

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

[FRL-7130-6]

RIN 2060-AG12

#### Protection of Stratospheric Ozone: Removal of Restrictions on Certain Fire Suppression Substitutes for Ozone-Depleting Substances; and Listing of Substitutes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to remove restrictions that were previously imposed on the use of certain substitutes for ozone-depleting substances (ODSs) under the Significant New Alternatives Policy (SNAP) program. Specifically, EPA is proposing to remove restrictions on the use of certain substitutes for halon fire suppression and explosion protection agents that are used in the total flooding end-use. The Agency is also proposing to add a substitute, with restrictions on its use, to the list of fire suppression and explosion protection agents.

Elsewhere in today's **Federal Register**, EPA is taking these actions as a direct final rule without prior proposal because EPA views these as noncontroversial revisions and anticipates no adverse comments. A detailed 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 hearing in response to these actions, 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 this time.

**DATES:** Comments must be received in writing by February 28, 2002.

**ADDRESSES:** Public comments and data specific to this action should be sent to Docket A-91-42, U.S. Environmental Protection Agency, OAR Docket and Information Center, 401 M Street, SW., Room M-1500, Mail Code 6102, Washington, DC 20460. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 260-7548; fax (202) 260-4400. 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 Margaret Sheppard 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:** Margaret Sheppard at (202) 564-9163 or fax (202) 565-2155, U.S. Environmental Protection Agency, Stratospheric Protection Division, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 4th floor, 501 3rd Street, NW., Washington, DC, 20001. You also may contact the Stratospheric Protection Hotline at (800) 296-1996 or EPA's Ozone Depletion World Wide Web site at "<http://www.epa.gov/ozone/title6/snap/>".

**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 remove restrictions that were imposed on the use of certain substitutes for ODSs under the SNAP program in the fire suppression and explosion protection industry 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. The revisions would modify the appendices to subpart G.

The direct final rule will be effective on April 1, 2002 without further notice unless we receive adverse comment (or a request for a public hearing) by February 28, 2002. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that all or part of 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 Margaret Sheppard 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. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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.

#### B. 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 that it considers this a "significant regulatory action" within the meaning of the Executive Order and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

#### C. 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 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.

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.

#### D. 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 remove regulatory restrictions on the use of certain fire suppressants and replace them with a recommendation to use 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.

#### E. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

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. Primarily, the rule removes regulatory restrictions on the use of most fire-suppressants used as total flooding agents and, instead, defers to the voluntary consensus standards set by the National Fire Protection Association. Thus, users of these substitutes are being relieved of regulatory constraints. For this action, EPA is also changing the listing of a substitute from acceptable subject to use

conditions to unacceptable. This agent, HBFC-22B1, was phased out of production more than five years ago, except for a few essential uses, because of its high ozone depletion potential. Later, the manufacturer withdrew it from the market because of its toxicity. Because this agent is generally unavailable and because of the potential liability associated with its toxic effects, EPA believes it is extremely unlikely that anyone is currently using this agent. We expect that listing this agent as an unacceptable substitute will have no significant impact on a substantial number of small entities. If anyone has information that small businesses are still using HBFC-22B1 and that there are impacts on those businesses that EPA should consider in making its decision, they should submit that information to EPA. With respect to EPA's decision on Halotron II, EPA is finding it acceptable for all uses requested by the manufacturer. Moreover, the manufacturer of the new fire suppressant, Halotron II, has not yet sold it, so today's action does not affect, in any way, current usage. For Envirolgel, today's action removes the use conditions and narrowed use limit on Envirolgel with one additive, while maintaining the existing narrowed use limit on Envirolgel used with all other additives. Thus, EPA is removing several regulatory constraints on the current ability of any entity, including small entities, to use this substitute. In addition, today's rule prevents potential conflicts between EPA regulations and existing state, local and tribal fire code requirements that incorporate NFPA standards by referring to standards of the NFPA.

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 and removing regulatory restrictions on a number of acceptable 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.

#### *F. 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 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. The halocarbon and inert gas fire suppressants in this proposed rule are used primarily in commercial areas and the workplace. These are areas where we expect adults are more likely to be present than children, and thus, the agents do not put children at risk disproportionately. The Agency finds a fetal toxin, HCFC-22B1, unacceptable in today's action. However, because this agent is generally unavailable and because of the potential liability associated with its toxic effects, EPA believes it is extremely unlikely that anyone is currently using this agent. Therefore, our action on this chemical is not likely to change the risk to children. If there were any change, it would add further protection for children. The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed results of early life exposure to the halocarbon and inert gas agents addressed in today's proposed rule.

#### *G. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 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 proposes to use the NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems, 2000 edition, a voluntary consensus standard developed by the National Fire Protection Association (NFPA). You can obtain copies of this standard by calling the NFPA's order telephone number 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 extensively in consultation with OSHA to encourage development of technical standards to be adopted by voluntary consensus standards bodies.

#### *H. 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 remove regulatory restrictions on the use of certain fire suppressants and replace them with a recommendation to use 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.

#### *I. 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. Primarily, the proposed rule would remove regulatory restrictions on the use of most fire-suppressants used as total flooding agents and, instead, defers to a voluntary consensus standard. Thus, users of these substitutes are being relieved of regulatory constraints. In addition, the rule allows wider use of substitutes, providing greater flexibility for industry. For the one substitute not acceptable, EPA believes it is unlikely that anyone is currently using this agent because this agent is generally unavailable and because of the potential liability associated with its toxic effects. Further, we have concluded that this rule is not likely to have any adverse energy effects.

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

Dated: January 15, 2002.

**Christine Todd Whitman,**  
*Administrator.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 281

[FRL-7134-3]

#### South Carolina; Tentative Approval of State Underground Storage Tank Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; notice of tentative determination on application of state of South Carolina for final approval, public hearing and public comment period.

**SUMMARY:** The State of South Carolina has applied for approval of its underground storage tank program for petroleum and hazardous substances under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the South Carolina application and has made the tentative decision that South Carolina's underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for approval. The South Carolina application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application,

unless insufficient public interest is expressed.

**DATES:** A public hearing is scheduled for March 20, 2002, unless insufficient public interest is expressed. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA in writing by February 28, 2002. EPA will determine by March 5, 2002, whether there is significant interest to hold the public hearing. The State of South Carolina will participate in the public hearing held by EPA on this subject. Written comments on the South Carolina approval application, as well as requests to present oral testimony, must be received by the close of business on February 28, 2002.

**ADDRESSES:** Copies of the South Carolina approval application are available at the following addresses for inspection and copying:

South Carolina Bureau of Underground Storage Tank Management, 2600 Bull Street, Columbia, South Carolina 29201-1708, Telephone: (803) 898-4350, 8:00 am through 4:30 pm, Eastern Standard Time.

U.S. EPA Docket Clerk, Office of Underground Storage Tanks, c/o RCRA Information Center, 1235 Jefferson Davis Highway, Arlington, Virginia 22202, Telephone: (703) 603-9231, 9:00 am through 4:00 pm, Eastern Standard Time; and,

U.S. EPA Region 4, Underground Storage Tank Section, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Telephone: (404) 562-9277, 8:00 am through 4:30 pm, Eastern Standard Time.

Written comments should be sent to Mr. John Mason, Chief of Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street S.W., Atlanta, Georgia 30303, Telephone (404) 562-9441.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State of South Carolina's application for program approval on March 20, 2002, at 5:30 pm, Eastern Standard Time, at the South Carolina Department of Health and Environmental Control, Peebles Auditorium, 2600 Bull Street, Columbia, South Carolina 29201-1708. Anyone who wishes to learn whether or not the public hearing on the State's application has been cancelled should telephone the following contacts after March 5, 2002:

Mr. John Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Telephone: (404) 562-9441, or

Mr. Stanley L. Clark, Chief, South Carolina Bureau of Underground Storage Tank Management, 2600 Bull Street, Columbia, South Carolina 29201-1708, Telephone: (802) 898-4350.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia 30303, Telephone: (404) 562-9441.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the State program: (1) Is "no less stringent" than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); (2) includes the notification requirements of RCRA section 9004(a)(8); and (3) provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (on information-gathering) and 9006 (on federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogues to these provisions.

##### II. South Carolina

The State of South Carolina submitted their draft state program approval application to EPA by letter dated August 29, 1996. After reviewing the package, EPA submitted comments to the state for review. South Carolina submitted their complete state program approval application for EPA's tentative approval on January 7, 1999. Technical issues prevented EPA from accepting the final application until the FY2000 South Carolina legislative session rectified certain legal points.

South Carolina adopted Underground Storage Tank Control Regulations that became effective on May 24, 1985. On