

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-7443-5]

RIN 2060-AG12

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to list 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.

Elsewhere in today's **Federal Register**, EPA is taking this action as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. A rationale for this action is set forth in the preamble to the direct final rule.

If we receive no adverse comments and no requests for public hearings in response to this action, we will take no further activity in relation to this rule. If EPA receives adverse comments or a request for public hearing, we will withdraw the direct final rule and review any comments in accordance with this proposal. If a public hearing is requested, EPA will provide notice in the **Federal Register** as to the location, date, and time. Any parties interested in commenting on this action should do so at that time.

DATES: Comments must be received in writing by February 26, 2003.

ADDRESSES: Public comments and data specific to this action should be sent to Docket A-2002-08, U.S. Environmental Protection Agency, OAR Docket and Information Center, 1200 Pennsylvania Avenue NW., Mailcode 6102T, Washington, DC 20460. The docket is physically located at 1301 Constitution Avenue NW., Room B108, Washington, DC. The docket may be inspected 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, a second copy of the comments should be sent 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 3rd 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: See additional information, pertaining to this action, provided in the Direct Final action of the same title located in today's **Federal Register**.

I. EPA Proposal

EPA would add three fire suppression agents to the list of acceptable substitutes, subject to narrowed use limits or use conditions, for halons which are ozone-depleting substances widely used in the fire protection sector. 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 are unacceptable or that have restrictions imposed on their use. Today's action would modify the appendices to subpart G to include these new substitutes.

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 this 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.

II. 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 proposed 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 Office of Management and Budget (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 recordkeeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test

marketing activity, recordkeeping for substitutes acceptable subject to narrowed use limits, and recordkeeping 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 20460, 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 statute 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 proposed 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 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 proposed rule on small entities, I certify 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. The newer chemical agents compete for specialized segments of this market where lower cost alternatives such as dry chemical and carbon dioxide extinguishers may not be an appropriate option. With respect to EPA's decision on H Galen HOPES, EPA is finding it acceptable as a streaming agent in nonresidential areas as requested by the manufacturer. Moreover, the manufacturer of the new fire suppressant, H Galen HOPES, has not yet sold it, so today's action does not affect, in any way, current usage. The manufacturer of the new fire suppressant streaming agent, C6-perfluoroketone, is selling it in the non-residential market, so today's action does not affect, in any way, current usage. 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 US. Owners of new facilities make up the market for the new alternative agent systems that are available 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 HFC227–BC as a total flooding agent is the U.S. Army, which is not a small entity. The Army is currently testing this fire suppressant in its new armored vehicles, 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 this substitute as a replacement for halon 1301 in total flooding applications.

Although this proposed 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 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 proposed 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 proposed rule will provide addition 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 references 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 order telephone number at 1-800-344-3555 and requesting order number S3-2003-00. In addition, EPA has worked

extensively in consultation with OSHA to encourage development of technical standards to be adopted by voluntary consensus standards bodies.

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

Dated: January 17, 2003.

Christine Todd Whitman,
Administrator.

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