

Client Alert.

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Cold Comfort – New California Rules for Businesses Using Refrigeration

By Peter Hsiao, Michael J. Steel, and Meredith Klein

On January 1, 2011, a new Air Resources Board (CARB) regulation takes effect to minimize leaks of refrigerants typically used by supermarkets and grocery stores, food and beverage processors, cold storage warehouses, hotels and recreational facilities, and industrial cooling processes. The regulation, known as the Refrigerant Management Program, is one of the measures adopted to implement AB 32, the California Global Warming Solutions Act of 2006. It applies to the larger commercial and industrial systems that use high global warming potential (GWP) refrigerants.¹ The regulation is not expected to apply to most bars, restaurants, liquor stores, or office buildings, and it will not apply to systems that use ammonia, carbon dioxide, or HFC-152a as the refrigerant.

WHO'S COVERED?

The Refrigerant Management Program regulates three types of businesses: (1) anyone who owns or operates a nonresidential stationary refrigeration system that uses more than 50 pounds of a high-GWP refrigerant; (2) anyone who installs, repairs, maintains, services, replaces, recycles, or disposes of a nonresidential stationary refrigeration or air conditioning appliance; and (3) anyone who distributes or reclaims high-GWP refrigerants.

WHAT'S REQUIRED?

The requirements will phase in over the next few years:

- As of January 1, 2011, owners or operators of regulated refrigeration systems must:
 - Conduct leak inspections, which vary from continuous leak monitoring to monthly, quarterly, or annual inspections, depending on the type and size of refrigeration system;
 - Ensure that detected leaks are repaired within specified periods of time (from 14 to 120 days, depending on the situation), and that verification testing is performed;
 - Prepare and implement a retrofit or retirement plan for a refrigeration system that has not been successfully repaired within the time limit set forth in the regulation; and
 - Maintain specified records (including records of all leak repair work and other servicing of refrigeration systems) for a minimum of five years.

¹ The Refrigerant Management Program applies to: (1) any refrigerant with a GWP value equal to or greater than 150, and (2) any refrigerant that is an ozone-depleting substance as defined in U.S. EPA regulations. High-GWP refrigerants include chlorofluorocarbons (CFC), hydrochlorofluorocarbons (HCFC), hydrofluorocarbons (HFC), and perfluorocarbons (PFC).

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- Starting in 2012, registration, reporting, and fee requirements will be phased in for facilities in the following three categories:
 - Beginning March 1, 2012, facilities with large systems using greater than 2,000 pounds of a regulated refrigerant must register, report, and pay an annual fee of \$370.
 - Beginning March 1, 2014, facilities with medium systems using between 200 and 2,000 pounds of a regulated refrigerant must register, report, and pay an annual fee of \$170.
 - By March 1, 2016, facilities with small systems using greater than 50 but less than 200 pounds of a regulated refrigerant must submit a one-time registration with no annual fee or reporting.

Refrigerant usage is based on a “full charge,” defined as the amount of refrigerant required in the refrigerant circuit for normal operating characteristics and conditions of a refrigeration system or appliance, determined by using one of three methods allowed by the regulation.

In addition to regulating facilities with refrigeration systems, the Refrigerant Management Program requires anyone performing installation, maintenance, service, repair, or disposal of a stationary appliance that contains or uses a high-GWP refrigerant to comply with a set of required service practices, including the requirement to hold a valid, applicable technician certification issued in accordance with U.S. EPA regulations for stratospheric ozone protection.

The regulation imposes reporting requirements on refrigerant distributors and wholesalers as well as on certified reclaimers, and prohibits a person from selling, supplying, offering for sale, or distributing any high-GWP refrigerant for use as a refrigerant, as of January 1, 2011, except as specifically authorized.

WHAT HAPPENS IF YOU VIOLATE THE RULE?

CARB may bring an action to enjoin any violation of the Refrigerant Management Program. In addition, CARB can seek civil penalties for each day, or portion of a day, that any leak inspection or repair is not completed after the date required, and each day that any required registration, report, or plan remains unsubmitted, is submitted late, or contains incomplete or inaccurate information. Overdue or unpaid fees are also subject to per-day penalties. Penalties can range from \$1,000 per day per violation (if a minor source can establish that the violation was not negligent or intentional; the strict liability penalty for Title V sources is \$10,000 per day per violation) to \$75,000 per day per violation for willful and intentional violations that involve emissions.

WHY IS CARB DOING THIS AND WHAT WILL IT COST?

CARB has estimated that the rule will cause greenhouse gas emission reductions of 8.1 million metric tons of CO₂e in 2020, equivalent to removing about 1.4 million cars from the road for a year. Though costs will vary from facility to facility, CARB anticipates that the leak detection, monitoring, and repair requirements of the rule will produce an average savings of roughly \$2 a metric ton for each ton of the equivalent of CO₂ reduced because prompt leak repair will reduce the need to buy costly refrigerant to refill the system.

CONCLUSION

Facilities will need to put inspection programs in place promptly in order to comply with CARB's new regulations. Morrison & Foerster continues to monitor CARB's rulemaking in this area and is providing additional assistance to regulated parties as they attempt to meet these new CARB requirements for refrigeration systems.

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