

subsidiaries would be “akin to those within one organization.” Therefore, EPA limited the proposed exception to wholly-owned subsidiaries.

EPA received comments regarding the proposal to allow the transfer of unreclaimed used refrigerant between two wholly-owned subsidiaries of the same holding company. One commenter noted that a holding company is a company that exists solely to control a partial or complete interest in other companies. The commenter delineated the type of company classified as a holding company from those considered to be a parent company by noting that by comparison, “a parent company generally has a business purpose beyond merely holding a partial or complete controlling interest in other companies.” The commenter did not believe that there is any environmental benefit that could occur by limiting the exception exclusively to holding companies or their subsidiaries. Another commenter distinguished between holding companies and chemical manufacturers making a similar point with regard to their business interests.

EPA received several comments questioning why EPA believes it is necessary to limit transfers to wholly-owned subsidiaries. One commenter, stated that EPA’s concerns regarding the transfers of refrigerant are inapplicable in the case of subsidiaries that are majority-owned and/or controlled by a parent corporation. For the purposes of refrigerant transfers, the commenter stated that the ownership dynamic in the case of two majority-owned and/or majority-controlled subsidiaries is no different from that of two wholly-owned subsidiaries. The commenter suggested that EPA revise the regulatory text to permit the transfers of unreclaimed refrigerant between majority-owned and/or controlled entities.

Another commenter, provided a lengthy discussion and several examples of transfers that would not be permitted if the provisions were adopted as proposed. Some of these scenarios included transfers involving the parent company, transfers involving a combined batch of refrigerant that mixes refrigerant drawn from equipment with various ownership within the corporate family, and transfers amongst various majority-owned subsidiaries.²

² EPA has responded fully to the scenarios identified in these comments. However, due to the length of the comments, EPA does not believe it is practical to provide a detailed summary of each scenario described by the commenter in this preamble. A complete copy of the comments identified by docket number VIII-I-13 as well as the accompanying “Response to Comments

The commenter noted that even though it owns less than 100% of some of its subsidiaries, the company has a strong interest in not damaging the refrigeration appliances, particularly those that are located at the parent facility and operated by the parent company personnel. The commenter stated that in order to use its supply of R-12 efficiently, it would like to store the recovered refrigerant together, regardless of whether it comes from an appliance owned by the parent or owned by a subsidiary. The parent would then be able to transfer the refrigerant to another plant owned either by the parent or by a subsidiary. The commenter indicated that what is important is that the knowledge of the refrigerant quality is transferred with the refrigerant, and therefore EPA should draft language that states that transfers between and amongst parent companies, wholly-owned subsidiaries and majority-owned subsidiaries, should be permitted.

The intended effect of EPA’s proposal was to create an exception from the sales restriction for transfers that were “akin to those within one organization.” EPA agrees with the commenters that transfers between a parent company³ and its subsidiaries and amongst the subsidiaries of the same parent company should be permitted regardless of whether the parent company is a holding company. EPA believes that transfers between subsidiaries having the same ownership as well as transfers between a subsidiary and the parent company are indeed akin to those within one organization. The owner, being the parent company, has a financial investment and incentive to protect the well being of their air-conditioning and refrigeration equipment, regardless of which subsidiary holds and operates the equipment. Therefore, through this action, EPA has modified the regulatory language at § 82.154(g) to permit transfers between a parent company and one of its subsidiaries or between subsidiaries having the same parent company. Similarly, EPA has added a definition of the term “parent company” at § 82.152.

In light of the points made, the Agency has decided that it would be

Document” is located in the EPA Air Docket: A-92-01.

³ For purposes of the refrigerant sales restriction at § 82.154(g), the following definition apply: a “parent company” means an individual, corporation, partnership, association, joint-stock company, or an unincorporated organization that can direct or cause the direction of management and policies of another entity, through the ownership of shares or otherwise.

more consistent with the Agency’s intent, to broaden the exception to the sales restriction for the transfers of refrigerant. In doing so, majority-owned and majority-controlled subsidiaries will be treated the same as wholly-owned subsidiaries. EPA’s rationale for this decision is based on common financial interests of majority owned and majority controlled subsidiaries. EPA agrees with the commenters and believes that transfers among these subsidiaries are “akin to transfers within one company.” These subsidiaries have a strong economic interest in not damaging the appliances owned by another subsidiary. EPA agrees with the commenters that majority-owned and majority-controlled subsidiaries should be treated the same as wholly-owned subsidiaries for the purposes of refrigerant transfers. Therefore, through today’s action, EPA is making the necessary changes to the regulatory text at § 82.154(g) and § 82.152 to ensure that such transfers can legally occur without prior reclamation of the refrigerant.

4. Transfers Between Federal Facilities

While EPA proposed to permit the transfer of unreclaimed refrigerant between subsidiaries, the Agency did not address the transfer of refrigerants between different Federal facilities owned by the same Federal agency. EPA received comment from the Department of Energy (DOE) requesting that the sales restriction exemption for the transfer of refrigerant between subsidiaries be extended to transfers between government-owned facilities including government-owned contractor-operated facilities. DOE stated that the majority of their facilities are operated by contractors, and the transfers between these entities are akin to transfers between subsidiaries of a parent company.

EPA believes that it is reasonable to consider the transfer of refrigerant between federally-owned facilities as akin to transfers between subsidiaries of a parent company. Therefore EPA has added an exemption to the prohibition at § 82.154(h)(4) to allow for the transfer of refrigerant between facilities owned by the same Federal agency or department. This exemption will hold as long as the facilities involved in the transfer of used refrigerant are owned by the same Federal agency or department. The facilities need not be operated by employees of the Federal facility or department, as long as such facilities are ultimately under the control of the same Federal agency or department.