

6560-50-P

The EPA Administrator, E. Scott Pruitt, signed the following document on September 21, 2017, and the agency is submitting it for publication in the Federal Register (FR). While we have taken steps to ensure the accuracy of this Internet version of the document, it is not the official version. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDSys website (<http://fdsys.gpo.gov/fdsys/search/home.action>) and on Regulations.gov (www.regulations.gov) in Docket No. **EPA-HQ-OAR-2017-0213**. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION

AGENCY 40 CFR Part 82

[EPA-HQ-OAR-2017-0213; FRL-XXXX]

RIN 2060-AT43

Protection of Stratospheric Ozone: Refrigerant Management Regulations for Small

Cans of Motor Vehicle Refrigerant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: EPA is taking direct final 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.

DATES: This rule is effective on **[Insert date 90 days from date of publication in the Federal Register]** without further notice, unless EPA receives adverse comment by **[Insert date 30 days from date of publication in the Federal Register]**. If EPA receives adverse

comment, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect.

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 Using a Direct Final Rule?

EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This rule makes

a minor change in regulatory text, which is intended to resolve a potential conflict in the current regulatory text and to ensure that the regulatory text conforms to the EPA's intention when finalizing the regulatory text at issue. However, in the "Proposed Rules" section of today's Federal Register, we are publishing a separate document that will serve as the proposed rule to make this revision to the regulatory text if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. In this action, 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. For further information about commenting on this rule, see the ADDRESSES section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that this direct final rule will not take effect. In that case, we would address all public comments in any subsequent final rule based on the proposed rule. If no adverse comment is received by **[Insert date 30 days from date of publication in the Federal Register]**, this direct final rule will be effective on **[Insert date 90 days from date of publication in the Federal Register]** without further notice and no further action will be taken on the proposed rule.

II. 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). 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.

What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for

your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

III. What Action is the Agency Taking?

Section 608 of the Clean Air Act (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 substances, 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 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 the most recent 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 MVACs¹ if the cans had a self-sealing valve. EPA requested comments on several aspects of this 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:

¹ 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."

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 did not finalize the sell-through provision. The preamble to the final rule states 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 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 relevant text in 40 CFR 82.154(c)(1) states that:

No person may sell or distribute, or offer for sale or distribution, any substance that consists in whole or in part of a class I or class II substance or, starting on January 1, 2018, any non-exempt substitute for use as a refrigerant unless ... (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 has 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 publishing this direct final 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.

This action will 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 is already creating confusion. 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 will eliminate the cost of that stranded inventory and also eliminate 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.

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. 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.

F. 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.

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

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

H. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

I. 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- EPA-HQ-OAR-2017-0213, where EPA's assessment of the underlying regulatory changes that led to this correction found no disproportionately high and adverse human health or environmental effects on minority

populations, low-income populations and/or indigenous peoples.

I. 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).

**Protection of Stratospheric Ozone: Refrigerant Management Regulations for
Small Cans of Motor Vehicle Refrigerant (Page 13 of 14)**

List of Subjects in 40 CFR Part 82

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

SEP 21 2017

Dated: _____

A handwritten signature in black ink, appearing to read "Scott Pruitt", is written over a horizontal line. The signature is stylized and cursive.

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. Amend §82.154 to revise paragraph (c)(1)(ix). The revision reads as follows:

(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.
