

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 82**

[FRL-5149-3]

**Protection of Stratospheric Ozone****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of partial stay and reconsideration.

**SUMMARY:** This action announces a three-month stay of a provision of the refrigerant recycling regulations promulgated under section 608 of the Clean Air Act that restricts the sale of class I or class II refrigerants contained in appliances without fully assembled refrigerant circuits. The effectiveness of 40 CFR 82.154(m), including the applicable compliance date, is stayed for three months pending reconsideration, only as it applies to refrigerant contained in appliances without fully assembled refrigerant circuits.

In the proposed rules Section of today's **Federal Register** notice, EPA is proposing to extend this stay to the extent necessary to complete reconsideration (including any appropriate regulatory action) of the rule in question.

**EFFECTIVE DATE:** January 27, 1995.

**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 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Deborah Ottinger, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), 401 M Street, SW., Washington, DC 20460, (202) 233-9200. 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. Background
- II. Rules to be Stayed and Reconsidered
- III. Issuance of Stay
- IV. Authority for Stay and Reconsideration
- V. Proposed Additional Temporary Stay
- VI. Effective Date

**I. Background**

On December 16, 1994, Hamilton Home Products, a distributor of pre-charged split air-conditioning systems, sent to the United States Environmental Protection Agency (EPA) a petition for reconsideration of the amendment to the Refrigerant Recycling Rule promulgated on October 28, 1994, (59 FR 55912, November 9, 1994), particularly the sales restriction provision under 40 CFR 82.154(m) as it applies to refrigerant contained in appliances without fully assembled refrigerant circuits. On January 6, 1995, Hamilton Home Products filed a petition in the United States Court of Appeals for the District of Columbia Circuit seeking review of this Refrigerant Recycling Rule (*Hamilton Home Products vs. U.S. Env'tl. Protection Agency*, D.C. Cir. No 95-1019). By this action, EPA is convening a proceeding for reconsideration.

**II. Rules To Be Stayed and Reconsidered**

Final regulations published on May 14, 1993 (58 FR 28660), established a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment. The regulations required technicians to observe practices that minimize release of refrigerant to the environment and to be certified as knowledgeable of these requirements (40 CFR 82.154, 82.156, 82.161). Moreover, to ensure that persons handling refrigerant are certified technicians, § 82.154(n) (now (m) by amendment) prohibited the sale of refrigerant unless the buyer was a certified technician or another exception applied. One exception was for refrigerant contained in an appliance. This exception was intended to permit uncertified individuals to purchase appliances, such as household refrigerators, whose installation would involve very little risk of refrigerant release (58 FR 28697).

On August 15, 1994, EPA proposed an amendment to the technician certification provisions of the rule to clarify the scope of the activities that must only be performed by a certified technician (59 FR 41968). During the comment period on the proposed rule, EPA became aware that it also needed to clarify the exception for pre-charged appliances from the sales restriction in light of the other amendments. It was not clear whether pre-charged split systems should be considered appliances, which are excepted, or components, which are not. Although

sold as a package, a pre-charged split system is not a fully assembled appliance.

For the reasons given in the October 28, 1994 final rule (59 FR 55912, published November 9, 1994) EPA revised the relevant paragraphs of § 82.154(m) to read "Effective November 14, 1994, no person may sell or distribute, or offer for sale or distribution, any class I or class II substance for use as a refrigerant to any person unless: \* \* \* (6) The refrigerant is contained in an appliance, and after January 9, 1995, the refrigerant is contained in an appliance with a fully assembled refrigerant circuit \* \* \*."

After promulgation of the October 28, 1994 rule and within the 60 day judicial review period, Hamilton Home Products (Hamilton) objected to the rule and submitted information to EPA regarding the effects of the sales restriction on pre-charged split systems. Hamilton claims that it was impracticable to raise the objection during the comment period due to lack of notice. While EPA believes its final rule is a logical outgrowth of the notice, the notice itself did not specifically address pre-charged split systems.

Hamilton's petition states that the Quick Connect assembly used in Hamilton's products, which are sold to homeowners, "enable[s] homeowners to have the installation completed with no refrigerant loss." Hamilton further notes that "in the six (6) years that Hamilton has been distributing "Quick-Connect" Split Systems for sale, there have been no returns as a result of any product loss of refrigerant." In addition, Hamilton states that consumers who buy split systems themselves, rather than through a contractor, realize significant savings even if the consumer hires a contractor to assemble the refrigerant circuit. Finally, Hamilton argues that loss of the split-system market would represent an extreme economic burden on the company.

EPA has completed a preliminary review of Hamilton's information and is now reconsidering the sales restriction provisions in light of this new information. Hamilton's information indicates that the risk of release of refrigerant during the assembly of quick-connect split systems, and therefore the benefit of restricting sale of split systems, may be small. At the same time, the cost to consumers and to distributors such as Hamilton of restricting sale of split systems may be significant.

**III. Issuance of Stay**

EPA hereby issues a three-month administrative stay of the effectiveness

of § 82.154(m), including all applicable compliance dates, as this provision applies to refrigerant contained in appliances without fully assembled refrigerant circuits (59 FR 55912). This stay does not affect refrigerant contained in pre-charged parts or bulk containers.<sup>1</sup> EPA will reconsider this rule, as discussed above and, following the notice and comment procedures of section 307(d) of the Clean Air Act, will take appropriate action. If the reconsideration results in restrictions on the sale of class I and class II refrigerants that are stricter than the existing rule, EPA will propose an adequate compliance period from the date of final action on reconsideration. EPA will seek to ensure that the affected parties are not unduly prejudiced by the Agency's reconsideration.

**IV. Authority for Stay and Reconsideration**

The administrative stay and reconsideration of the rule and

<sup>1</sup> EPA considers a "part" to be any component or set of components that makes up less than an appliance. For example, this includes line sets, evaporators, or condensers that are not sold as part of a set from which one can construct a complete split system or other appliance. On the other hand, EPA considers a "pre-charged split system" to be a set of parts or components, at least one of which is pre-charged, from which one can assemble a complete split system. This may include a pre-charged condenser, pre-charged evaporator, and pre-charged line set, or simply a pre-charged condenser sold along with an evaporator and line set containing only nitrogen.

associated compliance period announced by this notice are being undertaken pursuant to section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B). The issues in the petition for reconsideration were impracticable to raise during the comment period, and are of central relevance to the outcome of this provision of the rule.

**V. Proposed Additional Temporary Stay**

Because EPA may not be able to complete the reconsideration (including any appropriate regulatory action) of the rule stayed by this notice within the three-month period expressly provided in section 307(d)(7)(B), in the Proposed Rules Section of today's **Federal Register**, EPA proposes a temporary extension of the stay beyond the three months provided, only to the extent necessary to complete reconsideration of the rule in question.

**VI. Effective Date**

This action will become final on January 27, 1995.

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

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce, Nonessential

products, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: January 27, 1995.

**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 adding paragraph (m)(9) to read as follows:

**§ 82.154 Prohibitions.**

\* \* \* \* \*

(m) \* \* \*

(9) Rules stayed for reconsideration. Notwithstanding any other provisions of this subpart, the effectiveness of 40 CFR 82.154(m), only as it applies to refrigerant contained in appliances without fully assembled refrigerant circuits, is stayed from January 27, 1995 to April 27, 1995.

\* \* \* \* \*

[FR Doc. 95-2830 Filed 2-6-95; 8:45 am]

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