

TABLE 1 TO SUBPART R.—GENERAL PROVISIONS APPLICABILITY TO SUBPART R

Reference	Applies to subpart R	Comment
63.9(b)(2)	No	Subpart R allows additional time for existing sources to submit initial notification. Sec. 63.428(a) specifies submittal by 1 year after being subject to the rule or December 16, 1996, whichever is later.

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40 CFR Part 82

[FRL-5428-6]

RIN 2060-AF36

Protection of Stratospheric Ozone: Direct-Final Rulemaking Temporarily Extend the Existing Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Through this action EPA is amending the Clean Air Act section 608 refrigerant recycling regulations to extend the effectiveness of the refrigerant purity requirements of § 82.154 (g) and (h), which are currently scheduled to expire on March 18, 1996, until December 31, 1996, or until EPA completes rulemaking to adopt revised refrigerant purity requirements based on industry guidelines, whichever comes first. EPA is extending the requirements in response to requests from the air-conditioning and refrigeration industry to avoid widespread contamination of the stock of chlorofluorocarbon (CFC) and hydrochlorofluorocarbon (HCFC) refrigerants that could result from the lapse of the purity standard. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases.

EPA anticipates, before the close of the comment period for this direct final, publishing a proposal to adopt a more flexible approach to ensuring the purity of refrigerants and soliciting public comment on this approach. EPA requests that readers of this notice review that proposal, and consider providing comments.

This temporary extension will not result in any additional burden on the regulated community. Moreover, the retention of the reclamation requirement will protect the environment, public health, and consumers by ensuring that contaminated refrigerants are not vented or charged into equipment.

EFFECTIVE DATE: The direct final rule will become effective on April 15, 1996 unless significant adverse comments are received by April 1, 1996. If significant adverse comments are timely received on this direct final rule, EPA will withdraw the direct final rule and timely notice to that effect will be published in the Federal Register. All comments will then be addressed in a subsequent final rule based on the proposed rule contained in the Proposed Rules section of this Federal Register that is identical to this direct final rule. If no significant adverse comments are timely received on this direct final rule then the direct final rule will become effective 45 days from today's Federal Register notice and no further action is contemplated on the parallel proposal.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A-92-01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 in room M-1500. Dockets may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials. Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), 401 M Street SW., Washington, DC 20460, (Docket # A-92-01 VIII.G.) (202) 233-9729.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), 401 M Street, SW., Washington, DC 20460. The Stratospheric Ozone Information Hotline at 1-800-296-1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

- I. Overview
- II. Background

III. Today's Action

IV. Effective Date

V. Summary of Supporting Analysis

I. Overview

Paragraphs 82.154(g) and (h) of 40 CFR part 82, subpart F set requirements for sale of used refrigerant, mandating that it meet certain purity standards. These requirements will expire on March 18, 1996. EPA is currently in the process of promulgating new, more flexible, requirements based on industry guidelines, but will be unable to complete the rulemaking prior to the expiration of the existing standards. A lapse in the standards could result in widespread contamination of the stock of CFC and HCFC refrigerants. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases. Release of CFC and HCFC refrigerants has been found to deplete stratospheric ozone, resulting in increased human and environmental exposure to ultraviolet radiation. Increased exposure to ultraviolet radiation in turn can lead to serious health and environmental effects.

EPA is acting on requests from the air-conditioning and refrigeration industry to extend the effectiveness of the current refrigerant purity requirements, only until EPA can complete rulemaking to adopt more flexible requirements that will still ensure refrigerant purity.

II. Background

On May 14, 1993, EPA published final regulations establishing a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment (58 FR 28660). These regulations include evacuation requirements for appliances being serviced or disposed of, standards and testing requirements for used refrigerant sold to a new owner, certification requirements for refrigerant reclaimers, and standards and testing requirements for refrigerant recycling and recovery equipment.

When EPA promulgated the final rule, the Agency noted that further rulemaking would be required to address issues that had been raised during the comment period for the proposed rule (57 FR 58644). One of these issues was whether a standard for used refrigerant could be developed that would protect air-conditioning and refrigeration equipment, but would allow technicians to clean refrigerant themselves, rather than sending the refrigerant to an off-site reclaimer.

The final rule published on May 14, 1993, requires that refrigerant sold to a new owner be reclaimed to the ARI Standard 700 of purity by a certified reclaimer (§ 82.154(g) and (h)) referencing standard in § 82.164 and the definition of reclaim found in § 82.152). As discussed in the final rule, this requirement protects the purity of used refrigerant to prevent damage to air-conditioning and refrigeration equipment from the use of contaminated refrigerant. Equipment damage from contaminated refrigerant would result in costs to equipment owners, in releases of refrigerant from damaged equipment through increased leakage, servicing and replacement, and in reduction in consumer confidence in the quality of used refrigerant. This reduction in consumer confidence could lead to the premature retirement or retrofit of CFC or HCFC equipment since consumers would no longer believe that a sufficient stock of trustworthy refrigerants was available.

Although the reclamation requirements contained in 82.154(g) and (h) would clearly protect equipment, EPA believed that a more flexible but as effective requirement should be developed, particularly for refrigerant transferred between owners whose equipment was similar and was serviced by the same contractor. However, the only existing standard at the time EPA promulgated the rule was ARI Standard 700, and the only agreed upon means of enforcing it was by limiting sale of used refrigerant to only certified reclaimers. Certified reclaimers, unlike contractors or technicians, are required to have the equipment available that can verify that the refrigerant meets the purity standards, thus ensuring its purity prior to selling the refrigerants.

In order to encourage industry to explore the possibility of developing more flexible but still effective standards and technologies for purifying refrigerant, as well as more flexible means for ensuring compliance with purity standards, EPA adopted a commenter's suggestion and established an expiration date, or "sunset," for the reclamation requirement. EPA

accordingly made the reclamation requirements at § 82.154 (g) and (h) effective until May 15, 1995, two years after publication of the final rule. EPA believed that this two-year period would be sufficient for industry to develop new guidelines for reuse of refrigerant and for EPA to complete a rulemaking to adopt them if EPA determined that they would continue to reduce emissions to the lowest achievable level and maximize the recapture and recycling of refrigerants (58 FR 28679).

In December, 1994, a committee representing a wide range of interests within the air-conditioning and refrigeration industry published *Industry Recycling Guide (IRG-2): Handling and Reuse of Refrigerants in the United States*. This document establishes requirements and recommendations for the reuse of refrigerant in a number of different situations, including refrigerant transfers on the open market and between equipment owned by different people but serviced by the same contractor. Because EPA believes that these requirements would protect air-conditioning and refrigeration equipment while permitting technicians, contractors, and equipment owners more flexibility than the current requirements, EPA began pursuing a rulemaking to adopt the IRG-2 requirements. However, because the original sunset date was approaching, EPA also pursued a rulemaking to extend the effectiveness of § 82.154(g) and (h) (60 FR 14608). That rulemaking extended the effectiveness of the provisions until March 18, 1996. EPA believed that this extension would provide sufficient opportunity to develop and publish a proposed rule, take public comment, and develop and publish a final rule.

EPA drafted a proposed rulemaking concerning the adoption of a more flexible approach for ensuring refrigerant purity. However, several events beyond the agency's control have delayed the EPA's ability to release this proposal. While EPA expects to publish the proposal in the Federal Register prior to the end of the comment period for this direct final rulemaking, EPA will not have an opportunity to consider comments and promulgate a final action concerning the IRG-2 requirements prior to the expiration of these provisions on March 18, 1996.

Representatives of the air-conditioning and refrigeration industry expressed concern that any lapse in refrigerant purity requirements could result in a number of problems, including sloppy handling of refrigerant

and dumping of contaminated refrigerant on the market. These problems would result in significant damage to equipment, release of refrigerant, and aggravated refrigerant shortages.

Currently, the reclamation requirement encourages careful handling of refrigerant, because refrigerant that is irretrievably contaminated (for instance through mixture with other refrigerants) will not be accepted by any reclaimer, rendering it worthless. If this check is removed, sloppy handling may become widespread. This would not only lead to damage to equipment, but to the permanent loss of part of the stock of pure refrigerant through refrigerant mixture. Even in the best case in which the mixed refrigerant was properly disposed of, the limited supply of refrigerant would thereby be further reduced, necessitating more retrofit or replacement of existing equipment. Unfortunately, it is likely that the mixed refrigerant would often be used in air-conditioning and refrigeration equipment or vented rather than disposed of properly.

The possibility of widespread dumping of refrigerant on the market has been raised by reports that contractors and "recyclers" are stockpiling used refrigerant. In some cases, dumping dirty refrigerant on the market might be attractive simply because it enables the seller of refrigerant to avoid the costs of reclamation; for others, it might be attractive because the refrigerant is unreclaimable and therefore worthless if analyzed or sent to a reclaimer. In either situation, such dumping would lead to widespread equipment damage and potential releases of refrigerant. In addition, since domestic CFC production ceased December 31, 1995, protecting the purity of the existing stock of CFC refrigerants is essential.

III. Today's Action

In response to these concerns, EPA is extending the effectiveness of the current reclamation requirements until the Agency can adopt replacement requirements. It was never EPA's intent to leave air-conditioning and refrigeration equipment and refrigerant supplies unprotected by a purity standard, but only to replace the existing standard with a more flexible standard when that was developed. As discussed above, EPA is currently undertaking rulemaking to adopt a more flexible standard.

IV. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or adversely and materially affect 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 by OMB and EPA that this action to amend the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this rulemaking is estimated to result in the expenditure by State, local, and tribal governments or private sector of less than \$100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. As discussed in this preamble, this rule merely extends the current recordkeeping requirements during consideration of a more flexible approach that may result in reducing the burden of part 82 Subpart F of the Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities.

C. Paperwork Reduction Act

There are no additional information collection requirements associated with this rulemaking. EPA has determined that the Paperwork Reduction Act does not apply. The initial § 608 final rulemaking did address all recordkeeping associated with the refrigerant purity provisions. An Information Collection Request (ICR) document was prepared by EPA and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. This ICR is contained in the public docket A-92-01.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that since this amendment merely extends a current requirement designed to protect purity of refrigerants temporarily, there will be no adverse effects for the regulated community, including small entities. An examination of the impacts of these provisions was discussed in the initial final rule promulgated under § 608 (58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact

analysis was developed. That impact analysis accompanied the final rule and is contained in Docket A-92-01.

I certify that this amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Hydrochlorofluorocarbons, Interstate commerce, Reporting and reclamation, recordkeeping requirements, refrigerant purity, recycling, Stratospheric ozone layer.

Dated: February 14, 1996.

Carol M. Browner,
Administrator.

Part 82, chapter I, title 40, of the Code of Federal Regulations, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671-7671q.

2. Section 82.154 is amended by revising paragraphs (g) and (h) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(g) Effective until December 31, 1996, no person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed as defined at § 82.152;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

(h) Effective until December 31, 1996, no person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed by a person who has been certified as a reclaimer pursuant to § 82.164;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or

offered for sale together with the class I or class II substance.

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[FR Doc. 96-4038 Filed 2-28-96; 8:45 am]

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40 CFR Part 180

[PP 4F4344/R2207; FRL-5350-7]

RIN 2070-AB78

Sethoxydim; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a pesticide tolerance for the combined residues of the herbicide sethoxydim; 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodities (RACs) corn, field, grain at 0.5 parts per million (ppm); corn, fodder at 2.5 ppm; and corn forage at 2.0 ppm. These tolerances replace current entries for field corn, grain; corn, fodder; and corn, forage. BASF Corporation requested these tolerances in a petition submitted to EPA pursuant to Federal Food, Drug, and Cosmetic Act (FFDCA).

EFFECTIVE DATE: February 29, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [PP 4F4344/R2207], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to EPA Headquarters Accounting Office Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.gov. Copies of objections and hearing request must

be submitted as an ACSII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in Word Perfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [4F4344/R2207]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail, Robert J. Taylor, Product Manager (PM 25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On August 17, 1995 (60 FR 42884), EPA issued a notice in the Federal Register announcing that BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709-3528, had submitted a pesticide petition (PP 4F4344) to EPA proposing to amend 40 CFR part 180 pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establishing regulations to permit the combined residues of the herbicide sethoxydim; 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodities (RACs) corn, grain at 0.5 part per million (ppm); corn, fodder at 2.5 ppm; corn, forage at 2.0 ppm, and corn, silage at 2.0 ppm.

No comments were received in response to this notice of filing.

The petitioner subsequently amended the petition by submitting a revised section F deleting the proposed tolerance for corn silage. Because this is a deletion of a previously proposed tolerance, no longer in Table 2 of the Residue Chemistry Guidelines, there is no potential risk to humans. Therefore an additional period of public comment is not necessary.

The scientific data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. Several acute toxicology studies place technical sethoxydim in acute toxicity category IV for primary eye and dermal irritation and acute toxicity category III for acute oral, dermal, and inhalation. The dermal sensitization - guinea pig study was waived because no sensitization was seen in guinea pigs dosed with the end-use product Poast (18% a.i.).

2. A 21-day dermal study with rabbits fed dosages of 0, 40, 200, and 1,000 mg/kg/day with a NOEL (no-observed adverse effect level) of greater than 1,000 mg/kg/day (limit dose).

3. A 1-year feeding study with dogs fed dosages (based on consumption) of 0, 8.86/9.41, 17.5/19.9, and 110/129 mg/kg/day (males/females) with a NOEL (no-observed effect level) of 8.86/9.41 mg/kg/day (males/females) based on equivocal anemia in males and females at 17.5/19.9 mg/kg/day, respectively.

4. A 2-year chronic feeding/carcinogenicity study with mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 162 mg/kg/day (highest dose tested (HDT)) and a systemic NOEL of 18 mg/kg/day. A maximum tolerated dose (MTD) was not achieved for females in this study. A determination of the need for an additional study will be made once the replacement chronic feeding/carcinogenicity study in rats is evaluated.

5. A 2-year chronic feeding/carcinogenic study with rats fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no carcinogenic effects observed under the conditions of the study at dosage levels up to and including 18 mg/kg/day (HDT) and a systemic NOEL greater than or equal to 18 mg/kg/day (HDT). This study was reviewed under current guidelines and was found to be unacceptable because the doses used were insufficient to induce a toxic response and a maximum tolerated dose (MTD) was not achieved. This study must be repeated.

6. A chronic feeding/carcinogenic study with rats was submitted to supplement the above study. Rats in this study were fed dosages of 0, 18.2/23.0, and 55.9/71.8 mg/kg/day (males/females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 55.9/71.8 mg/kg/day (HDT) (males/females) and a systemic NOEL greater than or equal to 55.9/71.8 mg/kg/day (males/females). The doses used were insufficient to induce a toxic response and failed to achieve an MTD or define a Lowest Effect Level (LEL). Slight decreases in body weights in the final