

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 15 CONTROL OF EMISSIONS OF OZONE-DEPLETING COMPOUNDS

5 CCR 1001-19

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

I. Definitions

- A. "Air Conditioning and Refrigeration Service Facility" shall mean any person or business that performs air conditioning and refrigeration service.
- B. "Facility" shall mean any structure or building at a site.
- C. "Product Refrigeration System" shall mean any system or any combination of systems in retail or wholesale-refrigerated food facilities, which use a common refrigerant charge.
- D. "Refrigerated Food Appliance" shall mean any appliance, which is used to refrigerate foods for sale for human consumption.
- E. "Refrigerated Food Facility" shall mean any stationary source that contains a refrigerated food appliance.
- F. "Site" shall mean one or more contiguous or adjacent properties owned or operated by the same person or by persons under common control.
- G. "Stationary Appliance" shall mean any refrigeration and air conditioning equipment that contains and uses an ozone depleting compound refrigerant, which is not portable by nature or design or considered an integral part of a building or structure, has compressor(s) motors rated by the original equipment manufacturer at one hundred (100) horsepower or greater, and is not a refrigerated food appliance. The calculation of the horsepower of a stationary appliance shall be based on an evaluation of the compressor motor(s). For purposes of this Regulation No. 15 and registration requirements, a stationary appliance shall also mean one or more compressor(s) and all necessary piping and hardware required to make that system operate as designed. All configurations may be considered a system if connected by a common evaporator, condenser, or air-handling unit, or if compressors are housed in a common framework.

II. General Requirements

- A. All sources owning, operating, or engaged in the repair, maintenance, service, or disposal of any appliance or device which contains and uses an ozone depleting compound as a refrigerant shall comply with the standards, criteria, and requirements set forth in Title 40, Part 82, Subpart F, of the U.S. Environmental Protection Agency Code of Federal Regulations, in effect July 1, 1997.
- B. All sources owning, operating, or engaged in the repair, maintenance, service, or disposal of motor vehicle air conditioners shall comply with the standards, criteria, and requirements set forth in Title 40, Part 82, Subpart B, Sections 82.30, 82.32, 82.34 (a) and (d), and 82.42 (a) and (b)(1), (2), and (4) of the U.S. Environmental Protection Agency Code of Federal Regulations, in effect July 1, 1997 and 62 Fed. Reg. 68026, in effect January 29, 1998.

- C. No owner or operator of a retail store, cold storage warehouse, or commercial or industrial building shall intentionally vent or dispose of any ozone depleting compound refrigerant.
- D. All material referenced in this Regulation No. 15 is hereby incorporated by reference by the Air Quality Control Commission and made a part of the Colorado Air Quality Control Commission Regulations. Materials incorporated by reference are those in existence as of the date of this regulation and do not include later amendments. The material incorporated by reference is available for public inspection during regular business hours at the Office of the Commission, located at 4300 Cherry Creek Drive South, Denver, Colorado 80246, or may be examined at any state publications depository library. Parties wishing to inspect these materials should contact the Technical Secretary of the Commission, located at the Office of the Commission.

III. Registration Requirements for Stationary Appliances and Refrigerated Food Appliances

- A. The owner or operator of any existing stationary appliance by or within sixty (60) days of November 1 of each year and any new stationary appliance within thirty (30) days of installation shall submit an ozone depleting compound refrigerant registration form and pay a fee of forty-seven dollars (\$47.00) for each stationary appliance to the Division. Total fees shall not exceed three hundred dollars (\$300.00) per facility.
- B. The owner or operator of any site containing existing refrigerated food appliances which contain three hundred (300) pounds or greater of any ozone depleting compound refrigerant based upon the estimated refrigerant charge shall submit an ozone depleting compound refrigerant registration form and fee to the Division by or within sixty (60) days of November 1 of each year. The owner or operator of any site containing new refrigerated food appliances which contain three hundred (300) pounds or greater of any ozone depleting compound refrigerant based upon the estimated refrigerant charge shall submit an ozone depleting compound refrigerant registration form and fee to the Division within thirty (30) days of installation.

The owner or operator of any site containing refrigerated food appliances requiring registration shall pay to the Division a base fee of twenty-nine dollars (\$29.00) per site, fee of two dollars (\$2.00) per product refrigeration system, and fee of three dollars (\$3.00) per one hundred (100) pounds of an ozone depleting compound refrigerant in the registered product refrigeration system. Total fees shall not exceed seventy-five dollars (\$75.00) per product refrigeration system and three hundred dollars (\$300.00) per site.

- C. The owner or operator of any registered appliance shall have available for inspection by the Division or its agent proof of current registration.

IV. Notification and Reporting Requirements for Air Conditioning and Refrigeration Service Facilities

- A. The owner or operator of any air conditioning and refrigeration service facility and all persons engaged in recycling/recovery of ozone depleting compound refrigerant on a contract basis shall notify the Division by submitting a notification form (provided by the Division) and fee. A notification shall be submitted for each air conditioning and refrigeration facility that operates at one or more sites.
 - 1. All air conditioning and refrigeration service facilities that employ one (1) or more air conditioning or refrigeration technicians shall submit a forty dollar (\$40.00) annual fee to the Division.
 - 2. All existing air conditioning and refrigeration service facilities shall provide notification and fees to the Division by January 1, 1998.

3. All new air conditioning and refrigeration service facilities shall submit a notification and a fee to the Division within thirty (30) days of commencement of operations.
- B. Air conditioning and refrigeration service facilities which meet the requirements of this Regulation No. 15 shall renew the notification and fee annually with the Division within sixty (60) days of April 1.
- C. This section shall not be construed to require any individual technician to pay a fee or to notify the Division if such individual is employed by an air conditioning and refrigeration service facility that has complied with the requirements of this section and that has accounted for such individual in the fee submitted pursuant to Sections V.A.1. and V.A.2. of this Regulation No. 15.

V. Motor Vehicle Air Conditioning Service Requirements

A. Motor Vehicle Air Conditioning Recordkeeping Requirements

1. Owners or operators of motor vehicle air conditioning service facilities shall maintain records of motor vehicle air conditioning service and/or invoices and leak checks for a minimum of one (1) year and be available for inspection, including those records required in this Section V. of this Regulation No. 15.
 2. Owners or operators of motor vehicle air conditioning service facilities that utilize recovery only methods, shall document the handling and disposition of all ozone depleting compound refrigerants removed from motor vehicles.
 3. Owners or operators of salvage facilities that conduct or contract the recycling or recovery of ozone depleting compounds shall document the handling and disposition of all ozone depleting compound refrigerant removed from all salvaged motor vehicles.
- B. Owners or operators of motor vehicle air conditioning service facilities shall conduct leak checks on all motor vehicle air conditioners before ozone depleting compound refrigerants are added to any motor vehicle air conditioners.

VI. Statements of Basis, Specific Statutory Authority, and Purpose

A. November 20, 1997

The purpose of the changes to § XII of Part C of Regulation No. 15 is to replace the fee and registration requirements applicable to technicians with a fee to be paid by Air Conditioning and Refrigeration Service Facilities. In order to effectively collect such a fee, the revised rule also requires such facilities to file a "facility notification" with the Division. Such changes to the rule are necessary because the authority to require technicians to register with the APCD expired on July 1, 1996 pursuant to § 25-7-105(11)(g). However, the Commission has concluded that the repeal provision of § 25-7-105(11)(g) applies only to the Commission's authority to adopt State training and certification requirements pursuant to the second and third sentences of § 25-7-105(11)(g), and does not apply to regulations regarding the use and disposal of ozone-depleting compounds (ODCs) authorized by the first sentence of § 25-7-105(11)(f). The purpose of the change in the rule is to impose and collect a notification fee sufficient to implement the enforcement requirements of § 25-7-105(11)(f) use and disposal requirements. The specific statutory authority for this revision is set out at § 25-7-105(11)(f).

One interested party expressed concern that this rule revision may be construed to make the facility owners liable for regulatory violations committed by the technicians. However, this rule change is limited to a revision of the fee structure. This change in the fee structure does not increase the liability of facility owners for the acts of technicians.

FEDERAL REQUIREMENTS

The relevant federal requirements applicable to stationary sources are set out at 42 USC § 7671g and 40 CFR, Part 82, Subpart F. Such federal requirements do not require fees or notification. However, the revisions to Regulation No. 15 are adopted exclusively under state authority, are not part of the State Implementation Plan, and are not otherwise federally enforceable.

FINDINGS PURSUANT TO § 25-7-110.8

The fees and facility notification requirements are administrative in nature, and are not intended to directly reduce emissions. Such administrative changes are not technical in nature, and therefore are not based on scientific methodologies or information. No one proposed an alternative that would comply with State statutory requirements in a more cost-effective manner.

B. May 21, 1998

Background

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Administrative Procedures Act, C.R.S. (1988), Sections 24-4-103(4) and (12.5) for adopted or modified regulations, and federal regulations which are incorporated by reference.

Basis

Regulation No. 15 deals with the regulation of the use of ozone depleting compounds in the State of Colorado. Sources that use ozone-depleting compounds in stationary systems and product refrigeration systems and sources that provide service to motor vehicle air conditioners are regulated by Regulation No. 15. This rule change affects all sources affected by Regulation No. 15. The Division met with industry representatives in developing the proposed revisions. Division and industry agreed that certain requirements in Regulation No. 15 should be replaced with provisions from U.S. Environmental Protection Agency's ozone depleting compounds regulations (40 C.F.R. Part 82, Subparts B and F).

Specific Statutory Authority

The authority for this regulation is contained in the Colorado Air Pollution Prevention and Control Act (Colorado Act), Section 25-7-105(11) which provides authority to adopt regulations for the use of ozone depleting compounds. Section 25-7-106(6), C.R.S., provides the Commission with the authority to require testing, monitoring and record keeping. Commission action in promulgating these revisions is taken pursuant to Sections 25-7-105 through 25-7-109, C.R.S., as amended.

Purpose

The Commission intends the revisions to Regulation No. 15 to provide greater consistency with federal regulations by incorporating by reference portions of the federal regulations for which the Commission has authority to adopt. In making Colorado's program more consistent with the federal program, recordkeeping and reporting requirements have been reduced and the wholesale food industry is now subject to Regulation No. 15. Owners and operators of motor vehicle air conditioner service facilities will be subject to those recordkeeping and monitoring requirements necessary to prevent ozone-depleting compounds from being unnecessarily released into the atmosphere. The proposed revisions will also clarify certain state-only requirements, definitions, and requirements and simply the registration process.

Action Taken

The Air Quality Control Commission has removed any definitions of terms defined in the federal regulations. The Commission also removed the following requirements for stationary appliances: reporting; maintenance plans; installation, servicing, maintenance, and refrigerant recovery; inactive stationary appliances, and maximum allowable leakage rates.

Specifically, Regulation No. 15 now incorporates by reference Title 40, Part 82, Subpart F, of the U.S. Environmental Protection Agency Code of Federal Regulations, in effect July 1, 1997 and Title 40, Part 82, Subpart B, Sections 82.30, 82.32, 82.34 (a) and (d), and 82.42 (a) and (b)(1), (2), and (4) of the U.S. Environmental Protection Agency Code of Federal Regulations, in effect July 1, 1997, and 62 Fed. Reg. 68026, in effect January 29, 1998.

The wholesale-refrigerated food industry is now subject to Regulation No. 15, including the ozone depleting compounds registration and fee program. Previously, the wholesale food industry was inadvertently not included in the regulatory requirement to register equipment containing ozone-depleting compounds, while the retail food industry is included. There is no valid reason for such a distinction concerning the applicability of Regulation No. 15, that the wholesale food industry uses the same equipment, as does the retail food industry. The wholesale food industry is included in U.S. Environmental Protection Agency's ozone depleting compounds regulations (40 C.F.R. Part 82, Subparts B and F). Less than twenty wholesale food facilities are subject to Regulation No. 15.

Certain regulatory provisions have been maintained and other provisions included to require owners or operators of motor vehicle air conditioning service facilities to maintain records and conduct monitoring beyond the federal program pursuant to the Commission's authority in Section 25-7-106, C.R.S. Specifically, such owners and operators are required to maintain records of equipment servicing and ozone depleting compounds handling, disposal, and salvaging for one year, and maintain records of leak checks prior to adding refrigerant to a system.

In addition, the revision to Regulation No. 15 clarifies a previously existing requirement in Regulation No. 15 that owners and operators of motor vehicle air conditioning service facilities must perform leak checks on all systems prior to adding refrigerant pursuant to Sections 25-7-106(6)(b) and (c), C.R.S. This is an important requirement, because there is not the economic incentive for such sources to check for leaks prior to adding refrigerant, as there is for owners and operators of stationary appliances and refrigerated food appliances. In addition, federal regulations require owners and operators of stationary appliances to comply with the allowable leakage rates.

The previous requirements of Regulation No. 15 required the annual registration of equipment and fees be sent to the Division by or within sixty (60) days of several different payment schedules depending upon startup date of sources. This created an unnecessary burden on the Division in administering the registration and fee program. The Commission has combined the annual registration dates into one date. An affected source must send the annual registration to the Division within sixty days of July 1 of each year. The Commission has included a provision that allows payments for sources that pay between the adoption of these revisions and July 1, 1998 to be prorated for the time prior to July 1, 1998.

The Commission has revised the prohibition against intentional venting of ozone depleting compounds to be the same as the statutory language found in Section 25-7-105(11)(b), C.R.S. The revision results in a requirement that owners and operators of retail stores, cold storage warehouses, or commercial or industrial buildings may not intentionally vent ozone depleting compounds and a prohibition against owners and operators of stationary appliances, refrigerated food facilities, and motor vehicle air conditioning service facilities knowingly venting ozone depleting compounds to the atmosphere.

The Commission has revised the definition of "stationary appliance" to simplify the registration of stationary appliances. The proposed definition includes language that the Division has relied upon in policy used to interpret "stationary appliances." Prior to the policy, the regulated community had difficulty in applying the existing definition, because of the complexity of the possible configuration of a system.

Federal Requirements

The relevant federal requirements applicable to the regulation of ozone depleting compounds are set out at 42 U.S.C. sections 7671g and 7671h; and at 40 C.F.R., Part 82, Subparts B and F. There are several provisions in Regulation No. 15 that are not required under federal law. Such provisions include: the requirements for the payment of fees, the equipment registration requirements, the facility notification requirements, the prohibition against intentional venting of chlorofluorocarbons by the owners and operators of certain sources, and the recordkeeping requirements for motor vehicle air conditioning repair facilities. However, Regulation No. 15 is not part of the State Implementation Plan and such provisions are consistent with Section 25-7-105.1, C.R.S.

Findings pursuant to Section 25-7-110.8, C.R.S.

The requirements of Section 25-7-110.8, C.R.S. do not apply to the adoption of the applicable federal rules by reference, and therefore do not apply to the federal rules incorporated into Regulation No. 15. The Commission makes the following findings with respect to the remaining provisions of Regulation No. 15.

Regulation No. 15 is based on reasonably available, validated, reviewed and sound scientific methodologies indicating that the release of ozone depleting compounds into the atmosphere contributes to the depletion of stratospheric ozone.

The addition of ozone depleting compounds to a leaking air conditioner will result in the release of ozone depleting compounds into the atmosphere. Therefore, the requirement in Section V.B. to conduct a leak check before adding ozone depleting compound refrigerants to any motor vehicle air conditioner will result in a demonstrable reduction in air pollution. The remaining provisions of Regulation No. 15 are administrative in nature, and are not subject to the requirements of Section 25-7-110.8(1)(b), C.R.S.

No one proposed an alternative that would comply with the State statutory requirements in a more cost-effective manner.

C. December 20 & 21, 2007

Revisions to Regulation Number 15, Sections III.A. & B. and IV.A.1. & 2. and IV.B.

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4), C.R.S. for new and revised regulations.

Basis

The Air Quality Control Commission has adopted revisions to Sections IV.A.1. & 2. and IV.B. in order to increase the annual Facility Notification fee for air-conditioning and refrigeration service facilities in Colorado, commencing in 2008. The increase is necessary to help offset increasing program costs.

Specific Statutory Authority

The specific statutory authority for this revision is set forth in Sections 25-7-105(11)(f) C.R.S., which allows the Commission to adjust fees so that the revenue generated is sufficient to cover direct and indirect costs to implement the control of emissions of ozone depleting compounds program.

Purpose

The revision to Sections IV.A.1. & 2. was adopted to cover existing and anticipated revenue shortfalls. The revisions to Sections III.A. & B. and IV.B. were adopted to change the annual billing and registration dates.

COLORADO AIR QUALITY CONTROL COMMISSION

ADOPTED: December 20, 2007.

D. September 18, 2008

Revisions to Regulation Number 15, Sections III.A. & B.

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4), C.R.S. for new and revised regulations.

Basis

The Air Quality Control Commission has adopted revisions to Sections III.A. & B. in order to increase the annual Stationary Appliance and Refrigerated Food Appliance fees in Colorado, commencing in 2008. The increase is necessary to help offset increasing program costs. The General Assembly enacted revisions to the allowable fees in SB08-055 and established these fee cap increases because the prior statutory fee levels have never been adjusted and are now inadequate to support existing authorized expenditures to operate the program.

Specific Statutory Authority

The specific statutory authority for this revision is set forth in Sections 25-7-105(11)(h) C.R.S., which allows the Commission to adjust fees so that the revenue generated is sufficient to cover direct and indirect costs to implement the control of emissions of ozone depleting compounds program.

Purpose

The revision to Sections A & B. was adopted to cover existing and anticipated revenue shortfalls.

COLORADO AIR QUALITY CONTROL COMMISSION

ADOPTED: September 18, 2008.

Editor's Notes

History

Entire rule eff. 01/30/2008.

Section III eff. 10/30/2008.