of automotive refrigerant manufactured after January 1 of the year following that decision must have new labels and SKUs, which reflect the new deposit rate.
- (f) If the Executive Officer increases the deposit amount specified in section 95366(a) pursuant to section 95367(d)(1), any small container of automotive refrigerant that was manufactured or packaged before

January 1 of the year following that to change the deposit rate may be sold, supplied, or offered for sale in California.

- (g) If the Executive Officer decreases the deposit amount of section 95366(a) pursuant to section 95367(d)(2), any small container of automotive refrigerant that was manufactured or packaged before January 1 of the year following that decision may be sold, supplied, or offered for sale in California until December 31 of the year following that decision. Any small container manufactured or packaged before January 1 of the year following the decision as described in section 95367(d)(2) to change the deposit rate that is not sold by the December 31 of the year following that decision must be recalled by the manufacturer no later than 90 calendar days after the December 31 of the year following that decision, and the manufacturer must report the total number of small containers recalled in the reports required by section 95367.

Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.

§ 95368. Enforcement.

- (a) Penalties. Penalties may be assessed for any violation of this subarticle pursuant to Health and Safety Code section 38580. Each day during any portion of which a violation occurs is a separate offense.
- (b) Injunctions. Any violation of this subarticle may be enjoined pursuant to Health and Safety Code section 41513.
- (c) Revocation. The Executive Officer may revoke any Executive Order issued pursuant to this subarticle for a violation of this subarticle.
- (d) Testing to determine that small containers of automotive refrigerant are in compliance with the leakage rate requirement specified in “Certification Procedures for Small Containers of Automotive Refrigerant” adopted on July 20, 2009, and last amended on January 5, 2010, which is incorporated by reference herein, shall be performed using Test Procedure (TP-503), Test Procedure for Leaks from Small Containers of Automotive Refrigerant, adopted July 20, 2009, and last amended on January 5, 2010, which is incorporated herein by reference.
- (e) Before seeking remedial action against any manufacturer, distributor, or retailer, the Executive Officer will consider any information provided by the manufacturer, distributor, or retailer.

Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.