whether your facility is affected by this action, you should examine the applicability criteria in § 63.1100 of the final generic MACT standards. If you have any questions regarding the applicability of these technical corrections to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. For further information on these proposed rules, please see the information provided in the direct final rules action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Statutory and Executive Order Reviews

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the proposed rule amendments.

For purposes of assessing the impacts of the proposed rule amendments on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325 that has up to 500; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule amendments will not impose any requirements on small entities. The proposed rule amendments provide clarifications and corrections to previously issued rules. Before promulgating the rule on acrylic and modacrylic fiber production in 1999 (64 FR 34863), we concluded that each standard applied to five or fewer major sources. In addition, we conducted a limited assessment of the economic effect of the proposed standards on small entities that showed no adverse economic effect for any small entities within any of these source categories. Similarly, before promulgating the rules on ethylene production in 2002 (67 FR 46258), we determined that there were no small entities affected by those rules.

For a discussion of other administrative requirements for the proposed rules, see the direct final rules action in the Rules and Regulations section of today's **Federal Register**.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and Procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 7, 2005.

Stephen L. Johnson,

Acting Administrator.

[FR Doc. 05–7405 Filed 4–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7899–2]

RIN 2060–AM51

Protection of Stratospheric Ozone: Substitute Refrigerant Recycling; Amendment to the Definition of Refrigerant

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing changes to correct the final rule published in the **Federal Register** on March 12, 2004. Specifically, EPA is proposing to amend the regulatory text for the definitions of refrigerant and technician and the prohibition against venting substitute refrigerants. EPA is also proposing to amend the prohibition against venting substitute refrigerants to reflect the proposed changes to the definitions. These changes are being proposed to make certain that the regulations promulgated on March 12, 2004 cannot be construed as a restriction on the sales of substitutes that do not consist of an ozone-depleting substance (ODS), such as pure hydrofluorocarbon (HFC) and perfluorocarbon (PFC) substitutes.

DATES: Comments on this proposed rule must be received on or before May 13, 2005, unless a public hearing is requested. If requested by April 28, 2005 a hearing will be held on May 13, 2005 and the comment period will be extended until May 31, 2005. Inquires regarding a public hearing should be directed to the contact person listed below.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0070 by one of the following methods:

- Federal eRulemaking portal *http://www.regulations.gov*. Follow the on-line instructions for submitting comments;
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments;
- Fax comments to (202) 566–1741; or
- Mail/hand delivery: Submit comments to Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW., Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202) 566–1742.

Instructions: Direct your comments to Docket ID No. OAR–2004–0070. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit

EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, 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 either electronically in EDOCKET or in hard copy at the Air and Radiation Docket EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Julius Banks; (202) 343–9870; Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J); 1200 Pennsylvania Avenue, NW.; Washington, DC 20460. The Stratospheric Ozone Information Hotline, 800–296–1996, and the Ozone Web page, *http://www.epa.gov/ozone/title6/608/regulations/index.html,* can also be contacted for further information concerning this correction.

SUPPLEMENTARY INFORMATION: EPA views this as a noncontroversial action and anticipates no adverse comment. Therefore, in today's **Federal Register**, we are publishing a separate Direct Final rulemaking to correct the definitions of refrigerant and technician and amend the prohibition against the knowing venting of substitutes. The Direct Final rule will be effective on June 13, 2005 without further notice unless we receive adverse comment regarding the intent of the amended definitions and the amended prohibition by May 13, 2005. 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. EPA will address all public comments on the proposed rule in a subsequent final rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

EPA emphasizes that it is not re-proposing the June 11, 1998 proposal (63 FR 32044) to restrict the sale of hydrofluorocarbon (HFC) and perfluorocarbon (PFC) substitutes, but is only taking action to correct the definitions of refrigerant and technician at § 82.152 and amend the venting prohibition at § 82.154(a) to make certain that the definitions and prohibition are consistent with the expressed intent of the March 12, 2004 (69 FR 11946) final rule to not restrict the sales of such substitutes. EPA discussed and responded to comments concerning the sales restrictions on substitutes for refrigerants, and its extension to substitutes for refrigerants that consist in part or whole of a class I or class II ozone-depleting substance in the March 12, 2004 final rulemaking (69 FR 11969). Comments that are submitted in response to this notice that pertain to the merits of or implementation of a sales restriction on HFC or PFC substitutes are considered to be outside of the scope of today's action.

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I. Regulated Entities

Entities potentially regulated by this action include those that manufacture, own, maintain, service, repair, or dispose of all types of air-conditioning and refrigeration equipment (*i.e.*, appliances as defined by § 82.152); those who sell, purchase, or reclaim refrigerants and their substitutes; and those who own refrigerant recycling or recovery equipment. This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. 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 Act Amendments of 1990 (the Act). The applicability criteria are discussed below and in regulations published on December 30, 1993 (58 FR 69638). 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. Overview

On March 12, 2004 (69 FR 11946), EPA amended the rule on refrigerant recycling, promulgated under section 608 of the Act, to clarify how the requirements of section 608 apply to substitutes for chlorofluorocarbon (CFC) and hydrochlorofluorocarbon (HCFC) refrigerants. This rule explicated the self-effectuating statutory prohibition against the knowing venting of substitutes to the atmosphere during the maintenance, service, repair, and disposal of appliances that became effective on November 15, 1995. The rule also exempted certain substitutes from the venting prohibition on the basis of current evidence that their release is adequately addressed by other authorities; hence, such release does not pose a threat to the environment under section 608 (69 FR 11949).

EPA also amended the refrigerant recovery and recycling requirements for CFC and HCFC refrigerants to accommodate the proliferation of new substitutes for these refrigerants on the market, and to clarify that the venting prohibition applies to all substitutes and refrigerants for which EPA has not made a determination that their release ''does not pose a threat to the environment,'' including HFC and PFC substitutes. The March 12, 2004 final rule was not intended to either mandate section 608 technician certification for those maintaining, repairing, or servicing appliances using substitutes that do not consist of a class I or class II ODS or to restrict the sale of substitutes that do not contribute to the depletion of the stratospheric ozone layer, such as pure HFC and PFC substitutes (69 FR 11946).

III. Today's Action

With this action, EPA is proposing to correct the definitions of refrigerant and technician at § 82.152 and amend the prohibition against the knowing venting of substitutes at § 82.154(a), to reflect the intent and preamble language of the March 12, 2004 final rule to not regulate the use or sale of substitutes that do not consist of a class I or class II ozone-depleting substance.

A. Correction to the Definition of Refrigerant

While the intent of the March 12, 2004 final rule was not to restrict the sale of refrigerant substitutes that do not contribute to the depletion of the stratospheric ozone layer (69 FR 11946), the accompanying regulatory text could be construed as having the opposite effect. Specifically, the final rule's definition of refrigerant at § 82.152 (69 FR 11957) stated that refrigerant means, for purposes of this subpart, any substance consisting in part or whole of a class I or class II ozone-depleting substance that is used for heat transfer purposes and provides a cooling effect, or any substance used as a substitute for such a class I or class II substance by any user in a given end-use, except for the following substitutes in the following end-uses:

(1) Ammonia in commercial or industrial process refrigeration or in absorption units;

(2) Hydrocarbons in industrial process refrigeration (processing of hydrocarbons);

(3) Chlorine in industrial process refrigeration (processing of chlorine and chlorine compounds);

(4) Carbon dioxide in any application;

(5) Nitrogen in any application; or

(6) Water in any application.

EPA is aware that the above definition of refrigerant could be construed as being at odds with the preamble that discusses the Agency's intent to not restrict the sale of substitutes that do not consist of a class I or class II ODS. The unintentional inclusion of the phrase or any substance used as a substitute for such a class I or class II substance * * *, implies that any substance, including pure HFCs and PFCs, used as a substitute for such a class I or class II substance would be captured under the definition of refrigerant. If left uncorrected, this could create ambiguity about the interpretation of the regulations promulgated at 40 CFR part 82, subpart F (*i.e.*, section 608 regulations) and could have unintended implications on the prohibitions, required practices, and reporting and recordkeeping requirements of the regulations promulgated under section 608 of Title VI of the Clean Air Act (*e.g.*, mandatory certification of technicians servicing appliances using pure HFC refrigerants and a restriction on the sale of HFC substitutes to certified technicians).

Therefore, EPA is proposing to correct the definition of refrigerant by deleting the aforementioned phrase. The proposed definition at § 82.152 reads: Refrigerant means, for purposes of this subpart, any substance consisting in part or whole of a class I or class II ozone-depleting substance that is used for heat transfer purposes and provides a cooling effect. EPA has deleted the text specifying the exempted substitutes (namely, ammonia in commercial or industrial process refrigeration or in absorption units; hydrocarbons in industrial process refrigeration (processing of hydrocarbons); chlorine in industrial process refrigeration (processing of chlorine and chlorine compounds); carbon dioxide in any application; nitrogen in any application; or water in any application). Since these substances do not contain a class I or class II ODS, such a level of specificity is not required within the amended definition.

EPA requests comment on whether the proposed definition of refrigerant accurately reflects the Agency's intent to only include those substitutes that contain a class I or class II ODS, and hence contribute to depletion of the stratospheric ozone layer. EPA also seeks comment on whether the deleted text specifying the exempted substitutes provides greater clarity to the definition.

B. Amendment to the Prohibition Against Venting Substitutes

The proposed correction to the definition of refrigerant requires an amendment to the regulatory refrigerant venting prohibition at § 82.154(a). The March 12, 2004 amendment to the section 608 regulatory venting prohibition (69 FR 11979) states that Effective May 11, 2004, no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant from such appliances. * * * If not addressed, the proposed definition of refrigerant would exclude pure HFC and PFC substitutes [1] from the venting prohibition, because they do not consist in part or whole of a class I or class II ozone-depleting substance. The preamble to the March 12, 2004 final rule made clear that the Agency intended to exempt certain substitutes, namely, ammonia in commercial or industrial process refrigeration or in absorption units; hydrocarbons in industrial process refrigeration (processing of hydrocarbons); chlorine in industrial process refrigeration (processing of chlorine and chlorine compounds); carbon dioxide in any application; nitrogen in any application; or water in any application (69 FR 11949–54) from the statutory venting prohibition, because their release is adequately addressed by other entities; therefore, their release does not pose a threat to the environment under section 608 of Title VI of the Clean Air Act. However, EPA did not make such a finding for substitutes consisting in part or whole of an HFC or PFC substitute. So it remains illegal to knowingly vent substitutes consisting in part or whole of an HFC or PFC substitute during the maintenance, service, repair, or disposal of appliances (69 FR 11947).

In accordance with section 608(c)(2) of Title VI of the Clean Air Act (as amended in 1990), *de minimis* releases associated with good faith attempts to recapture and recycle or safely dispose of such substitutes shall not be subject to the prohibition. EPA has not promulgated regulations mandating certification of refrigerant recycling/recovery equipment intended for use with substitutes; therefore, EPA is not proposing a regulatory provision for the mandatory use of certified recovery/recycling equipment as an option for determining *de minimis* releases of substitutes. However, the lack of a regulatory provision should not be interpreted as an exemption to the venting prohibition for non-exempted substitutes. The regulatory prohibition at § 82.154(a) reflects the statutory reference to *de minimis* releases of substitutes as they pertain to good faith attempts to recapture and recycle or safely dispose of such substitutes.

In order to emphasize that the knowingly venting of HFC and PFC substitutes remains illegal during the maintenance, service, repair, and disposal of appliances and to make certain that the *de minimis* exemption for refrigerants remains in the regulatory prohibition, EPA is proposing to adopt the statutory section 608(c)(2) venting prohibition into the section 608 regulatory prohibition at § 82.154(a). The proposed definition of refrigerant means that refrigerant releases shall be considered *de minimis* only if they occur when: (1) The required practices set forth in § 82.156 are observed, recovery or recycling machines that meet the requirements set forth in § 82.158 are used, and the technician certification provisions set forth in § 82.161 are observed; or (2) The requirements set forth for the service of motor vehicle air-conditioners (MVACs) in subpart B (*i.e.*, section 609) of this part are observed. EPA is also proposing to list, in the regulatory prohibition at § 82.154(a), the substitutes that have been exempted from the statutory

[1] As defined at § 82.152, Substitute means any chemical or product, whether existing or new, that is used by any person as an EPA approved replacement for a class I or II ozone-depleting substance in a given refrigeration or air-conditioning end-use.

venting prohibition. EPA is proposing this edit in order to clarify which substitutes are exempt from the venting prohibition. Hence, EPA is proposing to amend the prohibition at § 82.154(a) to read: (a) Effective June 13, 2005, no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with the exception of the following substitutes in the following end-uses:

(1) Ammonia in commercial or industrial process refrigeration or in absorption units;

(2) Hydrocarbons in industrial process refrigeration (processing of hydrocarbons);

(3) Chlorine in industrial process refrigeration (processing of chlorine and chlorine compounds);

(4) Carbon dioxide in any application;

(5) Nitrogen in any application; or

(6) Water in any application.

The knowing release of a refrigerant or non-exempt substitute subsequent to its recovery from an appliance shall be considered a violation of this prohibition. *De minimis* releases associated with good faith attempts to recycle or recover refrigerants or non-exempt substitutes are not subject to this prohibition. Refrigerant releases shall be considered *de minimis* only if they occur when: (1) The required practices set forth in § 82.156 are observed, recovery or recycling machines that meet the requirements set forth in § 82.158 are used, and the technician certification provisions set forth in § 82.161 are observed; or (2) The requirements set forth in subpart B of this part are observed.

EPA requests comment as to whether the proposed edits to the regulatory venting prohibition accurately reflects the Agency's intent to *not exclude* HFC and PFC substitutes from the section 608(c)(2) venting prohibition. Thereby making certain that it remains unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance, to knowingly vent or otherwise knowingly release HFC and PFC substitutes into the environment. EPA also seeks comment on whether the proposed edits maintain the exemptions to the prohibition for *de minimis* releases associated with good faith attempts to recapture and recycle or properly dispose of substitutes. Finally, EPA seeks comment on whether the edits accurately depict the Agency's exemption to the venting prohibition for the following substitutes: (1) Ammonia in commercial or industrial process refrigeration or in absorption units; (2) Hydrocarbons in industrial process refrigeration (processing of hydrocarbons); (3) Chlorine in industrial process refrigeration (processing of chlorine and chlorine compounds); (4) Carbon dioxide in any application; (5) Nitrogen in any application; or (6) Water in any application.

C. Correction to the Definition of Technician

In 1994, EPA finalized the definition of technician at § 82.152 to read: Technician means any person who performs maintenance, service, or repair that could be reasonably expected to release class I or class II refrigerants from appliances, *except for MVACs,* into the atmosphere * * * (59 FR 55912 (November 9, 1994)). On June 11, 1998 (63 FR 32089), EPA proposed an amendment to the definition of technician to include persons who perform maintenance, service, repair, or disposal that could be reasonably expected to release class I substances, class II substances, or substitutes from appliances into the atmosphere (63 FR 32059). The intent of proposed amendment to the definition was to require section 608 technician certification for persons maintaining, repairing, servicing, or disposing of appliances containing non-exempt substitutes; however, EPA did not intend to remove the phrase except for MVACs from the definition of technician.

A petition for review challenging the March 12, 2004 final rule stated that the amended definition of technician could be misinterpreted to mean that technicians servicing and maintaining MVACs must also have section 608 technician certification. EPA did not intend for the amended definition of technician at § 82.152 to include persons servicing or repairing MVACs, and therefore is proposing to revert back to the original definition. EPA seeks comment on whether the proposal to revert back to the original definition of technician satisfies the Agency's intent to not require technician certification under section 608 for persons servicing or repairing MVACs.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, 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 entitlements, 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 that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to Executive Order 12866 review.

B. Paperwork Reduction Act

OMB has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82, subpart F under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2060–0256, EPA ICR number 1626.08. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672. This action does not impose any new information collection burden beyond the already-approved ICR.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control

number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by Small Business Administration size standards primarily engaged in the supply and sale of motor vehicle air-conditioning refrigerants as defined by NAIC codes 42114, 42193, and 441310; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are small business as defined by Small Business Administration size standards primarily engaged in the supply and sale of motor vehicle air-conditioning refrigerants as defined by NAIC codes 42114, 42193, and 441310. We have determined that approximately 819 small entities will experience an impact ranging from 0.001 percent to 0.163 percent, based on their annual sales and revenues.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. EPA is proposing this rulemaking to make certain that the regulatory text in the March 12, 2004 rulemaking (63 FR 11946) is consistent with the intent to not restrict the sale of substitutes that do not consist of a class I or class II ozone-depleting substance, while making certain that the statutory prohibition against knowingly releasing such substitutes remains. This rule proposes to correct the definitions of refrigerant and technician and makes certain that only substances consisting whole or in part of a class I or class II ODS are covered under the section 608 refrigerant regulations. Hence any burden associated with technician certification or sales of refrigerant substitutes not consisting of an ODS is removed by correcting these definitions. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government Agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule supplements the statutory self-effectuating prohibition against venting refrigerants by ensuring that certain service practices are conducted that reduce emissions and establish equipment and reclamation certification requirements. These standards are amendments to the recycling standards under section 608 of the Clean Air Act. Many of these standards involve reporting requirements and are not expected to be a high cost issue. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the reasons outlined above, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255 (August 10, 1999)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

This proposed rule 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, as specified in Executive Order 13132. The regulations promulgated under today's action are done so under Title VI of the Act which does not grant delegation rights to the States. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249 (November 9, 2000)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified

in Executive Order 13175. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: Protection of Children from Environmental Health & Safety Risks (62 FR 19885 (April 23, 1997)) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This rule amends the recycling standards for refrigerants to protect the stratosphere from ozone depletion, which in turn protects human health and the environment from increased amounts of UV radiation.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve voluntary consensus standards.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Dated: April 7, 2005.

Stephen L. Johnson,

Acting Administrator.

[FR Doc. 05–7406 Filed 4–12–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 67

[USCG–2003–14472]

RIN 1625–AA63

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. MARAD–2003–15171]

RIN 2133–AB51

Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Second Rulemaking

AGENCIES: Coast Guard, DHS, and Maritime Administration, DOT.

ACTION: Joint notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) are withdrawing their joint notice of proposed rulemaking on documentation, under the lease-financing provisions, of vessels engaged in the coastwise trade. The joint notice of proposed rulemaking was superseded by legislation. A new notice of proposed rulemaking addressing the provisions of the new legislation will be published in the future.

DATES: The joint notice of proposed rulemaking is withdrawn on April 13, 2005.

FOR FURTHER INFORMATION CONTACT: Patricia Williams, Deputy Director, National Vessel Documentation Center, Coast Guard, telephone 304–271–2506 or John T. Marquez, Jr., Maritime Administration, telephone 202–366–5320.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2004, the Coast Guard and the Maritime Administration (MARAD) published a joint notice of proposed rulemaking entitled ''Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Second Rulemaking'' in the **Federal Register** (69 FR 5403). The rulemaking concerned the documentation of vessels under the lease-financing provisions of 46 U.S.C. 12106(e) and asked the following questions:

1. To what extent and how should the Coast Guard prohibit or restrict the chartering back (whether by time charter, voyage charter, space charter, contract of affreightment, or other contract for the use of a vessel) of a lease-financed vessel to the owner, the parent, or to a subsidiary or affiliate of the parent? (Coast Guard.)

2. To ensure that control of a lease-financed vessel engaged in the coastwise trade is not returned to the owner or a member of its group, should the Maritime Administrator's approval be required before an interest in or control of a U.S. documented vessel is transferred to a non-U.S. citizen? (Maritime Administration.)

3. What limitations, if any, should the Coast Guard impose on the grandfather rights of lease-financed vessels with a coastwise endorsement issued before February 4, 2004? (Coast Guard.)

4. Should the Coast Guard require that an application for coastwise endorsement under the lease-financing regulations be audited by a third party to further ensure that the transaction in fact qualifies under the lease-financing laws and regulations? (Coast Guard.)

Discussion of Comments on the Joint Notice of Proposed Rulemaking

The comments received on the questions above clearly indicated that the lease-financing statute was subject to significantly differing interpretations and needed clarification. Congress also arrived at this conclusion and passed new legislation, signed into law on August 9, 2004, (discussed below) to clarify the lease-financing statute. However, because this legislation did not address the issue of third-party audits (question number 4 above) and because the notice of proposed rulemaking did not contain proposed regulatory text on that issue, comments to that question will be considered under the future Coast Guard rulemaking discussed below.