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Environmental + Utilities

October 2016

EPA Turns Up the Heat on Refrigerant Regulation

Refrigeration and cooling systems face expanded and tighter regulation under a final rule recently signed by EPA Administrator Gina McCarthy. The rule revises and expands EPA's regulations for "Ozone-Depleting Substances" (ODS), which erode the stratospheric ozone layer that protects the Earth from harmful ultraviolet radiation.

Most ODS are used as refrigerants in industrial process refrigeration (e.g., in chemical, electronics, and food manufacturing), commercial refrigeration (e.g., supermarkets, refrigerated storage and transport), or comfort-cooling/air conditioning systems. Since the 1990s, the ODS regulations (40 CFR Part 82) have mandated various practices to minimize or prevent the release of refrigerants during operation, maintenance and disposal of refrigerant-containing equipment, and to maximize refrigerant recapture and recycling. The regulations also require certification of technicians working with ODS systems, and subject to certain exemptions, restrict ODS sales to certified technicians.

But here's the tricky part: not only does the recently revised rule expand and tighten these requirements for ODS, it also extends them to non-ODS refrigerants used as substitutes for ODS. This extension is based not on the protection of the ozone layer, but on preventing global warming caused by such substitutes. The extension primarily targets hydrofluorocarbons (HFCs), a family of non-ODS refrigerants that have been widely used to replace ODS but have since been found to have significant global warming potential.[1]

In addition to extending the ODS regulations to non-ODS refrigerants, the recent revisions also include the following:

- Lowered thresholds for leak repair requirements: Under the existing regulations, the owner or operator of a refrigeration and air conditioning system that contains at least 50 pounds of refrigerant must repair and test the system or retire it when it is found to have leaked beyond certain annualized rates. Here are the existing and revised leak rates thresholds:

Type of equipment	Under existing regulations	Under revised regulations
Industrial process refrigeration	35%	30%
Commercial refrigeration	35%	20%
Comfort cooling	15%	10%

- New requirements for leak inspections or automatic detection monitors: Cooling systems that have exceeded the leak rates specified above must now be inspected either quarterly (for industrial process refrigeration and commercial refrigeration systems with a full charge of at least 500 pounds) or annually (for such systems with a full charge of at least 50 pounds but less than 500 pounds, and for comfort cooling systems). These inspection requirements can be avoided by continuously monitoring the system with an automatic leak detector that is audited or calibrated annually.
- Release reporting for elevated release levels: If a system with a full charge of at least 50 pounds of refrigerant has leaked 125% or more of the full charge in a calendar year, the

owner or operator must submit a report to EPA. The report must describe efforts to identify the leaks and repair the equipment.

- Recordkeeping for refrigerant recovery: Technicians must now keep a record of refrigerant recovered during disposal of refrigerant and cooling systems with a full charge of 5-50 pounds. (This closes a gap in the existing regulations, which had not required such recordkeeping for this size category.)
- Updated and expanded certification requirements for refrigeration technicians.

The revisions also make extensive organizational and wording changes intended to improve readability.

The rule revisions have not yet been published in the Federal Register, but are scheduled to take effect January 1, 2017. Compliance deadlines for the various new requirements range from January 1, 2017 to January 1, 2019. In the meantime, court challenges to the rule – and particularly EPA's authority for expanding the rule to non-ODS – seem likely.

Note: EPA will hold a webinar this Wednesday, Nov. 2, 2016, 2:00-3:00 p.m. EDT to brief regulated parties on the revised regulatory requirements and compliance dates. Advance registration is required.

If you have any questions or would like to discuss this update further, please contact one of the following lawyers or another member of the Environmental + Utilities Group:

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[1]The extension of the ODS regulations to non-ODS refrigerants does not apply to certain non-ODS substances that EPA had previously exempted on a case-by-case basis from a provision that applies specifically to both ODS and non-ODS refrigerants (a prohibition on deliberate venting of refrigerant during equipment maintenance, servicing, repair or disposal).