

Issue Update: Revised Recommended Language for Verification Contracts and Statements for Recycling Appliances and Vehicles

Executive Summary:

Date: October 23, 2017

This issue update supplements ISRI’s existing appliance recycling guidelines¹, pending revised guidelines, and supersedes Appendix D, Sample Certification and Contract Language, of the existing guidelines. This update provides revised recommended language for verification contracts and statements used in transactions of end-of-life appliances and vehicles for recycling. The updated language is a modified version of Appendix D that incorporates new elements in U.S. EPA’s late 2016 Refrigerant Management Update Rule. If your verification contracts and statements meet the relevant requirements of the revised regulations (shown below), then you do not need to change anything. Otherwise, please use the revised recommended language as soon as possible and by January 1, 2018.

In late 2016, U.S. EPA issued the Refrigerant Management Update Rule² for Recycling and Emissions Reduction at [40 CFR Part 82, Subpart F](#) under the Clean Air Act. The recycling of small appliances, motor vehicle air conditioners (MVACs), and MVAC-like appliances (henceforth, “appliances”) is subject to these Subpart F regulations. The major revisions included the following:

- Extending the definition of refrigerant to include any substance used as a refrigerant—both ozone-depleting (e.g., CFCs and HCFCs) and non-ozone-depleting (e.g., R-134a) substances;
- Extending recycling requirements previously applicable to only ozone-depleting substances also to non-ozone-depleting substances (in parallel with revised definition of refrigerant);
- New prohibitions respecting de minimis releases from appliances;
- Reorganization of the regulatory text to improve readability; and
- More-specific language for verification contracts and statements (discussed further below).

Of particular note, the preamble to the Refrigerant Management Update Rule³ contained the following:

“EPA interprets its regulations such that items that have had the entire refrigerant circuit removed, such as the outer housing of an air conditioner or the structural shell of a refrigerator, are not subject to the safe disposal regulations, as these items do not meet the definition of appliance. Similarly, shredded material, baled scrap, or crushed cars are not subject to the safe disposal regulations. The person responsible for compliance with the safe disposal regulations is the entity upstream that conducted the final processing where the appliance was shredded, crushed, flattened, baled, or otherwise demolished and where the refrigerant would have been previously recovered in accordance with the regulations.”

Revised Regulatory Language for Verification Contracts and Statements

As noted above, the Subpart F revisions added more-specific language for verification contracts and statements. Table 1 presents the previous regulatory text for verification language (left) and the revised

¹ ISRI. “Compliance Guideline: Refrigerant Recycling Requirements under the Clean Air Act”. March 1999.

² [81 Fed. Reg. 82272–82395](#) [2016-24215]

³ Id. 82309

regulatory text for verification language (right) in juxtaposition to show the differences between them. It is important to note that “refrigerant” previously meant only ozone-depleting substances whereas “refrigerant” now means any substance used as a refrigerant. The highlighted revised text represents a new element (discussed next) for verification contracts or statements, with any relevant previous regulatory text also highlighted to emphasize the change.

Verification contracts now must specify that the supplier will either properly recover any remaining refrigerant from appliances per the recovery requirements prior to their delivery for recycling or verify that refrigerant had been properly recovered from the appliances prior to receipt by the supplier.

In conjunction with the use of verification contracts and statements, recyclers (i.e., “final processors”) must notify suppliers of the requirements (i.e., Part 82.155(a)) for proper recovery of any remaining refrigerant from appliances prior to their delivery for recycling.

If all refrigerant had leaked out of an appliance to be delivered for recycling because of a system failure, accident, or other unavoidable occurrence, the recycler must obtain a signed statement from the supplier that all refrigerant had leaked out prior to delivery and that recovery was not possible.

Revisions to Recommended Language for Verification Contracts and Statements

The regulatory revisions noted in Table 1 affect the language to be used in verification contracts and statements going forward. Table 2 presents in juxtaposition the existing guidelines’ recommended language for verification contracts and statements⁴ (left) and revised recommended language based on the existing language and the revised regulations (right), using Table 1’s highlighting scheme.

The revised recommended language for verification contracts and statements uses the new expanded definition of “refrigerant”, which now includes (without limitation) non-ozone-depleting HFCs (e.g., R-134a) as well as ozone-depleting CFCs and HCFCs.

The revised recommended language for verification contracts has a new specification that the Seller either will recover any remaining refrigerant from the appliance or shipment of appliances under the contract in accordance with 40 CFR Part 82.155(a) prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the Seller.

The revised recommended language for verification statements has new references to the requirements for proper refrigerant recovery at 40 CFR Part 82.155(a) and to the meaning at 40 CFR Part 82.155(b)(2)(iii) of refrigerant that had “leaked out” and could not possibly be recovered.

Recommended Language for Verification Contracts and Statements

Exhibit 1 (below) presents the revised recommended language for verification contracts and statements, similar to Appendix D of the existing guidelines, for easy copying and incorporation into existing or new verification documents.

If you have any questions about the verification documents or the Subpart F regulations, please contact David Waggoner, Chief Scientist / Director of Environmental Management, at dwaggoner@isri.org or 202-662-8533.

⁴ Id. 1, Appendix D

Table 1: Comparison of Previous and Revised Verification Requirements

§82.156 Required practices. (Previous)	§82.155 Safe disposal of appliances (New Title)
<p style="text-align: center;">N/C</p>	<p>Until January 1, 2018, this section applies only to disposal of appliances containing class I and class II refrigerants [CFCs and HCFCs]. Starting on January 1, 2018, this section applies to disposal of appliances containing any class I or class II refrigerant or any non-exempt substitute refrigerant [e.g., HFC-134a].</p>
<p>(g) All persons recovering refrigerant from MVACs and MVAC-like appliances for purposes of disposal of these appliances must reduce the system pressure to or below 102 mm of mercury vacuum, using equipment that meets the standards set forth in §82.158(l).</p> <p>(h) All persons recovering the refrigerant from small appliances for purposes of disposal of these appliances must either:</p> <p style="padding-left: 40px;">(1) Recover 90% of the refrigerant in the appliance when the compressor in the appliance is operating, or 80% of the refrigerant in the appliance when the compressor in the appliance is not operating; or</p> <p style="padding-left: 40px;">(2) Evacuate the small appliance to four inches of mercury vacuum.</p>	<p>(a) Persons recovering refrigerant from a small appliance, MVAC, or MVAC-like appliance for purposes of disposal of these appliances must evacuate refrigerant to the levels in §82.156(b) through (d) using recovery equipment that meets the standards in §82.158(e) through (g), or 40 CFR part 82 subpart B, as applicable.</p>
<p>(f) Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, room air conditioning, MVACs, or MVAC-like appliances must either:</p> <p style="padding-left: 40px;">(1) Recover any remaining refrigerant from the appliance in accordance with paragraph (g) or (h) of this section, as applicable; or</p> <p style="padding-left: 40px;">(2) Verify that the refrigerant has been evacuated from the appliance or shipment of appliances previously. Such verification must include a signed statement from the person from whom the appliance or shipment of appliances is obtained that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with paragraph (g) or (h) of this section, as applicable. This statement must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered or a contract that refrigerant will be removed prior to delivery.</p>	<p>(b) The final processor—i.e., persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, MVAC, or MVAC-like appliance—must either:</p> <p style="padding-left: 40px;">(1) Recover any remaining refrigerant from the appliance in accordance with paragraph (a) of this section; or</p> <p style="padding-left: 40px;">(2) Verify using a signed statement or a contract that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with paragraph (a) of this section. If using a signed statement, it must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered. If using a signed contract between the supplier and the final processor, it must either state that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with paragraph (a) of this section prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the supplier.</p>

Table 1: Comparison of Previous and Revised Verification Requirements

§82.156 Required practices. (Previous)	§82.155 Safe disposal of appliances (New Title)
<p>[(f)]</p> <p>(3) Persons complying with paragraph (f)(2) of this section must notify suppliers of appliances that refrigerant must be properly removed before delivery of the items to the facility. The form of this notification may be warning signs, letters to suppliers, or other equivalent means.</p>	<p>[(b)(2)]</p> <p>[(i)‡]...</p> <p>(ii) The final processor must notify suppliers of appliances that refrigerant must be properly recovered in accordance with paragraph (a) of this section before delivery of the items to the facility. The form of this notification may be signs, letters to suppliers, or other equivalent means.</p> <p>(iii) If all the refrigerant has leaked out of the appliance, the final processor must obtain a signed statement that all the refrigerant in the appliance had leaked out prior to delivery to the final processor and recovery is not possible. “Leaked out” in this context means those situations in which the refrigerant has escaped because of system failures, accidents, or other unavoidable occurrences not caused by a person's negligence or deliberate acts such as cutting refrigerant lines.</p>
<p>Notes:</p> <p>N/C = No comparison</p> <p>Highlighting indicates text of a new requirement/condition (right), as well as any relevant previous text (left).</p> <p>‡ “(i) It is a violation of this subpart to accept a signed statement or contract if the person receiving the statement or contract knew or had reason to know that the signed statement or contract is false.” This provision was previously found at 40 CFR Part 82.154(n) among the prohibitions in 40 CFR Part 82.154.</p>	

Table 2: Comparison of Previous and Revised Recommended Verification Language

Existing Recommended Contract Text	Revised Recommended Contract Text
<p>Option 1 -- By Contract</p> <p>This language may be used in contracts with regular suppliers, thus avoiding certification by shipment from these suppliers. The contract need not specify the name or address of the person actually recovering the refrigerant. The following contract language may be used:</p> <p>“Seller certifies that all refrigerant (including but not limited to chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs), as defined in § 608 of the Clean Air Act Amendments and 40 CFR Part 82) that has not leaked previously will be recovered from appliances to be delivered under this contract of sale prior to delivery. Seller further agrees to indemnify and hold (Company name) harmless from any claim, penalty, fine, fee, cost, attorney’s fees, or other liability resulting in whole or in part from seller’s breach of this certification.”</p>	<p>Option 1 -- By Contract</p> <p>This language may be used in contracts with regular suppliers, thus avoiding certification by shipment from these suppliers. The contract need not specify the name or address of the person actually recovering the refrigerant. The following contract language may be used:</p> <p>“Seller certifies that all refrigerant (including but not limited to chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs), as defined in 40 CFR Part 82, Subpart F, pursuant to the Clean Air Act Amendments), that has not leaked previously will be recovered from appliances to be delivered under this contract of sale prior to delivery. Seller further certifies that Seller either will recover any remaining refrigerant from the appliance or shipment of appliances under this contract in accordance with 40 CFR Part 82.155(a) prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the Seller. Seller further agrees to indemnify and hold (Company name) harmless from any claim, penalty, fine, fee, cost, attorney’s fees, or other liability resulting in whole or in part from seller’s breach of this certification.”</p>
Existing Recommended Statement Text	Revised Recommended Statement Text
<p>Option 2 -- Certification By Shipment/Item</p> <p>[COMPANY LETTERHEAD]</p> <p>Notwithstanding any warranty or limitation of warranty herein, Seller certifies that to the best of his knowledge, all refrigerant (including but not limited to chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs) as defined in § 608 of the Clean Air Act Amendments and 40 CFR Part 82) -- [Check One]</p> <p><input type="checkbox"/> that had not leaked previously has been recovered from the appliance or shipment of appliances delivered under this sale. The refrigerant has been removed by (name) _____, located at _____ (address) _____, on (day, month, year) _____.</p> <p><input type="checkbox"/> has leaked previously from the appliance or shipment of appliances delivered under this sale.</p>	<p>Option 2 -- Certification By Shipment/Item</p> <p>[COMPANY LETTERHEAD]</p> <p>Notwithstanding any warranty or limitation of warranty herein, Seller certifies that to the best of Seller’s knowledge, all refrigerant (including but not limited to chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs), as defined in 40 CFR Part 82, Subpart F, pursuant to the Clean Air Act Amendments) -- [Check One]</p> <p><input type="checkbox"/> that had not leaked previously has been recovered from the appliance or shipment of appliances delivered under this sale in accordance with 40 CFR Part 82.155(a). The refrigerant has been recovered by (name) _____, located at _____ (address) _____, on (day, month, year) _____.</p> <p><input type="checkbox"/> had “leaked out” (as defined in 40 CFR Part 82.155(b)(2)(iii)) of the appliance or shipment of appliances delivered under this sale prior to delivery and could not possibly be recovered.</p>

Table 2: Comparison of Previous and Revised Recommended Verification Language

<p>Seller further agrees to indemnify and hold [company name] harmless from any claim, penalty, fine, fee, cost, attorney’s fees, or other liability resulting in whole or in part from seller’s breach of this certification.</p> <p>Seller: _____ Company: _____ Address: _____ City, State, Zip Code: _____ _____ Authorized Signature: _____ Date Signed _____</p>	<p>Seller further agrees to indemnify and hold [company name] harmless from any claim, penalty, fine, fee, cost, attorney’s fees, or other liability resulting in whole or in part from seller’s breach of this certification.</p> <p>Seller: _____ Company: _____ Address: _____ City, State, Zip Code: _____ _____ Authorized Signature: _____ Date Signed: _____</p>
<p>Notes: Highlighting indicates text of a new requirement/condition (right), as well as any relevant previous text (left).</p>	

Exhibit 1: Revised Recommended Language for Contracts and Statements

Option 1 -- By Contract

This language may be used in contracts with regular suppliers, thus avoiding certification by shipment from these suppliers. The contract need not specify the name or address of the person actually recovering the refrigerant. The following contract language may be used:

“Seller certifies that all refrigerant (including but not limited to chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs), as defined in 40 CFR Part 82, Subpart F, pursuant to the Clean Air Act Amendments), that has not leaked previously will be recovered from appliances to be delivered under this contract of sale prior to delivery. Seller further certifies that Seller either will recover any remaining refrigerant from the appliance or shipment of appliances under this contract in accordance with 40 CFR Part 82.155(a) prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the Seller. Seller further agrees to indemnify and hold (Company name) harmless from any claim, penalty, fine, fee, cost, attorney’s fees, or other liability resulting in whole or in part from seller’s breach of this certification.”

Exhibit 1: Revised Recommended Language for Contracts and Statements

Option 2 -- Certification By Shipment/Item

[COMPANY LETTERHEAD]

Notwithstanding any warranty or limitation of warranty herein, Seller certifies that to the best of Seller's knowledge, all refrigerant (including but not limited to chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs), as defined in 40 CFR Part 82, Subpart F, pursuant to the Clean Air Act Amendments) -- [Check One]

that had not leaked previously has been recovered from the appliance or shipment of appliances delivered under this sale in accordance with 40 CFR Part 82.155(a). The refrigerant has been recovered by (name) _____, located at (address) _____, on (day, month, year) _____.

had "leaked out" (as defined in 40 CFR Part 82.155(b)(2)(iii)) of the appliance or shipment of appliances delivered under this sale prior to delivery and could not possibly be recovered.

Seller further agrees to indemnify and hold [company name] harmless from any claim, penalty, fine, fee, cost, attorney's fees, or other liability resulting in whole or in part from seller's breach of this certification.

Seller: _____

Company: _____

Address: _____

City, State, Zip Code: _____

Authorized Signature: _____

Date Signed: _____