ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5199–2]

Protection of Stratospheric Ozone: Amendment to Transshipment Provision in Final Rule Accelerating the Phaseout of Ozone-Depleting Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing stricter requirements for transshipments of substances that deplete stratospheric ozone from foreign countries through the United States to foreign destinations. The proposed amendment would require a person to petition the Environmental Protection Agency (EPA) prior to the export of a controlled ozone-depleting substance to the United States for transshipment. EPA is proposing the amendment due to new information that the current regulation is being abused to illegally introduce controlled substances into U.S. commerce. The proposed amendment, at the request of industry, will protect the economic interests of legitimate businesses by deterring the illegal diversion of transshipments of controlled substances into U.S. commerce.

DATES: Written comments on this proposal must be received by June 9, 1995, at the address below. A public hearing, if requested, will be held in Washington, D.C. If such a hearing is requested, it will be held on May 25, 1995, and the comment period would then be extended to June 26, 1995. Anyone who wishes to request a hearing should call Tom Land at 202/233–9185 by May 17, 1995. Interested persons may contact the Stratospheric Ozone Protection Hotline at 1–800–296–1996 to see if a hearing will be held and to obtain the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

ADDRESSES: Comments on this proposal must be submitted to the Air Docket Office, Public Docket No. A–92–13, Room M–1500, Environmental Protection Agency, 401 M St., SW, Washington, DC 20406. Additional comments and materials supporting this rulemaking are contained in Docket No. A–92–13. The Docket may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday, at the address above. A reasonable fee may be charged for copying Docket materials.

FOR FURTHER INFORMATION CONTACT: Tom Land, Environmental Protection Agency, Office of Atmospheric Programs, Stratospheric Protection Division, (6205–J), 401 M St., SW, Washington, DC 20460, (202) 233–9185. The Stratospheric Ozone Protection Hotline at 1–(800)–296–1996 can also be contacted for further information of a copy of this rule.

SUPPLEMENTARY INFORMATION:

I. Background

Under the current regulatory requirements, published in the **Federal Register** on December 10, 1993, a person who transships a controlled substance from one foreign country through the United States to another foreign destination does not need allowances. The Environmental Protection Agency (EPA) implements a program of allowances to limit and monitor the production, import and export of controlled substances in the United States.

In the proposed rulemaking published in the **Federal Register** on November 10, 1994 (59 FR 56275), EPA proposed clarifications to the definition of transshipment. In response to that proposal several companies suggested EPA create a permitting process for transshipments to combat the known use of transshipment as a means of illegally importing controlled substances. Since that time, EPA has confirmed that transshipments are a large and common loophole for the illegal entry of controlled substances into U.S. commerce. EPA and U.S. Customs criminal investigators have identified transshipment as one of the most likely schemes for the illegal import of controlled substances into the United States. As recently as January 1995, three men were arrested for conspiracy to divert material into U.S. interstate commerce that they alleged was being transshipped. Legitimate U.S. companies that are worldwide leaders in the transition to alternatives are being adversely affected by illegal imports, and have requested such a change to discourage this activity.

II. Amendment to the Transhipment Requirements

To eliminate the use of transhipments as a loophole for the illegal import of controlled substances, EPA is proposing that a person must petition the Agency to tranship class I substances. The proposed petition process for transhipments would parallel the petition process created to combat the illegal imports of used, recycled and reclaimed controlled substances.

The proposed petition process for transhipments would require a person to submit a petition to EPA to tranship each shipment through the United States at least 15 working days prior to the date the ship is to leave the foreign country prior to arriving in the U.S. to tranship. The petition must include the following information:

- The name and quantity of the controlled substance to be transhipped,
- The name and address of the importer, the importer I.D. number, the contact person, and the phone and fax numbers,
- Name and address of the exporter and/or foreign owner of the material,
- The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the chemical,
- The intended foreign destination of the transhipped material, the anticipated date of export from the U.S., U.S. port of export, and, when practical, the anticipated vessel that will transport the chemical.

As with petitions to import used controlled substances, EPA will have 15 working days to review the petition to tranship. If during the 15 working days, EPA decides to object to the petition or to request additional information, the person submitting the petition will be notified. If EPA needs additional information, the importer may re-submit the petition with the requested information. If EPA does not object to the particular petition within the 15 working days, the person may proceed with the transhipment and assume it is permitted. EPA will then notify the U.S. Customs Service of the anticipated arrival of the shipments that will be transhipped to another foreign destination.

EPA believes that a shipment-by-shipment petition process for transhipments will most effectively counter illegal imports and restore market-based incentives for the transition to alternatives to controlled ozone-depleting substances. Shipments to the United States considered Transportation and Export (T&E) are not subject to the proposed petition requirements.

III. Summary of Supporting Analysis

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 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. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency originally published an RFA to accompany the August 12, 1998 final rule (53 FR 30566) that placed the initial limits on the production and consumption of CFCs and halons. The RFA was also updated as Appendix G of the Regulatory Impact Analysis for the regulations implementing the phaseout schedule of section 604 of the Clean Air Act Amendments of 1990. The Addendum to the Regulatory Impact Analysis was further updated in 1993 to examine the impact of the acceleration of the phaseout and the phaseout of HCFCs on small businesses. The analysis in the Addendum indicated that the actions were not expected to have a substantial impact on small entities.

EPA believes that any impact that today's proposed amendment will have on the regulated community will serve only to provide relief from otherwise applicable regulations, and will therefore limit the negative economic impact associated with the regulations previously promulgated under Section 604 and 606. Although almost all businesses participants in the phaseout program for ozone-depleting substances are large businesses, today's proposed amendment reduces reporting or recordkeeping burdens that might possibly impact small businesses. Therefore, the proposed amendment is expected to have minimal if any impact on small entities.

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, I certify that the regulation promulgated in this notice of proposed rulemaking will not have any additional negative economic impacts on any small entities.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* and assigned control number, OMB 2060–0170. An Information Collection Request document has been prepared by EPA (ICR No. 1432.15) and a copy may be obtained from Sandy Farmer, Information Policy Branch, U.S. EPA, 401 M St. SW. (2136), Washington, DC 20460 or by calling (202)–260–2740.

The information collection requirements for this final rule has an estimated reporting burden averaging 23.3 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing the collection of information.

Send comments regarding the burden estimate of any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, U.S. EPA, 401 M St., SW., (2136), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875 we have involved state, local, and tribal governments in the development of this rule to the extent they are affected by these requirements. EPA is conducting an outreach program to facilitate the transition for state, local and tribal governments to ozone-friendly alternatives.

E. Unfunded Mandate Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to 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 any small governments that may be significantly or uniquely affected by the rule. Section 250 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not selected or this alternative is inconsistent with law.

The net effect of all the amendments to the accelerated phaseout rule is a reduction in regulatory burden for regulated entities. This proposed amendment is designed to confront illegal activities which are costing legitimate U.S. businesses and the government millions of dollars in lost revenue. Because this proposed amendment to the rule is estimated to result in the expenditure of less than $100 million in any one year by state, local, and tribal governments, or the private section, the Agency has neither prepared a budgetary impact statement nor addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small government will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Ozone layer, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: April 19, 1995.

Carol Browner,

Administrator.

Part 82 is proposed to be 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, 7671–671q.

Subpart A—Production and Consumption Controls

2. Section 82.4 is amended by adding paragraph (g), to read as follows:

§ 82.4 Prohibitions.

* * * * *

(g) Effective January 1, 1995, no person may import, at any time in any control period, a used class I controlled substance, or tranship a controlled substance through the United States, without petitioning the Administrator as under § 82.13(g)(2) for authorization.

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3. Section 82.13 is amended by adding paragraph (g)(2) to read as follows:

§ 82.13 Record-keeping and reporting requirements.

* * * * *

(g) * * *

(1) * * *

(2) *Petitioning—Importers of Used Controlled Substances and Transhipments.* For each shipment of a used controlled substance (contaminated, recycled or reclaimed material), or each transhipment of a class I controlled substance, an importer must submit to the Administrator, at least 15 working days before the shipment is to leave the port of export, the following information in a petition:

(i) The name and quantity of the used controlled substance to be imported (including material that has been recycled or reclaimed) or of the controlled substance to be transhipped;

(ii) The name and address of the importer, the importer ID number, the contact person, and the phone and fax numbers;

(iii) Name and address of the source(s) of the used controlled substance, including a description of the previous use(s), when possible;

(iv) Name and address of the exporter and/or foreign owner of the material,

(v) The U.S. port of entry for the import, the expected date of arrival of the shipment and the vessel transporting the chemical;

(vi) The intended use of the used controlled substance;

(vii) The intended foreign destination of the transhipped material, the anticipated date of export from the U.S., U.S. port of export, and, when practical, the anticipated vessel that will transport the chemical.

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