

# Appendix A-1

## Proposed Regulation Order

### Small Containers of Automotive Refrigerant

[Note: This version of the proposed amendments to Title 17 California Code of Regulations (CCR) sections 95360 through 95369, complies with Government Code section 11346.2 subdivision (a)(3). The existing, original regulatory language currently adopted into the CCR is shown in "normal type." The proposed amendments subject to comment in this rulemaking are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions from the existing regulatory text. [Bracketed underline text] is placeholder text for these amendment's approval date. Vertical lines in the left margins are to flag where changes are proposed for ease of reference and are not part of the proposed amendments. The proposed amendments are being presented in two versions. For ease of readability, and to review the proposed amendments in an Accessible format that can toggle between amendments in strikeout/underline and a "clean" version with amendments incorporated into the regulatory text, please refer to the Word version of this Proposed Regulation Order.]

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## Proposed Regulation Order

Title 17, California Code of Regulations

Amend Sections 95360 through 95370 of title 17, California Code of Regulations, to read as follows:

### § 95360. Applicability.

(a) ~~Except as otherwise provided in sections 95363 or 95364, this~~ This subarticle applies to any person who uses, sells, supplies, offers for sale, advertises, manufactures for sale, recycles, reclaims, recovers, imports, exports, or introduces into commerce in the State of California any small container of automotive refrigerant ~~in a small container~~ that is used or intended for use to charge motor vehicle air conditioning systems.

(b) ~~The provisions of this subarticle do not apply to small containers of automotive refrigerant with a Global Warming Potential (GWP) value equal to or less than 150.~~

Note: Authority cited: Sections 38501, ~~38505~~, 38510, 38560, 38560.5, ~~38562.2~~, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, ~~38562.2~~, ~~38566~~, 39003, 39500, 39600 and 39601, Health and Safety Code.

### § 95361. Definitions.

(a) The definitions in section 1900(b), Title 13 of the California Code of Regulations apply with the following additions:

“Appliance” means any device that contains and uses a high-GWP refrigerant, including any air conditioner, refrigerator, chiller, freezer, or refrigeration system.

(1) ~~“Automotive Refrigerant”~~ means any substance used, sold for use, or designed or intended for use as a heat transfer fluid and provides a cooling effect in a Motor Vehicle Air Conditioner (MVAC) that is not either a Class I or a Class II refrigerant as defined in 42 U.S.C. sections 7671(a) or (b), or that is listed in Title 40, Code of Federal Regulations part 82, subpart A, appendix A, as it existed as of July 1, 2006.

(2) ~~“Automotive Refrigerant in a Small Container” means automotive refrigerant packaged in a container holding more than 2 ounces and less than 2 pounds of automotive refrigerant by weight.~~

(3) "Breached" or "Breached Container" means any small container that has been structurally compromised so that the container's contents have been released to the environment through an opening other than the self-sealing valve.

(4) "Can Heel" means the quantity of automotive refrigerant remaining in a small container of automotive refrigerant after that small container of automotive refrigerant has been used to charge an MVAC system or systems with refrigerant.

"Certified Reclaimed Refrigerant" means used (recovered) refrigerant that has been reclaimed by a U.S. EPA-certified refrigerant reclaimer from a previously operational appliance and meets all of the following conditions:

Meets all specifications in 40 C.F.R. Part 82, Subpart F, Appendix A (Specifications for Refrigerants) (July 1, 2022), which is incorporated by reference herein;

Contains zero percent (0%) new (virgin) refrigerant by weight to meet the specifications in 40 C.F.R., Part 82, Subpart F, Appendix A (Specifications for Refrigerants) (July 1, 2022).

(5) "Consumer" means the first person who in good faith purchases a small container of automotive refrigerant in a small container for purposes other than resale, including, but not limited to, MVAC maintenance and repair activities or other applications involving this product. A person who purchases a small container of automotive refrigerant in a small container for purposes of servicing or repairing another person's MVAC for consideration (e.g., a MVAC technician) is considered a 'consumer' for purposes of this subarticle. Manufacturers, distributors, and retailers are not consumers.

(6) "Dispose" means to discard a small container of automotive refrigerant in any manner, except as permitted in section 95365 of this subarticle.

(7) "Distributor" means any person to whom ana small container of automotive refrigerant-small container is sold or supplied for the purposes of resale or distribution in commerce, including imports to and exports from the United States. Manufacturers, retailers, and consumers are not distributors.

(8) "Executive Officer" means the Executive Officer of the California Air Resources Board (CARB).

"Foam" means a product with a cellular structure formed via a foaming process in a variety of materials that undergo hardening via a chemical reaction or phase transition.

(9) "Global Warming Potential" (GWP) means the radiative forcing impact of one mass-based unit of a given greenhouse gas relative to an equivalent unit of carbon dioxide over a given period of time.

(10) "Global Warming Potential Value" or "GWP Value" means, for the purposes of this subarticle, the 100-yr GWP value first published by the IPCC in its Second Assessment Report (SAR) (IPCC, 1995); or if a 100-yr GWP value was not specified in the IPCC SAR, it means the GWP value published by the IPCC in its Fourth Assessment Report (AR4) (IPCC, 2007); or if a 100-yr GWP value was not specified in the IPCC AR4, then the GWP value will be determined by the Executive Officer based on data, studies and/or good engineering or scientific judgment. Both the 1995 IPCC SAR values and the 2007 IPCC AR4 values are published in table 2.14 of the 2007 IPCC AR4. The SAR GWP values are found in column "SAR (100-yr)" of Table 2.14.; the AR4 GWP values are found in column "100 yr" of Table 2.14."

(11) "Label" means any written, printed, or graphic matter affixed to, applied to, attached to, embossed on, or appearing upon any small container for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

(12) "Manufacturer" means any person who imports, manufactures, assembles, packages, repackages, recovers, recycles, or reclaims a small container of automotive refrigerant in a small container, or who re-labels such a container of refrigerant.

(13) "Motor Vehicle Air Conditioner" (MVAC) is a system installed in a motor vehicle that uses a refrigerant to cool the driver's or passenger's compartment.

"Non-Profit Organization" is a business that has been granted tax-exempt status by the Internal Revenue Service (IRS).

(14) "Person" has the same meaning as defined in Health and Safety Code section 39047.

(15) "Reclaim" means to process refrigerant to a level equivalent to new product specifications in accordance with the AHRI 700-2006-Standard (~~"700 (2019 Standard for Specifications for Fluorocarbon-Refrigerants"~~, Air-Conditioning, Heating, and Refrigeration Institute, Arlington, VA, 2006).2019), which is incorporated by reference herein.

(16) "Recover" means to remove ~~automotive~~-refrigerant, in any condition, from either a MVAC system or previously operational appliance and to store it in an external container without necessarily testing or processing it in any way.

"Recovery and reclamation" means any action or activities in which a person or entity physically extracts refrigerants and foams stored in appliances or equipment, and subsequently processes such refrigerants and foams so that they conform to standards under Title 40 Code of Federal Regulations, Part 82, §82.164, adopted on July 30, 1992, as last amended on November 18, 2016, which is incorporated by reference herein.

(17) "Recycle" means to clean ~~automotive~~ refrigerant for reuse by oil separation and by single or multiple passes through moisture-absorption devices, such as replaceable core filter-driers that reduce moisture, acidity, and particulate matter.

(18) "Recovery facility" means a facility that recovers automotive refrigerant that is subject to the provisions of this subarticle.

"Refrigerant reclaimer" means a person who takes recovered refrigerant and reclaims it for reuse.

(19) "Retailer" means any person who owns, leases, operates or controls, or supervises a retail outlet in California. Manufacturers, distributors, and consumers are not retailers.

(20) "Retail Outlet" means any establishment at which a small container of automotive refrigerant ~~in a small container~~ is sold, supplied, or offered for sale in California.

(21) "Self-Sealing Valve" means a valve affixed to a small container of automotive refrigerant ~~small container~~ that automatically seals to prevent or minimized inadvertent release of refrigerant when not actively engaged for the purpose of dispensing refrigerant, and meets or exceeds established performance criteria as identified in section 95362(b).

~~(22)~~ "SKU" (Stock Keeping Unit) means a unique code identifier for each distinct product or service that can be ordered from a supplier. The SKU system enables the merchant to systematically track their inventory, such as in warehouses and retail outlets.

"Small Container" or "Small Container of Automotive Refrigerant" has the same meaning as ~~"Automotive Refrigerant"~~ automotive refrigerant packaged in a Small Container" as specified container holding more than 2 ounces and less than 2 pounds of automotive refrigerant by weight.

~~(23)~~ "Unclaimed deposits" means deposits collected from a consumer by a retailer in section 95361 (a)(2) conjunction with the sale of a small container of automotive refrigerant that are not returned to the consumer.

"Use" means any utilization of a compound or any substance, including, but not limited to, utilization in a product, consumption by the end-user, or in intermediate applications, such as formulation or packaging for other subsequent applications.

Note: Authority cited: Sections 38501, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38562.2, 38566, 39003, 39500, 39600 and 39601, Health and Safety Code.

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

- (a) Except as provided in ~~sections 95363 or section~~ section 95364, on or after January 1, 2010, no person may sell, supply, offer for sale, or manufacture for sale in California a small container of automotive refrigerant ~~in a small container~~ unless that small container of 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, for a small container of automotive refrigerant ~~in a small container~~ sold, supplied, offered for sale, or manufactured for sale in California between January 1, 2010, and April 12, 2017, 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) The criteria for obtaining certification, including all procedures for determining compliance with applicable test procedures, for small containers of automotive refrigerant in a small container sold, supplied, offered for sale, or manufactured for sale in California ~~on or after~~ between April 13, 2017, and December 31, 2024, are set forth in "Certification Procedures for Small Containers of Automotive Refrigerant," adopted on July 20, 2009, and last amended on January 17, 2017, which is incorporated by reference herein.

~~(d)~~ The criteria for obtaining certification, including all procedures for determining compliance with applicable test procedures, for small containers of automotive refrigerant sold, supplied, offered for sale, or manufactured for sale in California on or after January 1, 2025, are set forth in "Certification Procedures for Small Containers of Automotive Refrigerant," adopted on July 20, 2009, and last amended on [insert date of amendment], which is incorporated by reference herein.

~~(d)~~(e) 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 CARB 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, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38562.2, 38566, 39003, 39500, 39600 and 39601, Health and Safety Code.

### **~~§ 95363. Exemption for Low GWP Value Refrigerants.~~Reserved**

~~This subarticle does not apply to automotive refrigerants with a GWP value equal to or less than 150, where GWP value is defined as described in section 95361(a)(10).~~

~~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.~~

**§ 95364. Sell-Through of Products. (Phase I).**

- (a) ~~Notwithstanding the provisions~~ Small containers of section ~~95362(a)~~, automotive refrigerant ~~in a small container that was~~ were packaged or manufactured before January 1, 2010, may be sold, supplied, or offered for sale in California until December 31, 2010.
- (b) Notification necessary for products sold during the sell-through period. A person who sells or supplies a small container of automotive refrigerant ~~in a small container~~ that does not fully comply with the provisions of section 95362 must notify the purchaser in writing of the date on which the sell-through period will end. This notification must be supplied only if all of the following conditions are met:
  - (1) The product is being sold or supplied to a distributor or retailer; and
  - (2) The sell-through period for the product will expire 6 months or less from the date the product is sold or supplied.
- (c) Any small container of automotive refrigerant that is not sold by December 31, 2010 must be recalled by the manufacturer. A manufacturer must report the total number of small containers of automotive refrigerant that are recalled in the reports required by section 95367.

Note: Authority cited: Sections 38501, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38562.2, 38566, 39003, 39500, 39600 and 39601, Health and Safety Code.

**§ 95364.1. Manufacturing of Products with Modified Labels. (Phase II).**

Notwithstanding the provisions of section 95362(c), any small container of automotive refrigerant that was packaged or manufactured for sale in California on or after ~~the~~ April 13, 2017 and prior to January 1, 2018 is exempt from the labeling requirements specified in Section 2.3(B)(4) of "Certification Procedures for Small Containers of Automotive Refrigerant," adopted on July 20, 2009, as last amended on January 17, 2017, which is incorporated by reference herein.

Note: Authority cited: Sections 38501, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38562.2, 38566, 39003, 39500, 39600 and 39601, Health and Safety Code.

**§ 95364.2. Manufacturing of Products with Modified Labels and Deposit Program (Phase III).**

Notwithstanding the provisions of sections 95362(d), small containers of automotive refrigerant that were packaged or manufactured before January 1, 2025, may continue to be sold, supplied, or offered for sale in California.

Note: Authority cited: Sections 38501, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38562.2, 38566, 39003, 39500, 39600 and 39601, Health and Safety Code.

**§ 95365. Container Disposal or Destruction.**

- (a) On or after January 1, 2010, and for containers of automotive refrigerant purchased before January 1, 2025, 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 automotive refrigerant that contain any quantity of refrigerant that they purchased before January 1, 2025 to the retailer, the manufacturer, or the manufacturer's designated recovery facility.
- (c) ~~Refrigerant~~Until January 1, 2025, refrigerant recovery facilities must be registered with the CARB as described in "Certification Procedures for Small Containers of Automotive Refrigerant" adopted on July 20, 2009, and last amended on January ~~5, 2010~~17, 2017, 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, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38562.2, 38566, 39003, 39500, 39600 and 39601, Health and Safety Code.

## § 95366. Container Deposit and Return Program Requirements.

- (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 a small container 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 set at \$10.
  - (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) All deposits collected under section 95366(a)(1) that are not returned or refunded to consumers under section 95366(a)(3) must be transferred to the manufacturer or its designee. Transfers must be made annually by April 1 and include all such deposits collected from January through December of the preceding calendar year.
  - (5) If the amount of deposits that a retailer returns or refunds to consumers under section 95366(a)(3) exceeds the amount of deposits collected by that retailer under section 95366(a)(1) during the time period beginning with April 13, 2017 and ending December 31, 2017, that retailer may elect to defer the transfer of the deposits collected under 95366(a)(1) during the specified time period until the immediately following reporting period. A retailer electing to utilize this option must include such deferred deposits in the deposits required to be transferred to manufacturers or their designees under section 95366(a)(4) in the subsequent reporting period and must additionally indicate that it has elected to utilize this option in the reports it is required to maintain pursuant to section 95369(b).

- (6) Accumulate and store any used small container of automotive refrigerant for transfer to the manufacturer or its designee, and 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 complementary 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) Ensure that all deposits that are not returned or refunded by manufacturers to retailers and distributors under section 95366(b)(4) and all deposits collected by retailers that are transferred to manufacturers under section 95366(a)(4) will accrue to an account managed by the manufacturer or its designee to be used solely as described in section 95366(b)(6) for the purpose of enhancing the consumer education program or other programs, projects, and measures reducing greenhouse gas emissions as approved by the CARB. The manufacturer or its designee 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 or other programs, projects, and measures reducing greenhouse gas emissions approved by the Executive Officer. The enhanced educational programs are designed to inform consumers of measures to reduce GHG emissions associated with do-it-yourself recharging of MVAC systems. The manufacturers or their designees are to provide to CARB 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, development and usage of videos and other means of demonstrations at retail sites. Examples of programs, projects, and measures reducing greenhouse gas emissions include, but are not limited to: improved recycling or disposal of old refrigerants, and research, evaluation, and promotion of low GWP refrigerants. A manufacturer or its designee 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. For other programs or projects, a manufacturer or its designee must provide a description and obtain the Executive Officer's approval before it can expend funds attributable to unclaimed deposits.
- (7) A manufacturer may designate an entity to collect consumer deposits pursuant to section 95366(a)(4), to spend these funds on enhanced education programs or other programs, projects, and measures reducing greenhouse gas emissions as approved by the CARB pursuant to sections 95366(b)(5) and 95366(b)(6), and fulfill reporting requirements pursuant to sections 95367(a)(5) and 95367(a)(6). This designation is subject to advance review and approval by CARB's Executive Officer.
- (8) No later than January 1, 2030, all unclaimed deposits held by a manufacturer, or their designee under section 95366(b)(5), must be exhausted.
- (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 CARB as described in "Certification Procedures for Small Containers of Automotive Refrigerant" adopted on July 20, 2009, and last amended on January 5, 2017, 2017, 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, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38562.2, 38566, 39003, 39500, 39600 and 39601, Health and Safety Code.

**§ 95366.1. Expiration of Deposit and Reclaimed Refrigerant Requirements.**

The provisions of section 95366 no longer apply for small containers of automotive refrigerant sold on and after January 1, 2025.

Note: Authority cited: Sections 38501, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38562.2, 38566, 39003, 39500, 39600 and 39601, Health and Safety Code.

**§ 95366.2. Reclaimed Refrigerant Requirements.**

- (a) On and after January 1, 2025, each manufacturer of small containers of automotive refrigerant must use certified reclaimed refrigerant in small containers of automotive refrigerant.
- (b) The following table lists the minimum percentage of the total aggregate weight in pounds of certified reclaimed refrigerant that is required by manufacturers to charge in small containers of automotive refrigerant for each calendar year and their respective dates:

<u>Percentage of Certified Reclaimed Refrigerant Required each Calendar Year</u>	<u>Starting Date</u>
<u>25%</u>	<u>January 1, 2025</u>
<u>50%</u>	<u>January 1, 2026</u>
<u>100%</u>	<u>January 1, 2027</u>

(c) Each manufacturer's percentage requirement of pounds of certified reclaimed refrigerant under section 95366.2(b) will be determined based on the prior calendar year's total aggregate amount of pounds of refrigerant in small containers of automotive refrigerant entered into California.

Note: Authority cited: Sections 38501, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38562.2, 38566, 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, except the spending plan described in section 95367(a)(6). Each annual report documents monthly data for small containers of automotive refrigerant sold and returned during the prior calendar year, January 1 through December 31. Reports must be submitted as follows:

(1) Upon request from CARB, each retailer must report sales data of the number of small containers of automotive refrigerant sold and returned. The sales data must be reported for each SKU, for each manufacturer or distributor, for each month, and as totals for each annual reporting period.

~~(1)~~(2) Upon request from CARB, each retailer must report the number of used small containers of automotive refrigerant returned by consumers. The sales data and returned cans data must be reported for each SKU, for each manufacturer or distributor, for each month, and as totals for each annual 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)(6). Each retailer must also report the amounts of deposits collected under section 95366(a)(1) that are not returned or refunded to consumers under section 95366(a)(3), and that are transferred to manufacturers or their designees under section 95366(a)(4).

- ~~(2)~~(3) 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.
- ~~(4)~~ 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 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.
- ~~(3)~~(5) Each manufacturer must report the number of small containers of automotive refrigerant returned for recycling by each retailer or distributor within the State. The salesreturn 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)~~(6) 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)~~(7) Each manufacturer of small containers of automotive refrigerant, or its designee, must report the amounts of both deposits that retailers transfer to it under section 95366(a)(4), and the deposits it collects under section 95366(b)(1) that it does not refund to retailers or distributors under section 96366(b)(4), and must also provide an accounting and description of how those funds were spent on enhancing consumer education or other programs, projects, and measures reducing greenhouse gas emissions for the previous calendar year. The report must highlight each component of an educational program or the other programs, projects, and measures and funds spent for that component.
- ~~(6)~~(8) Each manufacturer of small containers of automotive refrigerant, or its designee, must submit a proposed plan that details how it expects to expend unreturned container deposit funds collected during the previous calendar year on enhanced consumer education programs or other programs, projects, and measures reducing greenhouse gas emissions approved by the Executive Officer pursuant to section 95366(b)(6). The proposed plan must highlight each component of an educational

program or the other programs, projects, and measures and funds to be spent for that component. Pursuant to section 95366(b)(6), a manufacturer or its designee may not begin expending these funds without review and approval of the plan by CARB's Executive Officer. The plans are to be sent to the Executive Officer and are due May 1 every year starting May 1, 2017.

~~(7)~~(9) 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.

(10) On or after January 1, 2025, each report submitted under section 95367(a) must be accompanied by an attestation that all reported information is true, accurate, and complete.

(b) On or after January 1, 2025, reports to the Executive Officer are due March 1 every year starting March 1, 2025. Each annual report documents monthly data for certified reclaimed refrigerant sold for and used in small containers of automotive refrigerant during the prior calendar year, January 1 through December 31. Reports must be submitted as follows:

(1) Each manufacturer of automotive refrigerant must report the amount of certified reclaimed refrigerant, in pounds, received and charged into small containers of automotive refrigerant. The refrigerant amounts must be reported by each refrigerant, for each reclaimer or other outlet, for each month and as totals for each reporting period.

(2) Each report submitted under section 95367(b)(1) must be accompanied by an attestation that all reported information is true, accurate, and complete.

Note: Authority cited: Sections 38501, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38562.2, 38566, 39003, 39500, 39600 and 39601, Health and Safety Code.

### **§ 95367.1. Expiration of Returned Containers for Recycling Reporting Requirements.**

The provisions of sections 95367(a)(2), 95367(a)(5), 95367(a)(6), and 95367(a)(9), do not apply to small containers of automotive refrigerant sold on and after Jan. 1, 2025.

Note: Authority cited: Sections 38501, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38562.2, 38566, 39003, 39500, 39600 and 39601, Health and Safety Code.

**§ 95367.2. Use of Unclaimed Deposits.**

- (a) On or after January 1, 2025, proceeds from unclaimed deposits must be spent to support only the following specified activities or combinations of activities:
- (1) Repairing motor vehicle air conditioning systems that use a refrigerant with a GWP value greater than 150.
  - (2) Recovery and reclamation of refrigerants or foams with a GWP value greater than 150.
- (b) Administrative costs to support the implementation of the activities or combination of activities specified in section 95367.2(a) must not exceed 5 percent of total spending of unclaimed deposits annually unless the exceedance is approved in advance by the Executive Officer. A manufacturer or its designee that requests an exceedance of this administrative costs limit for a calendar year must submit a request to CARB's Executive Officer by e-mail at [RDDIYreport@arb.ca.gov](mailto:RDDIYreport@arb.ca.gov) no later than May 1 of the calendar year prior to the calendar year in which the manufacturer or its designee requests the increased administrative cost, and must provide information justifying that request including: identifying programs it has either established or plans to establish to support the activities or combination of activities specified in section 95367.2(a), accounting or financial statements detailing administrative costs it has incurred or anticipates incurring associated with implementing such activities. CARB's Executive Officer will approve or disapprove such requests based on the information provided by a manufacturer or its designee and the exercise of their engineering and business judgment and will inform the manufacturer or its designee of the decision within 45 days after receipt of a complete request for the exceedance of administrative cost limit.
- (c) If a manufacturer elects to use a designee to administer and spend unclaimed deposits, it may only designate a non-profit organization that demonstrates the capability to implement and monitor the activities specified in section 95367.2(a).
- (d) A manufacturer that elects to use a designee to administer and spend unclaimed deposits to implement and monitor activities or combination of activities specified in section 95367.2(a) must first submit a request no later than May 1 of the calendar year prior to the calendar year in which the manufacturer

requests use of a designee, must receive approval from CARB's Executive Officer before using a designee. The Executive Officer will approve the designee if the manufacturer provides clear and convincing documentation that the designee can successfully implement and monitor the activities specified in section 95367.2(a). The documentation must include information that: identifies the proposed designee, the technical qualifications and experience of the staff persons overseeing the program, a description how the designee meets the requirements in section 95367.2(c), and prior experience the designee has in implementing greenhouse gas reduction programs. The Executive Officer will approve or disapprove such requests based on the information provided by a manufacturer or its designee and the exercise of their engineering and business judgment, and will inform the manufacturer of the decision within 45 days after receipt of a complete request.

- (e) The Executive Officer may revoke the approval of a designee if they determine that the information provided by the manufacturer in section 95367.2(d) in its request to use a designee no longer accurately represents the capabilities of the entity to implement and monitor the activities or combination of activities specified in section 95367.2(a), or on the basis of information that the designee is not implementing or monitoring the activities or combination of activities specified in section 95367.2(a) in a timely or capable manner. The Executive Officer may make such findings on the basis of information, including reports or documents the designee must submit to CARB pursuant to section 95367(a)(8), and his or her engineering and business judgment, and will inform a manufacturer and its designee of their determination within 45 calendar days after acquiring information that indicates the information provided by the manufacturer in section 95367.2(d) no longer accurately represents the capabilities of the entity to implement and monitor the activities or combination of activities specified in section 95367.2(a), or that the designee is not implementing or monitoring the activities or combination of activities specified in section 95367.2(a) in a timely or capable manner.

Note: Authority cited: Sections 38501, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38562.2, 38566, 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~~, [insert date of amendment], 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, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38562.2, 38566, 39003, 39500, 39600 and 39601, Health and Safety Code.

#### **§ 95369. Recordkeeping Requirements.**

- (a) Each manufacturer, distributor, and retailer of small containers of automotive refrigerant must retain invoices for a period not less than 5 years that show the manufacturer, distributor, or retailer name, business name, physical address, contact name, telephone number, fax number, ~~email~~-mail address, web site address, sale date, and the quantity of small containers of automotive refrigerant purchased or sold.
- (b) Each retailer of small containers of automotive refrigerant must maintain records on a manufacturer-specific basis for a period not less than 5 years, and must provide such records to CARB upon request that document, on a calendar year basis:
  - (1) the amounts of deposits collected under section 95366(a)(1) that are not returned or refunded to consumers under section 95366(a)(3), and
  - (2) the amounts of deposits collected under section 95366(a)(1) that are not returned or refunded to consumers under section 95366(a)(3), that are

transferred to manufacturers or their designees under section 95366(a)(4).

- (c) Each recovery facility must maintain records for a period not less than 5 years that show the number of small containers received, and from whom they were received.
- (d) Each recovery facility must maintain records for a period not less than 5 years that show the quantity of automotive refrigerant recovered, along with the quantity of that recovered refrigerant that was recycled, reclaimed, or disposed of.
- (e) Each manufacturer or its designee must maintain records for a period not less than 5 years that show expenditures for educational programs that it funded from unclaimed deposits.
- (f) On and after January 1, 2025, each manufacturer must retain records for a period not less than 5 years:
  - (1) Results of the analysis conducted to verify that reclaimed refrigerant meets all specifications in 40 C.F.R. Part 82, Subpart F, Appendix A (Specifications for Refrigerants) (July 1, 2022), which is incorporated by reference in section 95631.
  - (2) Documentation that supports that it has not exceeded the maximum allowable virgin refrigerant content.
  - (3) Other documentation that shows compliance with the provisions of sections 95366.1(a), 95366.1(b), and 95366.1(c). Recordkeeping to show compliance with the reclaimed refrigerant requirement may include documentation from a refrigerant reclaimer such as receipts or certificates of analysis.
- ~~(f)~~(g) Records include copies of all invoices, books, correspondence, electronic data, or other pertinent documents in the possession or under the control of a manufacturer or its designee, distributor, or retailer that is necessary to prove compliance with the requirements of this subarticle.
- ~~(g)~~(h) The records specified in this section may be stored in paper, electronic, or other usable formats.
- ~~(h)~~(i) The records specified in this section must be provided to CARB upon request by the Executive Officer or his or her designee.

Note: Authority cited: Sections 38501, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38562.2, 38566, 39003, 39500, 39600 and 39601, Health and Safety Code.

**§ 95370. Severability.**

Each part of this subarticle is severable, and in the event that any provision of this subarticle is held to be invalid, the remainder of this subarticle shall continue in full force and effect.

Note: Authority cited: Sections 38501, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38562.2, 38566, 39003, 39500, 39600 and 39601, Health and Safety Code.