

subscribers of a television service through a Provider which is marketed as and is in fact primarily a video service where

(1) Subscribers do not pay a separate fee for audio channels,

(2) The audio channels are delivered by digital audio transmissions through a technology that is incapable of tracking the individual sound recordings received by any particular consumer.

(3) However, paragraph (h)(2) of this section shall not apply to the Licensee's current contracts with Providers that are in effect as of the effective date of this part if such Providers become capable in the future of tracking the individual sound recordings received by any particular consumer, provided that the audio channels continued to be delivered to Subscribers by digital audio transmissions and the Licensee remains incapable of tracking the individual sound recordings received by any particular consumer.

(i) *Subscriber* means every residential subscriber to the underlying service of the Provider who receives Licensee's Service in the United States for all or any part of a month; provided, however, that for any Licensee that is not able to track the number of subscribers on a per-day basis, "Subscribers" shall be calculated based on the average of the number of subscribers on the last day of the preceding month and the last day of the applicable month, unless the Service is paid by the Provider based on end-of-month numbers, in which event "Subscribers" shall be counted based on end-of-month data.

(j) *Stand-Alone Contracts* means contracts between the Licensee and a Provider in which the only content licensed to the Provider is the Service.

### § 383.3 Royalty fees for public performances of sound recordings and the making of ephemeral recordings.

(a) *Royalty rates.* Royalty rates for the public performance of sound recordings by eligible digital transmissions made over a Service pursuant to 17 U.S.C. 114, and for ephemeral recordings of sound recordings made pursuant to 17 U.S.C. 112 to facilitate such transmissions, are as follows. Each Licensee will pay, with respect to content covered by the License that is provided via the Service of each such Licensee:

(1) For Stand-Alone Contracts, the greater of:

(i) 15% of Revenue, or

(ii) The following monthly minimum payment per Subscriber to the Service of such Licensee—

(A) From inception through 2006: \$0.0075

(B) 2007: \$0.0075

(C) 2008: \$0.0075

(D) 2009: \$0.0125

(E) 2010: \$0.0150 and

(2) For Bundled Contracts, the greater of:

(i) 15% of Revenue allocated to reflect the objective value of the Licensee's Service, or

(ii) The following monthly minimum payment per Subscriber to the Service of such Licensee:

(A) From inception through 2006: \$0.0220

(B) 2007: \$0.0220

(C) 2008: \$0.0220

(D) 2009: \$0.0220

(E) 2010: \$0.0250

(b) *Minimum fee.* Each Licensee will pay an annual, non-refundable minimum fee of one hundred thousand dollars (\$100,000), payable on January 31 of each calendar year in which the Service is provided pursuant to the section 112 and 114 statutory licenses, but payable pursuant to the applicable regulations for all years 2007 and earlier. Such fee shall be recoupable and credited against royalties due in the calendar year in which it is paid.

### § 383.4 Terms for making payment of royalty fees.

(a) Subject to the provisions of this section, terms governing timing and due dates of royalty payments, late fees, statements of account, audit and verification of royalty payments and distributions, cost of audit and verification, record retention requirements, treatment of Licensees' confidential information, distribution of royalties, unclaimed funds, designation and definition of the collection and distribution organization, and any definitions for applicable terms not defined herein and not otherwise inapplicable shall be those adopted by the Copyright Royalty Judges for subscription transmissions and the reproduction of ephemeral recordings by preexisting satellite digital audio radio services in Docket No. 2006-1 CRB DSTRA ("the SDARS Proceeding").

(b) Without prejudice to any applicable notice and recordkeeping provisions, statements of account shall not require reports of performances.

(c) If the Copyright Royalty Judges adopt reports of use regulations in the SDARS Proceeding, those regulations, if any, shall govern Licensees' obligations to report sound recordings used pursuant to this part, except that Licensees also shall report to SoundExchange which channels are transmitted by their respective

Providers for all past, current and future periods. In the event that the Copyright Royalty Judges do not adopt reports of use regulations in the SDARS Proceeding, then reports of use provided by XM Satellite Radio Inc. ("XM") and Sirius Satellite Radio Inc. ("Sirius") for their use of sound recordings on their preexisting satellite digital audio radio services (as defined in 17 U.S.C. 114(j)(10)) shall be deemed to satisfy XM's and Sirius' obligations to report sound recordings used pursuant to this part, and MTV Networks shall provide census reporting, retroactive to the inception of its Service.

Dated: November 6, 2007.

**James Scott Sledge,**

*Chief Copyright Royalty Judge.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

[EPA-HQ-OAR-2006-5065; FRL-8493-4]

RIN 2060-AO32

### Protection of Stratospheric Ozone: Revision of Refrigerant Recovery and Recycling Equipment Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to update motor vehicle refrigerant recovery and recycling equipment standards. Under Clean Air Act Section 609, motor vehicle air-conditioning (MVAC) refrigerant handling equipment must be certified by the Administrator or an independent organization approved by the Administrator and, at a minimum, must be as stringent as the standards of the Society of Automotive Engineers (SAE) in effect as of the date of the enactment of the Clean Air Act Amendments of 1990. In 1997, EPA promulgated regulations that required the use of SAE Standard J2210, HFC-134a Recycling Equipment for Mobile Air Conditioning Systems for certification of MVAC refrigerant handling equipment. SAE has replaced Standard J2210 with J2788, Recovery/Recycle and Recovery/Recycle/Recharging Equipment for HFC-134a Refrigerant. To avoid confusion, EPA is updating its reference to include the new SAE standards. This action reflects a change in industry standard practice. This action proposes to revise the EPA

addresses to send equipment certification forms.

**DATES:** Written comments or a request for a public hearing must be received by December 10, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No EPA-HQ-OAR-2006-5065, by mail to Environmental Protection Agency, Mailcode 6102T, EPA Docket Center (EPA/DC), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Karen Thundiyil, Stratospheric Protection Division, Office of Atmospheric Programs (MC 6205), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343-9464; fax number (202) 343-2363; e-mail address: [thundiyil.karen@epa.gov](mailto:thundiyil.karen@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the "Rules and Regulations" Section of this **Federal Register**, we are updating the existing motor vehicle refrigerant recovery and recycling equipment standards, as a direct final rule without a prior proposed rule. If we receive no adverse comment or a request for a public hearing, we will not take further action on this proposed rule.

### **I. Why is EPA Issuing This Proposed Rule?**

This document proposes to take action on motor vehicle air-conditioning refrigerant recovery and recycling equipment standards. We have published a direct final rule updating EPA's motor vehicle refrigerant recovery and recycling equipment standards in the "Rules and Regulations" section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment or a request for a public hearing, we will not take further action on this proposed rule. If we receive adverse comment or request, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further

information, please see the information provided in the **ADDRESSES** section of this document.

## **II. Statutory and Executive Order Reviews**

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

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden. The recordkeeping and reporting requirements included in this action are already included in an existing information collection burden. This action does not make any changes that would affect burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, 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 2060-0247, EPA ICR number 1617.05. 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. A copy may also be downloaded from <http://www.regulations.gov>.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### *C. Regulatory Flexibility Act*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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 rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. The requirements of today's rule do not mandate a switch to the new SAE equipment standards. Rather, as MVAC service shop owners replace end-of-life refrigerant handling equipment, owners will purchase equipment certified to the new SAE standard.

### *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. Today's rule does not affect State, local, or tribal governments. The impact of this rule on the private sector will be less than \$100 million per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This regulation does not apply to governmental entities.

#### *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 action 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. This regulation applies directly to facilities that use these substances and not to

governmental entities. 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 6, 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 final rule does not have tribal implications, as specified in Executive Order 13175. It does not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13175 does not apply to this rule.

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045: "Protection of Children From Environmental Health Risks and 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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

#### *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*

As noted in the proposed rule, 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 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 explicitly references technical standards; EPA uses the SAE revision versions of J2210. These standards can be obtained from <http://www.sae.org/technical/standards/>.

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

Environmental protection, Motor vehicle air-conditioning, Recover/recycle equipment, Recover/recycle/recharge equipment, Reporting and certification requirements, Stratospheric ozone layer.

Dated: November 2, 2007.

**Stephen L. Johnson,**  
Administrator.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 223**

[Docket No. 071030628-7631-01]

RIN 0648-AV84

#### **Endangered and Threatened Wildlife; Sea Turtle Conservation**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** In 2006, the National Marine Fisheries Service (NMFS) issued regulations requiring the use of chain mat modified dredges in the Atlantic sea scallop fishery south of 41° 9.0' North latitude from May 1 through November