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Part IV

**Environmental
Protection Agency**

40 CFR Part 82

**Protection of Stratospheric Ozone: Listing
of Substitutes for Ozone-Depleting
Substances; Final Rule and Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-7443-4]

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: This action lists three substitutes for ozone-depleting substances (ODSs) in the fire suppression and explosion protection sector as acceptable (subject either to narrowed use limits or use conditions) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the Clean Air Act, as amended in 1990, which requires EPA to evaluate substitutes for ODSs to reduce overall risk to human health and the environment.

In this Direct Final Rulemaking (FRM), EPA is issuing its decision on the acceptability of three halon substitutes in the fire suppression and explosion protection sector. EPA is issuing a companion proposal to this direct final rule elsewhere in today's **Federal Register**. If we receive any adverse comments, EPA will withdraw this direct final action and will consider and respond to any comments prior to taking any new, final action.

DATES: This rule is effective on March 28, 2003, without further notice, unless EPA receives adverse comment or receives a request for a public hearing by February 26, 2003. If we receive adverse comment or a request for a public hearing, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Send your comments and data specific to this final rule to Docket A-2002-08, U.S. Environmental Protection Agency, OAR Docket and Information Center, 1200 Pennsylvania Avenue NW., Mailcode 6102T, Washington, DC 20004. The docket is physically located at 1301 Constitution Avenue NW., Room B108, Washington, DC. You may inspect the docket between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 566-1742; fax (202) 566-1741. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. To expedite review, send a second copy of your comments directly to Bella Maranion at

the address listed below under **FOR FURTHER INFORMATION CONTACT**. Information designated as Confidential Business Information (CBI) under 40 CFR part 2, subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

FOR FURTHER INFORMATION CONTACT: Bella Maranion at (202) 564-9749 or fax (202) 565-2155, U.S. Environmental Protection Agency, Global Programs Division, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 Third Street NW., 4th floor, Washington, DC, 20001. Also contact the Stratospheric Protection Hotline at (800) 296-1996 and EPA's Ozone Depletion World Wide Web site at <http://www.epa.gov/ozone/snap/index.html>.

SUPPLEMENTARY INFORMATION: In this direct final rule, EPA adds three fire suppression agents to the list of acceptable substitutes, subject to either narrowed use limits or use conditions. The regulations implementing the SNAP program are codified at 40 CFR part 82, subpart G. The appendices to subpart G list substitutes for ODSs that have had restrictions imposed on their use. The action in this direct final rule will add these halon substitutes to the appendices to subpart G.

EPA is publishing today's revisions to the SNAP lists without prior proposal because the Agency views them as non-controversial and anticipates no adverse comment. We are adding three new agents to the list of acceptable substitutes, subject to narrowed use limits or use conditions. This action does not place any significant burden on the regulated community but lists as acceptable, subject to narrowed use limits or use conditions, new halon substitutes while continuing to protect human health and the environment.

In the "Proposed Rules" section of today's Federal Register publication, EPA is publishing a companion proposed rule that proposes the same actions as in this direct final rule. The direct final rule will be effective on March 28, 2003, without further notice unless we receive adverse comment (or a request for a public hearing) by February 26, 2003. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a

second public comment period on this action. Any parties interested in commenting must do so at this time.

You may claim that information in your comments is confidential business information, as allowed by 40 CFR part 2. If you submit comments and include information that you claim as confidential business information, we request that you submit them directly to Bella Maranion in two versions: one clearly marked "Public" to be filed in the Public Docket, and the other marked "Confidential" to be reviewed by authorized government personnel only.

Table of Contents

- I. Section 612 Program
 - a. Statutory Requirements
 - b. Regulatory History
- II. Listing of Substitutes
- III. Administrative Requirements
- IV. Additional Information

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act (CAA) authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- **Rulemaking:** Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

- **Listing of Unacceptable/Acceptable Substitutes:** Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

- **Petition Process:** Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with Section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

- **90-day Notification:** Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or

existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.

- *Outreach*: Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

- *Clearinghouse*: Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA issued a rule (69 FR 13044) which described the process for administering the SNAP program and published EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air-conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone-depleting compounds.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators, or end-users when they are responsible for introducing a substitute into commerce.

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risk posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risk screens can be found in the public docket, as described above in the **ADDRESSES** portion of this document.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make in SNAP. The Agency has identified four

possible decision categories: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable. Fully acceptable substitutes, i.e., those with no restrictions, can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risk to human health and the environment. Such substitutes are described as "acceptable subject to use conditions." Use of such substitutes without meeting associated use conditions renders these substitutes unacceptable and subjects the user to enforcement for violation of section 612 of the Clean Air Act.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for purposes of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

EPA does not believe that notice and comment rulemaking procedures are required to list alternatives as acceptable with no restrictions. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable lists are published as separate Notices of Acceptability in the **Federal Register**.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP rule published in the **Federal Register** on

March 18, 1994 (59 FR 13044), and see also the Code of Federal Regulations at 40 CFR part 82, subpart G. A complete chronology of SNAP decisions and the appropriate **Federal Register** citations may be found at EPA's Ozone Depletion Web site at <http://www.epa.gov/ozone/snap/chron.html>. For a complete listing of the Agency's decisions on acceptable and unacceptable substitutes, go to <http://www.epa.gov/ozone/snap/lists/index.html>.

II. Listing of Substitutes

In this final rule, EPA is issuing its decision on the acceptability, subject to narrowed use limits or use conditions, of the following substitutes in the fire suppression and explosion protection sector: *HFC227-BC*, *C6-perfluoroketone*, and *H Galden hydrofluoropolyethers (HFPEs)*. As described in the March 8, 1994 rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes.

The section below presents a detailed discussion of the fire suppression and explosion protection substitute listing determinations that are finalized in today's Final Rule. Tables summarizing these listing decisions are at the end of this document. The comments contained in the tables provide additional information on substitutes determined to be unacceptable, acceptable subject to narrowed use limits, or acceptable subject to use conditions. The comments contained in the appendix are not a binding part of the regulatory decision and are, therefore, not mandatory for use of a substitute. Nor should such comments be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of substitutes to act consistent with all such comments in their use of these substitutes especially if any practices have not already been identified in existing industry standards such as fire and building codes, or occupational exposure guidelines.

A. Listing Decisions: Fire Suppression and Explosion Protection—Total Flooding Agents

1. Acceptable Subject to Use Conditions a. HFC227-BC

HFC227-BC is acceptable, subject to use conditions, as a halon 1301

substitute for total flooding uses. HFC227-BC, which contains a combination of HFC-227ea and sodium bicarbonate, is designed for total flooding use in military combat vehicle crew and engine compartments and for industrial fire and explosion suppression systems in occupied and unoccupied areas. HFC-227ea, the main ingredient in HFC227-BC, is a halocarbon fire extinguishing agent that has previously been approved as a total flooding and streaming agent under EPA's SNAP program. It has no ozone-depletion potential and has a global warming potential (GWP) of 3800 compared to CO₂ on a 100-year time horizon. HFC-227ea is non-flammable. Its No Observed Adverse Effect Level (NOAEL) is 9.0% and the Lowest Observed Adverse Effect Level (LOAEL) is 10.5%. The calculated design concentration of HFC-227ea is 7.0% which provides a sufficient margin of safety for use in normally occupied areas in accordance with the safety guidelines in the latest edition of the National Fire Protection Association (NFPA) 2001 Standard for Clean Agent Fire Extinguishing Systems (*see discussion below*).

EPA is providing specific use conditions designed to protect military crew members and workplace personnel who may be present in areas where HFC227-BC is discharged. HFC227-BC is approved for use in military combat and vehicle crew and engine compartments and industrial fire or explosion suppression systems for occupied and unoccupied areas. Extinguisher bottles should be clearly labeled with the potential hazards associated with the use of HFC-227ea and sodium bicarbonate, as well as handling procedures to reduce risk resulting from these hazards. Sodium bicarbonate, while low in toxicity, also has the ability to affect blood pH level; therefore, its release in all settings should be targeted so that increased blood pH level would not adversely affect those exposed.

The addition of sodium bicarbonate in the mixture is to minimize the formation of toxic hydrofluoric acid (HF) formed by the decomposition of HFC-227ea during a fire. Sample calculations and assumptions for respirable and released sodium bicarbonate for varied enclosure sizes are included in the risk screen conducted for this substitute and available in public Docket A-2002-08 for this rule.

EPA is also providing additional comments regarding use of HFC227-BC. Use of HFC-227ea, the primary ingredient in HFC227-BC, should be in

accordance with the safety guidelines in the latest edition of the NFPA 2001 Standard for Clean Agent Fire Extinguishing Systems. Use of HFC227-BC should conform with relevant Occupational Safety and Health Administration (OSHA) requirements, including 29 CFR part 1910, subpart L, sections 1910.160 and 1910.162. Per OSHA requirements, protective gear (self-contained breathing apparatus) should be available in the event personnel should reenter the area. Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements. The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

On January 29, 2002, EPA published a Direct Final Rule (67 FR 4185) to replace the use conditions imposed under SNAP for halocarbon and inert gas agents used in the fire suppression and explosion protection industry with safety standards that have been established by the National Fire Protection Association (NFPA). NFPA is an independent, voluntary membership, non-profit international organization that is dedicated to reducing the burden of fire on the quality of life by advocating scientifically-based consensus codes and standards, research, and education for fire and related safety issues. NFPA codes and standards are used by the fire protection community throughout the United States and the world.

Based on the above rule, the revised SNAP listings for halocarbon alternatives, such as HFC-227ea, include the following comment, "Use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2001 Standard for Clean Agent Fire Extinguishing Systems." In the edition of NFPA 2001 that was published in March 2000, safety guidelines for halocarbon and inert gas agents are found in section 1.6, entitled "Safety."

EPA's precautionary requirements are consistent with worker safety conditions required by OSHA and the NFPA 2001 Standard, as mentioned above. Individuals must adhere to OSHA regulations in all commercial applications. EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (*e.g.*, respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard. As stated in the preamble to the original SNAP rule at 59 FR 13099,

"EPA has no intention to assume responsibility for regulating workplace safety especially with respect to fire protection, nor does the Agency intend SNAP regulations to bar OSHA from regulating under its Pub. L. 91-596 authority."

HFC227-BC reduces risk to the public compared to the ODS it replaces because it has no ODP. HFC227-BC also has a lower global warming impact and produces less toxic, caustic HF than HFC-227ea alone, because less of the halocarbon agent is needed when sodium bicarbonate is also being used. Other substitutes already listed as acceptable for total flooding have a higher global warming impact and comparable toxicity. Thus, we find that HFC227-BC is acceptable, subject to use conditions, because it reduces overall risk to public health and the environment in the end use listed.

B. Listing Decisions: Fire Suppression and Explosion Protection—Streaming Agents

1. Acceptable Subject to Narrowed Use Limits

a. C6-perfluoroketone

C6-perfluoroketone is acceptable, subject to narrowed use limits, as a halon 1211 substitute for streaming agent uses. The narrowed use limits require that C6-perfluoroketone be used only in nonresidential applications. C6-perfluoroketone is comprised of a perfluoroalkyl ketone (1,1,1,2,2,4,5,5,5-nonafluoro-4-(trifluoromethyl)-3-pentanone). C6-perfluoroketone has no ozone-depletion potential, a global warming potential of 6-100 compared to CO₂ on a 100-year time horizon, and an atmospheric lifetime of less than one year. It is marketed under the trade name Novec-1230. The NFPA 2001 standard refers to C6-perfluoroketone as FK-5-1-12myy2. In studies on C6-perfluoroketone, the NOAEL is 10% and the LOAEL is >10%.

EPA has reviewed the potential environmental impacts of this substitute and has concluded that, by comparison to halon 1211, C6-perfluoroketone significantly reduces overall risk to the environment. With no ozone-depletion potential, a global warming potential value of less than 1, and an atmospheric lifetime of less than three days, C6-perfluoroketone provides an improvement over use of hydrochlorofluorocarbons (HCFCs) and hydrofluorocarbons (HFCs) in fire protection. EPA's review of environmental and human health impacts of this blend is contained in the public docket for this rulemaking.

EPA is providing additional comments regarding use of C6-perfluoroketone for streaming agent uses. Appropriate protective measures should be taken and proper training administered for the manufacture, clean-up and disposal of this product. The acceptable exposure limit (AEL) is set at a level believed to protect workers who are regularly exposed, such as in the manufacturing or filling processes, from chronic adverse effects; the estimated AEL for C6-perfluoroketone is 100 ppm as an 8-hour time-weighted average. EPA recommends the following for establishments filling canisters to be used in streaming applications: adequate ventilation should be in place; all spills should be cleaned up immediately in accordance with good industrial hygiene practices; and training for safe handling procedures should be provided to all employees that would be likely to handle the containers of the agent or extinguishing units filled with the agent. We find that C6-perfluoroketone is acceptable subject to narrowed use limits (for use only in non-residential areas) because it reduces overall risk to public health and the environment in the end use and application requested by the submitter and listed above.

b. H Galden Hydrofluoropolyethers

H Galden Hydrofluoropolyethers (HFPEs) is acceptable, subject to narrowed use limits, as a halon 1211 substitute for streaming agent uses. The narrowed use limits require that HFPEs be used only in nonresidential applications. This substance is a mixture of fractions of hydrofluoropolyethers of similar composition. H Galden HFPEs have an ozone depletion potential of zero. They have an atmospheric lifetime from 12 to 25 years. H Galden HFPEs have a global warming potential (GWP) that varies for the particular fraction, ranging from 2790 to 6230 for the fractions having the highest GWP. Despite the relatively high GWP values, use of H Galden HFPEs are anticipated to have a smaller impact on global warming than the use of HFCs. H Galden HFPEs are non-flammable. In studies on H Galden HFPEs, the NOAEL was 3.5% and a LOAEL was not identified. H Galden HFPEs are expected to be blended with other compounds (e.g., HFC-227ea, HFC-125) that have previously been approved under SNAP.

EPA is providing additional comments regarding use of H Galden HFPEs in streaming agent applications. The estimated AEL for H-Galden HFPEs 1163 ppm for workplace exposure, typically during the manufacturing and

filling processes. Because the AEL is above 1000 ppm, a level that can be achieved using generally employed good housekeeping and industrial practices, EPA recommends that exposure levels be kept below 1000 ppm on an 8-hour TWA basis. Further, EPA recommends that H Galden HFPEs should not exceed its ceiling concentration of 6000 ppm at any time. EPA recommends the following procedures should be followed to ensure that this level is not exceeded:

- Adequate ventilation should be in place;
- All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and
- Training for safe handling procedures should be provided to all employees that would be likely to handle the containers of H Galden HFPEs or extinguishing units filled with the material.

H-Galden HFPEs have no ODP, relatively low atmospheric lifetimes of from 13–25 years, and comparable impact on global warming with the SNAP-approved HFC. H Galden HFPEs reduce risk overall compared to halon 1211, the ODS they replace. EPA's review of environmental and human health impacts of this blend is contained in the public docket for this rulemaking. Thus, we find that H-Galden HFPEs are acceptable subject to narrowed use limits (for use only in non-residential applications) because they reduce overall risk to public health and the environment in the end use and application requested by the submitter and listed above.

III. 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 result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, 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.

Pursuant to the terms of Executive Order 12866, OMB notified EPA on October 3, 2002, that it considers this a "non-significant regulatory action" within the meaning of the Executive Order and, therefore, did not require EPA to submit this action to OMB for review.

B. Paperwork Reduction Act

EPA has determined that this final rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, that are not already approved by the OMB. OMB has reviewed and approved two Information Collection Requests (ICRs) by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). These ICRs included five types of respondent reporting and record-keeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, record-keeping for substitutes acceptable subject to narrowed use limits, and record-keeping for small volume uses. The OMB Control Numbers are 2060–0226 and 2060–0350.

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20004, by E-mail at farmer.sandy@epa.gov, or by calling (202) 566–1676. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>. Include the ICR and/or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statutes unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as (1) A small business that produces or uses fire suppressants as total flooding and/or streaming agents with 500 or fewer employees or total annual receipts of \$5 million or less; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

Use of halon 1211 as a streaming agent in portable extinguishers has historically been in industrial and commercial applications with limited residential uses. Residential users typically use lower cost alternatives such as dry chemical and carbon dioxide hand-held extinguishers. In industrial and commercial applications, the newer chemical agents compete for specialized segments of the halon 1211 market where lower cost alternatives such as dry powder and carbon dioxide extinguishers may not be an appropriate option and where factors such as cleanliness and efficacy of the agent are important. With respect to EPA's decision on H Galden HFPEs, EPA is

finding it acceptable for all uses requested by the manufacturer. Moreover, the manufacturer of the new fire suppressant, H Galden HFPEs, has not yet sold it, so today's action does not affect, in any way, current usage. The manufacturer of the new fire suppressant, C6-perfluoroketone, is selling it in the non-residential market, so today's action does not affect, in any way, current usage. Thus, EPA is providing additional options for any entity, including small entities, to replace halon 1211 in streaming applications.

Use of halon 1301 total flooding systems have historically been in the protection of essential electronics, civil aviation, military mobile weapon systems, oil and gas and other process industries, and merchant shipping with smaller segments of use including libraries, museums, and laboratories. The majority of halon 1301 system owners continue to maintain and refurbish existing systems since halon 1301 supplies continue to be available in the U.S. Owners of new facilities make up the market for the new alternative agent systems and may also consider employing other available fire protection options including new, improved technology for early warning and smoke detection. The primary party intending to use HF227-BC as a total flooding agent is the U.S. Army, which is not a small entity. The Army has not yet used this fire suppressant, so the regulatory restrictions imposed in today's rule will not affect current use. Thus, EPA is providing more options to any entity, including small entities, to use these substitutes.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. By introducing new substitutes, today's rule gives additional flexibility to small entities that are concerned with fire suppression. EPA also has worked closely together with the National Fire Protection Association, which conducts regular outreach with, and involves small state, local, and tribal governments in developing and implementing relevant fire protection standards and codes.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Because this rule imposes no enforceable duty on any State, local or tribal government it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule will provide additional options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require state, local, or tribal governments to change their regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This direct final rule will provide additional options for fire protection

subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require tribal governments to change their regulations. Thus, Executive Order 13175 does not apply to this rule.

G. Applicability of Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The acceptability listings in this final rule primarily apply to the workplace, and thus, do not put children at risk disproportionately. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211 (Energy Effects)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule allows wider use of substitutes, providing greater flexibility for industry. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. EPA defers to existing National Fire Protection Association (NFPA) voluntary consensus standards and Occupational Safety and Health Administration (OSHA) regulations that relate to the safe use of halon substitutes reviewed under SNAP. EPA refers users to the NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems, 2000 edition, which provides for exposure and safe use of halocarbon and inert gas agents used to extinguish fires. Copies of this standard may be obtained by calling the NFPA's telephone number for ordering publications at 1-800-344-3555 and requesting order number S3-2003-00. The NFPA 2001 standard meets the objectives of the rule by setting scientifically-based guidelines for exposure to halocarbon and inert gas agents used to extinguish fires. In addition, EPA has worked in consultation with OSHA to encourage development of technical standards to be adopted by voluntary consensus standards bodies.

J. Judicial Review

Under section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of the 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 the action in the **Federal Register**. Under section 307(b)(2), the requirements of this rule may not be challenged later in the judicial proceedings brought to enforce those requirements.

K. Submittal to Congress and General Accounting Office

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the

Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as

defined by 5 U.S.C. 804(2). This rule will be effective on March 28, 2003.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: January 17, 2003.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671—7671q.

Subpart G—Significant New Alternatives Policy Program

2. Subpart G of part 82 is amended by adding Appendix L to read as follows:

Appendix L to Subpart G of Part 82—Substitutes Listed in the January 27, 2003, Final Rule, Effective March 28, 2003.

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTOR—TOTAL FLOODING SUBSTITUTES—ACCEPTABLE SUBJECT TO USE CONDITIONS

End-use	Substitute	Decision	Conditions	Comments
Total flooding	HFC227-BC	Acceptable subject to use conditions.	Sodium bicarbonate release in all settings should be targeted so that increased pH level would not adversely affect exposed individuals. Users should provide special training to individuals required to be in environments protected by HFC227-BC extinguishing systems. Each HFC227-BC extinguisher should be clearly labelled with the potential hazards from use and safe handling procedures.	Use of the agent, HFC-227ea, should be in accordance with the safety guidelines in the latest edition of the NFPA 2001 Standard for Clean Agent Fire Extinguishing Systems. See additional comments 1, 2, 3, 4, 5.

Additional comments"

- 1—Should conform with relevant OSHA requirements, including 29 CFR part 1910, subpart L, sections 1910.160 and 1910.162.
- 2—Per OSHA requirements, protective gear (SCBA) should be available in the event personnel should reenter the area.
- 3—Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements.
- 4—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.
- 5—EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (e.g., respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTOR—STREAMING AGENTS—ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

End-use	Substitute	Decision	Conditions	Comments
Streaming	C6-perfluoroketone (FK-5-1-12MY2).	Acceptable subject to narrowed use limits.	For use only in non-residential areas.	For operations that fill canisters to be used in streaming applications, EPA recommends the following: —Adequate ventilation should be in place; —All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and —Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent. See additional comments 1, 2, 3, 4.

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTOR—STREAMING AGENTS—ACCEPTABLE SUBJECT TO NARROWED USE LIMITS—Continued

End-use	Substitute	Decision	Conditions	Comments
Streaming	H Galden HFPEs	Acceptable subject to narrowed use limits.	For use only in non-residential areas.	For operations that fill canisters to be used in streaming applications, EPA recommends the following: —Adequate ventiation should be in place; —All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and —Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent. See additional comments 1, 2, 3, 4.

Additional comments.

1—Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements.

2—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

3—EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (e.g., respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

4—As with other streaming agents, EPA recommends that potential risks of combustion by-products be labelled on the extinguisher (see UL 2129)

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