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## EPA is Extending Its Refrigerant Management Regulations to Non-Ozone Depleting Refrigerants

The U.S. Environmental Protection Agency (EPA) has signed and is submitting for publication in the Federal Register an update to its Refrigerant Management Regulations under Section 608 of the Clean Air Act (CAA) to further reduce emissions of refrigerants from air conditioning and industrial refrigeration equipment. An advance pre-publication copy of the rule has been posted on the agency's website, [here](#). With this rule, EPA is revising the existing safe handling and management requirements that are currently applicable only to ozone-depleting substances (ODS) and extending them to substitute refrigerants, such as hydrofluorocarbons (HFCs). The agency is also tightening certain provisions of the existing Refrigerant Management Regulations to include more stringent leak inspection and repair requirements and recordkeeping and reporting requirements. The rule will become effective beginning in January 1, 2017, with staggered compliance deadlines for certain of the provisions newly applicable to substitute refrigerants. EPA's revised Refrigerant Management Regulations will not only impact owners and operators of refrigeration appliances and equipment and the technicians servicing such equipment, but will also impact refrigerant distributors and wholesalers, refrigerant reclaimers, and appliance disposal facilities. Each of these entities should begin to familiarize themselves with the updated regulatory requirements applicable to ODS and substitute refrigerants and begin preparing for their implementation early next year.

### What are the Section 608 Refrigerant Management Regulations?

Section 608 of the CAA establishes the National Recycling and Emission Reduction Program and defines EPA's responsibilities for protecting the stratospheric ozone and reducing the use and emissions of ODS. Under Section 608(a), EPA has established regulations for managing the use and disposal of ODS refrigerants in the course of conducting maintenance, service, repair, and disposal work on appliances and industrial process refrigeration equipment (*i.e.*, the refrigerant management requirements). Section 608(c) further prohibits the intentional venting or disposal into the environment of ODS *and* substitute refrigerants in the course of maintaining, servicing, repairing, and disposing of appliances and industrial process refrigeration equipment (*i.e.*, the venting

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prohibition). The statute builds in an exemption for “de minimis releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance.”

### **What statutory authority does EPA assert it has to regulate non-ozone depleting substitute refrigerants under Section 608?**

EPA asserts that it has statutory authority to promulgate refrigerant management regulations for substitute refrigerants primarily under Section 608(c)(2) and secondarily under Section 608(a).

#### *Asserted Authority under Section 608(c)(2)*

EPA states in the preamble to the rule that the changes to the Refrigerant Management Regulations serve to clarify how the venting prohibition in Section 608(c)(2) and the *de minimis* exemption apply to non-exempt substitute refrigerants. EPA maintains that Section 608(c) is ambiguous because the statute does not define “*de minimis* releases” or describe the actions that would qualify as “good faith attempts to recapture and recycle or safely dispose” of substitute refrigerants. In prior rulemakings, EPA has clarified that releases of ODS refrigerants qualify for the *de minimis* exemption if the emissions occur despite a person’s compliance with the refrigerant management requirements in 40 CFR Subpart F. By extending the refrigerant management regulations to non-ozone depleting substitutes, EPA asserts that it is clarifying that emissions of substitute refrigerants will similarly be considered exempt from the venting prohibition under the *de minimis* exemption if they occur when the management procedures applicable to ODS refrigerants are followed.

#### *Asserted Authority under Section 608(a)*

EPA interprets Section 608(a) as providing EPA with authority to extend the management requirements to non-exempt substitutes because the agency expects that requiring consistent practices for both ODS and substitute refrigerants will in fact reduce ODS emissions and increase ODS recapture and recycling. EPA offers two examples to defend this position. First, a person servicing equipment that uses ODS but who mistakenly believes that the equipment contains a substitute refrigerant may apply the wrong procedures for ODS, which may lead to illegal venting of ODS. Second, the improper handling of substitute refrigerants may contaminate appliances and refrigeration equipment using mixtures of ODS and non-ODS substitutes, which can lead to illegal venting. Thus, EPA believes that by requiring the same management requirements for substitute refrigerants as for ODS, ODS emissions will be reduced and the recapture and recycling of ODS will be further maximized.

#### *Industry Position*

During the rulemaking process, industry stakeholders shared their disagreement with EPA’s stated authority to extend the existing Refrigerant Management Regulations to substitute refrigerants. Industry commented that the venting prohibition of Section 608(c) is self-implementing, and does not contemplate or require implementing regulations by EPA. These commenters noted that nothing in the structure or language of Section 608 suggests that Congress intended for EPA to regulate non-exempt substitute refrigerants in the same way as ODS refrigerants. Industry commenters also emphasized that the agency does not have the authority under Section 608(a) to regulate substitute refrigerants that do not impact the stratospheric ozone. Congress, they argue, specifically included substitute refrigerants in the venting prohibition, but excluded substitutes from coverage under the management provisions of Section 608(a).

### **What impact will the final rule have on the management of substitute refrigerants?**

The refrigerant management regulations currently applicable to ODS refrigerants, and soon-to-be applicable to substitute refrigerants, are wide-ranging. Among other requirements, they include reporting and recordkeeping requirements, technician certification, leak repair and appliance retrofitting, and refrigerant evacuation and recovery during servicing or disposal. The examples below illustrate the impact the newly applicable management provisions will have on refrigeration appliances and equipment using non-ODS refrigerants.

- Owners or operators of refrigeration appliances containing  $\geq 50$  lbs of non-exempt substitute refrigerant will be required to repair appliances leaking above a certain leak rate (or, alternatively, retrofit or retire the appliance) within 30 days of discovery.
- Sales of non-exempt substitute refrigerants will be limited to certified technicians, except for small cans ( $\leq 2$  lbs) of motor vehicle air conditioner (MVAC) refrigerants that are manufactured with a self-sealing valve.
- New appliances containing non-exempt substitute refrigerants must be designed with an aperture or process stubs to allow for the evacuation or recovery of substitute refrigerant during servicing or disposal.
- Before an appliance is opened for maintenance, service, repair, or disposal, the non-exempt substitute refrigerant must be evacuated to a certain level by transfer of the refrigerant to a system receiver or a certified recovery and/or recycling machine.
- Persons who take the final step in the disposal process of small appliances must either recover any remaining non-exempt substitute refrigerant or verify that the refrigerant in the appliance has been recovered.
- Technicians who work with non-exempt substitute refrigerants must be certified.
- Any person reclaiming non-exempt substitute refrigerant for sale to a new owner must reprocess the refrigerant to certain specifications, release no more than 1.5% of the refrigerant during the reclamation process, properly dispose of the wastes from the reclamation process, and comply with recordkeeping and reporting requirements.
- Refrigerant recovery and/or recycling equipment used with non-exempt substitutes must be certified by an approved equipment testing organization as being capable of meeting certain performance standards.

#### What other changes has EPA finalized to the existing Refrigerant Management Regulations?

Other changes EPA is making to the existing Refrigerant Management Regulations include:

- **Recordkeeping requirements.** Technicians must keep records of refrigerant recovered during system disposal for systems with a charge size of 5 – 15 lbs. In addition, technicians disposing of appliances (in both commercial and residential settings) with a full charge of more than 5 and less than 50 lbs of either ODS or non-exempt substitute refrigerant must maintain certain records that include (a) the name of the company employing the technician, location of the appliance being disposed of, date of recovery, and type of refrigerant removed from the appliance prior to disposal, and (b) quantity and type of refrigerant transferred for reclamation, name of transferee, and date of transfer.
- **Leak rate thresholds.** The final rule lowers the leak rate thresholds at which large air conditioner and refrigeration applications (i.e.,  $\geq 50$  lbs) must be repaired.
  - Industrial process equipment: down from 35% to 30%
  - Commercial refrigeration equipment: down from 35% to 20%
  - Comfort cooling equipment: down from 15% to 10%
- **Leak inspection requirements.** For appliances containing  $\geq 500$  lbs of refrigerant and discovered to be leaking above an applicable leak rate threshold, quarterly leak inspections will be required until the appliance has not leaked above the applicable leak rate for four successive quarters. For appliances containing  $\geq 50$  lbs of refrigerant and discovered to be leaking above an applicable leak rate threshold, annual leak inspections will be required until the appliance has not leaked above the applicable leak rate for one year. Leak inspections must be performed by certified technicians, and must be performed on all visible and accessible components of the appliance. Continuous monitors may be used in place of the periodic inspections.



- **Leak rate calculation.** Owner or operators of appliances with  $\geq 50$  lbs of refrigerant must calculate the appliance's leak rate every time refrigerant is added, except following a retrofit, installation of a new appliance, or seasonal variance.
- **Repairs.** Every time the applicable leak rate is exceeded for any appliance subject to the leak repair requirements, the owner or operator must perform both an initial and follow up verification of the repairs. The technician conducting the verification test must provide documentation to the owner or operator of the appliance at the end of each service visit.
- **Reporting.** Owners or operators of an appliance that leaks 125% or more of its full charge in a calendar year must report to the EPA and describe the efforts made to identify leaks and repair the appliance.

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