

Person	Controlled substance	Allocation (kg)
Refricenter of Miami .....	HCFC-124 .....	50,380
Refricentro .....	HCFC-22 .....	381,293
R-Lines .....	HCFC-22 .....	45,979
Saez Distributors .....	HCFC-22 .....	63,172
Solvay Fluorides .....	HCFC-22 .....	37,936
	HCFC-22 .....	3,781,691
	HCFC-141b .....	3,940,115
Solvay Solexis .....	HCFC-142b .....	194,536
Tulstar Products .....	HCFC-141b .....	89,913
	HCFC-123 .....	34,800
	HCFC-124 .....	229,582

(b) [Reserved]

[FR Doc. E8-29965 Filed 12-22-08; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

[EPA-HQ-OAR-2007-0163; FRL-8752-6]

RIN 2060-AH67

### Protection of Stratospheric Ozone: Ban on the Sale or Distribution of Pre-Charged Appliances

**AGENCY:** Environmental Protection Agency [EPA].

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to ban the sale or distribution of air-conditioning and refrigeration appliances containing HCFC-22, HCFC-142b, or blends containing one or both of these substances, beginning January 1, 2010. In addition, EPA is proposing to extend these requirements to air-conditioning and refrigeration appliances that are suitable only for use with newly produced HCFC-22, HCFC-142b, or blends containing one or both of these controlled substances as the refrigerant, and pre-charged appliance parts. We are proposing these restrictions to protect stratospheric ozone.

**DATES:** Comments must be received on or before January 22, 2009, unless a public hearing is requested. Comments must then be received on or before February 6, 2009. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Standard Time on January 2, 2009. If a hearing is held, it will take place on January 7, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2007-0163, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov).
- *Fax:* 202-566-1741.
- *Mail:* Docket #, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Docket #EPA-HQ-OAR-2003-0163, Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2007-0163. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, 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 <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, 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 <http://www.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 the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

#### FOR FURTHER INFORMATION CONTACT:

Cindy Axinn Newberg, EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 343-9729, [newberg.cindy@epa.gov](mailto:newberg.cindy@epa.gov).

**SUPPLEMENTARY INFORMATION:** (1) Under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol), as amended, the U.S. and other industrialized countries that are Parties to the Protocol have agreed to limit production and consumption of hydrochlorofluorocarbons (HCFCs) and to phase out consumption in a step-wise fashion over time, culminating in a complete phaseout in 2030. Title VI of the Clean Air Act Amendments of 1990 (CAAA) authorizes EPA to promulgate regulations to manage the consumption and production of HCFCs until the total phaseout in 2030. EPA promulgated final regulations establishing an allowance tracking system for HCFCs on January 21, 2003 (68 FR 2820). These regulations were amended on June 17, 2004 (69 FR 34024) and July 20, 2006 (71 FR 41163). This action proposes a ban on sale or distribution of air-conditioning and refrigeration appliances that contain HCFC-22, HCFC-142b, or blends containing one or both of these controlled substances. In addition, EPA is proposing to extend these requirements to air-conditioning and refrigeration appliances that are suitable only for use with newly produced HCFC-22, HCFC-142b, or blends containing one or both of these controlled substances as the refrigerant.

(2) Abbreviations and Acronyms Used in This Document.

CAAA—Clean Air Act Amendments of 1990  
CFC—chlorofluorocarbon  
HCFC—hydrochlorofluorocarbon

ODP—ozone depletion potential  
 ODS—ozone-depleting substance  
 Party—States and regional economic integration organizations that have consented to be bound by the *Montreal Protocol on Substances that Deplete the Ozone Layer*  
 Protocol—*Montreal Protocol on Substances that Deplete the Ozone Layer*  
 SNAP—Significant New Alternatives Policy  
 TSCA—Toxic Substance Control Act  
 UNEP—United Nations Environment Programme  
 (3) 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.

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**I. Regulated Entities**

These proposed amendments will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing .....	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers.
Chlorofluorocarbon gas importers .....	325120	2869	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas exporters .....	325120	2869	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters.
Manufacturers of air conditioners and refrigerators	333415	.....	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
Importers of air conditioners and refrigerators .....	333415	3585	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware potentially could be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. 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.

**II. Background**

In 1973 chemists Frank Sherwood Rowland and Mario Molina at the University of California-Irvine began studying the impacts of chlorofluorocarbons (CFCs) in the earth's atmosphere. They discovered that CFC molecules were stable enough to migrate to the stratosphere and that the chlorine atoms contained in these molecules could cause the breakdown of large amounts of ozone in the stratosphere. The Toxic Substances Control Act (TSCA), passed in 1976, included regulatory authority over CFCs. EPA's first regulatory response to the concerns for stratospheric ozone protection resulted in a ban on CFC

aerosol propellants (43 FR 11301, March 17, 1978; 43 FR 11318, March 17, 1978).

EPA followed this initial regulatory approach with an Advance Notice of Proposed Rulemaking (ANPRM) which discussed a freeze on the production of certain CFCs and a system of marketable permits to allocate CFC consumption among industries (45 FR 66726; October 7, 1980). EPA did not act immediately on the 1980 ANPRM and was subsequently sued by the Natural Resources Defense Council (*NRDC v. Thomas*, No. 84-3587 (D.D.C.)) for failure to regulate CFCs further. EPA and NRDC settled the case and agreed that EPA would propose further regulatory controls on CFCs, or state the reasons for deciding not to issue a

proposal, by December 1, 1987, and would take final action by August 1, 1988.

On January 10, 1986 (51 FR 1257), EPA published its Stratospheric Ozone Protection Plan. That plan described the analytic basis for supporting negotiations for an international agreement to control CFCs and for reassessing the need for additional domestic regulations of CFCs and other ozone-depleting substances (ODS). The United States participated in negotiations organized by the United Nations Environment Programme (UNEP) to develop an international agreement to protect stratospheric ozone. These negotiations, preceded by the 1985 signing of the Vienna Convention, resulted in the signing of the Montreal Protocol in 1987. The United States ratified the Montreal Protocol on April 21, 1988. In 1988, EPA promulgated regulations implementing the requirements of the Montreal Protocol through a system of tradable allowances under section 157(b) of the Clean Air Act as amended in 1977. This section was subsequently modified by the 1990 Amendments and became CAAA § 615. The Senate Report on the 1990 Amendments, Senate Rep. No. 101-228: "Authority of the Administrator" notes that this section "is intended \* \* \* to preserve the authority and responsibility of the Administrator as set forth in section 157 of the existing Clean Air Act," although the Conference report to the 1990 CAAA is silent on this matter.

Since the CAAA were passed in 1990, EPA has promulgated regulations based on various provisions of Title VI. For example, EPA has promulgated a production and consumption phaseout schedule that included a revised trading regime for Class I ODS, a production and consumption phaseout schedule and trading regime for Class II ODS, servicing requirements for air-conditioning and refrigeration appliances, bans on nonessential products containing or manufactured with ODS, and labeling requirements.

Concern for ozone layer protection remains paramount for the global community. In an effort to further protect human health and the environment, the Parties to the Montreal Protocol adjusted the Montreal Protocol's phaseout schedule for HCFCs in September 2007. The Parties agreed that industrialized countries, including the United States, would reduce production and consumption of HCFCs to 75 percent below the established baseline in 2010, to 90 percent below the established baseline in 2015, and to 99.5 percent in 2020—allowing for only

0.5 percent production and consumption between 2020–2030 to be used solely for servicing existing appliances culminating in the terminal phaseout in 2030. In addition, the Parties adjusted the schedule for non-industrialized countries by agreeing to set production and consumption baselines based on the average values for 2009–2010 production and consumption, respectively; to freeze production and consumption in 2013; and to add stepwise reductions as follows: 10 percent below baselines in 2015, 35 percent below in 2020, 67.5 percent below in 2025 and allowing for a servicing tail to average no more than 2.5 percent between 2030–2040 to be used solely for servicing existing appliances, culminating in the terminal phaseout in 2040.

The requirements already established at § 82.16(c) will make it unlawful to produce or import HCFC-22 or HCFC-142b on or after January 1, 2010 for use in refrigeration or air-conditioning appliances manufactured on or after that date. The practical result of this provision is that effective January 1, 2010, domestic manufacturers of air-conditioning and refrigeration appliances will not be able to charge newly manufactured appliances with newly produced or imported HCFC-22 or HCFC-142b, and thus will not be introducing appliances containing these newly produced substances into interstate commerce. This regulatory provision does not lead to similar results for imported products, because these appliances are charged before entering the United States.

### III. Proposed Action

EPA is proposing to establish regulations that ban the sale or distribution or offer for sale or distribution in interstate commerce of all air-conditioning and refrigeration appliances containing HCFC-22, HCFC-142b, or blends containing one or both of these controlled substances, beginning January 1, 2010. The ban would cover imported appliances and appliances ultimately destined for export, as well as appliances manufactured in the United States for domestic use. In addition, EPA is proposing to extend these requirements to air-conditioning and refrigeration appliances that are suitable only for use with newly produced HCFC-22, HCFC-142b, or blends containing one or both of these controlled substances as the refrigerant, as well as pre-charged appliance components.

Over 9.7 million pre-charged air-conditioning and refrigeration appliances (e.g., window air

conditioners, refrigerators) were imported into the United States in 2006. Coupled with any pre-charged appliances that were manufactured domestically, they represent a concern for ozone layer recovery after the January 1, 2010 restriction on production and import of HCFC-22 and HCFC-142b becomes effective. The United States is committed to protecting stratospheric ozone because a thinning of the ozone layer results in greater ultraviolet radiation, and more incidences of related human health damages, such as incidences of skin cancer.

#### *A. Authority to Ban Sale or Distribution, or Offer for Sale and Distribution, of Specific Types of Appliances*

Section 301(a) gives EPA statutory authority to promulgate regulations as are necessary to carry out its functions under the Clean Air Act, such as issuing prohibitions and standards. Further, § 615 of the CAAA states that:

If, in the Administrator's judgment, any substance, practice, process, or activity may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare, the Administrator shall promptly promulgate regulations respecting the control of such substance, practice, process or activity, and shall submit notice of the proposal and promulgation of such regulation to the Congress.

As discussed in the Background section to this proposal, EPA acted under pre-1990 CAA authority that is substantially the same as the authority provided by CAAA § 615.<sup>1</sup> Various sections of Title VI of the CAAA include statutory language that is the same as, or similar to, the statutory authority that existed prior to 1990. Provisions contained in Title VI of the CAAA include specific legislative language pertaining to individual ODSs or specific programs while also including non-specific authority in § 615 to determine when action is necessary to ensure adequate protection of stratospheric ozone. For example, § 606 authorizes EPA to accelerate the phaseout requirements to take further action necessary to protect stratospheric ozone. The general authority in § 615 serves as a supplement to other more specific authority contained in Title VI.

<sup>1</sup> In 1988, EPA promulgated regulations implementing the requirements of the Montreal Protocol through a system of tradable allowances under section 157(b) of the Clean Air Act as amended in 1977. Section 157(b) was subsequently modified by the 1990 Amendments and became section 615. Thus EPA has taken action previously under similar authority.

While § 615 sets forth the authority and responsibility of the Administrator to protect stratospheric ozone in order to protect public health and welfare, EPA recognizes that this authority was intended to augment the other authorities and responsibilities established by Title VI and not to serve as a basis for prohibiting practices, processes, or activities that Congress specifically exempted. For example, EPA does not intend to promulgate regulations eliminating the exceptions from the phaseout for essential uses as established by § 604.

Since 1990, EPA has rarely relied on the authority in § 615 to support rulemaking activity, since the activities that the Agency regulates have generally been addressed under other, more specific, Title VI authorities. In 1993, EPA promulgated trade restrictions using § 615 authority in order to conform EPA regulations to Montreal Protocol provisions on trade with countries that were not Parties to the Protocol (March 18, 1993, 58 FR 15014, 15039 and December 10, 1993, 58 FR 65018, 65044). These trade restrictions prevented shipments of ozone-depleting substances from the U.S. to countries with no regulatory infrastructure to control their use. Promulgating these restrictions reduced the release of ozone-depleting substances into the atmosphere, thereby reducing effects on public health and welfare. The restrictions also resulted in eliminating the U.S. as a potential market for ODS produced in non-Parties, thereby discouraging shifts of production to non-Parties and limiting the potential for undermining the phaseout. Since 1993, EPA has stated that § 615 authority is available and would be used if the other Title VI authorities were not sufficient to address concerns for ozone layer protection. For example, in the late 1990s, EPA, the National Aeronautics and Space Administration (NASA), and the Federal Aviation Administration (FAA) considered options for addressing potential ozone depletion concerns that would result from supersonic commercial aircraft. EPA and NASA analyzed the impacts from a theoretical fleet of supersonic commercial aircraft, known as High Speed Civil Transport (HCST), and in an October 1998 Memorandum of Agreement between the two agencies (signed by Spence M. Armstrong, Associate Administrator for Aeronautics and Space Transportation Technology (NASA) and Robert Perciasepe, Assistant Administrator for Air and Radiation (EPA)) (available in the docket) noted the potential to rely on

§ 615 in conjunction with other regulatory authorities.

Through this action EPA is proposing to establish regulations under authority of § 615, to take effect January 1, 2010, that would ban the sale or distribution or offer for sale or distribution in interstate commerce of all air-conditioning and refrigeration appliances containing HCFC-22, HCFC-142b, or blends containing one or both of these controlled substances. Furthermore, EPA is proposing to ban effective January 1, 2010, the sale or distribution or offer for sale or distribution in interstate commerce of all air-conditioning and refrigeration appliances suitable for use solely with newly produced HCFC-22, HCFC-142b, or blends containing one or both of these controlled substances, as well as pre-charged appliance parts. As discussed elsewhere in this proposal, EPA believes that not exercising § 615 authority for precharged appliances could lead to problematic consequences in light of the January 1, 2010, ban on the manufacture of HCFC-22, HCFC-142b, or blends containing one or both of these substances for servicing new appliances. This ban makes it more likely that new appliances containing these substances could be serviced or disposed of illegally by non-certified technicians lacking training on emissions minimization. Furthermore, reducing the installed base of HCFC appliances results in reducing potential emissions and lessening the need for HCFCs for servicing. While some of the HCFCs used in appliances can be reclaimed and reused, a certain amount of the HCFCs becomes contaminated and is not available for future use. Thus restricting the installed base of HCFC appliances will have the effect of reducing the overall amount of HCFC consumption and emissions. This approach is consistent with the previous actions taken to restrict applications of ozone-depleting substances where suitable substitutes exist. This proposal also helps further the goals of the Montreal Protocol, in particular the Parties' recent emphasis on reducing emissions of HCFCs, as evidenced by the Parties' agreement in September 2007 to accelerate the HCFC production and consumption phaseout. The result of the rulemaking will be fewer appliances pre-charged with HCFCs that could be emitted either during the useful lifetimes of the appliances via leaks or improper servicing, or by the improper disposal of the appliances resulting in the release of refrigerant. EPA requests comments regarding whether this is an appropriate

circumstance to invoke the authority provided by § 615.

#### *B. Criteria and Conditions Established Under § 615 of CAAA*

Under § 615, if in the Administrator's judgment, any substance, practice, process, or activity may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare, then the Administrator must promptly promulgate regulations respecting the control of such substance, practice, process or activity. In this proposal, the Administrator proposes to conclude that, beginning January 1, 2010, the practice of selling and distributing precharged air-conditioning and refrigeration appliances and pre-charged appliance parts containing HCFC-22, HCFC-142b, or blends of these substances, as well as air-conditioning and refrigeration appliances suitable for use solely with newly produced HCFC-22, HCFC-142b, or blends of these substances, may reasonably be anticipated to affect ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health.<sup>2</sup> EPA requests comment on these proposed findings.

As summarized in the background section of this preamble, the effects of ODS on stratospheric ozone are well known. Further information on the science of ozone depletion is available in the docket. The specific ODS addressed in this action, HCFC-22 and HCFC-142b, are class II substances listed under section 602(b) of the Clean Air Act. Pursuant to section 602(b), class II substances are those substances that are "known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer." As discussed below under the heading "*What are the impacts on stratospheric ozone resulting from continued activities?*," EPA has prepared an estimate of the reduction in HCFC emissions attributable to a ban on pre-charged appliances. EPA estimates that a ban on HCFC pre-charged imports will reduce HCFC emissions by approximately 4,700 ODP tons from 2010 through 2019. EPA plans to assess whether it is feasible to compare the HCFC emissions averted through this rulemaking to the overall ODS emission rate for the same period. (For purposes of approximate comparison, an assumed average of 470 ODP tons per year of

<sup>2</sup> EPA is not addressing in this proposed action the separate question of whether such effect also may reasonably be anticipated to endanger public welfare.

averted emissions during this time period is approximately 12 percent of the 3,810 ODP ton U.S. compliance cap for consumption of all HCFCs each year during 2010–2014, and 31 percent of the cap during 2015–2019.)

The phrase “such effect,” as used in section 615, could be read to refer to (1) stratospheric ozone depletion generally; (2) stratospheric ozone depletion associated with HCFCs; or (3) stratospheric ozone depletion attributable to the specific practice of importing HCFC pre-charged appliances. As indicated above, the Administrator proposes to conclude that, the stratospheric ozone depletion attributable to the specific practice of importing HCFC pre-charged appliances “may reasonably be anticipated to endanger” public health and thus is sufficient in itself. Therefore, it is not necessary to arrive at additional or definitive interpretations for purposes of this action.

The links between stratospheric ozone depletion and skin cancer are well established. Other public health concerns include cataracts and immune suppression. Since the appearance of an ozone hole over the Antarctic in the 1980s, Americans have become aware of the health threats posed by ozone depletion, which decreases the atmosphere’s ability to protect the earth’s surface from the sun’s UV rays. The 2006 documents *Scientific Assessment of Ozone Depletion*, prepared by the Scientific Assessment Panel to the Montreal Protocol, and *Environmental Effects of Ozone Depletion and its Interactions with Climate Change*, prepared by the Environmental Effects Assessment Panel (see [http://ozone.unep.org/Assessment\\_Panels/](http://ozone.unep.org/Assessment_Panels/)), provide comprehensive information regarding the links between emissions of ODS, ozone layer depletion, UV radiation, and human health effects.

Skin cancer is the most common form of cancer in the U.S., with more than 1,000,000 new cases diagnosed annually (National Cancer Institute, “Common Cancer Types,” at <http://www.cancer.gov/cancertopics/commoncancers>). Melanoma, the most serious form of skin cancer, is also one of the fastest growing types of cancer in the U.S.; melanoma cases in this country have more than doubled in the past two decades, and the rise is expected to continue (Ries, L., Eisner, M.P., Kosary, C.L., et al., eds. *SEER Cancer Statistics Review, 1973–1999*. Vol 2003. Bethesda (MD): National Cancer Institute; 2002.) In 2007, invasive melanoma was expected to strike more than 59,000 Americans and kill more than 8,000

(National Cancer Institute, “Melanomas,” at <http://www.cancer.gov/cancertopics/types/melanoma>).

Nonmelanoma skin cancers are less deadly than melanomas. Nevertheless, left untreated, they can spread, causing disfigurement and more serious health problems. There are two primary types of nonmelanoma skin cancers. Basal cell carcinomas are the most common type of skin cancer tumors. They usually appear as small, fleshy bumps or nodules on the head and neck, but can occur on other skin areas. Basal cell carcinoma grows slowly, and rarely spreads to other parts of the body. It can, however, penetrate to the bone and cause considerable damage. Squamous cell carcinomas are tumors that may appear as nodules or as red, scaly patches. This cancer can develop into large masses, and unlike basal cell carcinoma, it can spread to other parts of the body.

EPA projects that approximately 1,700 total cases of cancer (nonmelanoma and cutaneous malignant melanoma) and approximately 9 premature mortalities will be avoided by banning the sale and distribution of pre-charged appliances beginning in 2010. More information regarding this projection is available in a memorandum prepared by ICF Consulting for EPA (“Avoidance of Skin Cancer Incidences and Mortalities Associated with a 2010 Ban on Products Pre-Charged with R-22”) and placed in the docket for this rulemaking. EPA does not routinely provide projections of this nature in developing rules under Title VI of the CAA. Other UV-related health effects, which EPA has not quantified, are discussed below.

Other UV-related skin disorders include actinic keratoses and premature aging of the skin. Actinic keratoses are skin growths that occur on body areas exposed to the sun. The face, hands, forearms, and the “V” of the neck are especially susceptible to this type of lesion. Although premalignant, actinic keratoses are a risk factor for squamous cell carcinoma. Chronic exposure to the sun also causes premature aging, which over time can make the skin become thick, wrinkled, and leathery.

Cataracts are a form of eye damage in which a loss of transparency in the lens of the eye clouds vision. If left untreated, cataracts can lead to blindness. Research has shown that UV radiation increases the likelihood of certain cataracts. Although curable with modern eye surgery, cataracts diminish the eyesight of millions of Americans. Other kinds of eye damage include pterygium (*i.e.*, tissue growth that can block vision), skin cancer around the eyes, and degeneration of the macula

(*i.e.*, the part of the retina where visual perception is most acute).

Scientists have found that overexposure to UV radiation may suppress proper functioning of the body’s immune system and the skin’s natural defenses. All people, regardless of skin color, might be vulnerable to effects including impaired response to immunizations, increased sensitivity to sunlight, and reactions to certain medications.

EPA seeks comment on whether the practice of selling and distributing air-conditioning and refrigeration appliances containing HCFC-22, HCFC-142b, or blends of these substances may reasonably be anticipated to affect ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare.

EPA investigated the potential impacts of failure to control the import of refrigeration and air-conditioning appliances containing HCFC-22, HCFC-142b, or blends containing one or both of these controlled substances. EPA believes the impacts fall into two broad categories: environmental impacts on stratospheric ozone resulting from continued activities and financial impacts.

The first impact category—impacts on stratospheric ozone resulting from continued activities—can be further delineated into:

- Impacts from the continued production of HCFC-22, HCFC-142b, and blends containing one or both of these substances for use as a refrigerant in air-conditioning and refrigeration appliances that cannot be initially charged in the U.S. but could be charged abroad and subsequently imported into the U.S. if EPA did not take action; and
- Impacts from improperly servicing equipment and/or venting controlled substances.

1. What are the impacts on stratospheric ozone resulting from continued activities?

The global HCFC phaseout is already underway, and restrictions on production, import, and sale and distribution of specific types of HCFC products are already in place in the United States and in international markets. The United States banned sale and distribution of aerosols, pressurized dispensers, and foam products containing HCFCs in 1994, and the European Union has banned HCFCs for refrigerant use in new equipment since 2001 (Regulation EC No 2037/2000 of the European Parliament). Many manufacturers of pre-charged appliances already service the European market and other markets with non-

HCFC pre-charged appliances, thus they are already manufacturing air-conditioning and refrigeration pre-charged appliances with non-ozone depleting refrigerants. EPA believes this should ease the implementation of a proposed ban, and given that retooling and other design changes have either already occurred to meet the European and other markets, or will occur as a result of the global phaseout of HCFCs, EPA believes costs associated directly with this proposed rulemaking are limited.

EPA estimates that in 2006, approximately 9.7 million pre-charged appliances, including heat pumps, window air conditioners, and dehumidifiers, were imported into the United States and sold throughout the country. This figure includes units pre-charged with other refrigerants. EPA estimates that 9.0 million pre-charged appliances, the vast majority, were pre-charged with HCFC-22. In addition to the 9.7 million imported pre-charged appliances, appliances were sold that were manufactured domestically. EPA believes this is a mature and stable market and EPA projects that in the absence of a restriction, as many as 12.7 million pre-charged HCFC appliances could be imported and made available for sale or distribution in the U.S., on an annual basis, during 2010–2019 using reasonable assumptions concerning market growth. Separate domestic restrictions on the production and import of HCFC-22 and HCFC-142b would essentially preclude the manufacture and initial charging of these appliances with newly manufactured HCFC-22, HCFC-142b, and blends containing one or both of these controlled substances, as of January 1, 2010.

In estimating the environmental impacts associated with continuing to allow sale and distribution of HCFC pre-charged appliances in interstate commerce, EPA considered factors such as the number of different appliances likely to be available, the average charge sizes for the appliances, and the leak rates associated with the appliances that are likely to be serviced during their useful lifetime. The projected emission of HCFC-22 between January 1, 2010 and December 31, 2019, in the absence of a ban on pre-charged appliances, based on charge sizes and leak rates is approximately 4,700 ODP-weighted metric tons from these pre-charged appliances. By comparison, in accordance with the Montreal Protocol adjustments from September 2007, in 2010 the cap for consumption for the total basket of HCFCs in the United States will be 3,810 ODP tons annually

for the years 2010–2014 and 1,524 ODP tons for the years 2015–2020. This consumption is for the total basket of HCFCs, with HCFC-22 and HCFC-142b restricted to servicing the existing base of air-conditioning and refrigeration appliances—in particular the units that are charged onsite, including but not limited to, chillers and residential unitary units.

The maximum level of consumption will also be used to service and charge both existing and newly manufactured appliances with other HCFCs, and in other applications such as niche solvent uses prior to 2015, and will include amounts for consumption of HCFC-123, HCFC-124, HCFC-225ca, HCFC-225cb, and—in some extremely narrow cases—HCFC-141b. EPA requests comments on the projected number of pre-charged HCFC appliances that could be available after January 1, 2010, and the associated amount of ODS that would be necessary to both charge and service these appliances during their useful lifetimes.

2. What factors will influence the costs of pre-charged appliances charged with substitutes?

EPA believes that for the air-conditioning and refrigeration applications affected by this proposed rule, the price of the refrigerant is a comparatively small fraction of the total price of the appliance, ranging from 1 to 3 percent of total cost. EPA also believes that only a limited number of appliance components will be replaced to accommodate an alternative refrigerant. The decision by the Parties to the Montreal Protocol to adjust the phaseout schedules for HCFCs was based partly on reliable information concerning commercially available substitute refrigerants that has been provided to the Parties by the technical assessment panels the Parties sponsor. For some applications, manufacturers have a suite of refrigerants from which to choose and can therefore consider a range of price and operational factors.

EPA considered whether the transition to alternative refrigerants in pre-charged appliances would involve differential costs. Considering that these appliances are not retrofitted, this would be an upstream cost occurring at the point of manufacture, not after consumer purchase. EPA's evaluation, included in the docket for this rulemaking, examined potential consumer impacts from differences in refrigerant cost and differences in costs associated with changes to certain appliance components to accommodate an alternative refrigerant. Generally the R-410A appliances are more energy-efficient than their HCFC-22

counterparts, which may result in reduction of energy usage by consumers and thus would result in a net savings. EPA assessed existing industry data and applied assumptions regarding future manufacturing and marketing trends. Several critical limitations associated with projecting differential refrigerant and component prices precluded the Agency from determining an incremental cost estimate with certainty. However, given the relatively limited range of impacts, EPA believes it can estimate, with a reasonable degree of certainty, a range of possible cost impacts.

The prices of HCFC-22 in developing countries range widely from \$2/kg to \$13/kg. The current average price for R-410A—one substitute for HCFC-22 in non-industrialized countries—is approximately \$13/kg. Refrigerant prices vary widely based on factors such as volumes purchased and negotiation of purchasing contracts; further, projecting prices into the future is complicated by variability in individual manufacturers' business decisions regarding when to make the long-term capital investments to alternative refrigerants. EPA expects, however, that the prices of alternative refrigerants such as R-410A will drop as demand increases and patents expire. The more aggressive phasedown of HCFC-22 production and import resulting from the decision taken at the 19th Meeting of the Parties is likely to lead to an increase in the price of HCFC-22 and a drop in the price of R-410A. Prices of HCFC-22 will likely increase as the stepwise reductions in production and consumption continue. As the global phaseout of HCFCs continues, other international markets may become more restrictive, further influencing the global pricing.

Equipment charged with alternative refrigerants such as R-410A requires slightly different components—such as thicker-walled copper tubing—that may cost slightly more than the components used in older HCFC-22 appliances. EPA is not aware of any industry data now available that projects the likely future differences in component costs between equipment designed for HCFC-22 and equipment designed for alternatives including R-410A, whether from manufacturers in developed countries or developing countries. EPA's evaluation estimates that for appliances manufactured in the United States, incremental costs associated with component modifications could range from zero to 10 percent of the cost of the appliances—an estimated per-unit difference of \$5 for smaller units and \$45 for larger units. The cost differential

for manufacturers in developing countries could be less or more, and the degree to which any such differential would be passed along to U.S. consumers is unknown. The more efficient operations of the R-410A appliances may result in reduced energy costs.

Given the caveats above, EPA estimates that the price differential could range from zero to \$45 (with a mid-range of \$42.50) for each of the larger units (e.g., unitary air conditioners) that would be imported annually during the period 2010–2019, and that the differential for the smaller units (e.g., room air-conditioners) would range from zero to \$5 (with a mid-range of \$3.50).

In the analysis included in the docket for this proposed rulemaking, EPA states that 9.0 million appliances pre-charged with HCFC-22 were imported into the United States in 2006. Applying assumptions identified in the docket concerning market growth, EPA estimates that the market for imported pre-charged appliances will grow to an annual average rate of 12.7 million appliances per year during the period 2010–2019. Thus, during the period 2010–2019, EPA projects that an average of 12.7 million appliances per year would be imported pre-charged with a non-ozone-depleting alternative refrigerant such as R-134a, R-407C, or R-410A. EPA's analysis shows that the engineering modifications to components of appliances using R-134a or R-407C are likely to have negligible cost. EPA has, however, calculated the incremental cost associated with the more significant modifications necessary for units using R-410A, which EPA estimates will constitute approximately 64 percent of the pre-charged imports during this time, or approximately 8.1 million of the 12.7 million pre-charged units imported with alternative refrigerants on an annual basis during 2010–2019.

The annual aggregate of such impacts would range from zero to \$48 million, with a mid-range estimate of \$41 million.

Assumptions regarding the market, growth, and factors concerning costs are further considered in a draft memorandum *Costs Associated with Refrigerant Substitution from R-22 to R-410A in Pre-charged Equipment*,<sup>3</sup> prepared by ICF Consulting for EPA and available in the docket for this rulemaking. EPA seeks comment on that draft memorandum, including the

<sup>3</sup> HCFC-22 is also referred to as R-22, particularly where it is used in refrigeration and air-conditioning applications.

assumptions regarding likely refrigerant replacement and the cost impacts. In addition, EPA requests comments regarding the current and potential availability and prices of pre-charged appliances that do not contain HCFC-22, HCFC-142b, or blends containing either of these refrigerants. In particular, EPA is interested in information regarding likely market trends considering both the promulgation of a ban on sale and distribution and in the absence of such a restriction. EPA requests comments on the projected number of appliances that could be available after January 1, 2010, and the associated amount of ODS that would be necessary to both charge and service these appliances during their useful lifetimes.

### 3. Are There Implications for Other Markets?

EPA believes that there is an additional impact associated with not banning the sale and distribution in interstate commerce of these appliances as of January 1, 2010. EPA believes that prolonging U.S. demand for imported pre-charged appliances would discourage global efforts to transition to non-ODS technologies in manufactured air-conditioning and refrigeration appliances. Given the commitments of the United States and its trading partners to ultimately phase out HCFCs, investment in HFC product lines is occurring and will continue to occur globally. Production capacity requires a long-term capital investment and the choice of refrigerant dictates some of that investment in the form of factory tooling, design, and a network of suppliers for components. Without this proposed ban, investment decisions influenced by demand could foster continued investment in HCFC-based manufacturing rather than investment in alternatives and would run counter to the United States's domestic approach to promote smooth transitions rather than a rush to transition at the tail end of global phaseout. EPA has not calculated these potential impacts but does recognize that such impacts potentially exist. EPA requests comments regarding the timing for transitioning pre-charged appliances to non-ODS refrigerants.

### 4. Without Taking Action Are There Impacts Associated With Unequal Treatment of Stakeholders?

The requirements established at § 82.16(c) make it unlawful, effective January 1, 2010, to produce or import HCFC-22 or HCFC-142b for use in refrigeration or air-conditioning appliances manufactured on or after that

date. The result of this provision is that, effective January 1, 2010, domestic air-conditioning and refrigeration appliance manufacturers will no longer have newly manufactured or imported HCFC-22 or HCFC-142b available to charge their newly manufactured appliances. EPA believes that this proposal, once finalized, will have the effect of providing more equitable treatment of domestically manufactured and imported appliances by holding the equipment to the same requirements for sale and distribution within interstate commerce.

EPA would like to clarify that when referring to appliances that are suitable for use solely with newly produced HCFC-22, HCFC-142b, and blends containing one or both of these controlled substances, EPA means to refer to appliances that according to the manufacturer would not be suitable for use with recycled or reclaimed refrigerants. EPA believes that such a situation could potentially arise if, for example, manufacturer's directions stated specifically that the appliance must be charged with newly manufactured refrigerants. EPA is not suggesting through this action to create any differentiated standards, just to clarify that the proposed rule is not intended to extend to newly manufactured appliances charged with used refrigerants.

EPA believes that not promulgating these proposed requirements, or a very similar set of requirements, could result in differing treatment with regard to sale and distribution in interstate commerce for similar appliances based on the location of the manufacturing facility. EPA requests comments on the application of a sales restriction in interstate commerce on all pre-charged appliances.

### C. Establishing 40 CFR Part 82 Subpart I

EPA intends to house the proposed requirements in a new subpart. EPA intends to create 40 CFR Part 82 Subpart I, to be named Ban on Refrigeration and Air-Conditioning Appliances Containing HCFCs. While alternatively these proposed requirements could be contained within existing subparts, particularly subpart A or subpart C, EPA believes a new subpart is more appropriate. The requirements could be housed in subpart A, but subpart A generally applies to bulk substances and not finished goods. EPA could house the provisions in subpart C, since that subpart includes a ban on the sale and distribution of certain products manufactured with or containing HCFCs, but those provisions were



promulgated under CAA section 610. Given that EPA is using different authority for these provisions and is structuring them somewhat differently, EPA is planning to house these provisions separately for ease of reference.

*D. Air-Conditioning and Refrigeration Appliances Banned From Sale or Distribution, or Offer for Sale or Distribution, in Interstate Commerce*

EPA is proposing that any air-conditioning or refrigeration appliances containing HCFC-22, HCFC-142b, or any blend that contains one or both of these controlled substances, would be subject to the ban proposed through this action. EPA requests comment on banning the sale or distribution, or offer for sale or distribution, of these appliances recognizing the wide availability of substitutes. EPA additionally requests comments on whether the types of appliances listed below in this section comprise the universe of affected appliances that currently or potentially could use HCFC-22, HCFC-142b, or any blend that contains one or both of these controlled substances as a refrigerant.

Refrigeration and air-conditioning end-uses typically use a refrigerant in a vapor compression cycle to cool and/or dehumidify a substance or space, like a refrigerator cabinet, room, office building, or warehouse. HCFC-22 is a popular refrigerant that is commonly used in a variety of refrigeration and air conditioning equipment including both industrial and residential applications, most of which are not pre-charged but are instead charged onsite. HCFC-22 can be used in a large range of equipment including:

**Residential Uses**

- Window air conditioning units.
- Dehumidifiers.
- Central air conditioners.
- Air-to-air heat pumps.
- Ground-source heat pumps.
- Ductless air conditioners.
- Chest or upright freezers.

**Commercial and Industrial Uses**

- Packaged air conditioners and heat pumps.
- Chillers.
- Retail food refrigeration.
- Cold storage warehouses.
- Industrial process refrigeration.
- Transport refrigeration.

HCFC-22 is often used as a component in refrigerant blends that contain several chemicals. Some common end uses for refrigerant blends that contain HCFC-22 are:

- Retail food refrigeration.

- Cold storage warehouses.
- Industrial process refrigeration.
- Transport refrigeration.

As a refrigerant, HCFC-142b is rarely used by itself; it is generally a component of a refrigerant blend. For example, it is part of a blend known as R-409A, which also includes HCFC-22 and can be used in some applications.

Readers interested in substitutes for CFC refrigerants should review the Significant New Alternatives Policy (SNAP) program which evaluates and regulates substitutes for ODS. Section 612 authorizes EPA to identify and publish lists of acceptable and unacceptable substitutes for class I or class II ozone-depleting substances. The Administrator has determined a large number of alternatives are acceptable because they provide limited risk to human health and the environment. The purpose of SNAP is to allow a safe, smooth transition away from ODS by identifying as acceptable substitutes that offer lower overall risks to human health and the environment than the ODS they replace and by prohibiting substitutes that provide significantly greater risk than other substitutes that are available. Additional information concerning substitutes specifically for air-conditioning and refrigeration applications can be found at: <http://www.epa.gov/ozone/snap/refrigerants/index.html>.

**1. Resale of Used Air-Conditioning and Refrigeration Appliances in Interstate Commerce**

This proposed rule concerns only the sale or distribution, and offer for sale or distribution, of newly manufactured appliances. This action is not intended to govern the sale or distribution, or offer for sale or distribution, of any previously owned or used appliances. EPA believes appliances previously owned or used should continue to be available in interstate commerce. However, EPA is concerned with the potential for appliances to be marked as previously owned and used when those appliances were actually newly manufactured. Therefore, we are requesting comments on whether we can continue to permit the sale or distribution, and offer for sale or distribution, of used appliances while maintaining the integrity of this proposal. EPA requests comments on whether there is a need for additional requirements to distinguish between newly manufactured and previously manufactured appliances.

**2. Servicing Air-Conditioning and Refrigeration Appliances**

This proposed rule does not affect the servicing of air-conditioning or refrigeration appliances manufactured prior to January 1, 2010. Servicing is regulated under other authorities, notably 40 CFR part 82, subpart F. EPA believes it is necessary to continue to permit the servicing of air-conditioning and refrigeration appliances manufactured prior to January 1, 2010, to ensure a smooth transition to alternatives. As noted above, regardless of whether EPA takes final action on this proposed rule, it will be illegal to produce or import HCFC-22, HCFC-142b or blends containing one or both of these controlled substances to charge appliances manufactured after January 1, 2010. If new appliances that use these banned refrigerants are available for sale after this time, there may be a temptation to illegally recharge them with the banned refrigerants. This could increase the potential for poor servicing practices resulting in leaks or venting in violation of the Subpart F prohibitions.

**3. Identifying Banned Appliances**

The term "appliance" is defined in section 601 of the CAAA and in EPA's regulations at 40 CFR part 82, subpart F. EPA is proposing to apply the same definition of "appliance" as appears in subpart F: any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer. Further, EPA is proposing to use the same definition of "refrigerant" that appears in 40 CFR part 82, subpart F: 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 believes that consistency in these definitions benefits the regulated community. For further clarification, EPA is providing below a listing of appliances that would be banned by this proposal, if they were pre-charged with HCFC-22, HCFC-142b or a blend containing one or both of these controlled substances. EPA notes that most of the pre-charged appliances are characterized as small appliances (e.g.; window air conditioning units, upright freezers, refrigerators) and that some of these (e.g.; refrigerators) have already transitioned away from HCFCs. However, EPA is including other appliances that commonly use HCFC refrigerants as well in case some significant change in industry and/or shipping practices results in pre-charging new categories of appliances.



EPA believes this is important both to ensure that EPA is not inadvertently excluding appliances that should be included and in recognition that business practices do change. Therefore, while certain items are not practical to pre-charge now, there may be significant changes at some future date. This is not intended to be an exhaustive list but can be used as guidance when for the reader to judge whether there is any potential now or in the future for a particular appliance to be covered by this proposal if it were sold or distributed in interstate commerce pre-charged. For example, EPA is not aware of any industrial process refrigeration appliances sold or distributed pre-charged, but for completeness, industrial process refrigeration appliances, chillers, and other appliances not currently sold or distributed pre-charged are included:

- Air-to-air heat pumps.
- Chest or upright freezers.
- Chillers.
- Cold storage warehouses.
- Ductless air conditioners.
- Dehumidifiers.
- Ground-source heat pumps.
- Industrial process refrigeration.
- Packaged air conditioners and heat pumps.
- Retail food refrigeration.
- Transport refrigeration.
- Unitary air conditioners.
- Window air conditioning units.

Furthermore, EPA is also including pre-charged components for appliances, such as line-sets and pre-charged compressors. When sold charged with refrigerants, these components present all the same concerns as the pre-charged appliances. EPA requests comments on using the definitions of appliance and refrigerant that appears in subpart F to determine what is subject to this proposed ban. EPA further requests comments on including pre-charged components.

#### 4. Ban on Sale or Distribution in Interstate Commerce

EPA has previously banned the sale or distribution, and offer for sale or distribution in interstate commerce, of certain products containing or manufactured with class II substances, including most pressurized dispensers and plastic foam products (58 FR 69637). EPA has also previously banned the sale or distribution, and offer for sale or distribution in interstate commerce, of air-conditioning and refrigeration appliances containing class I substances (66 FR 57512). Consistent with those previous actions, EPA is proposing to apply the term “interstate commerce” to the product’s entire distribution chain up to and including

the point of sale to the ultimate consumer.

EPA’s interpretation of interstate commerce for this purpose does not cover the sale, distribution, or offer of sale or distribution of an appliance if the appliance is completely manufactured, distributed, and sold without ever crossing state lines. However, to avoid coverage by this proposed rulemaking, the appliance must be manufactured, distributed, and sold exclusively within a particular state, and also all of the raw materials, components, equipment, and labor that went into the manufacturing, distributing, selling, or offering for sale or distribution of such a product originated within that state as well.

The sale and distribution of the affected appliance includes every sale and distribution up to and including the sale to the ultimate consumer and all these sales would need to occur without ever crossing a state line for the product to be considered not part of interstate commerce and thus not banned by this proposed rulemaking. This is consistent with the sales restriction promulgated under section 610 and housed at 40 CFR Part 82 subpart C. EPA requests comments on banning the sale or distribution or offer for sale or distribution of these appliances in interstate commerce.

#### 5. Imports and Exports

EPA intends to treat both the domestic sale or distribution of any appliance imported into the United States, and the domestic sale or distribution of any appliance intended for ultimate export from the United States, as acts of interstate commerce within the meaning of today’s proposal. This interpretation was previously discussed by EPA in the regulations implementing the ban on Nonessential Products containing or manufactured with a class II substance (58 FR 69638). The sale or distribution, or offer for sale or distribution, of imported products or products destined for export within the scope of this proposal would be subject to the same restrictions as the sale or distribution, or offer of sale or distribution, of products within the scope of that Nonessential Products ban. EPA is not proposing to regulate foreign commerce through this action. These proposed requirements would only apply to interstate commerce and would only affect appliances that would be in interstate commerce within the borders of the United States including those that would be in interstate commerce prior to export or subsequent to import. EPA requests comments regarding the import and export of banned appliances.

#### 6. Sale and Distribution of Products Manufactured Prior to January 1, 2010

EPA recognizes that air-conditioning and refrigeration appliances containing HCFC-22, HCFC-142b or a blend where either or both of these substances are components, could be manufactured prior to January 1, 2010, but may not have reached the ultimate consumer by January 1, 2010. EPA contemplated mechanisms to either permit for a ‘sell through’ or ‘grandfather’ appliances that were previously manufactured and placed into an initial inventory—similar to the approaches in 40 CFR Part 82, subpart C. While such an approach could smooth the transition to non-ODS pre-charged appliances, given that this proposed regulation is based on meeting the criteria established by Section 615, EPA is concerned that any “sell through” or “grandfathering” provision would provide less environmental protection. Therefore, EPA would only adopt such an approach if it were very limited and narrowly defined. In addition, EPA is proposing that these provisions have an effective date of January 1, 2010 rather than 60 days from the date that the final rule is published in the **Federal Register**. EPA chose this date partly because it corresponds with other milestones, mostly notably the implementation of the reduction to 75 percent below the United States baseline for production and consumption of all HCFCs. However, a secondary reason for proposing this date is to provide adequate planning time for the various stakeholders to take actions to permit for a smooth transition to non-HCFC pre-charged appliances. EPA requests comments on whether the Agency should adopt a narrowly tailored sell-through or grandfathering provision.

#### IV. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action” because OMB believes that it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden. Rather, this rule proposed to ban the sale or

distribution of air-conditioning and refrigeration appliances containing HCFC–22, HCFC–142b, or blends containing one or both of these substances, beginning January 1, 2010. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0498. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act (RFA)*

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 this proposal on small entities, small entity is defined as: (1) An entity that is

primarily engaged in Chlorofluorocarbon gas, air conditioner, and refrigerator importing, exporting and manufacturing, as defined by NAIC codes 333415 and 325120 (based on Small Business Size Standards.) See table below for examples and additional details; (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.

This proposal will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing .....	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers.
Chlorofluorocarbon gas importers .....	325120	2869	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas exporters .....	325120	2869	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters.
Manufacturers of air conditioners and refrigerators	333415	.....	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
Importers of air conditioners and refrigerators .....	333415	3585	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.

After considering the economic impacts of the proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. None of the entities affected by this rule are considered small as defined by the NAICS Codes listed above. 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*

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. The requirements already established at § 82.16(c) will make it unlawful to produce or import HCFC–22 or HCFC–142b on or after January 1, 2010 for use in refrigeration or air-conditioning appliances manufactured on or after that date. The practical result is that already domestic manufacturers of air-conditioning and refrigeration appliances will not be able to charge newly manufactured appliances with newly produced or imported HCFC–22 or HCFC–142b, and thus will not be introducing appliances containing these

newly produced substances into interstate commerce. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As stated above, this rule affects manufacturers of air-conditioning and refrigeration appliances, not small governments.

*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. Today’s proposal is expected to primarily affect producers, importers and exporters of air-conditioning and refrigeration appliances. Thus, the requirements of section 6 of the Executive Order do not apply. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule affects manufacturers of air-conditioning and refrigeration appliances, not tribal governments. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from tribal officials.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because

it is not economically significant as defined in EO 12866. The Agency nonetheless has reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's surface. The following studies describe the effects on children of excessive exposure to UV radiation: (1) Westerdahl J, Olsson H, Ingvar C. "At what age do sunburn episodes play a crucial role for the development of malignant melanoma," *Eur J Cancer* 1994; 30A: 1647–54; (2) Elwood JM, Japson J. "Melanoma and sun exposure: an overview of published studies," *Int J Cancer* 1997; 73:198–203; (3) Armstrong BK, "Melanoma: childhood or lifelong sun exposure," In: Grobb JJ, Stern RS, Mackie RM, Weinstock WA, eds. "Epidemiology, causes and prevention of skin diseases," 1st ed. London, England: Blackwell Science, 1997: 63–6; (4) Whieman D., Green A. "Melanoma and Sunburn," *Cancer Causes Control*, 1994: 5:564–72; (5) Heenan, PJ. "Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia," *Int J Cancer* 1995; 60: 489–94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, et al. "Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma." *Arch Dermatol* 1995; 131: 157–63; (7) Armstrong, DK. "How sun exposure causes skin cancer: an epidemiological perspective," *Prevention of Skin Cancer*. 2004. 89–116. The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assess results of early life exposure to UV radiation.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed regulation solely impacts the sale or distribution, or offer for sale or distribution of pre-charged appliances. Further, we have concluded that this rule is not likely to have any adverse energy effects.

#### I. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 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 proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. By restricting the sale and distribution of appliances charged with HCFC–22 and HCFC–142b, emissions of these ozone-depleting substances will be avoided lessening the adverse human health effects for the entire population.

#### List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports,

Hydrochlorofluorocarbons, Imports, Reporting and recordkeeping requirements.

Dated: December 11, 2008.

**Stephen L. Johnson,**  
*Administrator.*

40 CFR part 82 is proposed to be amended 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, 7671–7671(q)

2. A new subpart I is added to read as follows:

#### Subpart I—Ban on Refrigeration and Air-Conditioning Appliances Containing HCFCs

Sec.

82.300 Purpose.

82.302 Definitions.

82.304 Prohibitions.

82.306 Prohibited products.

#### Subpart I—Ban on Refrigeration and Air-Conditioning Appliances Containing HCFCs

##### § 82.300 Purpose.

The purpose of this subpart is to protect stratospheric ozone by restricting the sale and distribution of HCFC appliances under authority of section 615 of the Clean Air Act as amended in 1990.

##### § 82.302 Definitions.

As used in this subpart, the term:

*Administrator* means the Administrator of the United States Environmental Protection Agency or an authorized representative.

*Appliance* means any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

*Class I substance* means any controlled substance designated as class I in 40 CFR part 82, appendix A to subpart A.

*Class II substance* means any controlled substance designated as class II in 40 CFR part 82, appendix B to subpart A.

*Consumer*, when used to describe a person taking action with regard to a product, means the ultimate purchaser, recipient or user of a product.

*Distributor*, when used to describe a person taking action with regard to a product, means:

(1) The seller of a product to a consumer or another distributor; or

(2) A person who sells or distributes that product in interstate commerce for export from the United States.

*Hydrochlorofluorocarbon* means any substance listed as class II in 40 CFR part 82, appendix B to subpart A.

*Person* means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

*Pre-charged appliance* means any appliance charged with refrigerant prior to sale or distribution, or offer for sale or distribution in interstate commerce.

*Pre-charged appliance component* means any portion of a pre-charged appliance including but not limited to condensers and line sets that are charged prior to sale or distribution or offer for sale or distribution in interstate commerce.

*Product* means an item or category of items manufactured from raw or recycled materials which is used to perform a function or task.

*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.

#### **§ 82.304 Prohibitions.**

Effective January 1, 2010, no person may sell or distribute, or offer to sell or distribute, in interstate commerce any product identified in § 82.306.

#### **§ 82.306 Prohibited products.**

Effective January 1, 2010, the following products are subject to the prohibitions specified under § 82.304—

(a) Any air-conditioning or refrigeration appliance manufactured on or after January 1, 2010 containing HCFC-22, HCFC-142b or a blend containing one or both of these controlled substances,

(b) Any air-conditioning or refrigeration appliance manufactured on or after January 1, 2010 that is suitable only for use with newly produced HCFC-22, HCFC-142b or a blend containing one or both of these controlled substances, and

(c) Any pre-charged appliance component for air-conditioning or refrigeration appliances manufactured on or after January 1, 2010 containing HCFC-22, HCFC-142b, or a blend containing one or both of these controlled substances, except

(d) This prohibition shall not apply where the HCFC-22 or HCFC-142b (including the HCFC-22 or HCFC-142b

contained in any blend) is used, recovered and reclaimed.

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 312**

[EPA-HQ-SFUND-2008-0873; FRL-8755-7]

RIN 2050-AG47

### **Amendment to Standards and Practices for All Appropriate Inquiries Under CERCLA**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to amend the Standards and Practices for All Appropriate Inquiries to reference a standard practice recently made available by ASTM International, a widely recognized standards development organization. Specifically, EPA is proposing to amend the All Appropriate Inquiries Final Rule to reference ASTM International's E2247-08 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property" and allow for its use to satisfy the statutory requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). In the "Rules and Regulations" section of this **Federal Register**, EPA is amending the All Appropriate Inquiries Final Rule to reference the ASTM E2247-08 Standard 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 January 22, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-2008-0873 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [superfund.docket@epa.gov](mailto:superfund.docket@epa.gov).

- *Fax:* 202-566-9744.

- *Mail:* Superfund Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

- *Hand Delivery:* EPA Headquarters West Building, Room 3334, located at 1301 Constitution Ave., NW.,

Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The EPA Headquarters Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time, Monday through Friday, excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-SFUND-2008-0873. Please reference Docket number EPA-HQ-SFUND-2008-0873 when submitting your comments.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, 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 <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, 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 <http://www.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 the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>

*Docket:* You may use EPA Dockets at <http://www.epa.gov/edocket/> to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket identification number.

All documents in the docket are listed in the <http://www.regulations.gov> index. Certain types of information claimed as CBI, and other information whose