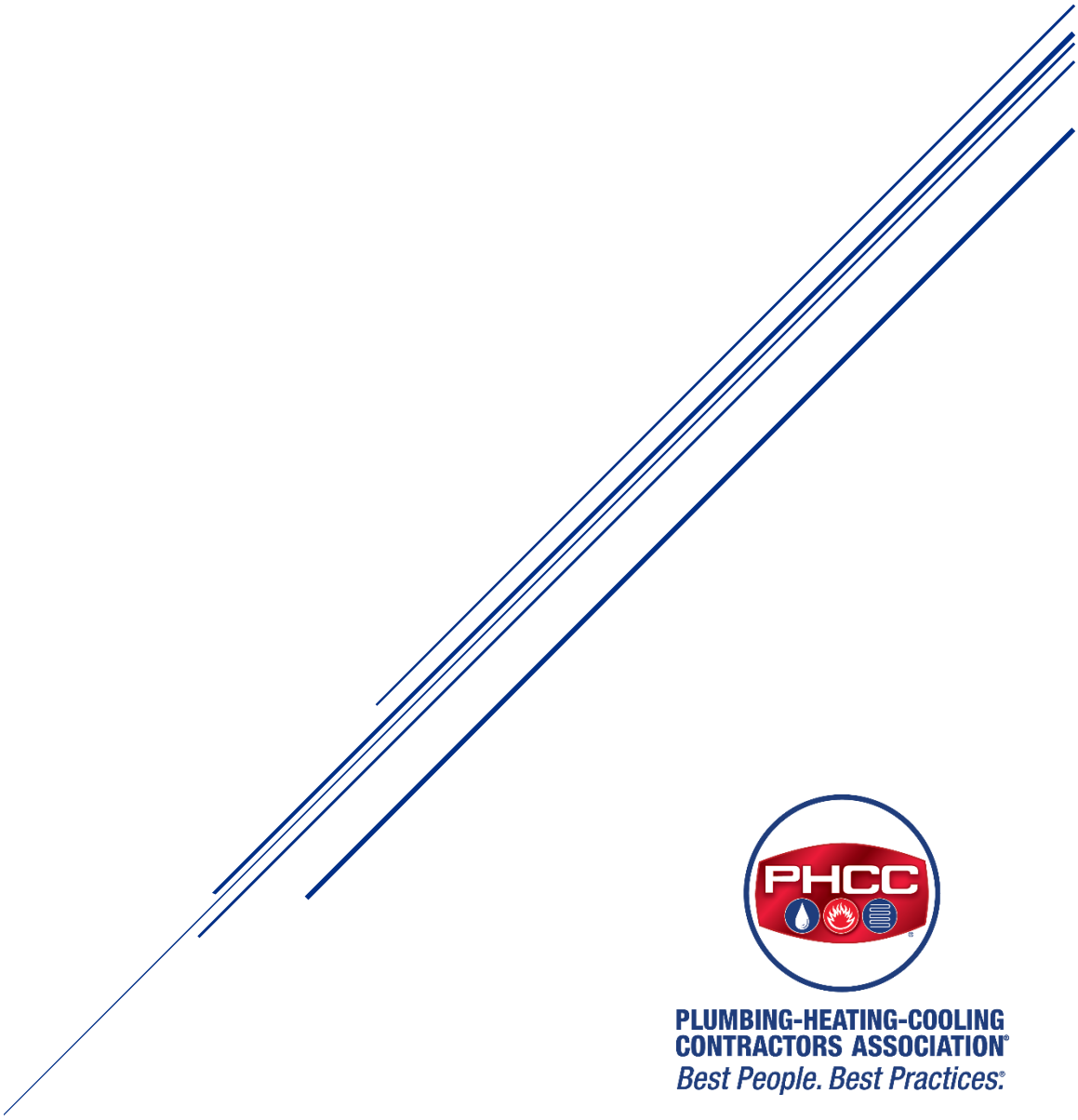
EPA TAKES COMMENTS ON REFRIGERANT RULES

By Chuck White, Vice President of Regulatory Affairs



PLUMBING-HEATING-COOLING CONTRACTORS ASSOCIATION®
Best People. Best Practices.®

As of October 25, 2018

The U.S. Environmental Protection Agency (EPA) established rules for the safe handling of refrigerants in May of 1993. Since that time the rule has been modified numerous times and, it is safe to say, the world of refrigerants has changed dramatically. In November 2016 EPA published a rule updating and extending existing refrigerant management requirements, which previously applied only to Ozone Depleting Substances (ODS refrigerants), to non-exempt substitute refrigerants such as HFCs and HFOs. This included extending the "appliance maintenance and leak repair" provisions 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. 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.

The 2016 Rule, effective January 1, 2017, has started a series of legal questions both challenging and supporting EPA in the rulemaking. 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 (the cases have been consolidated) challenging the statutory authority of EPA. 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 which if granted would pull back the rule for possible modifications.

At issue is an EPA interpretation of essentially two subsections of Section 608 language. In section 608 (a), EPA is required to establish standards and requirements (including all related leak repair documentation) regarding use and disposal of class I and class II substances (ODS refrigerants included) during the service, repair, or disposal of air-conditioning and refrigeration appliances or Industrial Process Refrigeration (IPR). This section also includes requirements to reduce the use and emission of ODS to the lowest achievable level, and to maximize the recapture and recycling of such substances and allows that the regulations may include requirements to use alternative substances (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 alternatives.

Section 608(c) contains what is commonly called the "venting prohibition." Section 608(c)(1), 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 "de minimis" releases associated with good faith attempts to recapture and recycle or safely dispose of such a substance.

Section 608(c)(2) expanded this in November 1995 to apply to any substitute substance for a class I or class II substance unless the Administrator determines that a substance is exempt, meaning that venting, releasing, or disposing of such substance does not pose a threat to the environment (thus creating exempt and non-exempt substitutes.) 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 and EPA is not proposing to revisit it.

In the 2016 Rule, EPA interpreted Section 608 of the Clean Air Act 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 previous case law 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. EPA grounded its authority for the extension of refrigerant requirements to non-exempt substitute refrigerants largely on Section 608(c) in large part because 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.

EPA believed at the time 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.
- 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.
- Section 301(a) provides authority for EPA to "prescribe such regulations as are necessary to carry out [the EPA Administrator's] functions" under the Act.
- 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.

In accordance with the Administrator's statement in the August 10, 2017 EPA has reassessed its decision to extend those requirements to non-exempt substitutes and the interpretations supporting that extension. EPA's ability to revisit existing regulations is well-grounded in the law. The main considerations leading to the Agency's decision to reassess the 2016 are questions about whether extending the full set of subpart F requirements exceeded EPA's statutory authority under CAA section 608. The conflict can be summarized with the following points:

- The requirements (prior to 2016), 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 but 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.

The inclusion of the term "substitutes" in section 608(c) but not section 608(a), contrasted with the express references to ODS in both subsections, 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 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 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 Congress authorized EPA to issue refrigerant management regulations for substitutes.

In light of these considerations, EPA is proposing to change some of the interpretations that supported the 2016 Rule. Specifically, EPA is proposing to conclude:

- The extension of the leak repair requirements to non-exempt substitute refrigerants exceeds EPA's legal authority and furthermore is not necessary to fulfill the purposes of section 608(a).
- 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.
- EPA is 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.

- Amend the 2016 Rule 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 requesting comment on whether the agency should rescind the entire extension of the subpart F requirements to non-exempt substitutes.

EPA is proposing to change aspects of the interpretation of CAA section 608(c) that it adopted in the 2016 Rule. Specifically, EPA believes that the extension of the leak repair requirements to non-exempt substitute refrigerants exceeded its authority. 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). 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.]

EPA stated in the 2016 Rule that it:

- 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…including the leak repair requirements, as applicable.

EPA is proposing to conclude that this 2016 interpretation exceeds the scope of the Agency's authority under section 608(c)(2) and is therefore proposing to return to the interpretation used prior to the 2016 Rule. Reasons given for revising the leak rules include:

- 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 the above 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. Further, EPA has recognized that refrigeration and air-conditioning equipment often does leak, and that this is particularly likely for larger and more complicated appliances like those subject to the subpart F leak repair provisions. 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.

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, 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 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 in order to ensure that recycling and recovery equipment on the market is capable of limiting emissions.

Similarly, disposing of the appliance without removing the refrigerant 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.” 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.

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" and that "educating technicians on how to contain and conserve refrigerant effectively, curtailing illegal venting into the atmosphere" was one of the primary reasons many technicians commented in support of the certification program.

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. 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. 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.

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. 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 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.

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.

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.

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:

- 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.
- 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.
- 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.

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 did note 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. EPA is proposing to withdraw the extension of the 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.

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.

- Congress specifically required EPA to issue regulations for class I and class II substances that would meet certain statutory purposes set forth in section 608 (a).
- Congress did not list substitutes for coverage by those requirements.
- 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). 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.

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 to non-exempt substitute refrigerants.

EPA requests comment on the frequency of appliances being contaminated by mixtures of ODS and substitute refrigerants, and the resulting equipment damage.

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.

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 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.

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.

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. 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. Therefore, EPA is proposing to take final action to extend the compliance date 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. 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.

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.

EPA requests comment on the proposal to extend the date by which appliances containing non-exempt substitute refrigerants must comply.

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, 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.

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 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. EPA requests comment on whether it should continue to explicitly take costs into consideration in the final rule, and if so how.

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.

During the development of this notice of proposed rulemaking one Federal Department indicated that they had 608 certified technicians working on 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 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.

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.

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.

EPA requests comment on whether there are any costs associated with rescinding those requirements as they apply to non-exempt substitute refrigerants.

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.

The full text of the document is here and the docket notice is here.