

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 82**

[FRL-5174-5]

Protection of Stratospheric Ozone; Refrigerant Recycling**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: Through this action EPA is amending the Clean Air Act section 608 refrigerant recycling regulations to extend the effectiveness of the refrigerant purity requirements at § 82.154(g) and (h), which are currently scheduled to expire on May 15, 1995, only until March 18, 1996 or until EPA can complete rulemaking to adopt new refrigerant purity requirements based on industry guidelines, whichever comes first. EPA is extending the requirements in response to requests from the air-conditioning and refrigeration industry in order to avoid widespread contamination of the stock of chlorofluorocarbon (CFC) and hydrochlorofluorocarbon (HCFC) refrigerants, which could result from the lapse of the purity standard. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases.

In the proposed rules section of today's **Federal Register**, EPA is proposing to extend the effectiveness of the refrigerant purity requirements at § 82.154(g) and (h) and soliciting public comment on this extension. If adverse comments are received on this direct final rule, EPA will withdraw the direct final rule and address the comments received in a subsequent final rule on the related proposed rule. No additional opportunity for public comment on the extension will be provided.

DATES: This final action will become effective on May 16, 1995 unless EPA is notified by April 17, 1995 that any person wishes to submit adverse comment. If such notification is received and EPA withdraws this direct final rule, then timely notice will be published in the **Federal Register**.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A-92-01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 in room M-1500. Dockets may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable

fee may be charged for copying docket materials. Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Deborah Ottinger, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), 401 M Street SW., Washington, DC 20460, (Docket # A-92-01 VIII.F.) (202) 233-9149.

FOR FURTHER INFORMATION CONTACT: Section 608 Recycling Program Manager, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), 401 M Street SW., Washington, DC 20460. The Stratospheric Ozone Information Hotline at 1-800-296-1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

- I. Overview
- II. Background
- III. Today's Action
- IV. Effective Date
- V. Summary of Supporting Analysis
- VI. Judicial Review

I. Overview

Paragraphs 82.154 (g) and (h) of 40 CFR Part 82, subpart F set requirements for sale of used refrigerant, mandating that it meet certain purity standards. These requirements will expire on May 15, 1995. EPA is currently in the process of adopting new, less restrictive, refrigerant purity requirements based on industry guidelines, but will be unable to complete the rulemaking prior to the expiration of the existing standards. A lapse in the standards could result in widespread contamination of the stock of CFC and HCFC refrigerants. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases. Release of CFC and HCFC refrigerants has been found to deplete stratospheric ozone, resulting in increased human and environmental exposure to ultraviolet radiation. Increased exposure to ultraviolet radiation in turn causes increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to plants (including crops and aquatic organisms), and increased formation of ground-level ozone. To avoid these results, EPA is acting on requests from the air-conditioning and refrigeration industry to extend the effectiveness of the current refrigerant purity requirements, only until EPA can

complete rulemaking to adopt the new requirements.

II. Background

On May 14, 1993, EPA published final regulations establishing a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment (58 FR 28660). These regulations include evacuation requirements for appliances being serviced or disposed of, standards and testing requirements for used refrigerant sold to a new owner, certification requirements for refrigerant reclaimers, and standards and testing requirements for refrigerant recycling and recovery equipment.

When EPA promulgated the final rule, the Agency noted that further rulemaking would probably be required to address some issues that had been raised during the comment period on the proposed rule (57 FR 58644). One of these issues was whether a standard for used refrigerant could be developed that would protect air-conditioning and refrigeration equipment, but would allow technicians to clean refrigerant themselves, rather than sending the refrigerant to an off-site reclaimer.

The final rule published on May 14, 1993, requires that refrigerant sold to a new owner be reclaimed to the ARI 700 Standard of purity by a certified reclaimer (§ 82.154 (g) and (h) referencing standard in §§ 82.152(r) and 82.164). As discussed in the final rule, this requirement was intended to protect the purity of used refrigerant in order to prevent damage to air-conditioning and refrigeration equipment from use of contaminated refrigerant. Equipment damage from contaminated refrigerant would result in costs to equipment owners, in releases of refrigerant from damaged equipment through increased leakage, servicing and replacement, and in reduction in consumer confidence in the quality of used refrigerant. This reduction in consumer confidence could in turn lead to release of refrigerant that was presumed to be contaminated (and therefore harmful to equipment), depleting stratospheric ozone, decreasing the limited supply of refrigerants, and forcing the premature retirement or retrofit of CFC or HCFC equipment (58 FR 28678).

Although the reclamation requirements at § 82.154 (g) and (h) would clearly protect equipment, EPA believed that a less stringent but still effective requirement could be developed, particularly for refrigerant transferred between owners whose equipment was similar and was serviced

by the same contractor. However, the only existing refrigerant purity standard at the time EPA promulgated the rule was ARI 700, and the only agreed upon means of enforcing it was by limiting sale of used refrigerant to only certified reclaimers.

In order to encourage industry to explore the possibility of developing less stringent but still effective standards and technologies for purifying refrigerant, EPA adopted a commenter's suggestion that the Agency establish an expiration date, or "sunset," for the reclamation requirement. EPA accordingly made the reclamation requirements at § 82.154 (g) and (h) effective until May 15, 1995, two years after publication of the final rule. EPA believed that this two-year period would be sufficient for industry to develop new guidelines for reuse of refrigerant and for EPA to complete a rulemaking to adopt them (58 FR 28679).

In December, 1994, a committee representing a wide range of interests within the air-conditioning and refrigeration industry published *Industry Recycling Guide (IRG-2): Handling and Reuse of Refrigerants in the United States*. This document establishes requirements and recommendations for the reuse of refrigerant in a number of different situations, including refrigerant transfers on the open market and between equipment owned by different people but serviced by the same contractor. EPA believes that these requirements would protect air-conditioning and refrigeration equipment while permitting technicians, contractors, and equipment owners more flexibility than the current requirements, and EPA is pursuing rulemaking to adopt the IRG-2 requirements as soon as possible. However, EPA does not believe that it will have an opportunity to develop and publish a proposed rule, take public comment, and develop and publish a final rule between now and May 15, 1995, when the current reclamation requirements will expire.

Representatives of the air-conditioning and refrigeration industry have expressed concern that such a lapse in refrigerant purity requirements would result in a number of problems, including sloppy handling of refrigerant and dumping of contaminated refrigerant on the market. These problems would in turn result in significant damage to equipment, release of refrigerant, and aggravated refrigerant shortages.

Currently, the reclamation requirement encourages careful

handling of refrigerant, because refrigerant that is irretrievably contaminated (for instance through mixture with other refrigerants) will not be accepted by any reclaimer, rendering it worthless. However, if this check is removed, sloppy handling may become widespread. This would not only lead to damage to equipment, but to the permanent loss of part of the stock of pure refrigerant through refrigerant mixture. Even in the best case in which the mixed refrigerant was properly disposed of, the limited supply of refrigerant would thereby be further reduced, necessitating more retrofit or replacement of existing equipment. Unfortunately, it is likely that the mixed refrigerant would often be used in air-conditioning and refrigeration equipment or vented rather than properly disposed of.

The possibility of widespread dumping of refrigerant on the market has been raised by reports that contractors and "recyclers" are stockpiling used refrigerant. In some cases, dumping dirty refrigerant on the market might be attractive simply because it enables the seller of refrigerant to avoid the costs of reclamation; in others, it might be attractive because the refrigerant is unreclaimable and therefore worthless if analyzed or sent to a reclaimer. (In fact, in the latter situation the refrigerant is worse than worthless, because the owner of the refrigerant must actually pay to have the refrigerant properly disposed of.) In either situation, such dumping would lead to widespread equipment damage. This concern is exacerbated by the date on which the current reclamation requirements are scheduled to expire: May 15 falls at the beginning of the summer, when there is heavy demand for refrigerant.

III. Today's Action

In response to these concerns, EPA is extending the effectiveness of the current reclamation requirements until the Agency can adopt replacement requirements. It was never EPA's intent to leave air-conditioning and refrigeration equipment and refrigerant supplies unprotected by a purity standard, but only to replace the existing standard with a more flexible standard when that was developed. As discussed above, EPA is currently undertaking rulemaking to adopt a more flexible standard and anticipates publishing a proposal by mid to late summer of this year.

IV. Effective Date

This final action will become effective on May 16, 1995 unless EPA is notified

by April 17, 1995 that any person wishes to submit adverse comment. If such notification is received and EPA withdraws this direct final rule, then timely notice will be published in the **Federal Register**.

V. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this amendment to the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that this amendment will have negligible impact on the regulated community because it simply extends an existing requirement. This requirement itself is expected to result in significant private savings due to avoided damage to air-conditioning and refrigeration equipment and

preservation of a stock of pure refrigerant to continue servicing equipment. An examination of the impacts of the section 608 rule as a whole on small entities was discussed in the final rule (58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis accompanied the final rule and is contained in Docket A-92-01. I certify that this amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

C. Paperwork Reduction Act

Any information collection requirements in a rule must be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because no additional informational collection requirements are required by this amendment, EPA has determined that the Paperwork Reduction Act does not apply to this rulemaking and no new Information Collection Request document has been prepared.

VI. Judicial Review

Because these regulations are nationally applicable under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the United

States Court of Appeals for the District of Columbia Circuit within sixty days of publication of this action in the **Federal Register**.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Hydrochlorofluorocarbons, Interstate commerce, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: March 14, 1995.

Carol M. Browner,
Administrator.

Part 82, chapter I, title 40, of the code of Federal Regulations, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671-7671q.

2. Section 82.154 is amended by revising paragraphs (g) and (h) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(g) Effective May 16, 1995 until March 18, 1996, no person may sell or offer for

sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed as defined at § 82.152(r);

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

(h) Effective May 16, 1995 until March 18, 1996, no person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed by a person who has been certified as a reclaimer pursuant to § 82.164;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

* * * * *

[FR Doc. 95-6750 Filed 3-16-95; 8:45 am]

BILLING CODE 6560-50-P