reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 19, 2018.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

[FR Doc. 2018–21328 Filed 9–28–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2017–0629; FRL–9984–55–OAR]

RIN 2060–AT81

Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program's Extension to Substitutes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Air Act (CAA) prohibits knowingly venting or releasing ozone-depleting and substitute refrigerants in the course of maintaining, servicing, repairing, or disposing of appliances or industrial process refrigeration. On November 18, 2016, EPA finalized a rule that updated the existing refrigerant management requirements and extended requirements that previously applied only to refrigerants containing an ozone-depleting substance (ODS) to substitute refrigerants such as hydrofluorocarbons that are subject to the venting prohibition (*i.e.,* those that have not been exempted from that prohibition). The Agency is revisiting the aspects of the 2016 Rule that apply to equipment containing such substitute refrigerants. This action proposes changes to the legal interpretation that supported that rule and amendments to the regulations based on the revised interpretation. More specifically, in connection with the proposed changes to the legal interpretation, EPA is proposing to revise the appliance maintenance and leak repair provisions so they apply only to equipment using refrigerant containing a class I or class II substance. Based on this proposed limitation of the leak repair requirements, this document further proposes to revise the list of practices that must be followed in order for refrigerant releases to be considered *de minimis* to clarify that the reference to following leak repair practices only applies to equipment that contains ODS refrigerant. EPA is also taking comment on whether, in connection with the proposed changes to the legal interpretation, the 2016 Rule's extension of subpart F refrigerant management requirements to such substitute refrigerants should be rescinded in full. Additionally, EPA is proposing to extend by six to twelve months the January 1, 2019 compliance date for when appliances containing only substitute refrigerants subject to the venting prohibition must comply with the appliance maintenance and leak repair provisions.

DATES: Written comments must be received by November 15, 2018. EPA will hold a public hearing on or before October 16, 2018. The hearing will be held in Washington, DC. More details concerning the hearing can be found at *www.epa.gov/section608.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2017–0629, at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*e.g.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jeremy Arling by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205T), 1200 Pennsylvania Avenue NW, Washington, DC 20460; by telephone: (202) 343–9055; or by email: *arling.jeremy@epa.gov.*

I. General Information

A. What is the National Recycling and Emission Reduction Program?

Section 608 of the CAA, titled ''National Recycling and Emissions Reduction Program,'' has three main components. First, section 608(a) requires EPA to establish standards and requirements regarding the use and disposal of class I and class II substances.[1] The second component, section 608(b), requires that the regulations issued pursuant to subsection (a) contain requirements for the safe disposal of class I and class II substances. The third component, section 608(c), prohibits the knowing venting, release, or disposal of ODS refrigerants [2] and their substitutes [3] in the course of maintaining, servicing, repairing, or disposing of appliances or industrial process refrigeration (IPR). This third component is also referred to as the ''venting prohibition'' in this proposal. Section 608(c)(1) includes an exemption from this prohibition for ''[d]e minimis releases associated with good faith attempts to recapture and recycle or safely dispose'' of class I or class II substances, and section 608(c)(2) extends 608(c)(1) to substitute refrigerants. Section 608(c)(2) also includes a provision that allows the Administrator to exempt a substitute refrigerant from the venting prohibition if he or she determines that such venting, release, or disposal of a substitute refrigerant ''does not pose a threat to the environment.'' [4]

EPA first issued regulations under section 608 of the CAA on May 14, 1993 (58 FR 28660, ''1993 Rule''), to establish the national refrigerant management program for ODS refrigerants recovered during the service, repair, or disposal of air-conditioning and refrigeration appliances. These regulations were intended to substantially reduce the use and emissions of refrigerants that are ODS.

[1] A class I or class II substance refers to an ozone-depleting substance listed at 40 CFR part 82 subpart A, appendix A or appendix B, respectively. This proposal refers to class I and class II substances collectively as ozone-depleting substances, or ODS.

[2] The term ''ODS refrigerant'' as used in this proposal refers to any refrigerant or refrigerant blend in which one or more of the components is a class I or class II substance.

[3] The term ''substitute'' is defined at 40 CFR 82.152. In the context of the subpart F regulations, any refrigerant or refrigerant blend in which none of the components is a class I or class II substance is treated as a substitute, while any refrigerant or refrigerant blend in which one or more the components is a class I or class II substance is regulated as an ODS refrigerant.

[4] EPA is using the term ''non-exempt substitute'' in this document to refer to substitute refrigerants that have not been exempted from the venting prohibition under CAA section 608(c)(2) and 40 CFR 82.154(a) in the relevant end-use. Similarly, the term ''exempt substitute'' refers to a substitute refrigerant that has been exempted from the venting prohibition under section 608(c)(2) and § 82.154(a) in the relevant end-use. A few exempt substitutes have been exempted from the venting prohibition in all end-uses.

The 1993 Rule required that persons servicing air-conditioning and refrigeration equipment containing ODS refrigerants observe certain practices that reduce emissions. It established requirements for refrigerant recovery equipment, reclaimer certification, and technician certification, and also restricted the sale of ODS refrigerant so that only certified technicians could purchase it. In addition, the 1993 Rule required that ODS be removed from appliances prior to disposal, and that all air-conditioning and refrigeration equipment using an ODS be provided with a servicing aperture or process stub to facilitate refrigerant recovery. The 1993 Rule also established a requirement to repair leaking appliances containing more than 50 pounds of ODS refrigerant. The rule set an annual leak rate of 35 percent for commercial refrigeration appliances and IPR and 15 percent for comfort cooling appliances. If the applicable leak rate is exceeded, the appliance must be repaired within 30 days. Further, consistent with CAA section 608(c)(1), the 1993 Rule included a regulatory provision prohibiting the knowing venting or release of ODS refrigerant by any person maintaining, servicing, repairing, or disposing of an appliance. 58 FR 28714; 40 CFR 82.154(a) (1993). It also provided that such releases would be considered *de minimis,* and therefore not subject to the prohibition, if they occurred when certain regulatory requirements were followed. 40 CFR 82.154(a) (1993).

EPA revised these regulations, which are found at 40 CFR part 82, subpart F (''subpart F''), through subsequent rulemakings published on August 19, 1994 (59 FR 42950), November 9, 1994 (59 FR 55912), August 8, 1995 (60 FR 40420), July 24, 2003 (68 FR 43786), March 12, 2004 (69 FR 11946), January 11, 2005 (70 FR 1972), April 13, 2005 (70 FR 19273), May 23, 2014 (79 FR 29682), April 10, 2015 (80 FR 19453), and November 18, 2016 (81 FR 82272). In the April 2005 rulemaking, EPA revised the regulatory venting prohibition in 40 CFR 82.154, so that it also applied to non-exempt substitute refrigerants, and included such substitutes in the regulatory provision implementing the *de minimis* exemption, so that it exempted ''*de minimis* releases associated with good faith attempts to recycle or recover refrigerants or non-exempt substitutes'' from the prohibition. 70 FR 19278. However, in contrast to how these regulations applied to ODS refrigerants, they did not provide that releases of non-exempt substitute refrigerants would be considered *de minimis* if certain regulatory requirements were followed. Additionally, the 2004 and 2005 rules exempted certain substitute refrigerants from the venting prohibition either in specific end uses or in all end uses. *See* 69 FR 11953–11954; 70 FR 19278; 40 CFR 82.154(a) (June 2005). This regulatory list of exemptions from the venting prohibition in 40 CFR 82.154(a) has been periodically updated since 2005. EPA also issued proposed rules to revise the regulations in subpart F on June 11, 1998 (63 FR 32044), elements of which were not finalized, and on December 15, 2010 (75 FR 78558), for which no elements were finalized. A more detailed history of these regulatory updates can be found at 81 FR 82275. Prior to the 2016 Rule, EPA regulations did not address how regulated entities could avail themselves of the *de minimis* exemption for non-exempt substitutes. *See, e.g.,* 81 FR 82283–82285.

On November 18, 2016, EPA published a rule updating the refrigerant management requirements and extending requirements that previously applied only to refrigerants containing an ODS to non-exempt substitute refrigerants, such as hydrofluorocarbons (HFCs) and hydrofluorolefins (HFOs) (81 FR 82272) (''2016 Rule''). The 2016 Rule also made a number of revisions to improve the efficacy of the refrigerant management program as a whole, such as revisions of regulatory provisions for increased clarity and readability, and removal of provisions that had become obsolete.

B. Does this action apply to me?

Categories and entities potentially affected by this action include those who own, operate, maintain, service, repair, recycle, reclaim, or dispose of refrigeration and air-conditioning appliances and refrigerants, as well as entities that manufacture or sell refrigerants, products, and services for the refrigeration and air-conditioning industry. Potentially affected entities include, but are not limited to, the following:

TABLE 1—POTENTIALLY AFFECTED ENTITIES

Category	North American Industry Classification System (NAICS) code	Examples of regulated entities
Industrial Process Refrigeration (IPR).	111, 11251, 11511, 21111, 2211, 2212, 2213, 311, 3121, 3221, 3222, 32311, 32411, 3251, 32512, 3252, 3253, 32541, 3256, 3259, 3261, 3262, 3324, 3328, 33324, 33341, 33361, 3341, 3344, 3345, 3346, 3364, 33911, 339999.	Owners or operators of refrigeration equipment used in agriculture and crop production, oil and gas extraction, ice rinks, and the manufacture of frozen food, dairy products, food and beverages, ice, petrochemicals, chemicals, machinery, medical equipment, plastics, paper, and electronics.
Commercial Refrigeration.	42374, 42393, 42399, 4242, 4244, 42459, 42469, 42481, 42493, 4451, 4452, 45291, 48422, 4885, 4931, 49312, 72231.	Owners or operators of refrigerated warehousing and storage facilities, supermarkets, grocery stores, warehouse clubs, supercenters, convenience stores, and refrigerated transport.
Comfort Cooling	45211, 45299, 453998, 512, 522, 524, 531, 5417, 551, 561, 6111, 6112, 6113, 61151, 622, 7121, 71394, 721, 722, 813, 92.	Owners or operators of air-conditioning equipment used in the following: hospitals, office buildings, colleges and universities, metropolitan transit authorities, real estate rental & leased properties, lodging and food services, property management, schools, and public administration or other public institutions.
Plumbing, Heating, and Air-Conditioning Contractors.	238220, 811111, 81131, 811412	Plumbing, heating, and air-conditioning contractors, and refrigerant recovery contractors, including automotive repair.
Manufacturers and Distributors of Small Cans of Refrigerant.	325120, 441310, 447110	Automotive parts and accessories stores and industrial gas manufacturers.
Reclaimers	325120, 423930, 424690, 562920, 562212	Industrial gas manufacturers, recyclable material merchant wholesalers, materials recovery facilities, solid waste landfills, and other chemical and allied products merchant wholesalers.

TABLE 1—POTENTIALLY AFFECTED ENTITIES—Continued

Category	North American Industry Classification System (NAICS) code	Examples of regulated entities
Disposers and Recyclers of Appliances.	423990, 562212, 562920	Materials recovery facilities, solid waste landfills, and other miscellaneous durable goods merchant wholesalers.
Refrigerant Wholesalers	325120, 42, 424690	Industrial gas manufacturers, other chemical and allied products merchant wholesalers, wholesale trade.
Certifying Organizations	541380	Environmental test laboratories and services.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. To determine whether your facility, company, business, or organization could be affected by this action, you should carefully examine the regulations at 40 CFR part 82, subpart F and the proposed revisions below. If you have questions regarding the applicability of this action, if finalized, to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. What action is the agency taking?

Subpart F contains a comprehensive set of specific refrigerant management requirements, including provisions that: Restrict the servicing of appliances and the sale of refrigerant to certified technicians; specify the proper evacuation levels before opening an appliance; require the use of certified refrigerant recovery and/or recycling equipment; require the maintenance and repair of appliances that meet size and leak rate thresholds; require that refrigerant be removed from appliances prior to disposal; require that appliances have a servicing aperture or process stub to facilitate refrigerant recovery; require that refrigerant reclaimers be certified to reclaim and sell used refrigerant; and establish standards for technician certification programs, recovery equipment, and quality of reclaimed refrigerant (40 CFR part 82 subpart F).

Based on feedback from some in the regulated community, the Agency reviewed the 2016 Rule, focusing in particular on whether the Agency had the statutory authority to extend the full set of subpart F refrigerant management regulations to non-exempt substitute refrigerants, such as HFCs and HFOs. Based on that review, Administrator Pruitt signed a letter on August 10, 2017 stating that EPA is ''planning to issue a proposed rule to revisit aspects of the 2016 Rule's extension of the 40 CFR part 82 subpart F refrigerant management requirements to non-exempt substitutes.'' [5] Consistent with the Administrator's letter, the Agency is now proposing to withdraw the recent extension of the appliance maintenance and leak repair provisions at 40 CFR 82.157 [6] to appliances using only non-exempt substitute refrigerants.[7] This proposal would relieve businesses from having to conduct leak inspections, repair leaks, and keep records for appliances containing 50 or more pounds of non-exempt substitute refrigerant. EPA is also taking comment on whether to withdraw the extension of the full set of subpart F provisions to non-exempt substitute refrigerants. EPA is not proposing any changes to the refrigerant management program as it relates to requirements for ozone-depleting refrigerants or appliances containing or using any amount of ODS. Accordingly, none of the proposed changes would affect requirements for ODS under CAA section 608.

D. What is the agency's authority for taking this action?

These proposed revisions to the regulations found at 40 CFR part 82, subpart F are based on proposed changes to EPA's interpretation of its authority under CAA section 608. In particular, in the 2016 Rule EPA had for the first time adopted an interpretation of CAA section 608 to support the extension of the full set of subpart F refrigerant management requirements to non-exempt substitute refrigerants. Under the interpretation proposed in this document, EPA now proposes to conclude that its authority to regulate substitutes under section 608 does not extend as far as its authority to regulate ODS. Specifically, EPA would conclude, as a legal matter, that the extension of the full set (that is, the entirety) of subpart F requirements to non-exempt substitute refrigerants exceeds EPA's statutory authority. In connection with the proposed changes in its legal interpretation, EPA is proposing to rescind the 2016 Rule's extension of the leak repair requirements to non-exempt substitutes, while retaining the extension of the remaining subpart F requirements. In light of the questions regarding the scope of EPA's authority to regulate non-exempt substitute refrigerants under section 608, EPA is also taking comment on whether it would be appropriate and warranted for the agency to instead rescind the entire extension of the subpart F requirements to non-exempt substitutes at this time. EPA is not, however, proposing to change the interpretation that EPA has authority to interpret the venting prohibition and the *de minimis* exemption in section 608(c) and to explain how that prohibition and that exemption apply to non-exempt substitute refrigerants.[8]

EPA's authority for this proposed action is further supported by the Agency's authority to revisit and revise existing regulations and legal interpretations. More detail on EPA's authority for this action is provided in subsequent sections of this document, including in sections II.D and II.E below, discussing EPA's authority under CAA sections 608(c) and 608(a), respectively.

E. What are the incremental costs and benefits of this action?

By rescinding the extension of the leak repair provisions to substitutes, the proposed rule would reduce the burden associated with the 2016 Rule by $39 million per year. EPA also estimates this rule would increase the need to purchase non-exempt substitute refrigerant for leaking appliances, at an overall cost of approximately $15 million per year. Thus, incremental compliance savings and increased refrigerant costs combined are estimated to be a reduction of at least $24 million

[5] Letter from EPA to National Environmental Development Association's Clean Air Project and the Air Permitting Forum (Aug. 10, 2017), *available at www.epa.gov/sites/production/files/2017-08/documents/608_update_letter.pdf* and in the docket to this rule.

[6] For ease of reference, in this document EPA uses the terms ''leak repair provisions'' or ''leak repair requirements'' to refer to the appliance maintenance and leak repair provisions at 40 CFR 82.157.

[7] Ozone-depleting refrigerants and appliances that contain or use any amount of class I or class II ODS would continue to be subject to the ODS requirements.

[8] Section 608(c) does not expressly provide that EPA may write regulations under that section. Section 301, however, states that the ''Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under [the Clean Air Act].''

per year. EPA estimates that this proposed action would result in foregone annual greenhouse gas (GHG) emissions reductions benefits of at least 3 million metric tons of carbon dioxide equivalent ($MMTCO_2e$). This proposed rule to rescind the extension of the leak repair provisions to substitutes would not directly affect the stratospheric ozone layer.

EPA is also taking comment whether the agency should rescind the entire extension of the subpart F requirements to non-exempt substitutes and any additional cost savings associated with that action. This would reduce the burden associated with the 2016 Rule by at least an additional $4 million per year (for a total annual burden reduction of at least $43 million per year). EPA estimates withdrawing subpart F regulations of non-exempt substitute refrigerants to result in additional foregone annual GHG emissions reductions of 0.7 $MMTCO_2e$ associated with the use of self-sealing valves for a total foregone emissions reduction of at least 3.6 $MMTCO_2e$.

Table 2 presents a summary of the annual costs and benefits associated with two scenarios including rescinding the extension of the leak repair provisions to non-exempt substitutes and rescinding the extension of all Subpart F provisions to non-exempt substitutes.

TABLE 2—SUMMARY OF ANNUAL COSTS AND BENEFITS WITH 7% AND 3% DISCOUNT RATES

[2014$]

	Rescinding extension of leak repair provisions to non-exempt substitutes		Rescinding extension of all Subpart F provisions to non-exempt substitutes	
	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate
Burden Reduction	$38,958,000	$35,264,000	$43,014,000	$39,320,000
Refrigerant Replacement Cost.	−$14,874,000	−$14,874,000	−$14,874,000	−$14,874,000
Forgone Emissions Reductions.	2.946 $MMTCO_2e$	2.946 $MMTCO_2e$	3.603 $MMTCO_2e$	3.603 $MMTCO_2e$
Annual Cost Savings	$24,084,000	$20,390,000	$28,140,000	$24,446,000

Additional information on these analyses can be found in Section III of this document and the technical support document in the docket.

II. The Proposed Rule

A. History of the Extension of the Subpart F Requirements to Non-Exempt Substitutes

On November 18, 2016, EPA published a rule updating existing refrigerant management requirements and extending the full set of the subpart F refrigerant management requirements, which prior to that rule applied only to ODS refrigerants,[9] to non-exempt substitute refrigerants, such as HFCs and HFOs (81 FR 82272). As such, as part of the 2016 Rule, EPA extended the ''appliance maintenance and leak repair'' provisions, currently codified at 40 CFR 82.157, to appliances that contain 50 or more pounds of non-exempt substitute refrigerant. Included in the leak repair provisions are requirements to conduct leak rate calculations when refrigerant is added to an appliance, repair an appliance that leaks above the threshold leak rate applicable to that type of appliance, conduct verification tests on repairs, conduct periodic leak inspections on appliances that have exceeded the threshold leak rate, report to EPA on chronically leaking appliances, retrofit or retire appliances that are not repaired, and maintain related documentation to verify compliance. Although the 2016 Rule took effect on January 1, 2017, it included later compliance dates for some of the revised regulations, including the leak repair provisions. Under the 2016 Rule, owners and operators of appliances that contain 50 or more pounds of refrigerant must comply with these revised appliance maintenance and leak repair provisions beginning January 1, 2019.

Two industry coalitions, National Environmental Development Association's Clean Air Project (NEDA/CAP) and the Air Permitting Forum (APF), filed petitions for judicial review of the 2016 Rule in the U.S. Court of Appeals for the District of Columbia Circuit, and the cases have been consolidated. *See NEDA/CAP* v. *EPA,* No. 17–1016 (D.C. Cir. filed January 17, 2017); *APF* v. *EPA,* No. 17–1017 (D.C. Cir. filed January 17, 2017). The Chemours Company, Honeywell International Inc., the Natural Resources Defense Council, and the Alliance for Responsible Atmospheric Policy are participating as intervenor-respondents in that litigation, in support of the 2016 Rule. In addition, APF has filed a petition with EPA for administrative reconsideration of the 2016 Rule. The petition for reconsideration is available in the docket for this action and raises several issues regarding changes made in the 2016 Rule, including EPA's statutory authority for its decision in the 2016 Rule to expand the scope of the refrigerant management requirements—including, but not limited to, leak repair requirements—to cover non-exempt substitute refrigerants. Honeywell International Inc. submitted a document styled as a response to APF's petition for reconsideration, which is also available in the docket for this action.

B. Legal Background

The discussion of EPA's statutory authority to extend refrigerant management requirements to non-exempt substitute refrigerants in the 2016 Rule focused primarily on CAA section 608, especially on sections 608(c) and 608(a). *See generally* 81 FR 82284–82288.

Section 608(a) requires EPA to establish standards and requirements regarding use and disposal of class I and class II substances. With regard to refrigerants, EPA is to promulgate regulations establishing standards and requirements for the use and disposal of class I and class II substances during the service, repair, or disposal of air-conditioning and refrigeration appliances or IPR. Regulations under section 608(a) are to include requirements to reduce the use and emission of ODS to the lowest achievable level, and to maximize the recapture and recycling of such substances. Section 608(a) further provides that ''[s]uch regulations may include requirements to use alternative substances (including substances which are not class I or class II substances) or to minimize use of class I or class II substances, or to promote the use of safe

[9] The only subpart F requirements that applied to substitute refrigerants prior to the 2016 Rule were the venting prohibition and certain exemptions from that, as set forth in § 82.154(a).

alternatives pursuant to section [612] or any combination of the foregoing.''

Section 608(c) establishes a self-effectuating prohibition, commonly called the ''venting prohibition.'' [10] Section 608(c)(1), effective July 1, 1992, makes it unlawful for any person in the course of maintaining, servicing, repairing, or disposing of an appliance or IPR to knowingly vent, release, or dispose of any ODS used as a refrigerant in such equipment in a manner that permits that substance to enter the environment. Section 608(c)(1) also includes an exemption from this prohibition for ''[d]e minimis releases associated with good faith attempts to recapture and recycle or safely dispose'' of such a substance. Section 608(c)(2) states that, effective November 15, 1995, ''paragraph (1) shall also apply to the venting, release, or disposal of any substitute substance for a class I or class II substance by any person maintaining, servicing, repairing, or disposing of an appliance or [IPR] which contains and uses as a refrigerant any such substance, unless the Administrator determines that venting, releasing, or disposing of such substance does not pose a threat to the environment.'' EPA interprets section 608(c)(2)'s extension of section 608(c)(1) to substitute refrigerants to extend both the prohibition on venting and the *de minimis* exemption to non-exempt substitute refrigerants. This is a long-held position and EPA is not proposing to revisit it. *See, e.g.,* 69 FR 11949 (March 12, 2004); 70 FR 19274–19275 (April 13, 2005).

In the 2016 Rule, EPA interpreted section 608 of the CAA as being ambiguous with regard to EPA's authority to establish refrigerant management regulations for non-exempt substitute refrigerants because Congress had not precisely spoken to this issue. Accordingly, EPA took the view that it had the discretion under *Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837, 843–44 (1984), to interpret section 608 as providing EPA with authority to extend all aspects of its refrigerant management regulations under section 608 to non-exempt substitute refrigerants, including those regulations that had previously only applied to ODS refrigerants. *See* 81 FR 82283. The 2016 Rule explained that EPA had established the subpart F standards for the proper handling of ODS refrigerants during service, repair, or disposal of an appliance to maximize the recovery and/or recycling of such substances and reduce the use and emission of such substances primarily under section 608(a). Section 608(a) expressly requires EPA to issue regulations that apply to class I and class II substances, but does not expressly address whether EPA could establish the same refrigerant management practices for substitute substances. On the other hand, section 608(c)(2) explicitly mentions substitute refrigerants and directly applies the provisions for ODS refrigerants in section 608(c)(1) to them.

In the 2016 Rule EPA grounded its authority for the extension of refrigerant requirements to non-exempt substitute refrigerants largely on section 608(c), which EPA interpreted to provide it authority to promulgate regulations that interpret, explain, and enforce the venting prohibition and the *de minimis* exemption as they apply to non-exempt substitute refrigerants. *See* 81 FR 82283–82284. In reaching this interpretation, EPA relied in part on a policy rationale that by establishing a comprehensive and consistent framework that applies to both ODS and non-exempt substitute refrigerants, the 2016 Rule would provide clarity to the regulated community concerning the measures that should be taken to comply with the venting prohibition for non-exempt substitutes and would thus reduce confusion and enhance compliance for both ODS and non-exempt substitutes. EPA further explained its view in the 2016 Rule that the extension of requirements under section 608 to non-exempt substitutes was also supported by section 608(a) because having a consistent regulatory framework for non-exempt substitutes and ODS is expected to reduce emissions of ODS refrigerants, as well as non-exempt substitutes. In addition, EPA located supplemental authority for the 2016 Rule in section 301(a), which provides authority for EPA to ''prescribe such regulations as are necessary to carry out [the EPA Administrator's] functions'' under the Act. *Id.* Further, EPA located supplemental authority to extend the recordkeeping and reporting requirements to non-exempt substitutes in section 114, which provides authority to the EPA Administrator to require recordkeeping and reporting in carrying out provisions of the CAA. *Id.*

C. EPA's Authority To Revisit Existing Regulations and Interpretations

EPA's ability to revisit existing regulations is well-grounded in the law. Specifically, EPA has inherent authority to reconsider, repeal, or revise past decisions to the extent permitted by law so long as the Agency provides a reasoned explanation. The CAA complements EPA's inherent authority to reconsider prior rulemakings by providing the Agency with broad authority to prescribe regulations as necessary in CAA section 301(a). The authority to reconsider prior decisions exists in part because EPA's interpretations of statutes it administers ''[are not] instantly carved in stone,'' but must be evaluated ''on a continuing basis.'' *Chevron U.S.A. Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 863–64 (1984). This is true when, as is the case here, review is undertaken ''in response to . . . a change in administrations.'' *National Cable & Telecommunications Ass'n* v. *Brand X internet Services,* 545 U.S. 967, 981 (2005). Indeed, ''[a]gencies obviously have broad discretion to reconsider a regulation at any time.'' *Clean Air Council* v. *Pruitt,* 862 F.3d 1, 8–9 (D.C. Cir. 2017). Similarly, the fact that an agency has previously adopted one interpretation of a statute does not preclude it from later exercising its discretion to change its interpretation. *National Cable & Telecommunications Ass'n,* 545 U.S. at 981.

In accordance with the Administrator's statement in the August 10, 2017 letter that EPA planned to issue a proposed rule to revisit aspects of the 2016 Rule's extension of the subpart F refrigerant management requirements to non-exempt substitutes, EPA has reassessed its decision to extend those requirements to non-exempt substitutes and the interpretations supporting that extension. The main considerations leading to the Agency's decision to reassess the 2016 Rule's extension of subpart F requirements to non-exempt substitute refrigerants are questions about whether extending the full set of subpart F requirements exceeded EPA's statutory authority under CAA section 608. The subpart F requirements, including the leak repair requirements, were originally established for ODS based primarily on authority under CAA section 608(a). Sections 608(a)(1) and (2) explicitly require EPA to regulate ODS but make no mention of substitutes. Section 608(c)(2) does expressly mention substitute refrigerants. However, that provision focuses on prohibiting knowing releases of substitute refrigerants in the course of maintenance, service, repair, and disposal activities and on providing an exemption for *de minimis* releases.

Thus, the structure of section 608, specifically the inclusion of the term ''substitutes'' in section 608(c) but not section 608(a), contrasted with the express references to ODS (class I and class II substances) in both subsections,

[10] In this context, EPA uses the term ''self-effectuating'' to mean that the statutory prohibition on venting is itself legally binding even in the absence of implementing regulations.

suggests that EPA's authority to address substitutes under section 608 is more limited than its authority to address ODS. If Congress had intended to convey authority to EPA to promulgate the same, full set of refrigerant management requirements for substitutes as for ODS, it is reasonable to expect that Congress would have expressly included substitutes in section 608(a), as it did for section 608(c)—but it did not. On the other hand, section 608(a) requires the Agency to issue regulations that reduce the use and emission of ODS to the lowest achievable level and maximize the recapture and recycling of such substances. While section 608(a) contains discretionary language about what requirements those regulations *may* include, it does not contain any more specific mandates about *how* the required objectives should be achieved. To the extent that the extension of certain subpart F requirements to non-exempt substitutes is necessary to reduce the use and emission of ODS to the lowest achievable level or to maximize the recapture and recycling of such substances, EPA is proposing to conclude, as in the 2016 Rule, that such an extension would be authorized by section 608(a). In addition, EPA believes that section 608(c) is reasonably construed as providing the Agency discretionary authority to interpret and apply the venting prohibition and the *de minimis* exemption, as they are expressly incorporated as relating to substitutes under section 608(c)(2). However, EPA believes that its statutory authority under section 608, taking that authority as a whole, does not extend as far with respect to substitutes as it does with respect to ODS, and specifically believes that section 608 is ambiguous with respect to the extent to which, if at all, Congress authorized EPA to issue refrigerant management regulations for substitutes.

In light of these considerations, the Agency has re-examined its authority for aspects of the 2016 Rule. In particular, EPA has carefully reviewed the specific requirements under subpart F that were extended to non-exempt substitute refrigerants and evaluated whether those extensions were within the scope of EPA's statutory authority under sections 608(a) and 608(c).

While EPA believes the scope of its authority for substitutes under section 608 is narrower than that for ODS, EPA maintains that section 608 is ambiguous with respect to the extent of its authority to apply refrigerant management requirements to non-exempt substitute refrigerants. EPA is proposing to change some of the interpretations that supported the 2016 Rule. Specifically, EPA is proposing to conclude that the extension of the leak repair requirements in § 82.157 to non-exempt substitute refrigerants exceeds EPA's legal authority and furthermore is not necessary to fulfill the purposes of section 608(a). EPA proposes to conclude that these changes in interpretations are appropriate interpretations of sections 608(a) and (c) in light of the statutory text, context, and EPA's historical views. With regard to section 608(a), EPA is also taking comment on an alternative legal interpretation under which the agency would not rely on section 608(a) for any extension of the refrigerant management regulations to substitute refrigerants.

In light of EPA's proposed legal interpretations, EPA's proposal for amending the 2016 Rule is to rescind the extension of the leak repair requirements to non-exempt substitutes, while retaining the extension of the remaining subpart F requirements. EPA is also requesting comment on whether the agency should rescind the entire extension of the subpart F requirements to non-exempt substitutes. These points, and EPA's proposed legal interpretations, are discussed further below in the context of specific authority under sections 608(c) and (a), respectively.

D. Authority Under CAA § 608(c) To Extend Refrigerant Management Provisions to Non-Exempt Substitute Refrigerants

EPA is proposing to change aspects of the interpretation of CAA section 608(c) that it adopted in the 2016 Rule. Under the interpretation proposed in this action, the Agency exceeded its statutory authority under section 608(c) in the 2016 Rule by extending the leak repair (§ 82.157) requirements to appliances that use only substitute refrigerants.

As in prior actions under section 608, EPA continues to interpret section 608(c) to provide it some authority to interpret, explain, and enforce the venting prohibition and the *de minimis* exemption, as these are both provisions in a statutory regime that EPA is entrusted to administer. However, EPA also recognizes that sections 608(a) and 608(c) differ from one another in some key respects, including the fact that 608(a)(1) and (2) expressly require EPA to issue regulations for class I and class II substances, but include no such requirement for (or, indeed, any mention of) substitutes.[11] In contrast, 608(c) does explicitly apply to substitute refrigerants, but that subsection leaves EPA discretion as to whether to promulgate regulations implementing its provisions. In light of these differences in wording between 608(a) and 608(c), EPA is proposing to conclude that the 2016 Rule exceeded the agency's authority under section 608 by extending the full set of the subpart F requirements to substitutes.

Specifically, EPA believes that the extension of the leak repair requirements to non-exempt substitute refrigerants exceeded its authority. To justify the extension of the leak repair requirements to non-exempt substitute refrigerants in the 2016 Rule, EPA reversed its longstanding position that ''topping off'' leaking appliances was not venting or a knowing release of refrigerant in the course of maintaining, servicing, repairing, or disposing of an appliance within the meaning of section 608(c). Prior to the 2016 Rule, EPA's position had been that refrigerant released during the use of an appliance is not subject to the venting prohibition. When establishing the original leak repair provisions, EPA in 1993 stated that:

> [T]he venting prohibition itself, which applies to the maintenance, service, repair, and disposal of equipment, does not prohibit 'topping off' systems, which leads to emissions of refrigerant during the use of equipment. The provision on knowing releases does, however, include the situation in which a technician is practically certain that his or her conduct will cause a release of refrigerant during the maintenance, service, repair, or disposal of equipment. Knowing releases also include situations in which a technician closes his or her eyes to obvious facts or fails to investigate them when aware of facts that demand investigation. [58 FR 28672.]

In the 2016 Rule, EPA changed the Agency's interpretation of the venting prohibition as part of the rationale that supported applying the leak repair requirements, originally issued under CAA section 608(a), to non-exempt substitute refrigerants. EPA stated in the 2016 Rule that it:

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[11] Section 608(a)(3) does provide that the regulations issued under section 608(a) ''may include requirements to use alternative substances (including substances which are not class I or class II substances), . . . or to promote the use of safe alternatives pursuant to section [612].'' (In implementing Title VI, EPA has at times used the terms ''alternative'' and ''substitute'' interchangeably. *See, e.g.,* 81 FR 86779, n.1; 81 FR 82276, 82291.) EPA is not relying upon these provisions in 608(a)(3) in this document, as the proposed regulatory changes do not relate to requirements to use substitutes or promote their use pursuant to section 612. Furthermore, EPA did not rely on these authorities in 608(a)(3) in extending the refrigerant management requirements to substitute refrigerants in the 2016 Rule, and is not relying on them in addressing the underlying questions of statutory interpretation at issue here.

concludes that its statements in the 1993 Rule presented an overly narrow interpretation of the statutory venting prohibition. Consistent with the direction articulated in the proposed 2010 Leak Repair Rule, EPA is adopting a broader interpretation. When refrigerant must be added to an existing appliance, other than when originally charging the system or for a seasonal variance, the owner or operator necessarily knows that the system has leaks. At that point the owner or operator is required to calculate the leak rate. If the leaks exceed the applicable leak rate for that particular type of appliance, the owner or operator will know that absent repairs, subsequent additions of refrigerant will be released in a manner that will permit the refrigerant to enter the environment. Therefore, EPA interprets section 608(c) such that if a person adds refrigerant to an appliance that he or she knows is leaking, he or she also violates the venting prohibition unless he or she has complied with the applicable practices referenced in § 82.154(a)(2), as revised, including the leak repair requirements, as applicable. [81 FR 82285.]

EPA is proposing to conclude that this 2016 interpretation exceeds the scope of the Agency's authority under section 608(c)(2). The agency is therefore proposing to return to the interpretation used prior to the 2016 Rule.[12] First, the 2016 interpretation is based on a strained reading of section 608(c)(2) because the refrigerant releases from such leaks typically occur during the normal operation of the appliance, rather than ''in the course of maintaining, servicing, repairing, or disposing of'' an appliance. The operational leaks that trigger the leak repair provisions may take the form of a slow leak that results in the need to add refrigerant and that occurs in the weeks or months prior to the servicing event. Leaks may also result from an unintended catastrophic failure, which leads to a subsequent service event to recharge the appliance. While section 608(c)(2) applies to the release of substitute refrigerants in ''the course of maintaining, servicing, repairing, or disposing of an appliance,'' neither of those types of leaks typically occur in the course of maintaining, servicing, repairing, or disposing of an appliance. Moreover, EPA has always understood that few appliances are leak-free, which further supports the notion that leaks frequently occur during normal operation of an appliance.[13] Further, EPA has recognized that refrigeration and air-conditioning equipment often does leak, and that ''[t]his is particularly likely for larger and more complicated appliances like those subject to the subpart F leak repair provisions.'' (81 FR 82313). Therefore, the leak repair provisions apply to activities that are too distinct from the activities identified in section 608(c) to provide EPA with regulatory authority to extend the leak repair regulations to non-exempt substitute refrigerants.

EPA notes that under the proposed revisions to its interpretation discussed in this document, the venting prohibition under section 608(c) would continue to apply to actions taken in the course of maintaining, servicing, repairing, or disposing of appliances containing non-exempt substitute refrigerant, including those containing 50 or more pounds of such refrigerant. For example, knowing release from cutting refrigerant lines when disposing of an appliance is prohibited. Similarly, opening an appliance to repair a component without first isolating it and recovering the refrigerant would typically lead to a knowing release of refrigerant to the environment. It is also possible that some ''topping off'' may occur in an appliance with a leak that is so visible, audible, or frequent that adding refrigerant to the appliance creates the practical certainty that the refrigerant will be released contemporaneously with the servicing event and therefore may constitute a knowing release. For example, hearing hissing or noticing a ruptured line while continuing to add refrigerant to an appliance would constitute a knowing release. However, EPA does not believe this occurs in a substantial number of situations, and thus does not believe that the possibility of such an event justifies a blanket interpretation that ''topping off'' an appliance that has leaked, absent adherence to the leak repair requirements at § 82.157, is necessarily and *per se* a violation of 608(c).

EPA is proposing to remove the extension of the leak repair requirements to non-exempt substitute refrigerants as exceeding its authority, but to retain the other provisions of subpart F as appropriate measures to implement, explain, and enforce the venting prohibition for non-exempt substitute refrigerants. In contrast to the leak repair requirements, the other provisions of subpart F that EPA extended to non-exempt substitute refrigerants in the 2016 Rule relate directly to emissions that necessarily occur in the course of maintaining, servicing, repairing, or disposing of an appliance. Accordingly, those provisions directly address the potential for knowing releases of non-exempt substitute refrigerants that would be within the scope of section 608(c)(2). Moreover, prior to the 2016 Rule, EPA had long recognized connections between other subpart F requirements and the potential for releases to occur during appliance maintenance, service, repair or disposal, and continues to do so. For example, failure to properly evacuate an appliance (§ 82.156 and § 82.158) before opening it for servicing will create the practical certainty that the refrigerant in the appliance will be released during the servicing event. EPA required that recovery and/or recycling equipment be tested and certified by an EPA-approved laboratory or organization ''[i]n order to ensure that recycling and recovery equipment on the market is capable of limiting emissions.'' (58 FR 28682).

Similarly, disposing of the appliance without removing the refrigerant (§ 82.155) will result in the release of any remaining refrigerant during disposal of the appliance. EPA acknowledged this when finalizing the safe disposal requirements in 1993, writing: ''The Agency wishes to clarify that the prohibition on venting refrigerant includes individuals who are preparing to dispose of a used appliance.'' (58 FR 28703). EPA established the reclamation requirement for used refrigerant to prevent equipment damage from dirty refrigerant and ensure a market for recovered refrigerants, both of which minimize knowingly venting or releasing of refrigerant during appliance maintenance, servicing, repair, and disposal. (58 FR 28678). With respect to the sales restriction and technician certification requirements, EPA stated that ''unrestricted sales will enable untrained or undertrained technicians to obtain access to refrigerants that are likely to be used improperly in connection with servicing activities that will result in the venting of refrigerants'' (58 FR 28698) and that ''[e]ducating technicians on how to contain and conserve refrigerant effectively, curtailing illegal venting into the atmosphere'' was one of the primary reasons many technicians commented

[12] The 2010 leak repair proposal (75 FR 78558) was not finalized. As noted in the 2016 Rule (81 FR 82275), EPA withdrew the 2010 proposal in the 2016 rulemaking and re-proposed elements of the 2010 proposal in the notice of proposed rulemaking (80 FR 69461) for the 2016 Rule.

[13] Recognizing that appliances can leak during their normal operation, 40 CFR 82.157(g) requires periodic leak inspections of appliances with 50 or more pounds of refrigerant that had been repaired after leaking above the applicable threshold rate. Automatic leak detection equipment is also allowed in lieu of inspections for such appliances, or portions of such appliances. This proposal, if finalized, would rescind this requirement for appliances containing only non-exempt substitute refrigerant.

in support of the certification program. (58 FR 28691). Accordingly, as part of EPA's proposal, the agency would conclude that the 2016 Rule's extension of the other, non-leak-repair requirements under subpart F to non-exempt substitute refrigerants is within the scope of EPA's authority under CAA section 608(c)(2), because those other requirements implement that provision's venting prohibition.

While EPA continues to believe that it has authority to implement, explain, and enforce the venting prohibition and the exemptions in 608(c) for non-exempt substitute refrigerants, as explained above, it is proposing to conclude that the extension of the full set of the subpart F requirements to appliances using only substitute refrigerant exceeded its legal authority under section 608(c). As explained above, it is proposing to rescind the extension of subpart F's leak repair requirements to appliances using only non-exempt substitute refrigerants. EPA is also seeking comments on whether the agency should instead withdraw the entire extension of subpart F requirements to non-exempt substitute refrigerants in the 2016 Rule given its proposed interpretation. Section 608(c) does not expressly require EPA to issue regulations, nor does it contain specific deadlines or requirements for any rules that EPA might promulgate under that authority. Accordingly, EPA has substantial discretion in issuing regulations under section 608(c) and the timing of any such regulations. Given that discretion, EPA could conclude that a full withdrawal of the extension of subpart F requirements to non-exempt substitute refrigerants is appropriate and warranted at this time. Such an approach could be reasonable in light of the questions as to EPA's legal authority for that extension. For example, if EPA were to conclude that interpreting section 608(c) to authorize the same full set of requirements as 608(a) for refrigerants renders 608(a) superfluous with respect to refrigerants [14] and that this structural issue raises critical uncertainties as to the extent to which EPA should replicate 608(a) requirements under 608(c), EPA could decide that a full withdrawal of the extension is an appropriate use of its discretion under section 608(c). Such action would allow the Agency to consider and potentially develop options not discussed in this proposed rule. If EPA were to decide that a full withdrawal of the extension is prudent, the prohibitions under section 608(c) would continue to apply directly to any knowing release of non-exempt substitute refrigerant in the course of maintaining, servicing, repairing, or disposing of an appliance.

For the reasons discussed above in this section, EPA is specifically requesting comment on whether to retain the non-leak repair requirements in the final rule or whether to rescind the entirety of the 2016 Rule's extension of the subpart F requirements to non-exempt substitutes. Included in the docket for this action is a version of the regulatory text in subpart F with red-line strikeout showing the types of revisions to subpart F that the Agency is considering making, should it decide to finalize a full withdrawal of the 2016 Rule's extension of the refrigerant management requirements to non-exempt substitutes. Additional information on the costs and benefits of rescinding that entire extension is found in Section III of this document and the technical support document in the docket. If EPA were to rescind the extension in full through this rulemaking, it would likely give subsequent consideration to whether some subset of the subpart F requirements, a different set of requirements, or some combination of the two, would be an appropriate means of implementing the venting prohibition for substitutes. Such consideration could result in a new proposal following final action on this current proposal.

EPA requests comment on the proposed changes discussed above, including the proposed changes in interpretation of section 608(c). EPA also welcomes comment on whether section 608(c) provides authority to promulgate a set of leak repair provisions, or refrigerant management requirements generally, for non-exempt substitutes that may be different from the ones currently found in subpart F, to meet the purposes of that section while minimizing overlap with requirements authorized under section 608(a). Additionally, EPA requests comment on the practical considerations of implementing the venting prohibition for substitutes in a manner that is different from ODS. Lastly, EPA requests comment on whether stakeholders may have a reliance interest in either the leak repair provisions or the other subpart F provisions as they relate to substitutes under the 2016 Rule and how that interest would be affected by the proposed changes discussed above.

E. Authority Under CAA § 608(a) To Extend Refrigerant Management Provisions to Non-Exempt Substitute Refrigerants

As noted above, EPA concluded in the 2016 Rule that it had supplemental authority under section 608(a) to extend the subpart F requirements to non-exempt substitutes:

> This action extending the regulations under subpart F to non-exempt substitutes is additionally supported by the authority in section 608(a) because regulations that minimize the release and maximize the recapture and recovery of non-exempt substitutes will also reduce the release and increase the recovery of ozone-depleting substances. Improper handling of substitute refrigerants is likely to contaminate appliances and recovery cylinders with mixtures of ODS and non-ODS substitutes, which can lead to illegal venting because such mixtures are difficult or expensive to reclaim or appropriately dispose of . . . . In short, the authority to promulgate regulations regarding the use of class I and II substances encompasses the authority to establish regulations regarding the proper handling of substitutes where this is needed to reduce emissions and maximize recapture and recycling of class I and II substances. Applying consistent requirements to all non-exempt refrigerants will reduce complexity and increase clarity for the regulated community and promote compliance with those requirements for ODS refrigerants, as well as their substitutes. [81 FR 82286.]

In reviewing the legal interpretation of 608(a) that supported the 2016 Rule, EPA has further examined the connection between the purposes of section 608(a) and the 2016 Rule's extension of subpart F refrigerant management requirements to non-exempt substitute refrigerants. After further consideration of this issue, EPA believes that the statements in the preamble to the 2016 Rule, which were advanced generally and without distinction to support extending all the subpart F requirements to non-exempt substitute refrigerants, failed to recognize that particular requirements may have a greater or lesser connection to the purposes of section 608(a) when applied to non-exempt substitute refrigerants. Accordingly, EPA is proposing to conclude that the connection between applying the leak repair requirements to appliances with only substitute refrigerants and the reduction in emissions of ODS is too tenuous to support reliance on CAA section 608(a) as a basis for authority to extend the leak repair requirements to non-exempt substitutes.

[14] While section 608(c) only addresses refrigerants, whether ODS or substitutes, section 608(a) is not limited to refrigerants. In fact, EPA has applied its authority under section 608(a) to establish or consider regulations for ODS in non-refrigerant applications. For example, in 1998, EPA issued a rule on halon management under the authority of section 608(a)(2). (63 FR 11084). Accordingly, when considering potential issues arising from interpretations of section 608(c) to authorize the same requirements as 608(a), it is appropriate to focus on refrigerants.

This may be particularly true when the leak repair provisions are compared to the other provisions of subpart F. The 2016 Rule also identified several scenarios where failure to apply consistent standards to appliances containing non-exempt substitute refrigerants could arguably lead to emissions of ODS. For example, improper handling of non-exempt substitute refrigerants by persons lacking the requisite training may contaminate appliances and recovery cylinders with mixtures of ODS and non-ODS substitutes. Contaminated appliances may lead to equipment failures and emissions from those systems, including emissions of ODS. Because contaminated cylinders may be more costly to recycle they may simply be destroyed. The costs of handling or properly disposing of these mixed refrigerants may incentivize intentional releases to the atmosphere. Therefore, contamination can lead to the release of class I and class II substances. Maintaining the sales restriction and technician certification requirement for non-exempt substitute refrigerants may reduce the possibility that refrigerant in the appliances will be misidentified by an uncertified person attempting to service the appliance, which in turn reduces the possibility that contamination and subsequent refrigerant releases may occur. Maintaining reclamation standards may ensure that used refrigerant is not contaminated when it reenters the market for use and may reduce emissions associated with the mixing of refrigerants and equipment damage. EPA solicits comment and any data or analysis commenters may have regarding these scenarios, their frequency, and their emissions effects.

In contrast, requiring the repair of appliances using only substitute refrigerants would reduce emissions from those particular appliances, but is unlikely to independently reduce cross-contamination, refrigerant mixing, or releases from an ODS appliance. The response to comments for the 2016 Rule [15] did note, in the context of explaining EPA's authority for the revisions to 40 CFR 82.157, that providing a consistent standard for ODS and non-exempt substitute refrigerants would reduce emissions of ODS by reducing the incidence of failure to follow the requirements for ODS appliances. However, in that discussion, EPA did not address whether, if all other subpart F requirements were extended to non-exempt substitutes, it would be necessary to also extend § 82.157 to non-exempt substitute refrigerants. EPA is proposing to withdraw the extension of the subpart F provisions related to leak repair for non-exempt substitute refrigerants. Other elements of the 608 program such as the refrigerant sales restriction, technician certification, reclamation standards, and evacuation standards would continue to apply to non-exempt substitute refrigerants if this proposal is finalized. If these other subpart F requirements continue to apply, such that, for example, the regulations only permit certified technicians to service equipment regardless of whether it contains ODS or non-exempt substitutes, those requirements could also reduce the incidence of failure to follow the requirements for ODS appliances. By contrast, it is unclear how application specifically of the leak repair requirements to non-exempt substitute refrigerants would lead to additional reductions in ODS emissions if those other requirements are applied to non-exempt substitutes. Thus, insofar as the 2016 Rule was grounded in an argument that section 608(a) supports the extension of the leak repair provisions to non-exempt substitute refrigerants, EPA is proposing to withdraw that interpretation.

EPA is also seeking comment on whether, as a matter of statutory interpretation, the agency can rely on section 608(a) for the issuance of any of the subpart F requirements for substitute refrigerants, even those for which there is demonstrably a connection between the regulatory requirement and the purposes of section 608(a) to reduce use and emission of class I and II substances to the lowest achievable levels and maximize the recapture and recycling of such substances. As noted above, in section 608(a) Congress specifically required EPA to issue regulations for class I and class II substances that would meet certain statutory purposes set forth in that section. But Congress did not list substitutes for coverage by those requirements. In contrast, section 608(c) does expressly extend requirements to substitute refrigerants. This difference between section 608(a) and 608(c) could be interpreted as a manifestation of Congressional intent to distinguish between the categories of substances covered in these respective provisions and to only convey authority to address substitute refrigerants under 608(c), not 608(a).[16] This interpretation, if adopted, would lead to the conclusion that section 608(a) cannot provide a basis for extending any of subpart F's refrigerant management requirements to substitute refrigerants.[17]

EPA requests comment on the proposed changes discussed in this section, including the proposed changes in interpretation of section 608(a) so as to remove support for the extension of the leak repair requirements in § 82.157 to non-exempt substitute refrigerants. EPA also requests comment on the frequency of appliances being contaminated by mixtures of ODS and substitute refrigerants, and the resulting equipment damage. Further, EPA requests comment on whether the agency should conclude that it could not rely on section 608(a) for any authority to extend subpart F requirements to substitutes. If EPA were to reach such a conclusion, EPA would rely solely on section 608(c) for the extension of the non-leak repair subpart F requirements to non-exempt substitutes, or alternatively, would withdraw the entire extension. As noted previously, the docket contains a version of the regulatory text showing the types of revisions to subpart F that the Agency is considering making should it decide to finalize a full withdrawal of the 2016 Rule's extension of the refrigerant management requirements to non-exempt substitutes. In addition, EPA welcomes comment on whether section 608(a) provides authority to promulgate a set of leak repair provisions, or refrigerant management requirements generally, for non-exempt substitutes that may be different from the ones currently found in subpart F. If the Agency were to decide to pursue a different approach than one of the two potential outcomes discussed in detail in this proposed rule—the proposed action, rescinding the 2016 Rule's extension of the leak repair requirements to non-exempt

[15] Response to Comments for the Notice of Proposed Rulemaking: Protection of Stratospheric Ozone: Update to the Refrigerant Management Requirements under the Clean Air Act, pages 13–14 (pdf pages 18–19). Available at: *https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0453-0226.*

[16] This interpretation would not affect EPA's discretionary authority to ''include requirements to use alternative substances (including substances which are not class I or class II substances) . . . or to promote the use of safe alternatives pursuant to section [612]'' in regulations under section 608(a), as these authorities are expressly mentioned in section 608(a)(3). As discussed at n.11, *supra,* EPA did not rely on these authorities in 608(a)(3) in extending the refrigerant management requirements to substitute refrigerants in the 2016 Rule, and is not relying on them in this proposal or in addressing the underlying questions of statutory interpretation at issue here.

[17] Some commenters on the 2016 Rule pointed out that Congress specifically listed class I and class II substances for coverage under the regulations required by section 608(a) and contended that those regulations could not be applied to refrigerants that are neither class I nor class II substances.

substitutes, or the potential alternative approach on which it takes comment, rescinding its extension of the full set of subpart F requirements to non-exempt substitutes—it would provide the public with an opportunity to offer comments on that different approach. Lastly, EPA requests comment on whether stakeholders may have a reliance interest in either the leak repair provisions or the other subpart F provisions as they relate to substitutes under the 2016 Rule and how that interest would be affected by the potential changes discussed in this section.

F. Extension of the January 1, 2019 Compliance Date for the Appliance Maintenance and Leak Repair Provisions for Non-Exempt Substitute Refrigerants

EPA is evaluating whether the January 1, 2019 compliance date for the appliance maintenance and leak repair provisions for non-exempt substitutes remains viable for regulated entities or whether the date should be extended, depending on the outcome and timing of the final rule. EPA has been working to develop this proposed rule expeditiously and intends to develop the final rule as quickly as practicable, in recognition of the January 1, 2019 compliance date for the extension of the appliance maintenance and leak repair provisions at § 82.157 to non-exempt substitutes.[18] Despite the Agency's best efforts, it is possible that regulated entities will face a choice about whether to incur compliance costs prior to issuance of a final rule that could rescind those requirements for non-exempt substitutes. In that scenario, certain regulated entities likely would incur costs to comply with provisions that might ultimately be rescinded, while the foregone benefits of extending the compliance date likely would be limited as explained below. Therefore, EPA is proposing to take final action to extend the compliance date in § 82.157(a) for appliances containing only non-exempt substitute refrigerants if final action on the substantive portions of this proposed rule will not occur within a reasonable time before the existing compliance date. If we take final action on this proposal, we will revise the first sentence of § 82.157(a) to extend the compliance date for appliances containing only non-exempt substitute refrigerants. Such an extension would only be for as long as is needed to provide regulated entities certainty on whether to incur expenditures necessary to comply with these provisions. EPA anticipates that the extension would be between six to twelve months beyond January 1, 2019. If needed, EPA intends to take final action on the proposed extension of the compliance date separate from, and before, taking final action on other proposals in this document.

EPA is proposing this extension because it anticipates that there could be undue costs to owners and operators to comply with the appliance maintenance and leak repair provisions for appliances containing non-exempt substitutes, such as inventorying equipment, establishing recordkeeping procedures, and meeting the new leak rate thresholds if it has not finalized any revisions within a reasonable time before the existing compliance date and if that compliance date is not extended. Facilities that have both ODS and non-exempt substitute appliances may already be using similar refrigerant management programs for all of their appliances. However, the costs may be greater for facilities that only have appliances that use non-exempt substitute refrigerants and that do not have established procedures for ODS-containing equipment. In the 2016 Rule EPA did consider the ongoing costs that such facilities would face in complying with the newly applicable subpart F requirements, but did not consider potential one-time costs to such facilities associated with establishing a refrigerant management program or designing a recordkeeping system. EPA's analysis of appliance data submitted to the California Air Resources Board under its Refrigerant Management Program show that 46 percent of facilities only have HFC appliances. Within that group of facilities, EPA estimates that 55 percent have at least one appliance that exceeds the new threshold rates. As discussed in the economic analysis section, EPA estimates that extending the compliance date by up to 12 months would result in foregone annual GHG emissions reductions benefits of 3 $MMTCO_2e$.

EPA requests comment on the proposal to extend the date by which appliances containing non-exempt substitute refrigerants must comply with § 82.157. EPA is interested in whether facilities, and particularly those facilities that do not have ODS equipment, anticipate any practical difficulties in gearing up to meet the January 1, 2019 compliance date, and intends to consider such information in determining whether a compliance date extension is needed. EPA additionally requests comments on any costs or hardship that owners and operators of appliances containing non-exempt substitutes would face if this compliance date is not extended and if EPA has not finalized any revisions within a reasonable time before the current compliance date for § 82.157, and on any foregone benefits from extending this compliance date.

EPA further notes that the United States Court of Appeals for the District of Columbia Circuit issued a recent decision in *Air Alliance Houston* v. *EPA,* No. 17–1155 (DC Cir. August 17, 2018), which addressed an EPA rule delaying the effective date of a previously issued EPA regulation in the context of a reconsideration proceeding under section 307(d)(7)(B) of the Clean Air Act. In contrast to the rule at issue in the *Air Alliance Houston* case, this notice of proposed rulemaking is not occurring in the context of a section 307(d)(7)(B) reconsideration. Nevertheless, EPA requests comments regarding the implications, if any, of this recent decision for its ability to finalize an extension of the compliance date as proposed in this section. EPA will consider these comments in deciding whether to finalize such an extension.

III. Economic Analysis

Section 608 of the CAA does not explicitly address whether costs or benefits should be considered in developing regulations under that section. Because the statutory language does not dictate a particular means of taking economic factors into account, if at all, EPA has discretion to adopt a reasonable method for doing so. EPA has focused primarily on the proper scope of the Agency's authority to regulate, although it has also presented and considered an analysis of costs and benefits in making the choices underlying this proposed rulemaking. EPA interprets section 608 to *permit* it to consider costs and benefits, but does not interpret section 608 to *require* it to propose or select the option with the best cost-benefit outcome.

While EPA is proposing to determine that the 2016 Rule's extension of the full set of subpart F requirements, in its entirety, to non-exempt substitute refrigerants exceeded EPA's statutory authority, the agency notes that it has

[18] Only the amendments to the appliance maintenance and leak repair provisions found at § 82.157 have a compliance date of January 1, 2019. EPA is not proposing an extension of the compliance dates for the extension of any of the other subpart F requirements, as those compliance dates have already passed. While the amendments at § 82.157 include revisions to the appliance maintenance and leak repair program that affect appliances using ODS refrigerants, as well those using only non-exempt substitutes, EPA is only proposing to extend the compliance date for appliances using only non-exempt substitutes, for the reasons described later in this document.

also considered costs in developing this proposal. EPA's economic analysis indicates that the expected cost savings for the proposal would outweigh the monetized foregone benefits. Specifically, the $39 million annual savings of rescinding the 2016 Rule's extension of the leak repair provisions to non-exempt substitutes would outweigh the foregone benefits of $15 million in avoided refrigerant purchases. For the scenario where the agency would rescind the entire extension of the subpart F requirements to non-exempt substitutes in the 2016 Rule, the cost savings of $43 million would outweigh the same $15 million in foregone benefits.[19] EPA requests comment on whether it should continue to explicitly take costs into consideration in the final rule, and if so how.

The Agency attempted to minimize costs in the 2016 Rule, in particular by allowing more time and options for repair before requiring retrofit or retirement. As an example, EPA provided an extension if a component is not available in the first 30 days after discovering the leak. Prior to 2016, an owner/operator would have had to retrofit or retire their appliance. Owners and operators of appliances containing non-exempt substitutes would also benefit from those flexibilities, but also became subject to a new regulatory scheme.

EPA is proposing to remove the requirement to repair leaks in appliances containing only substitute refrigerants, along with the associated verification tests, leak inspections, and recordkeeping. In the 2016 Rule, EPA estimated that extending the leak repair provisions to appliances containing non-exempt substitutes would have an annual cost of $39 million in 2014 dollars using a 7 percent discount rate. This is composed of $10 million in recordkeeping costs and $29 million in repair and leak inspection costs. Costs were modeled for a single typical year in which all the requirements were in effect, based on the appliance distribution modeled for 2015. To allow for ease of comparison between the two rules, the model and the use of 2014 dollars are the same in the analysis for this proposal as EPA used in the 2016 Rule.

In the 2016 Rule, EPA also estimated lower expenditures to purchase replacement refrigerant and lower emissions of refrigerant expressed in ozone depletion potential tons and global warming potential. The current leak repair requirement in the 2016 Rule was expected to result in appliance owners or operators purchasing less refrigerant because they would be able to identify and repair leaks earlier, preventing refrigerant releases. EPA estimated that the total annual reduced expenditures for purchasing non-exempt substitute refrigerant would be $15 million. By withdrawing that portion of the 2016 Rule, those reduced expenditures would not be realized.

EPA estimates that this proposed rule to rescind the extension of the leak repair provisions to substitutes would not directly affect the stratospheric ozone layer. EPA is not proposing to amend any provisions of 40 CFR part 82, subpart F that relate to ODS refrigerants. EPA estimates that this proposed action would result in foregone annual GHG emissions reductions benefits of 2.9 $MMTCO_2e$—approximately a 40 percent reduction from the level estimated for the 2016 rulemaking. GHG emissions reductions benefits associated with the reduction in emissions of ODS refrigerants would be retained.

As discussed previously, EPA is requesting comment on whether to withdraw the entire extension of subpart F requirements to non-exempt substitute refrigerants. EPA estimates that rescinding the entire subpart F requirements for non-exempt substitute refrigerants would reduce the annual burden associated with the 2016 Rule by at least an additional $4 million per year (for a total annual burden reduction of at least $43 million per year). This is composed of $3 million in compliance costs associated with the requirement to use self-sealing valves on small cans of refrigerant and $1 million in recordkeeping costs. The unrealized annual savings associated with reduced use of non-exempt substitute refrigerant would remain $15 million, as discussed previously. Thus, EPA estimates that withdrawing the entire extension of subpart F requirements to non-exempt substitute refrigerants would reduce total compliance costs by at least $28 million per year. EPA estimates that this would result in additional foregone annual greenhouse gas (GHG) emissions reductions benefits of 0.7 $MMTCO_2e$ associated with the use of self-sealing valves (for a total of at least 3.6 $MMTCO_2e$). While the majority of GHG reductions from HFC appliances that EPA quantified were the result of extending the leak repair provisions to non-exempt substitutes, in the 2016 Rule EPA asserted that there would be other, unquantified benefits resulting from extending the full set of refrigerant management provisions to substitutes.

In the 2016 Rule, EPA did not identify any additional costs or benefits associated with extending certain provisions of subpart F to non-exempt substitute refrigerants. These provisions include the evacuation requirements, recovery equipment certification, safe disposal requirements, reclamation standards, and technician certification. As noted in the technical support document for the 2016 Rule, EPA assumes full compliance with the venting prohibition and such actions that were considered necessary to comply with the venting prohibition were not considered to lead to additional costs or benefits.

With regard to the extension of the 608 technician certification requirement to non-exempt substitute refrigerants in the 2016 Rule, EPA understood that most technicians serviced both appliances containing ODS refrigerants, which were previously subject to the 608 technician certification requirements, and appliances containing non-exempt substitutes. Most technicians are contractors who work on appliances of various ages and for multiple clients, including both individuals and businesses. There was no evidence that facilities using only non-exempt substitute refrigerants are segregated geographically, such that a technician in a certain county would only encounter appliances solely using non-exempt substitutes, or are segregated by business type, such that a technician who only works in one sector (*e.g.,* supermarkets or residential air conditioning) would only encounter appliances solely using non-exempt substitutes. Based on this rationale, EPA concluded in the 2016 Rule that it was extremely unlikely that a person in the air-conditioning and refrigeration equipment servicing field would never encounter equipment containing ODS refrigerant during the course of their career. Accordingly, in the 2016 Rule, EPA assumed persons entering that field would seek 608 technician certifications in order to maintain competitiveness and persons currently in that field already had 608 certification so that they could accept jobs that involved appliances containing ODS refrigerant.

While commenters on the 2016 Rule did not provide any information indicating EPA's analysis was missing a significant group of new technicians that would be newly required to go through the 608 certification process, during the development of this notice of proposed rulemaking one Federal Department indicated that they had 608 certified technicians working on

[19] This analysis is based on effects that EPA monetized in the 2016 Rule. As discussed later in this section, EPA is requesting comment on additional factors.

facilities with appliances containing class I or class II refrigerant, and a separate group of un-certified persons working at facilities that contained only appliances using non-exempt substitute refrigerant.

Based on this new information, EPA broadly requests comment on whether there are costs associated with the technician certification requirements in the 2016 Rule and on whether removal of that technician certification requirement for non-exempt substitutes would alleviate those costs. EPA particularly requests comment on whether this Federal Department's arrangement is typical, either for larger entities that have in-house personnel servicing appliances or for contractors that provide technicians to service refrigeration and cooling equipment. If so, EPA requests comment on what training was provided prior to the 2016 Rule related to the handling of refrigerants or the venting prohibition for those technicians, whether there were any costs associated with tracking which personnel are 608 certified and thus were eligible to work on appliances containing ODS refrigerant, and which were not certified and thus were only eligible to work on appliances containing non-exempt substitutes. Similarly, EPA broadly requests comments on whether there are costs associated with the other provisions that were extended to non-exempt substitute refrigerants in the 2016 Rule for which EPA had previously assumed no incremental compliance costs. Conversely, because those requirements have now gone into effect, EPA requests comment on whether there are any costs associated with rescinding those requirements as they apply to non-exempt substitute refrigerants.

Details of the methods used to estimate the benefits of this proposed rule are discussed in the *Analysis of the Economic Impact of the Proposed 2018 Revisions to the National Recycling and Emission Reduction Program* in the docket. For a complete description of the methodology used in EPA's analysis, see the technical support document and Section VI of the 2016 Rule (81 FR 82344).

To avoid the costs associated with leaking appliances and increased refrigerant purchases, owners and operators of large appliances that use non-exempt substitute refrigerants may already be engaged in effective refrigerant management programs that work for their facilities and their types of equipment. EPA welcomes input from owners and operators of such equipment for how to achieve the goals of the 2016 Rule in reducing refrigerant leaks without a comprehensive regulatory program for leak repair.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an economic analysis of the potential costs and benefits associated with this action which is available in Docket Number EPA–HQ–OAR–2017–0629.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 1626.16. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

EPA is proposing to revise the leak repair provisions so they apply only to equipment using refrigerant containing a class I or class II substance. This proposal does not affect the recordkeeping and reporting requirements finalized in the 2016 Rule that apply to appliances containing 50 or more pounds of an ODS refrigerant. There are no new records that would be maintained or reports that would be submitted under this proposal. Most of this burden is already covered by the existing requirements in 40 CFR part 82, subpart F, and the existing ICR.

Respondents/affected entities: This proposal would remove reporting and recordkeeping requirements for owners and operators of appliances containing 50 or more pounds of a non-exempt substitute refrigerant (*e.g.,* HFCs) and technicians servicing such appliances. Entities required to comply with reporting and recordkeeping requirements include technicians; technician certification programs; refrigerant wholesalers; refrigerant reclaimers; refrigeration and air-conditioning equipment owners and/or operators; and other establishments that perform refrigerant removal, service, or disposal.

Respondent's obligation to respond: Mandatory (40 CFR part 82, subpart F).

Estimated number of respondents: 573,731.

Frequency of response: The frequency of responses vary from once a year to daily. Public reporting burden for this collection of information is estimated to vary from one minute to 9.4 hours per response, including time for reviewing instructions and gathering, maintaining, and submitting information.

Total estimated burden: 434,359 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $24,625,892 (per year). There are no estimated annualized capital or operation & maintenance costs associated with the reporting or recordkeeping requirements.

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 the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than October 31, 2018. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This proposed rule would not impose any

new regulatory requirements. It is deregulatory in that it proposes to remove required leak repair and maintenance practices and associated recordkeeping for appliances containing non-exempt substitute refrigerant. This document also seeks comments on withdrawal of additional refrigerant management requirements for appliances containing non-exempt substitute refrigerant. We have therefore concluded that this action will relieve regulatory burden for directly regulated small entities.

E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

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.

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. EPA has not conducted a separate analysis of risks to infants and children associated with this proposed rule.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

EPA believes that it is not feasible to quantify any disproportionately high and adverse effects from this action on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 82

Environmental protection, Air pollution control, Chemicals, Reporting and recordkeeping requirements.

Dated: September 18, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 82 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. Amend § 82.154 by revising paragraph (a)(2)(i) to read as follows:

§ 82.154 Prohibitions.

(a) * * *

(2) * * *

(i) The applicable practices in § 82.155 and § 82.156 are observed, the practices in § 82.157 are observed for appliances that contain a class I or class II refrigerant, recovery and/or recycling machines that meet the requirements in § 82.158 are used whenever refrigerant is removed from an appliance, the technician certification provisions in § 82.161 are observed, and the reclamation requirements in § 82.164 are observed; or

* * * * *

■ 3. Amend § 82.157 by revising paragraph (a) to read as follows:

§ 82.157 Appliance maintenance and leak repair.

(a) *Applicability.* This section applies as of January 1, 2019. This section applies only to appliances with a full charge of 50 or more pounds of any class I or class II refrigerant or blend containing a class I or class II refrigerant. Notwithstanding the use of the term refrigerant in this section, the requirements of this section do not apply to appliances containing solely substitute refrigerants. Unless otherwise specified, the requirements of this section apply to the owner or operator of the appliance.

* * * * *

[FR Doc. 2018–21084 Filed 9–28–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[EPA–HQ–OAR–2017–0755; FRL–9984–54–OAR]

RIN 2060–AT75

Light-Duty Vehicle GHG Program Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing two technical corrections to the light-duty vehicle greenhouse gas (GHG) emissions standards regulations finalized in the 2012 rulemaking that established standards for model years 2017–2025 light-duty vehicles. First, EPA proposes to correct regulations pertaining to how auto manufacturers must calculate credits for the GHG program's optional advanced technology incentives. The regulations currently in place result in auto manufacturers receiving fewer credits than the agency intended for electric vehicles, plug-in hybrid electric vehicles, fuel cell electric vehicles, and natural gas fueled vehicles. Auto manufacturers requested through a petition letter submitted jointly by the Auto Alliance and Global Automakers in June 2016 that EPA correct the regulations to provide the intended level of credits for these technologies. Second, the regulations regarding how manufacturers must calculate certain types of off-cycle credits contain an error and are inconsistent with the 2012 final rule preamble, raising implementation concerns for some manufacturers. The proposed amendments would clarify the calculation methodology in the regulations. Both of these corrections allow the program to be implemented as originally intended. The proposed corrections are not expected to result in any additional regulatory burdens or costs.

DATES:

Comments: Written comments must be received on or before October 31, 2018. If EPA receives a request for a