ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5670–2]

RIN 2060–AF36

Protection of Stratospheric Ozone: Extension of The Existing Reclamation Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: 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 of § 82.154(g) and (h), which are currently scheduled to expire on December 31, 1996, until EPA adopts revised purity requirements. EPA initially extended these requirements in response to requests from the air-conditioning and refrigeration industry to avoid widespread contamination of the stock of chlorofluorocarbon (CFC) and hydrochlorofluorocarbon (HCFC) refrigerants that 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.

EPA proposed a more flexible approach to ensuring the purity of refrigerants on February 29, 1996, and solicited public comment. EPA received significant comments regarding a potential delegation of authority and an unintentional creation of a monopoly. EPA believes prior to adopting a more flexible approach EPA must further consider these comments. EPA intends to issue a supplemental action that would revise several aspects of the February 29, 1996 proposal.

To prevent any lapse in the purity standards, on November 1, 1996, EPA proposed to extend the current reclamation requirements indefinitely until EPA adopts revised requirements. Today EPA is extending the current reclamation requirements. This continuation will not result in any additional burden on the regulated community. Moreover, the retention of the reclamation requirement will protect the environment, public health, and consumers by ensuring that contaminated refrigerants are not vented or charged into equipment.

EFFECTIVE DATE: January 1, 1997.

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, D.C. 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.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, D.C. 20460, (202) 233–9729. 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. Regulated Entities

Entities potentially regulated by this action are those that wish to recover, recycle, reclaim, sell, or distribute in interstate commerce refrigerants that contain chlorofluorocarbons (CFCs) and/or hydrochlorofluorocarbons (HCFCs). Regulated categories and entities include:

Category	Example of regulated entities
Industry	Reclaimers. Equipment manufacturers. Air-conditioning and refrigeration contractors and technicians. Owners and operators of industrial process refrigeration equipment. Laboratories. Plumbing, heating and cooling contractors.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria contained in Section 608 of the Clean Air Amendments of 1990; discussed in regulations published on May 14, 1993 (59 FR 28660); and discussed below. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background and Notice of Proposed Rulemaking

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. As discussed in the Notice of Proposed Rulemaking (NPRM) issued November 1, 1996 (61 FR 56493), these requirements will expire on December 31, 1996. EPA proposed extending these requirements beyond the end of 1996.

EPA is in the process of considering whether it is appropriate to promulgate new, more flexible, reclamation requirements based on industry guidelines. To that end, EPA issued a separate NPRM on February 29, 1996 (61 FR 7858). The February 29, 1996 NPRM was an omnibus notice that addressed many aspects of 40 CFR Part 82, Subpart F. Among the various issues raised in that NPRM was the adoption of a more flexible approach to reclamation with the related adoption of third-party certification for laboratories and reclaimers. Other issues addressed in that NPRM include changes to the recordkeeping and reporting requirements for technician certification programs, the adoption of an updated industry standard, amending the definitions of motor vehicle air-conditioning-like appliances and small appliances, the adoption of formal revocation procedures for approved certification programs, transfers of refrigerant between subsidiaries, and clarifying the distinction between major and minor repairs. EPA has analyzed the public comments concerning the February 29, 1996 NPRM, and will issue a final rulemaking soon; however, EPA has decided not to complete promulgation of all the proposed changes discussed in that NPRM as part of one final package. The decision to delay action on specific issues proposed in the February 29, 1996 NPRM and to extend the current reclamation requirements was discussed in the November 1, 1996 NPRM (61 FR 56493).

III. Response to Comments

EPA requested and received nine comments regarding the November 1, 1996 NPRM. All the comments

supported EPA's proposed extension of the current requirements beyond December 31, 1996.

Of these nine comments received, six commenters raised similar points. These commenters stated that it is important to extend the reclamation requirements for both environmental and consumer protection needs. The commenters stated that the reclamation requirements ensure that used refrigerant sold in the marketplace meets the ARI Standard 700 levels of purity. The commenters indicated that avoiding contamination of the refrigerant supply is paramount. The commenters highlighted concerns that a lapse in the requirements could lead to widespread contamination of the stock of used CFC- and HCFC-refrigerants leading to increased equipment failures and potential venting of refrigerants. These commenters also indicated that EPA should continue the evaluation of a more flexible approach to reclamation and implement such an approach as soon as possible. EPA agrees with these commenters.

EPA received one comment from a company that operates many older air-conditioning and refrigeration systems. This commenter, a supporter of the extension, indicated that contamination of refrigerant stock could damage parts, leading to a shortage of replacement parts and resulting in a consequent cost increases for replacement parts. EPA understands this commenter's concerns for readily available, fairly priced replacement parts.

While the last two commenters supported the proposed decision, they requested that EPA adopt a more flexible approach within a short timeframe. One commenter stated that their organization would continue to support the use of the current reclamation requirements as an interim measure and that EPA should adopt a more flexible approach with due speed. The other commenter stated that there was no choice but to support the extension because the alternative of permitting the requirements to lapse would be worse. This commenter requested that EPA set a specific deadline for the adoption of a more flexible reclamation requirement and that this deadline should be no later than a date within the next three calendar months. The commenter further stated that EPA should do everything within its power to meet such a deadline. EPA understands the concerns raised by this commenter. EPA had intended to adopt a more flexible approach to reclamation before December 31, 1996, therefore, avoiding the need for today's action. However, as discussed above and in the NPRM, central to the proposed adoption of a more flexible approach to reclamation is the proposed adoption of third-party certification programs for both laboratories and reclaimers. Commenters submitting information regarding the February 29, 1996 NPRM identified several specific concerns regarding the appropriateness of delegating various functions to third-parties and whether EPA may unintentionally create a monopoly. These comments have led to the need for additional research and consultation by EPA. EPA did not propose in the November 1, 1996 NPRM any specific date to sunset the reclamation requirements since such a date could occur prior to the completion of EPA's analysis. Instead, EPA indicated that the Agency would work to expedite the adoption of a more flexible approach and would extend the current requirements only until such action is completed.

EPA did not propose a date-certain sunset partly because EPA does not believe a date-certain approach is necessary at this juncture. EPA established sunsets for these requirements in the past based on EPA's estimation of the time required for industry representatives to develop an alternative to traditional reclamation that permits flexibility without compromising the goals of environmental protection and the time necessary for the Agency to adopt that approach. Initially, EPA anticipated that the industry standard would be a recycling standard similar to the standard used to recycle CFC–12 recovered from motor vehicle air conditioners. However, the standard developed by industry, known as *Industry Recycling Guide -2* (IRG–2) is significantly different from what EPA had initially envisioned. IRG–2 establishes a method for contractors and technicians to evaluate used refrigerant based on the history of that refrigerant, to use recycling devices where appropriate, and to ultimately rely on the testing of representative refrigerant samples by off-site laboratories prior to permitting the refrigerant to change ownership. IRG–2 could not be adopted by EPA without the further development of procedures for adequately testing representative samples by capable laboratories. The need to develop such a program and the concerns raised by commenters were not initially anticipated by EPA. EPA also did not predict other factors that slowed the rulemaking process, such as budgetary events beyond EPA's control.

These unforseen circumstances have led to today's action. While EPA anticipates the adoption of the more flexible reclamation approach in early 1997, EPA does not wish to ignore the possibility that other unforseen circumstances could arise resulting in a further delay. If such unforeseen circumstances did arise, it is likely that EPA would pursue another extension, thus diverting resources from the more important endeavor of ultimately replacing the current requirements with a more flexible approach. Therefore, EPA did not propose and today is not adding a sunset date.

IV. Today's Action

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 previously, EPA is currently undertaking rulemaking to adopt a more flexible standard.

V. Effective Date

Today's action will be effective starting January 1, 1997. This expedited effective date is necessary to avoid a lapse in the current reclamation requirements. Section 553 of the Administrative Procedures Act (APA) authorizes agencies to dispense with certain procedures for rules when there exists ''good cause'' to do so. Given the lack of burden upon affected parties, the need to ensure that no regulatory lapse occurs, and in accordance with section 553(b), the Agency finds that there is good cause to accelerate the effective date of this rulemaking because to delay the effective date would be ''impracticable, unnecessary, or contrary to the public interest.''

The retention of the current reclamation requirements will protect the environment, public health, and consumers by ensuring that contaminated refrigerants are not vented or charged into equipment. Therefore, the effective date for this rulemaking will be January 1, 1997.

VI. 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 action to amend 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. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this rulemaking is estimated to result in the expenditure by State, local, and tribal governments or private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. As discussed in this preamble, this rule merely extends the current reclamation requirements during consideration of a more flexible approach that may result in reducing the burden of part 82 Subpart F of the Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities.

C. Paperwork Reduction Act

There is no additional information collection requirements associated with this rulemaking. Therefore, EPA has determined that the Paperwork Reduction Act does not apply. The initial § 608 final rulemaking did address all recordkeeping associated with the refrigerant purity provisions. An Information Collection Request (ICR) document was prepared by EPA and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. This ICR is contained in the public docket A–92–01.

D. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule because it continues existing requirements. EPA would like to clarify that there was a misstatement in the NPRM regarding the potential impact that this rule would have on small entities. This rule does not make any change to the current regulatory situation. It does not provide relief or any increase from current regulatory burdens. Thus the regulatory flexibility analysis discussed in the initial final rule (May 14, 1996, 58 FR 28660) is still applicable.

VII. Submission To Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 82

Environmental protection, Aerosols, Air pollution control, Chlorofluorocarbons, Chemicals, Hydrochlorofluorocarbons, Stratospheric ozone layer.

Dated: December 20, 1996.

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) 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;

(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) 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.

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