TABLE 7 TO § 63.1103(e).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ETHYLENE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
*	* * * * * *	*
(b) * * *	(1) The maximum true vapor pressure of total organic HAP is ≥3.4 kilopascals but <76.6 kilopascals; and the capacity of the vessel is ≥95 cubic meters.	(i) * * * (ii) * * *
*	* * * * * *	*
(g) * * *	(1) The waste stream contains any of the following HAP: benzene, cumene, ethyl benzene, hexane, naphthalene, styrene, toluene, o-xylene, m-xylene, p-xylene, or 1,3-butadiene.	(i) * * *
*	* * * * * *	*

* * * * *

[FR Doc. 05–7404 Filed 4–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7899–3]

RIN 2060–AM51

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

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

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

DATES: This direct rule is effective on June 13, 2005, without further notice, unless EPA receives adverse comment by May 13, 2005. If EPA receives adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

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

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

Instructions: Direct your comments to Docket ID No. OAR–2004–0070. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

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

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. EPA

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

In the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to amend the definitions of refrigerant and technician and prohibit the knowing venting of HFC and PFC substitutes. This direct final rule will become effective on June 13, 2005, without further notice unless we receive adverse comment regarding the intent of the amended definitions by May 13, 2005. If EPA receives adverse comment on the intent of the corrected definitions and the amended prohibition, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments on the proposed rule in a subsequent final rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

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I. Regulated Entities

Entities potentially regulated by this action include those that manufacture, own, maintain, service, repair, or dispose of all types of air-conditioning and refrigeration equipment (*i.e.*, appliances as defined by § 82.152); those who sell, purchase, or reclaim refrigerants and their substitutes; and those who own refrigerant recycling or recovery equipment. This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria contained in section 608 of the Clean Air Act Amendments of 1990 (the Act). The applicability criteria are discussed below and in regulations published on December 30, 1993 (58 FR 69638). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Overview

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

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

III. Today's Action

With this action, EPA is correcting the definitions of refrigerant and technician at § 82.152 and amending the prohibition against the knowing venting of substitutes at § 82.154(a). These amendments are being made to reflect the intent of the March 12, 2004 final rule to not regulate the sale of substitutes that do not consist of a class I or class II ozone-depleting substance.

A. Correction to the Definition of Refrigerant

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

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

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

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

(4) Carbon dioxide in any application;

(5) Nitrogen in any application; or

(6) Water in any application.

EPA is aware that the above definition of refrigerant could be construed as being at odds with the preamble that discusses the Agency's intent to not restrict the sale of substitutes that do not consist of a class I or class II ODS. The unintentional inclusion of the phrase or any substance used as a substitute for such a class I or class II substance * * *, implies that any substance, including pure HFCs and PFCs, used as a substitute for such a class I or class II

substance would be captured under the definition of refrigerant. If left uncorrected, this could create ambiguity about the interpretation of the regulations promulgated at 40 CFR part 82, subpart F (*i.e.*, section 608 regulations) and could have unintended implications on the prohibitions, required practices, and reporting and recordkeeping requirements of the regulations promulgated under section 608 of Title VI of the Clean Air Act (*e.g.*, mandatory certification of technicians servicing appliances using pure HFC refrigerants and a restriction on the sale of HFC substitutes to certified technicians).

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

B. Amendment to the Prohibition Against Venting Substitutes

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

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

In order to emphasize that the knowingly venting of HFC and PFC substitutes remains illegal during the maintenance, service, repair, and disposal of appliances and to make certain that the *de minimis* exemption for refrigerants remains in the regulatory prohibition, § 82.154(a) is amended to reflect the venting prohibition of section 608(c)(2) of the Act. Therefore, the amended definition of refrigerant means that refrigerant releases shall be considered *de minimis* only if they occur when: (1) The required practices set forth in § 82.156 are observed, recovery or recycling machines that meet the requirements set forth in § 82.158 are used, and the technician certification provisions set forth in § 82.161 are observed; or (2) the requirements set forth for the service of motor vehicle air-conditioners (MVACs) in subpart B (*i.e.*, section 609) of this part are observed. EPA is also specifying, in the regulatory prohibition at § 82.154(a), the substitutes that have been exempted from the statutory venting prohibition. EPA has made this edit in order to clarify which substitutes are exempt from the venting prohibition. Hence, EPA is amending the prohibition at § 82.154(a) to read: (a) Effective June 13, 2005, no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with the exception of the following substitutes in the following end-uses:

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

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

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

(4) Carbon dioxide in any application;

(5) Nitrogen in any application; or

(6) Water in any application.

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

C. Correction to the Definition of Technician

In 1994, EPA finalized the definition of technician at § 82.152 to read: Technician means any person who performs maintenance, service, or repair that could be reasonably expected to release class I or class II refrigerants from appliances, *except for MVACs,* into the atmosphere. * * * (59 FR 55912 (November 9, 1994)). On June 11, 1998 (63 FR 32089), EPA proposed an amendment to the definition of technician to include persons who perform maintenance, service, repair, or

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

disposal that could be reasonably expected to release class I substances, class II substances, or substitutes from appliances into the atmosphere (63 FR 32059). The intent of proposed amendment to the definition was to require section 608 technician certification for persons maintaining, repairing, servicing, or disposing of appliances containing non-exempt substitutes; however, EPA did not intend to remove the phrase except for MVACs from the definition of technician.

A petition for review challenging the March 12, 2004 final rule stated that the amended definition of technician could be misinterpreted to mean that technicians servicing and maintaining MVACs must also have section 608 technician certification. In the course of finalizing the March 12, 2004 rulemaking (69 FR 11979), EPA inadvertently removed the text except for MVACs from the definition of technician, at § 82.152. Since EPA did not intend for the amended definition of technician to include persons servicing or repairing MVACs, the Agency is reverting to the original definition.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to Executive Order 12866 review.

B. Paperwork Reduction Act

OMB has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82, subpart F under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2060–0256, EPA ICR number 1626.07. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672. This action does not impose any new information collection burden beyond the already-approved ICR.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Analysis

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

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that approximately 819 small entities will experience an impact ranging from 0.001 percent to 0.163 percent, based on their annual sales and revenues.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. EPA is finalizing this rulemaking to make certain that the regulatory text in the March 12, 2004 rulemaking (63 FR 11946) is consistent with the intent to not regulate the use or sale of substitutes that do not consist of a class I or class II ozone-depleting substance, while making certain that the statutory prohibition against knowingly releasing such substitutes remains. This rule corrects the definitions of refrigerant and technician and makes certain that only substances consisting whole or in part of a class I or class II ODS are covered under the section 608 refrigerant regulations. Hence any burden associated with technician certification or sales of refrigerant substitutes not consisting of an ODS is removed.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative

was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government Agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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

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

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255 (August 10, 1999)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The regulations promulgated under today's action are done so under Title VI of the Act which does not grant delegation rights to the States. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249 (November 9, 2000)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This direct final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

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

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

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

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

I. National Technology Transfer and Advancement Act

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

J. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). It will become effective June 13, 2005.

List of Subjects in 40 CFR Part 82

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

Dated: April 7, 2005.

Stephen L. Johnson,

Acting Administrator.

■ Part 82, chapter I, title 40, of the Code of Federal Regulations, is 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, 7671–7671q.

Subpart F—[Amended]

■ 2. Section 82.152 is amended by revising the definitions of ''refrigerant'' and ''technician'' to read as follows:

§ 82.152 Definitions.

* * * * *

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.

* * * * *

Technician means any person who performs maintenance, service, or repair, that could be reasonably expected to release refrigerants from appliances, except for MVACs, into the atmosphere. Technician also means any person who performs disposal of appliances, except for small appliances, MVACs, and MVAC-like appliances, that could be reasonably expected to release refrigerants from the appliances into the atmosphere. Performing maintenance, service, repair, or disposal could be reasonably expected to release refrigerants only if the activity is reasonably expected to violate the integrity of the refrigerant circuit. Activities reasonably expected to violate the integrity of the refrigerant circuit include activities such as attaching and detaching hoses and gauges to and from the appliance to add or remove refrigerant or to measure pressure and adding refrigerant to and removing refrigerant from the appliance. Activities such as painting the appliance, rewiring an external electrical circuit, replacing insulation on a length of pipe, or tightening nuts and bolts on the appliance are not reasonably expected to violate the integrity of the refrigerant circuit. Performing maintenance, service, repair, or disposal of appliances that have been evacuated pursuant to § 82.156 could not be reasonably expected to release refrigerants from the appliance unless the maintenance, service, or repair consists of adding refrigerant to the appliance. Technician includes but is not limited to installers, contractor employees, in-house service personnel, and in some cases owners and/or operators.

* * * * *

■ 3. Section 82.154 is amended by revising paragraph (a) to read as follows:

§ 82.154 Prohibitions.

(a)(1) Effective June 13, 2005, no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with the exception of the following substitutes in the following end-uses:

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

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

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

(iv) Carbon dioxide in any application;

(v) Nitrogen in any application; or

(vi) Water in any application.

(2) The knowing release of a refrigerant or non-exempt substitute subsequent to its recovery from an appliance shall be considered a violation of this prohibition. De minimis releases associated with good faith attempts to recycle or recover refrigerants or non-exempt substitutes are not subject to this prohibition. Refrigerant releases shall be considered de minimis only if they occur when:

(i) The required practices set forth in § 82.156 are observed, recovery or recycling machines that meet the requirements set forth in § 82.158 are used, and the technician certification provisions set forth in § 82.161 are observed; or

(ii) The requirements set forth in subpart B of this part are observed.

* * * * *

[FR Doc. 05–7407 Filed 4–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0397; FRL–7708–4]

Paecilomyces lilacinus strain 251; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the fungus *Paecilomyces lilacinus* (*P. lilacinus*) strain 251 in or on food commodities when applied or used in accordance with label directions. Prophyta Biologischer Pflanzenschutz GmbH, Germany submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. Notification that EPA had received the petition was published on November 7, 2003 (68 FR 63088–92) (FRL–7331–7). This regulation eliminates the need to establish a maximum permissible level for residues of *P. lilacinus* strain 251.

DATES: This regulation is effective April 13, 2005. Objections and requests for hearings must be received on or before June 13, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket ID number OPP–2004–0397. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Mandula, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–7378; e-mail address: *mandula.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop Production/ Agriculture (NAICS 111)