regulations. Under the initial regulations promulgated under section 608 and published May 14, 1993 (58 FR 28660), oil removal is considered a minor repair. Consistent with the requirements for all minor repairs the appliance must be brought to at least atmospheric pressure for oil removal.

The settlement agreement between EPA and CMA was based on the need to provide greater flexibility to the regulated community. The inclusion of a proposed provision to allow a slight positive pressure was viewed as a relaxation of the current regulations. This implies that a significant part of the regulated community agreed with EPA's interpretation that under the May 14 rule, oil removal required evacuation to atmospheric pressure.

Two commenters stated that EPA should not consider removing oil to be opening the appliance. One commenter stated that when the oil has been removed the valve is closed and the oil container is removed. The second commenter stated that the oil remaining in the sump is a barrier that will keep the refrigerant in the appliance. The impeller is a labyrinth seal with only .002-.003 inch clearance, and the valve through which the oil is drained is a small orifice. This commenter believes that if extreme precautionary measures are taken the appliance is not truly opened.

EPA disagrees with these commenters. EPA believes that changing oil does constitute opening the appliance. Opening an appliance is defined as "any service, maintenance, or repair on an appliance that would release class I or class II refrigerant from the appliance to the atmosphere unless the refrigerant were recovered previously from the appliance * (59 FR 55926). EPA believes that refrigerant would be released during an oil change, unless the refrigerant were recovered previously. One commenter recognized that such a risk exists by stating that there is a need for "extreme precautionary measures * * * during oil changes" and that only under those circumstances is the "system not truly 'opened' and there is little risk that refrigerant in the system will be vented to the atmosphere." EPA believes that the need to take "extreme precautionary measures" to prevent a release demonstrates that without such precautions a release is likely. Furthermore, EPA believes there is no way to assure that refrigerant is not released except to evacuate the appliance to 5 psig or below. Therefore, EPA continues to believe that removing oil constitutes opening the appliance.

EPA is concerned not only with the bulk of the refrigerant charge, but also with the refrigerant entrained in the oil. EPA has stated in applicability determination #23 and in the preamble to the initial regulations (58 FR 28677) that after an appliance is reduced to atmospheric pressure, the refrigerant entrained in the oil is not subject to those regulations. EPA would like to clarify that where the refrigerant and oil have not been drawn to at least atmospheric pressure, section 608(c), the venting provision, would apply. Therefore, recovery of the refrigerant from that oil would still be required.

During the settlement negotiations with CMA, CMA supplied information stating that the percentage of refrigerant entrained in oil for an appliance at 80 degrees fahrenheit could be 50 percent of the total volume of oil for HCFC-22. If the pressure is reduced to 5 psig the percentage of refrigerant is less than 5 percent for HCFC-22. EPA believes that this demonstrates that without a requirement to reduce the pressure or to recover that refrigerant in some other way, significant quantities of refrigerant will be released.

One commenter suggested an approach that would recover the refrigerant in the oil through a less timeconsuming method. The commenter suggested that instead of evacuating the refrigerant EPA should permit the oil to be drained into a secondary vessel that can be isolated from the chiller and evacuated to recover the refrigerant in the oil. EPA received another comment stating that this method would still be time-consuming and costly. After reviewing the comments, EPA believes that this method actually will be less time-consuming and costly than the current requirements. Those concerned with the time and cost involved with this procedure should consider whether their current practices are actually in violation of the regulations.

EPA is concerned with preventing the release of the refrigerant through the opening of the appliance. Therefore, EPA believes that if the oil can be drained into a system receiver, where the system receiver can be isolated and evacuated to a pressure no greater than 5 psig, the goal would be achieved. EPA believes this a reasonable alternative to the requirements currently in effect. Therefore, through this action, EPA will revise the regulations to permit appliances to be pressurized to slightly above 0 psig (but not to exceed 5 psig) during oil changes and/or to permit the oil to be drained into a system receiver where the technician will then recover the oil entrained in the refrigerant to 0 psig.

VI. Judicial Review

Under Section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of this action in the **Federal Register**. Under Section 307(b)(2), the requirements of this rule may not be challenged later in judicial proceedings brought to enforce those requirements.

VII. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this final action to amendment to the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be