



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2017-0213; FRL-9968-67-OAR]

RIN 2060-AT43

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing this action to correct an editing oversight that lead 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 may continue to be sold to persons that are not certified as technicians under sections 608 or 609 of the Clean Air Act. In the “Rules and Regulations” section of this **Federal Register**, EPA is publishing this action as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by [insert date 30 days after date of publication in the Federal Register]. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Daylight Time on [insert date 7 days after date of publication in the Federal Register]. If a public hearing is requested, the hearing will be held on or around [insert date 15 days after date of publication in the Federal Register]. If a hearing is held, it will take place at EPA headquarters in

Washington, DC. EPA will post a notice on our Web site, www.epa.gov/section608, announcing further information should a hearing take place.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2017-0213, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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. Why Is EPA Issuing this Proposed Rule?

On November 18, 2016, EPA published a rule finalizing a 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 motor vehicle air conditioning

(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. However, the Agency did not finalize a sell-through provision as proposed. Instead, EPA intended to allow the continued sale of small cans without self-sealing valves that were manufactured or imported before January 1, 2018, and described that intent in the preamble to the final rule. *See* 81 FR 82280, 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 to state: “*Self-sealing valve specifications*. This provision applies starting January 1, 2018, for all containers holding two pounds or less of non-exempt substitute refrigerant for use in an MVAC that are manufactured or imported on or after that date. (i) Each container holding two pounds or less of non-exempt substitute refrigerant for use in an MVAC must be equipped with a single self-sealing valve that automatically closes and seals when not dispensing refrigerant. . . .” 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 is proposing this rule 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.

EPA has published a direct final rule making identical edits to the regulatory text as those proposed here in the “Rules and Regulations” section of this Federal Register because we view this as a noncontroversial action and anticipate no adverse comment. We have further explained our reasons for this action in the preamble to the direct final rule. For additional information on the action being taken, see the direct final rule published in the Rules and Regulations section of this Federal Register.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. In that case, we would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. EPA is not proposing, and is not seeking comment on, any changes to the regulations at 40 CFR part 82, subpart F other than the proposed revisions discussed in this notice. For further information on how to submit comments, please see the information provided in the **ADDRESSES** section of this document.

II. Does this Action Apply to Me?

Categories and entities potentially affected by this action include entities that distribute or sell small cans refrigerant for use in MVAC. Regulated entities include, but are not limited to, 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.

III. Statutory and Executive Order Reviews

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. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0256. These changes do not add information collection requirements beyond those currently required under the applicable regulations.

C. 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 action 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 have no net regulatory burden for all directly regulated small entities.

D. 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. 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 they 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.

E. 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.

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

This action does not have tribal implications as specified in Executive Order 13175. 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 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.

G. 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.

H. 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.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. 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 they 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. The documentation for this decision is contained in

Docket No. EPA-HQ-OAR-2017-0213, where EPA's assessment of the underlying regulatory changes that necessitated this correction found no disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples.

List of Subjects in 40 CFR Part 82

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

Dated: September 21, 2017.

E. Scott Pruitt,
Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency proposes to amend 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.

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