

##### 5. Other Comments and Amendments to the Refrigerant Sales Restriction

EPA requested comments on the appropriateness of modifying the sales restriction to limit the types of refrigerants available to technicians certified to service and maintain MVACs under section 609. EPA received one comment regarding § 82.154(m)(2) and (8). The commenter stated that EPA intended to reference § 82.154(n) not (m) and that the two provisions would expire prior to promulgation and should therefore not be promulgated.

EPA would like to clarify that the Agency was correct in referencing § 82.154(m). In the May 14, 1993, final rulemaking, EPA promulgated the prohibition against the sale and distribution of class I or class II substances for use as a refrigerant at § 82.154(n). Subsequent amendments to the regulations resulted in the removal of the prohibition against the sale and distribution of class I or class II substances for use as a refrigerant from §§ 82.154(n) through 82.154(m)(2) and (8) (see regulatory text amendments at 59 FR 55912; November 9, 1994).

In today's action, EPA is amending the sales restriction regulatory text at § 82.154(m), by deleting the two expired subparagraphs ((m)(2) and (m)(8)) and by adding two subparagraphs at (m)(2) and (m)(4). Former subparagraphs (m)(2) and (m)(8) permitted "grandfathered" technicians to purchase refrigerant until May 15, 1995. Since these subparagraphs have expired, this deletion makes no substantive change to the regulations. The subparagraphs that EPA is adding contain exceptions to the sales restriction for persons who employ certified technicians and who comply with the recordkeeping requirement at § 82.166(b). Such persons may purchase refrigerants or have designated representatives purchase refrigerants. As proposed, EPA is providing an exemption to the refrigerant sales restriction for persons who employ at least one section 609 certified technician, provided that the refrigerant is either R-12 or a SNAP-approved substitute for MVACs.

EPA received comments indicating that the prohibitions, at § 82.154(g) and (h), on the sale of used refrigerant that has not been reclaimed by an EPA-certified reclaimer are nearly identical and should be combined. EPA also received one comment requesting that the Agency clarify that refrigerant distributed from salvage facilities be subject to the reclamation requirements for the sale of used refrigerants at § 82.154(g) and (h).

EPA believes that the revised definition of reclaim warrants the combination of paragraphs (g) and (h). Therefore, EPA has combined § 82.154(g) and (h) accordingly. In addition, EPA has always intended the sales restriction on used refrigerant to apply to the sale or distribution or the offer for sale or distribution as specified at § 82.154(m). Therefore, as a point of clarification, EPA has amended § 82.154(g) to specifically include the prohibition to the distribution or offer to distribute used refrigerant. EPA believes that this amendment of § 82.154 simplifies the prohibition.

EPA is also amending § 82.154(m) to include a reference to the § 82.166(b) exception for persons who employ at least one section 608 certified technician. Although the NPRM did not include the reference to § 82.166(b) in proposed § 82.154(m), EPA has included it here in order to enhance the utility of the regulations and make them easier to use by the regulated community. This amendment only references currently existing regulatory language, and does not alter in any way the rights or obligations of any regulated party; therefore, it constitutes a minor technical change.

##### *E. Motor Vehicle Air Conditioner (MVAC)-Like Appliances*

MVAC-like appliances are essentially identical to motor vehicle air conditioners (MVACs), which are subject to regulations promulgated under section 609 of the Act. However, because MVAC-like appliances are contained in off-road vehicles, they are not regulated under section 609. Rather, they are subject to regulations promulgated under section 608 of the Act. EPA believes that if the appliance is similar to an MVAC in all relevant respects, it should be treated similarly to an MVAC. Hence, EPA proposed to modify the definition of MVAC-like appliance. Currently, § 82.152 states that, *MVAC-like appliance* means mechanical vapor compression, open-drive compressor appliances used to cool the driver's or passenger's compartment of an off-road motor vehicle. This includes the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using R-22 refrigerant. (58 FR 28713).

Commenters sought clarification on what types of appliances the Agency considers as "MVAC-like." The Agency received comments questioning whether § 82.152 can be interpreted to include air-conditioners on mowing, quarrying, and heavy-duty off-road vehicles;

planes; boats; and trolleys. Currently the definition of "MVAC-like appliance" specifically includes agricultural or construction equipment that does not use HCFC-22 refrigerant. EPA believes that mowing and quarrying appliances, planes, boats, and trolleys, that operate with open-drive compressors that are used to cool the driver's or passenger's compartments, and do not use HCFC-22 refrigerant, are similar to MVACs in all relevant respects and should be treated similarly to an MVAC appliance.

EPA believes, however, that the definition of MVAC-like should include an upper limit on the amount of refrigerant contained in the appliance. Without an upper limit, the definition could be construed to include appliances that are not similar to an MVAC in all relevant respects. For example, a chiller located on a marine vessel could be mistakenly considered MVAC-like. EPA believes that an upper limit would prevent any possible confusion. To ensure consistency between what is an "MVAC" and what is "MVAC-like," the refrigerant limit for MVAC-like appliances must be consistent with the largest amount of refrigerant contained in most MVACs. EPA discussed in the NPRM that EPA believes that all MVACs contain less than 20 pounds of refrigerant. Therefore, the adoption of a 20-pound limit for MVAC-like appliances should not exclude any appliance that reasonably should be considered MVAC-like. EPA further stated that placing a charge limit into the definition would provide clarity to those who are unsure about whether a particular appliance qualifies as MVAC-like, specifically where the charge is larger than that of the average automobile air conditioner, yet smaller than that of the average bus air conditioner. Therefore, EPA proposed to add a 20-pound ceiling to the definition of MVAC-like appliance.

EPA requested comment on amending the definition of MVAC-like appliances and whether a ceiling of 20 pounds represents an appropriate cutoff. EPA did not receive any comments or concerns indicating that the 20-pound limit was inappropriate based on the existence of appliances that should meet this definition and contain a larger refrigerant charge. Therefore, through this action, EPA is adding a 20-pound limit to the definition of MVAC-like appliances.

##### *F. Changes to the ARI Standard 740 Test Procedure for Refrigerant Recycling and Recovery Equipment*

As proposed, EPA is adopting several changes to the current test procedure for refrigerant recycling equipment found