



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2017–0213; FRL-9972-48-OAR]

RIN 2060-AT43

Protection of Stratospheric Ozone: Refrigerant Management Regulations for Small Cans of Motor Vehicle Refrigerant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 28, 2017, the Environmental Protection Agency (EPA) published a direct final rule and an accompanying notice of proposed rulemaking entitled “Protection of Stratospheric Ozone: Refrigerant Management Regulations for Small Cans of Motor Vehicle Refrigerant.” Because EPA received adverse comment, EPA is withdrawing the direct final rule through a separate notice. In this action, EPA is finalizing its proposal to correct the editing oversight that led to a potential conflict in a prior rulemaking as to whether or not containers holding two pounds or less of non-exempt substitute refrigerants for use in motor vehicle air conditioning that are not equipped with a self-sealing valve can be sold to persons that are not certified technicians, provided those small cans were manufactured or imported prior to January 1, 2018. This action clarifies that those small cans manufactured or imported prior to January 1, 2018 may continue to be sold to persons that are not certified as technicians under sections 608 or 609 of the Clean Air Act.

DATES: This final rule is effective [**Insert date of publication in the Federal Register**].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2017–0213. All documents in the docket are listed on the <http://www.regulations.gov>

web site. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Sara Kemme by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205T), 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone: (202) 566-0511; or by email: kemme.sara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What action is the Agency taking?

On September 28, 2017, EPA published a Direct Final Rule (82 FR 45202) to make a minor change to resolve a potential conflict in regulatory text at 40 CFR 82.154(c)(1)(x) to ensure that it conforms to the EPA's intention. We stated in that direct final rule that if we received adverse comment by October 30, 2017, we would publish a timely withdrawal in the Federal Register so that the direct final rule would not take effect. EPA received adverse comment on that direct final rule by October 30, 2017 and is publishing a separate notice withdrawing that direct final rule.

To accompany the direct final rule, EPA also published a Notice of Proposed Rulemaking on September 28, 2017 entitled "Protection of Stratospheric Ozone: Refrigerant Management Regulations for Small Cans of Motor Vehicle Refrigerant" (82 FR 45253). That notice proposed

to make the same change in the regulatory text as in the direct final rule. This action addresses the relevant comments received and finalizes the revisions in the proposal.

B. Does this action apply to me?

Categories and entities potentially affected by this action include entities that distribute or sell small cans of refrigerant for use in motor vehicle air conditioning (MVAC) systems.

Regulated entities include, but are not limited to, importers, manufacturers, and distributors of small cans of refrigerant (NAICS codes 325120, 441310, 447110) such as automotive parts and accessories stores and industrial gas manufacturers. This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, or organization could be regulated by this action, you should carefully examine the regulations at 40 CFR part 82, subpart F. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the FOR FURTHER INFORMATION CONTACT section.

C. Judicial Review

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by [Insert date 60 days after publication in the **Federal Register**]. This final action is a nationally applicable regulation and has nationwide scope and effect because it makes revisions to the EPA's regulations for the National Recycling and Emission Reduction Program found at 40 CFR part 82, subpart F, which are nationally applicable regulations that have nationwide scope and effect. Under CAA section 307(d)(7)(B), only an objection to this final action that was raised with reasonable specificity during the period for public comment can be raised during judicial review. This section also provides a mechanism for EPA to convene a proceeding for

reconsideration, “[i]f the person raising an objection can demonstrate to [EPA] that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of this rule.” Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, William Jefferson Clinton Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344–A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

D. Effective Date

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. 553(d), generally provides that rules may not take effect earlier than 30 days after they are published in the Federal Register. EPA is issuing this final rule under section 307(d) of the Clean Air Act (CAA), which states: “The provisions of section 553 through 557 . . . of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.” CAA section 307(d)(1). Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective immediately upon publication in the Federal Register. APA section 553(d) provides an exception for any action that grants or recognizes an exemption or relieves a restriction. This final rule relieves a restriction on the sale of certain small cans of MVAC refrigerant that were manufactured or imported prior to January 1, 2018.

II. Background

Section 608 of the CAA bears the title “National Recycling and Emission Reduction Program.” Under the structure of section 608, this program has three main components. First, section 608(a) requires EPA to establish standards and requirements regarding use and disposal of class I and II substances¹, including a comprehensive refrigerant management program to limit emissions of ozone-depleting refrigerants. The CAA directs EPA to include regulations that reduce the use and emissions of class I and II substances to the lowest achievable level and that maximize the recapture and recycling of such substances. The second component, section 608(b), requires that the regulations issued pursuant to subsection (a) contain requirements for the safe disposal of class I and class II substances. The third component, section 608(c), prohibits the knowing venting, release, or disposal of ozone-depleting refrigerants and their substitutes during the maintenance, service, repair, or disposal of air-conditioning and refrigeration appliances or industrial process refrigeration.

EPA first issued regulations under section 608 of the CAA on May 14, 1993 (58 FR 28660), to establish the national refrigerant management program for ozone-depleting refrigerants recovered during the maintenance, service, repair, and disposal of air-conditioning and refrigeration appliances. These regulations were intended to substantially reduce the use and emissions of ozone-depleting refrigerants. EPA revised these regulations through subsequent rulemakings published on August 19, 1994 (59 FR 42950), November 9, 1994 (59 FR 55912), August 8, 1995 (60 FR 40420), July 24, 2003 (68 FR 43786), March 12, 2004 (69 FR 11946), January 11, 2005 (70 FR 1972), May 23, 2014 (79 FR 29682), and April 10, 2015 (80 FR 19453). For a more detailed summary of the history of EPA’s Refrigerant Management Program

¹ A class I or class II substance refers to an ozone-depleting substance listed 40 CFR part 82 subpart A, appendix A or appendix B, respectively.

see the discussion in the most recent update to these regulations at 81 FR 82272, 82275 (Nov. 18, 2016).

On November 9, 2015, EPA proposed updates to the refrigerant management regulations under section 608 of the CAA (80 FR 69458). Among other things, EPA proposed to extend the sales restriction to non-exempt substitute refrigerants with an exception for small cans of refrigerant for use in MVAC. That is, the proposed revisions would have restricted the sale of non-exempt substitute refrigerants to certified technicians, with an exception for small cans (two pounds or less) of non-exempt substitute refrigerant for the servicing of MVACs² if the cans had a self-sealing valve. EPA requested comments on several aspects of that proposal including a scenario that would have included a sell-through provision for all small cans manufactured or imported prior to that effective date. (80 FR 69481). The proposal further stated that:

For manufacture and import of small cans of refrigerant for MVAC servicing, EPA is proposing a compliance date of one year from publication of the final rule. EPA is also proposing to allow small cans manufactured and placed into initial inventory or imported before that date to be sold for one additional year. For example, if the rule is published on July 1, 2016, small can manufacturers would have until July 1, 2017, to transition their manufacturing lines to add self-sealing valves. Manufacturers, distributors, and auto parts stores would be able to sell all small cans manufactured and placed into initial inventory or imported prior to July 1, 2017, until July 1, 2018. EPA seeks comments on this proposed implementation timeline. [80 FR 69509]

On November 18, 2016, EPA published a rule finalizing the proposed restriction that non-exempt substitute refrigerants may only be sold to technicians certified under sections 608 or 609 of the CAA. (81 FR 82280). In the case of refrigerant for use in MVAC, EPA finalized the exemption for the sale of certain small cans of non-ozone-depleting substitutes with a self-sealing valve to allow the do-it-yourself community to continue servicing their personal vehicles.

Id. However, the agency intended to allow the continued sale of small cans manufactured or

² In this context, containers that meet these criteria are referred to interchangeably as “small cans of MVAC refrigerant,” “small cans of refrigerant for MVAC servicing,” or simply “small cans.”

imported prior to the January 1, 2018 compliance date.. The preamble to the final rule stated that, “EPA is requiring that small cans of non-exempt substitute refrigerant be outfitted with self-sealing valves by January 1, 2018. Based on comments, EPA is not finalizing the proposal to prohibit the sale of small cans that do not contain self-sealing valves that were manufactured or imported prior to that requirement taking effect.” *Id.* The preamble further stated:

With regards to small cans of MVAC refrigerant, manufacturers, distributors and retailers of automotive refrigerant supported the proposed “manufacture-by” date of one year from publication of the final rule, but commented that they oppose a sell-through date for small cans that do not have self-sealing valves. They commented that such a requirement would be inefficient, burdensome, costly, and environmentally problematic. It would require all retailers to know of the requirement and establish processes for returning unsold cans back to the manufacturer for destruction. More likely, the cans may be improperly disposed of, which would negate the environmental benefit of the new provisions. One commenter stated that a “manufacture-by” date would shift EPA’s burden in ensuring compliance from a few manufacturers to thousands of retailers. Furthermore, commenters cited EPA’s July 2015 SNAP rule (80 FR 42901; July 20, 2015) which listed HFC-134a as unacceptable for use as an aerosol as of a “manufacture-by” date, rather than a “sell-by” date. [81 FR 82342]

EPA described its intention to allow the continued sale of small cans without self-sealing valves that were manufactured or imported before the January 1, 2018, compliance date as follows:

In response to the comments received on EPA’s proposal to allow small cans manufactured and placed into initial inventory or imported before that date to be sold for one additional year, EPA is not finalizing the sell-through requirement and is finalizing only a date by which small cans must be manufactured or imported with a self-sealing valve. EPA agrees that this is the least-burdensome option and that it avoids the potential for any unintended consequences of a “sell-by” date. [81 FR 82342]

These intentions were also expressed in the regulatory text at 40 CFR 82.154(c)(2), which was revised in the November 2016 rule. However, because of an editing error, another provision, 40 CFR 82.154(c)(1)(ix), contains text that could be construed as contradicting the Agency’s clearly expressed intent to allow non-technicians to purchase, and retailers to sell, small cans of refrigerant for use in MVAC that were manufactured or imported before the

January 1, 2018, compliance date irrespective of whether they have a self-sealing valve.

The Automotive Refrigeration Products Institute and the Auto Care Association inquired about whether the language in 40 CFR 82.154(c)(1)(ix) effectively negates the provision in 40 CFR 82.154(c)(2) and the preamble discussion showing EPA's intention to allow small cans of refrigerant for use in MVAC manufactured or imported before January 1, 2018, to continue to be sold without self-sealing valves. EPA published a direct final rule and an accompanying notice of proposed rulemaking to revise the regulatory text, so that persons in possession of small cans of refrigerant for use in MVAC without self-sealing valves that were manufactured or imported before January 1, 2018, can be assured that they will be able to sell off their existing inventories without disruption.

The public comment period for the notice of proposed rulemaking that accompanied the direct final rule closed on October 30, 2017. EPA received adverse comment on the direct final rule and accordingly is publishing a notice withdrawing the direct final rule. EPA is now finalizing the regulatory revisions based on the accompanying proposal, "Protection of Stratospheric Ozone: Refrigerant Management Regulations for Small Cans of Motor Vehicle Refrigerant" (82 FR 45253). The regulatory text being finalized in this action is the same as the revised text in the direct final rule.

In the direct final rule, which is being withdrawn, EPA explained that the action would eliminate burden associated with regulatory uncertainty in this area. The Automotive Refrigeration Products Institute and the Auto Care Association informed EPA that the lack of clarity surrounding the status of small cans of refrigerant for use in MVAC without self-sealing valves that were manufactured or imported before the compliance date created confusion for their members. Unless resolved, this lack of clarity could unnecessarily influence sales of

automotive refrigerant during 2017. This is because retailers may not want to stock large numbers of these small cans of refrigerant for use in MVAC unless they are given some assurance that they will be able to sell off any remaining inventory after January 1, 2018. There is also the concern that if clarity is not provided by January 1, 2018, retailers may feel compelled to manually pull cans without self-sealing valves from their shelves and return the cans to their supplier(s). This rule eliminates the cost of that stranded inventory and also eliminates other non-quantified burdens associated with the removal of such cans from the market, such as the labor involved in segregating small cans with self-sealing valves from those without self-sealing valves and physically pulling those from shelves.

III. Response to Comments

EPA received several comments on the direct final rule, some of which were adverse at least in part. EPA is addressing those comments, as relevant, in this final rule. Consistent with the statements in the direct final rule and the parallel proposed rule, EPA did not initiate a second comment period on this action.

One commenter asked why it is that the sell through provision proposed in 2015 was not finalized, if the intent was to protect ozone³. The commenter stated that finalizing a sell through provision that does not permit the sales of refrigerant without a self-sealing valve would have a greater benefit for the general welfare, stating that it would reduce harmful gases being released and bolster the argument for allowing do-it-yourselfers to be allowed to purchase the product, regardless of the impending compliance date. Conversely, another commenter wrote that the selling of these cans will present very little damage to the ozone⁴ and does not break any regulations, acts, or executive orders that have been previously passed. However, the commenter further said that the

³ EPA believes the commenter is referring to stratospheric ozone.

⁴ EPA believes the commenter is referring to stratospheric ozone.

extended use of such cans of refrigerant that leak could pose a small threat to our ozone in the future and that for this reason, they should not be able to be imported or manufactured after the date of January 1, 2018.

EPA responds that it disagrees that the first commenter's suggestion would have a greater benefit for the general welfare, for reasons explained in its response to comments on the 2016 final rule.⁵ More specifically, in the 2016 final rule EPA noted that comments from distributors and retailers of automotive refrigerant supported the proposed "manufacture-by" date of one year from publication of the final rule, but commented that they oppose a sell-through date for small cans that do not have self-sealing valves. (81 FR 82342). They commented that such a requirement would be inefficient, burdensome, costly, and environmentally problematic, and that it would require all retailers to know of the requirement and establish processes for returning unsold cans back to the manufacturer for destruction. *Id.* EPA further noted in the 2016 rule the comment that the cans may be improperly disposed of, which would negate the environmental benefit of the new provisions added in that rule. *Id.* EPA additionally noted the point made by one commenter who stated that a "manufacture-by" date would shift EPA's burden in ensuring compliance from a few manufacturers to thousands of retailers. *Id.* EPA responded in the 2016 final rule that to allow all entities in the distribution chain time to plan for and communicate changes to the sales restriction on non-exempt substitute refrigerants, as well as the requirement for self-sealing valves on small cans, EPA was finalizing a sales restriction date and "manufacture-by" or "import-by" date of January 1, 2018. *Id.* EPA also noted this was consistent with past practice in a Significant New Alternatives Policy (SNAP) Program rule (*id.*, citing 80 FR 42901; July 20, 2015). For all of these reasons, EPA continues to support the approach

⁵ EPA additionally notes that to the extent that the comments are based on a premise that the provision applies to containers that hold ozone-depleting refrigerants, that premise is mistaken, as explained in a later comment response.

articulated in the 2016 final rule and is finalizing the revisions in the September 28, 2017 proposal, so that EPA's intent in the 2016 final rule to have a sales restriction date be based on a "manufacture-by" or "import-by" date of January 1, 2018 is effectuated.

EPA received one comment that EPA should require self-sealing valves for all refrigerants in order to prevent inadvertent release of ozone-depleting substances (ODS). This comment is outside of the scope of this rulemaking, which clarifies the status of small cans of non-exempt substitute refrigerant for use in MVACs that were manufactured or imported prior to January 1, 2018. The exemption at issue in this rule does not apply to any container that contains ODS. Further, there are no ODS that are allowed to be sold in small cans for MVAC use. All ODS refrigerants are subject to a sales restriction that places restrictions on the sale of such substances to people who are certified technicians (40 CFR 82.154(c)). Given there are no ODS MVAC refrigerants currently sold in small cans and given that all ODS refrigerants are subject to the sales restriction, EPA did not propose to require self-sealing valves on small cans of ODS MVAC refrigerant and is not finalizing such a requirement.

EPA received one comment that the agency should not allow the sale of small cans of MVAC refrigerants because instead of taking corrective measures and replacing leaking refrigeration system components, business owners are purchasing these small cans at automotive stores and recharging commercial equipment themselves. This comment is likewise outside the scope of this action. EPA did not propose to eliminate or revise the aspects of the provision at 40 CFR 82.154(c)(1)(ix) that allows the continued sale of small cans of MVAC refrigerants to people who are not certified technicians subject to certain conditions (for example, that they have a self-sealing valve) and is not finalizing such a provision.

One comment asked whether self-sealing valves are required for small containers of R-134a, a non-exempt substitute refrigerant used in MVACs, if they are sold only to certified technicians. EPA responds that the self-sealing valve specifications at 40 CFR 82.154(c)(2) establish eligibility for the exception from the sales restriction at 40 CFR 82.154(c)(1)(ix). If the buyer is a certified technician, then adherence to 40 CFR 82.154(c)(2) would not be required, but the seller would be responsible for the recordkeeping at 40 CFR 82.154(c)(3).

EPA also received a comment suggesting that EPA consider a future regulatory action to require that small cans of MVAC refrigerant be labeled with the date of manufacture. EPA appreciates the suggestion. As noted by the commenter, however, this comment is outside the scope of this current rulemaking. In the direct final rule EPA specifically noted that “EPA is not making, and is not seeking comment on, any changes to the regulations at 40 CFR Part 82, subpart F other than the revision discussed in this notice.” (82 FR 45202). EPA did not propose to require labeling of small cans of MVAC refrigerant. In addition, while EPA recognizes labels may bring increased transparency, the costs and benefits associated with this suggested revision have not been assessed. Thus, EPA is not finalizing the commenter’s suggested changes at this time.

After considering all of the comments received, EPA concludes that it is appropriate to finalize the revisions as proposed and is doing so in this final action.

IV. Statutes and Executive Orders Review

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 deregulatory action. EPA described the potential cost savings of this action in the direct final rule. (82 FR 45202).

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. The regulatory revisions finalized in this action do not contain any information collection activities

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule does not impose any new regulatory requirements. It is deregulatory in that it clarifies that small cans of refrigerant for use in MVAC may be sold to persons who are not certified technicians even if they are not equipped with a self-sealing valve, so long as those small cans are manufactured or imported prior to January 1, 2018. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. This rule does not impose any new regulatory requirements. It is deregulatory in that it corrects a potential conflict in the refrigerant management regulations as to whether or not small cans of refrigerant for use in MVAC could be sold to non-technicians if they were manufactured or imported prior to January 1, 2018, and do not have a self-sealing valve. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

This action does not affect the level of protection provided to human health or the environment. This action corrects a potential conflict in the refrigerant management regulations as to whether or not small cans of refrigerant for use in MVAC could be sold to non-technicians if the cans were manufactured or imported prior to January 1, 2018, and do not have a self-sealing valve. This action clarifies that those small cans of refrigerant for use in MVAC may be sold to persons who are not certified technicians.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 82

Environmental protection, Air pollution control, Chemicals, Reporting and recordkeeping requirements.

Dated: December 15, 2017.

E. Scott Pruitt,
Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends 40 CFR part 82 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. In §82.154, revise paragraph (c)(1)(ix) to read as follows:

§82.154 Prohibitions.

(c) ***

(1) ***

(ix) The non-exempt substitute refrigerant is intended for use in an MVAC and is sold in a container designed to hold two pounds or less of refrigerant, has a unique fitting, and, if manufactured or imported on or after January 1, 2018, has a self-sealing valve that complies with the requirements of paragraph (c)(2) of this section.

[FR Doc. 2017-27800 Filed: 12/26/2017 8:45 am; Publication Date: 12/27/2017]