''major rule'' as defined by 5 U.S.C. 804(2).

E. Petition for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 29, 1998.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraph (c)(39) to read as follows:

§ 52.1020 Identification of plan.

* * * * * *

(c) * * *

(39) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on June 30, 1994.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated June 30, 1994 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 117 of the Maine Department of Environmental Protection Regulations, ''Source Surveillance,'' effective in the State of Maine on May 9, 1994.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. In § 52.1031, Table 52.1031 is amended by adding a new entry following existing state citation ''117'' to read as follows:

§ 52.1031 EPA-approved Maine regulations

* * * * *

TABLE 52.1031—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020
*	*	*	*	*	*
117	Source Surveillance	4/27/94	8–11–98	[Insert FR citation from published date]	(c)(39)
*	*	*	*	*	*

[FR Doc. 98–21347 Filed 8–10–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6136–8]

RIN: 2060–AI07

Protection of Stratospheric Ozone: Halon Recycling and Recovery Equipment Certification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final determination.

SUMMARY: Today's action consists of EPA's determination that it is neither necessary nor appropriate under section 608(a)(2) of the Clean Air Act as amended in 1990 (CAA or ''Act'') to issue a proposed rule requiring the certification of recycling and recovery equipment for halons; and further, that it is neither necessary nor appropriate under section 608(a)(2) of the CAA to require that halons be removed only through the use of certified equipment. Halons are gaseous or easily vaporized halocarbons used primarily for fire and explosion protection and are listed as group II, Class I ozone-depleting substances (ODSs) under 40 CFR part 82, subpart A. Section 608 of the CAA directs EPA to issue regulations which reduce the use and emissions of ozone-depleting substances to the lowest achievable level and which maximize the recapture and recycling of such substances. In developing regulations concerning use, emissions and recycling, EPA considers both technological and economic factors. The objective of an equipment certification program, and associated provisions allowing the removal of halons only through the use of certified equipment, would be to verify that all recycling and recovery equipment sold was capable of minimizing emissions, and that such certified equipment was in fact used, thereby minimizing emissions during recycling and recovery activities. Research completed by EPA in association with this determination, however, suggests that the great majority of halon recovery and recycling equipment currently in use or on the market consists of highly efficient halon closed recovery systems achieving a minimum recovery efficiency of 98%. Entities which perform the vast majority of halon transfers employ these efficient units. Operations utilizing less efficient halon recycling and recovery equipment and methods are estimated to account for less than 1% of total annual halon emissions in the United States during recycling and recovery activities. With regard to halon emissions arising from the use of inefficient, non-closed halon recovery and recycling devices, sections 82.270(d) and (e) of an EPA rule issued March 5, 1998 (63 FR 11084), were intended to eliminate the use of such devices and restrict halon recovery and recycling equipment to the highly efficient category of closed recovery

systems currently widely used in industry. For these reasons, EPA determines that no further environmental advances can be made in regard to the CAA section 608 goals of reducing halon use or emissions, or maximizing halon recapture or recycling, through a halon recovery and recycling equipment certification program.

EFFECTIVE DATE: This direct final determination is effective on October 13, 1998 without further notice unless the EPA receives adverse comment by September 10, 1998. If adverse comment is received, the EPA will publish a timely withdrawal of the direct final determination in the **Federal Register** and inform the public that the determination will not take effect.

ADDRESSES: Comments on this determination should be sent to Docket No. A–98–37, U.S. Environmental Protection Agency, OAR Docket and Information Center, Room M–1500, Mail Code 6102, 401 M Street, S.W., Washington, D.C. 20460. The docket may be inspected from 8:00 a.m. until 5:30 p.m., weekdays. The docket phone number is (202) 260–7548, and the fax number is (202) 260–4400. A reasonable fee may be charged for copying docket materials. A second copy of any comments should also be sent to Lisa Chang, U.S. Environmental Protection Agency, Stratospheric Protection Division, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460 if by mail, or at 501 3rd Street, N.W., Room 267, Washington, D.C. 20001 if comments are sent by courier delivery.

FOR FURTHER INFORMATION CONTACT: Lisa Chang at (202) 564–9742 or fax (202) 565–1096, U.S. Environmental Protection Agency, Stratospheric Protection Division, Mail Code 6205J, 401 M Street, S.W., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: The contents of this direct final determination are listed in the following outline:

I. Background

A. Section 608 of the Clean Air Act

Section 608 of the CAA (42 U.S.C. 7671g) sets forth certain requirements for a national recycling and emission reduction program aimed at Class I and Class II ozone-depleting substances, including halons, and their substitutes. Class I and Class II ozone-depleting substances are designated as such under section 602 of the Act, in accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer, an international agreement to which the United States is a party. Section 608 further directs that the national recycling and emission reduction regulations must ''reduce the use and emission of such substances to the lowest achievable level,'' and ''maximize the recapture and recycling of such substances.'' Section 608(a)(1) of the Act provides for a national recycling and emission reduction program with respect to Class I substances that are used as refrigerants; section 608(a)(2) provides for such a program for all other Class I and Class II substances, including halons.

B. Sierra Club Suit

The Sierra Club sued EPA in the U.S. District Court for the District of Columbia on March 31, 1995, claiming that EPA had not fulfilled its obligation to promulgate regulations establishing standards and requirements regarding use and disposal for non-refrigerant Class I and Class II substances under section 608(a)(2) of the CAA. In a consent decree (notice of which was published on September 17, 1996, in the **Federal Register** at 61 FR 48950) EPA agreed to consider appropriate regulation of halons. Under the terms of the consent decree, EPA agreed to take the following actions with regard to halons: (1) To issue a proposed rule regarding a ban on the sale of all halon blends and to take final action on the proposal; (2) to issue a proposed rule or rules regarding the intentional release of halons during repair and testing of equipment containing halons; training concerning the use of such equipment; disposal of halons; and removal or disposal of equipment containing halons at the end of the life of such equipment; and to take final action on the proposal; and (3) to issue either a proposed rule requiring the certification of recycling and recovery equipment for halons and allowing the removal of halons only through the use of certified equipment or a direct final determination that no such rule is either necessary or appropriate under section 608(a)(2) of the Clean Air Act. EPA addressed items (1) and (2) with a proposed (62 FR 36428) and final (63 FR 11084) rule. Today's action addresses item (3).

EPA's agreement in regard to item (3) was based in part on EPA's commitment to complete a study assessing the feasibility of certifying halon recycling and recovery equipment and allowing removal of halons only through use of certified equipment. The study, ''Assessment of the Need for a Halon Recovery/Recycling Equipment Certification Program'' (hereafter referred to as ''the halon recovery/recycling equipment study,'' or ''EPA (1998)'') characterized the size and makeup of the domestic halon recovery and recycling industry, its current practices and equipment, and the likely environmental benefits achievable by its further regulation. During May-June of 1998, the report was reviewed by several technical experts as well as a larger group drawn from stakeholder communities including industry, non-governmental environmental organizations, and government. The report and reviewers' comments are available in the Docket for this action. These materials have provided an important foundation for today's direct final determination.

C. Halons

Halons are gaseous or easily vaporized halocarbons used primarily for putting out fires, but also for explosion protection. The two halons most widely used in the United States are Halon 1211 and Halon 1301. Halon 1211 is used primarily in streaming applications; recovered Halon 1211 is primarily used by the military and equipment distributors to fill or recharge portable fire extinguishers. Some Halon 1211 is also stockpiled and resold by commercial recycling facilities. Halon 1301 is typically used in total flooding applications; the market for recovered Halon 1301 is driven primarily by servicers of halon fire protection systems, the military, and large commercial interests including airlines. System servicers use recovered Halon 1301 to recharge systems, to stockpile for future sale, to sell to other servicers, or to sell to military or commercial interests (EPA, 1998). Very limited use of Halon 2402 exists in the United States as an extinguishing agent in engine nacelles on older aircraft and in the guidance system of Minuteman missiles. Although Halon 2402 is an

effective fire extinguishing agent, use in North America and Europe has been very limited due to safety concerns (UNEP, 1994). Halon 2402 was and continues to be used mainly in the Russian Federation and in other countries with economies in transition (CEIT) (UNEP, 1998). Because of the very limited use of Halon 2402, EPA's study, as well as the discussions contained within this final determination, focus on describing recovery and recycling practices for Halons 1211 and 1301. Nevertheless, all EPA halon regulations and determinations, including today's action, issued under Title VI of the CAA are intended to cover all group II, Class I substances listed in appendix A to subpart A of 40 CFR part 82—that is, Halon 1211, Halon 1301, Halon 2402, and all isomers of these substances. Halons are used in a wide range of fire protection applications because they combine several marked advantages over other extinguishing agents. For a further discussion of the properties of halons for fire protection applications see 63 FR 11084.

Despite these advantages, halons are among the most ozone-depleting chemicals in use today. With 0.2 ozone-depleting potential (ODP) representing the threshold for classification as a Class I substance, Halon 1301 has an estimated ODP of 10; Halon 1211 has an estimated ODP of 3. Thus, while total halon production (measured in metric tons) comprised just 2 percent of the total production of Class I substances in 1986, halons represented 23 percent of the total estimated ozone depletion attributable to Class I substances produced during that year. Prior to the early 1990's, the greatest releases of halon into the atmosphere occurred not in extinguishing fires, but during testing and training, service and repair, and accidental discharges. Data generated as part of the Montreal Protocol's technology assessment indicated that only 15 percent of annual Halon 1211 emissions and 18 percent of annual Halon 1301 emissions occur as a result of use to extinguish actual fires. These figures indicated that significant gains could be made in protecting the ozone layer by revising testing and training procedures and by limiting unnecessary discharges through better detection and dispensing systems for halon and halon alternatives. The fire protection community began to conserve halon reserves in response to the impending ban on the production and import of Halons 1211, 1301, and 2402 that occurred January 1, 1994. Through standards, research, and field practice, the fire protection community eliminated most discharge testing with halons and minimized use of halon for testing and training. Additionally, fire equipment distributors began to service and maintain fire suppression equipment regularly to avoid leaks, false discharges, and other unnecessary emissions.

Nevertheless, because of the significant environmental concern associated with halons, EPA contemplated further regulatory activity to strengthen already conservative halon use, transfer, and recycling practices in the industry. On March 5, 1998, EPA issued a final rule (63 FR 11084, hereafter referred to as ''the March 5 rule'') establishing training requirements for technicians who handle halon-containing equipment; banning releases of halons during the testing, maintenance, repair, servicing, and disposal of halons and halon-containing equipment and during technician training; and providing that halons and halon-containing equipment may be disposed of only by sending such halon or equipment for recycling or recovery, respectively, by a facility operating in accordance with the voluntary industry standards established by the National Fire Protection Association (NFPA), ''NFPA 10'' and ''NFPA 12A,'' or by sending halon for destruction by an EPA-approved method. This rule more fully extended conservative practices throughout the fire protection and halon recycling communities, and ensured continued observance of such practices in the event of changes in the halon market conditions that significantly contributed to their adoption. The effect of the March 5 rule on halon recycling and recovery practices is discussed further below.

D. Today's Action

Today's action consists of EPA's determination that it is neither necessary nor appropriate under section 608(a)(2) of the CAA to issue a proposed rule requiring the certification of recycling and recovery equipment for halons; and further, that it is neither necessary nor appropriate under section 608(a)(2) of the CAA to require that halons be removed only through the use of certified equipment. The principal basis for this determination is that such requirements would provide no significant advancement toward the objectives of reducing halon use or emissions to lowest achievable levels, or maximizing their recapture and recycling, as directed by section 608. The environmental gains that could have been made in this regard through such requirements have already been realized through recently promulgated EPA regulations concerning halons (63 FR 11084).

II. Basis for Today's Action

A. Halon Emissions

Total annual Halon 1211 emissions (includes all legitimate—*e.g.*, fire extinguishing—as well as incidental—*e.g.*, transfer loss—releases) in the United States has been estimated at 1,079 tonnes for 1997 (this is against a total stock for North America, including the United States, of more than 27,000 tonnes of Halon 1211; UNEP, 1998; EPA, 1998). Estimated temporal trends in halon emissions suggest that emission data for 1997 are reasonably representative of recent and near-future years; trends in emissions are briefly noted at the end of this section. The quantity of Halon 1211 subjected to recovery attempts for the same year, for the United States, is estimated at 298 tonnes (EPA, 1998).

Facilities performing Halon 1211 recovery and recycling operations can be grouped into three broad classes: large-scale commercial recyclers, large servicers of halon extinguishers, and small servicers of halon extinguishers. The numbers of facilities in each of these categories, as well as the relative volume of Halon 1211 transfers performed by each category, have recently been estimated. While constituting the smallest number of such facilities, large-scale commercial recyclers accounted for the greatest quantity of Halon 1211 transfers, and the relatively large number of entities in the small servicer category accounted for a relatively small portion of halon transfers (EPA, 1998; Table 1). In addition, the types of equipment and practices employed among these groups of facilities have been evaluated. In general, facilities were found to employ either highly efficient, closed recovery units of the type called for under sections 82.270(d) and (e) of the March 5 rule, with halon recovery efficiencies of approximately 98%; or pressure transfer and other non-closed halon recovery systems and methods, with recovery efficiencies as low as 90%, and of the type whose use sections 82.270(d) and (e) of the March 5 rule were designed to prohibit.

It was further estimated that of the 298 tonnes of Halon 1211 subjected to recovery attempts for 1997, approximately 95% is recovered by large scale commercial recyclers and large servicers of halon extinguishing systems using highly efficient closed recovery units, and the remaining 5%

by small servicers utilizing a range of methods, including both high-efficiency halon recovery units, as well as low-efficiency non-closed equipment and methods. Annual Halon 1211 losses to the atmosphere arising from transfers from each group, as a percentage of total annual Halon 1211 emissions in the United States for 1997, are estimated at −0.3% (large-scale commercial recyclers); −0.2% (large servicers of halon extinguishers); and −0.1% (small servicers of halon extinguishers) (EPA, 1998; Table 1). It should be noted that the rate of Halon 1211 extinguisher decommissioning is expected to increase over the next several years, leading to a slight increase in emissions due to an increased volume of recovery and recycling activity (EPA, 1998), followed by decreases projected through the year 2030 (UNEP, 1998).

Regarding Halon 1301, total annual emissions (again, including all legitimate as well as incidental releases) in the United States was estimated at 786 tonnes for 1997). This compares to a total North America Halon 1301 stock of more than 17,000 tonnes (UNEP, 1998; EPA, 1998). Approximately 981 tonnes of Halon 1301 were subjected to recovery attempts for the same year in the United States. The high recovery rate relative to Halon 1211 reflects a higher demand for Halon 1301.

As with Halon 1211, the same three general classes of facilities performing halon recovery and recycling operations can be identified and their numbers and practices broadly characterized (Table 2). Significant economic and operational differences between Halon 1211 and Halon 1301 recovery and recycling practices and sectors exist. However, research indicates that as with Halon 1211, approximately 95% of the Halon 1301 recovered annually is recovered using highly efficient closed recovery units, with the remaining 5% by a range of methods including both high-efficiency closed recovery systems, as well as low-efficiency, non-closed equipment and methods (Table 2). Annual Halon 1301 losses to the atmosphere arising from transfers from each group of facilities performing recovery and recycling operations, expressed as a percentage of total annual Halon 1301 emissions in the United States for 1997, are estimated at −2% (large-scale commercial recyclers), −1% (large servicers of halon extinguishers); and −0.1–1% (small servicers of halon extinguishers) (EPA, 1998; Table 2). The rate at which Halon 1301 fire protection systems are decommissioned is expected to decrease over the next several years, leading to a slight decrease in emissions, with slowly declining emissions projected through the year 2030 (EPA, 1998; UNEP, 1998).

TABLE 1.—HALON 1211 RECOVERY AND RECYCLING IN THE UNITED STATES

[Data for 1997; EPA, 1998]

(A) Type of operation	(B) Number of organizations of this type	(C) Percent of Halon 1211 transferred by these organizations annually	(D) Quantity of Halon 1211 transferred annually (tonnes/yr) [1]	(E) Estimated recovery efficiency of equipment used (percent)	(F) Estimated emissions (tonnes/yr) [2]	(G) Contribution to Total U.S. Annual Halon 1211 Emissions (Percent) [3]
Large-scale commercial recyclers	4–6	60–65	179–194	98	3.6–3.9	−0.3
Large servicers of halon extinguishers	20	30–35	89–104	98	1.8–2.1	−0.2
Small servicers of halon extinguishers	[4]	5	15	90–98	0.3–1.5	−0.1

[1] Calculated by multiplying percent of Halon 1211 transferred by type of operation (column (C)) by 298 tonnes/yr, the estimated total quantity of Halon 1211 subjected to recovery attempts in 1997.

[2] Calculated by multiplying equipment transfer loss rate (100% minus estimated recovery efficiency of equipment, or column (E)) by total quantity of Halon 1211 recovered by each type of operation (column (D)).

[3] Calculated by dividing Halon 1211 estimated emissions for each type of operation (column (F)) in 1997 by the total mass of Halon 1211 emitted for 1997 (estimated at 1,079 tonnes).

[4] Several hundred.

TABLE 2.—HALON 1301 RECOVERY AND RECYCLING IN THE UNITED STATES

[Data for 1997; EPA, 1998]

(A) Type of operation	(B) Number of organizations of this type	(C) Percent of Halon 1301 transferred annually (excludes North Slope and military)	(D) Quantity of Halon 1301 recovered and recycled annually (tonnes/yr) [1]	(E) Estimated Recovery Efficiency of Equipment Used	(F) Estimated Emissions (tonnes/yr) [2]	(G) % of Total Annual Halon 1301 Emissions [3]
Large-scale commercial recyclers	4—6	70	686	98	14	−2
Large servicers of halon extinguishing systems	12	25	245	98	5	−1
Small servicers of halon extinguishing systems	−100	5	49	90—98	1—5	−0.1–1%

[1] Calculated by multiplying percent of Halon 1301 transferred by type of operation (column (C)) by 981 tonnes/yr, the estimated total quantity of Halon 1301 subjected to recovery attempts in 1997.

[2] Calculated by multiplying equipment transfer loss rate (100% minus estimated recovery efficiency of equipment, or column (E)) by total quantity of Halon 1301 recovered by each type of operation (column (D)).

[3] Calculated by dividing Halon 1301 estimated emissions for each type of operation (column (F)) in 1997 by the total mass of Halon 1301 emitted for 1997 (estimated at 786 tonnes).

B. Current Practices

The recovery and recycling infrastructure for both Halon 1211 and 1301 has been in place for many years, but since the signing of the Montreal Protocol, halon recovery and recycling have increased markedly. As a result, related services and necessary equipment have become widely available in the United States. Halon recovery and recycling, in general, are performed by large-scale commercial halon recycling concerns, large servicers of halon fire extinguishers, and small servicers of halon fire extinguishers (see previous section for further discussion). Research indicates that for Halon 1211 recovery and recycling, all units currently on the market, and most units currently in use, are highly efficient closed halon recovery systems, with recovery efficiencies of 98% or greater (EPA, 1998). Research similarly suggests that for Halon 1301 the majority of equipment currently in use, and all equipment currently on the market, are highly efficient halon closed recovery systems with recovery efficiencies exceeding 98% (EPA, 1998).

Halon recovery and recycling equipment includes equipment that processes Halon 1211, equipment that processes Halon 1301, equipment capable of processing more than one halon, and units capable of processing halon as well as other chemicals (EPA, 1998). The manufacture of halon recovery, recycling, and reclamation equipment in the United States has centered around several firms since 1980, including Getz Manufacturing (a subsidiary of Amerex Fire International Inc.), FRC International Corporation, Walter Kidde Aerospace, and Neutronics Inc.

Halon 1211 recycling equipment manufacture was most vigorous in the 1980s, with the majority of sales occurring just prior to the ban on halon manufacturing in January 1994. Over 1,000 Halon 1211 recovery/recycling units have been sold worldwide, with approximately half of these sales attributed to the U.S. military and Halon 1211 extinguishing system manufacturers in the United States. The market for Halon 1211 recovery/recycling units appears to be virtually saturated within the United States and equipment currently in use is expected to last as long as halon recovery and recycling equipment is needed domestically (EPA, 1998).

The high value of recovered Halon 1301 created a demand for recovery/recycling units as early as 1980. Hundreds of early models of relatively less-efficient recovery/recycling units were sold between 1980 and 1990, but sales of these units declined considerably with the introduction of more efficient, effective systems in the late 1980s. Consultation with industry experts suggests that it is highly unlikely that many of these less efficient units are still in use today (EPA, 1998); it is believed that the majority of operations that perform Halon 1301 transfers and recycling utilize systems that have recovery efficiencies exceeding 98%.

In summary, recent research suggests that the great majority of equipment currently in use or on the market for halon recovery and recycling is highly efficient halon closed recovery systems achieving a minimum recovery efficiency of 98%. Furthermore, the market for halon recovery/recycling equipment is virtually saturated. Entities which perform the vast majority of halon transfers employ these efficient, closed halon recovery units. Although there is some number of facilities performing halon transfers using devices with poor (e.g., 90 percent) recovery efficiencies, such operations at most are estimated to account for approximately 1 percent of total halon emission in the United States annually. It should be emphasized that certain provisions of the EPA rule published on March 5, 1998 were intended to prohibit the use of the less efficient, non-closed halon recovery and recycling methods responsible for these small releases of halons to the atmosphere.

C. Existing Certification Programs

The chief objective of an equipment certification program would be to verify that all recycling or recovery equipment sold was capable of minimizing emissions; a statement of this objective can be found in the discussion of a similar refrigerant recovery and recycling equipment certification program established under section 608(a) (58 FR 28660, 28682).[1] The specific provisions of the refrigerant recycling equipment certification program were developed based chiefly on (1) consideration of operating specifications of equipment extant at the time (*e.g.*, in establishing performance standards for vapor recovery efficiencies); (2) considerations of economics and the relative public benefits and private costs at stake (e.g., in considering the appropriateness of establishing equipment recovery rate standards); and (3) consideration of existing equipment capabilities, and capabilities likely to be achievable with technological advances (*e.g.*, in considering allowable purge losses).

A program to certify halon recovery and recycling equipment would likely require initial certification of equipment makes and models (and additional certification provisions for makes and/or models no longer in production) to be performed by laboratories or organizations to be approved by EPA and subsequent periodic certification of such equipment by conducting periodic inspections of equipment at manufacturing facilities to ensure that models have not undergone design changes that may affect their performance. Test performance criteria would have to be established, likely based to some extent on existing industry standards for the halon recovery and recycling units, where appropriate standards existed. Performance parameters of interest might include halon agent recovery efficiency. Different standards might have to be developed based on the type of halon system that the recycling/recovery equipment is designed for. It would further be necessary to establish criteria and an administrative program for EPA approval of equipment testing organizations. For enforcement purposes, it would be necessary to require manufacturers and importers to place a label on each piece of certified equipment indicating that it is certified and showing which organization tested and certified it. Finally, in order to ensure that only the equipment deemed and certified capable of minimizing releases of halons to the atmosphere is actually utilized during halon recovery and recycling activities, it would be necessary to establish and enforce the explicit requirement that only certified recovery and recycling equipment may be used during halon recovery and recycling activities.

[1] Significant contrasts between the commercial and technological contexts surrounding the refrigerants and the halons, however, lead to divergent conclusions regarding the necessity and appropriateness of recovery and recycling equipment certification programs for these broad groups of ozone-depleting substances (ODSs). For example, because the refrigerant recycling rule was issued in 1993, prior to the phaseout of refrigerant production (1996), economic incentives to develop high-efficiency refrigerant recovery practices and equipment were limited. In contrast, production of halons was phased out in 1994, strongly contributing to an increase in the economic value of halons, and incentives for the development of today's generally efficient recovery practices. As a result, while it was necessary for refrigerant recovery and recycling regulations to include a greater level of prescriptive detail regarding methods of recovery and recycling, much less need currently exists to prescribe efficient transfer, recovery, and recycling practices with respect to halons, as such practices have developed in the years since the phaseout of halon production.

D. Prior Halon Regulation

As noted earlier, EPA has already issued a rule under Section 608 of the CAA to reduce the use and emissions of halons and to maximize their recapture and recycling. The March 5 rule (63 FR 11084) established certain practices and requirements relative to halons including training requirements for technicians who handle halon-containing equipment, and prohibitions on releases of halons during the testing, maintenance, repair, servicing, and disposal of halons and halon-containing equipment and during technician training. The March 5 rule also provided that halons and halon-containing equipment may be disposed of only by sending such halon or equipment for recycling or recovery, respectively, by a facility operating in accordance with the voluntary NFPA 10 and 12A standards, or by sending halon for destruction by an EPA-approved method.

The intent of the disposal provisions (sections 82.270(d) and (e)) of the March 5 rule was twofold. First, in specifying disposal practices for halons and halon-containing equipment, it was established that recovery and recycling (as well as halon destruction by approved methods) are the only permissible disposal options for halons; *i.e.*, release of halons to the atmosphere, or other means of disposing of halons, are no longer permissible. This provision has the effect of shifting maximum quantities of halons intended for disposal into recovered and recycled pools. Second, it was intended to establish that recovery and recycling must be performed only through the use of the most efficient recovery and recycling practices and equipment available today by requiring that facilities to whom halon or halon-containing equipment had been sent for recovery or recycling operate in accordance with the NFPA 10 standard for portable fire extinguishers (NFPA, 1998) and the NFPA 12A standard for Halon 1301 systems (NFPA, 1997).[2] By specifying that the only permissible disposal options for halons are recovery, recycling, or destruction; and by requiring in effect that halon recovery and recycling occur only through the use of equipment achieving maximum recovery efficiencies currently available, the March 5 rule was intended to reduce emissions of halons to the lowest achievable level during recovery and recycling, and to maximize halon recapture and recycling. Thus, enforcement of this rule should lead to a great reduction, if not virtual elimination, of halon emissions attributable to the above-described transfer losses from non-closed halon recovery systems. As noted earlier, all halon recovery and recycling equipment currently on the market achieves efficiencies of 98 percent or greater. Therefore, the remaining environmental benefits achievable by further regulation of halon recovery and recycling practices are extremely small.

E. Discussion and Conclusion

Section 608 of the CAA provides the statutory basis under which today's action has been contemplated. That section directs EPA to issue regulations which ''reduce the use and emission of [ozone depleting] substances to the lowest achievable level'' and ''maximize the recapture and recycling of such substances.'' In applying these standards concerning use, emissions and recycling, EPA considers both technological and economic factors. The phrases ''lowest achievable level'' and ''maximize * * * recapture and recycling'' are not defined in the Act. EPA does not believe that these standards are solely technological in nature, but rather, include a role for economic factors in determining the lowest achievable levels and maximum amount of recapture and recycling. EPA therefore considers in an appropriate manner the technology available and potential benefits, among other factors, in establishing its regulatory programs under section 608. EPA believes that the language of the CAA and the legislative history of section 608 both support its approach. For a further discussion of this approach, see 58 FR 28667.

Up to 1% of halon emissions in North America, prior to the March 5 rule, was attributable to halon transfers that were performed using non-closed halon recovery systems (EPA, 1998)—that is, the inefficient halon transfer methods or systems whose use it would be the objective of an equipment certification program to eliminate. This suggests that the maximum environmental gain achievable by the elimination of the use of non-closed halon recovery systems and methods is up to 1% of annual domestic halon emissions. However, the March 5 rule established requirements that reduce the use and emission of halons, and maximize their recapture and recycling. Included in the requirements of the March 5 rule were provisions (40 CFR 82.270 (d) and (e)) regarding halon disposal with a twofold intent relevant to halon recovery and recycling. First, in specifying disposal practices for halons and halon-containing equipment, the Agency established that recovery and recycling (as well as halon destruction by approved methods) are the only permissible disposal options for halons. Second, the Agency intended to establish that recovery and recycling must be performed only through the use of closed halon recovery systems. Research has indicated that the majority of halon closed recovery systems in use today, as well as all units currently sold in this sector, meet or exceed industry standards that require minimum recovery efficiencies of 98% (EPA, 1998). Therefore, by specifying that the only permissible disposal options for halons are recovery, recycling, or destruction; and by requiring in effect that halon recovery and recycling occur only through the use of equipment achieving maximum recovery efficiencies currently available, EPA believes that the March 5 rule effectively reduces emissions of halons to the lowest achievable level during recovery and recycling, and maximizes their recapture and recycling.

As the objective of a halon recovery and recycling equipment certification program is to verify that all such equipment is capable of minimizing emissions, EPA finds that this objective will be met through the regulatory mechanism of the March 5 rule. Furthermore, as the objective of a requirement to use only certified equipment is to eliminate the use of equipment that does not meet current standards, EPA finds that this objective will also be met through the regulatory

[2] The NFPA 10 and NFPA 12A standards were cited because they prescribe the use of closed halon systems for halon transfers. Specifically, NFPA 10, the voluntary industry standard for portable fire extinguishers, including halon-containing portable fire extinguishers, states that the ''removal of Halon 1211 from fire extinguishers shall be done only using a listed halon closed recovery system. The removal of agent from other halogenated agent fire extinguishers shall be done only using a closed recovery system...'', where a closed recovery system for halons and halogenated agents is defined as a ''system that provides for the transfer of halogenated agents between fire extinguishers, supply containers, and recharge and recovery containers so that none of the halogenated agent escapes to the atmosphere'' (NFPA, 1998). NFPA 12A states that the ''charging or recharging of cylinders or the removal or transfer of agent should be done using a closed loop system. A closed loop system permits transfer of halon between supply cylinders, system cylinders, and recovery cylinders, with only minor loss of halon to the atmosphere'' (NFPA, 1997).

It has been brought to EPA's attention that the language in the NFPA 10 and NFPA 12A standards is not fully consistent with the intent of the provisions in 40 CFR 82.270(d) and (e). EPA will propose an amendment to the March 5 rule to clarify that in all cases, only a halon closed recovery system may be used in the transfer of halons during halon recovery and recycling operations, and that the requirement to use only a halon closed recovery system during halon recovery and recycling operations applies for all halons listed as group II, Class I ozone-depleting substances, and all their isomers.

mechanism of the March 5 rule. Therefore, EPA determines that it is neither necessary nor appropriate under section 608(a)(2) of the Act to issue a proposed rule requiring the certification of recycling and recovery equipment for halons; and further, that it is neither necessary nor appropriate under that section to require that halons be removed only through the use of certified equipment at this time. Further information and discussion relevant to EPA's decision may be found in the halon recovery/recycling equipment study mentioned above (EPA, 1998), as well as in associated materials, all placed in the docket for this determination. Nothing in this determination should affect any existing legal requirements regarding halons, and this determination does not preclude future regulatory action regarding equipment certification, or other aspects of halon use, should information pointing to significant environmental benefit be produced.

F. References

National Fire Protection Association (NFPA), 1998. NFPA 10 Standard for Portable Fire Extinguishers. 1988 Edition. National Fire Protection Association, Quincy, MA. 56 pp.

NFPA, 1997. NFPA 12A Standard on Halon 1301 Fire Extinguishing Systems. 1997 Edition. National Fire Protection Association, Quincy, MA. 57 pp.

EPA, 1998. Assessment of the Need for a Halon Recovery/Recycling Equipment Certification Program. Draft report prepared for the Stratospheric Protection Division, U.S. Environmental Protection Agency, Washington, D.C. 17 pp.

United Nations Environment Program (UNEP), 1994. Montreal Protocol on Substances that Deplete the Ozone Layer—Report of the Halon Fire Extinguishing Agents Technical Options Committee, December, 1994. UNEP Ozone Secretariat, Nairobi, Kenya. 174 pp.

UNEP, 1998. Montreal Protocol on Substances that Deplete the Ozone Layer—Technology and Economic Assessment Panel, April 1998 Report. UNEP Ozone Secretariat, Nairobi, Kenya.

III. Administrative Requirements

A. Executive Order 12866

Executive Order 12866 (58 FR 51735, October 4, 1993) provides for interagency review of ''significant regulatory actions.'' It has been determined by the Office of Management and Budget (OMB) and EPA that this action—which is a determination that requiring the certification of equipment used in halon recovery and recycling, and requiring that halons be removed from halon-containing equipment only through use of certified recovery and recycling equipment, is not necessary or appropriate—is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies, when developing regulations, consider the potential impact of those regulations on small entities. Because this action is a determination that requiring the certification of equipment used in halon recovery and recycling, and requiring that halons be removed from halon-containing equipment only through use of certified recovery and recycling equipment, is not necessary or appropriate, the Regulatory Flexibility Act does not apply. By its nature, this action will not have an adverse effect on the regulated community, including small entities.

C. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

D. Paperwork Reduction Act

This action does not add any new requirements or increase burdens under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Unfunded Mandates Reform Act

It has been determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector, in any one year.

F. Executive Order 13045—Children's Health

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

This action is not subject to E.O. 13045 because it is not a rule and is not likely to result in a rule.

IV. Judicial Review

Because this direct final determination is of nationwide scope and effect, under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of this action in the **Federal Register**.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: July 31, 1998.

Carol M. Browner,

Administrator.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 98–36; DA 98–1553]

Assessment and Collection of Regulatory Fees for Fiscal Year 1998

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In a rule published on July 1, 1998, the Commission revised its Schedule of Regulatory Fees in order to recover the amount of Regulatory Fees that Congress has required it to collect for fiscal year 1998. This order establishes the dates when these regulatory fees must be paid.

DATES: Annual regulatory fees are due during the period September 14, 1998, through September 18, 1998, for all annual fee payors. Beginning on September 14, 1998, for applicants who pay fees in advance in combination with their application fee for new, renewal and reinstatement authorizations in the private wireless services.