

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 82**

[FRL-7202-7]

RIN 2060-AJ74

Protection of Stratospheric Ozone: Interim Change in Allowances To Produce Methyl Bromide for Developing Countries**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of proposed rulemaking.

SUMMARY: With this action, EPA is proposing to extend the time companies are allocated limited production rights to manufacture methyl bromide solely for export to developing countries. The rule published in the **Federal Register** on November 28, 2000 (65 FR 70795), allocated additional production allowances, called Article 5 allowances, for the manufacture of methyl bromide solely for export to developing countries only until January 1, 2002. Today's action extends this time limit on the allocation of Article 5 allowances for methyl bromide until January 1, 2005, in accordance with the Clean Air Act.

Elsewhere in this issue of the **Federal Register**, EPA is extending the time companies are allocated limited production rights to manufacture methyl bromide solely for export to developing countries as a direct final rule without prior proposal because the Agency views this change as noncontroversial and anticipates no relevant adverse comments. The rationale for this extension appears in the preamble to the direct final rule. If no relevant adverse comments are received in response to the direct final rule, no further activity is contemplated on this proposed rule. The EPA believes today's action is noncontroversial because it does not result in any change in policy and merely extends the time period for an existing provision of the regulation.

DATES: Written comments on this proposed rule must be received on or before May 29, 2002, unless a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on May 9, 2002. If a hearing is held, EPA will publish a document in the **Federal Register** announcing the hearing information. Inquires regarding a public hearing should be directed to the contact person listed below.

ADDRESSES: Comments on this proposed rulemaking (companion to the direct final rule) should be submitted in duplicate (two copies) to: Air Docket No. A-92-13, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Mail Code 6102, Washington, D.C., 20460. If sending comments by courier, they should be delivered to Air Docket No. A-92-13, USEPA, 401 M Street, SW, Room M-1500, Washington, D.C., 20460. Comments must be identified with Docket No. A-92-13 and must be identified as comments on this proposed rule (companion to the direct final rule). Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Protection Hotline at 1-800-269-1996.

Materials relevant to this proposed rulemaking are contained in Docket No. A-92-13. The Docket is located in room M-1500, First Floor, Waterside Mall at the courier delivery address above. The materials may be inspected from 8 a.m. until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Tom Land, U.S. Environmental Protection Agency, Global Programs Division, Office of Atmospheric Programs, 6205J, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, (202)-564-9185, land.tom@epa.gov.

SUPPLEMENTARY INFORMATION: The EPA believes that the revision in the direct final rule published in today's **Federal Register** is noncontroversial; however, should the Agency receive relevant adverse comment on this rule, it will publish a notice informing the public that the revision did not take effect. All relevant adverse comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on today's revision to part 82, subpart A should do so at this time. For additional information, see the direct final rule published in the Final Rules section of this **Federal Register**.

Supporting Analyses*a. 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 to State, local, and tribal governments, in the aggregate, or to 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. 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 the Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local, or tribal government or the private sector. Rather, it extends the availability of an exemption from a regulatory prohibition. Thus, today's rule is not subject to the requirements of sections 202 or 205 of the UMRA.

We determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, we are 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. 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.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business that is identified by the North American Industry Classification System code (NAICS) in the Table below.

| Type of enterprise | NAIC code | Size standard (number of employees) |
|--|-----------|-------------------------------------|
| Organic Chemicals Wholesale-saling | 422690 | 100 |

(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, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities, as it regulates large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances.

c. 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 a "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 entitlements, 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 action 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.

d. Applicability of Executive Order 13045—Children's Health Protection

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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it implements an exemption established in the Montreal Protocol and adopted by Congress in section 604(e)(3) of the Clean Air Act.

e. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) renewed the approval of the information collection requirements and assigned OMB control number 2060-0170 (EPA ICR No. 1432.18).

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.

f. 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 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 rule extends an exemption used by large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances. It has no effect on State or local governments. Thus, Executive Order 13132 does not apply to this rule.

g. 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 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 rule extends an exemption used by large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances. It has no effect on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

h. The 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 its 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 does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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. The proposed rule would simply extend the time period for production of methyl bromide explicitly for export to developing countries and therefore have no adverse impacts on energy supply, distribution or use.

List of Subjects in 40 CFR Part 82

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

Dated: April 22, 2002.

Christine Todd Whitman,
Administrator.

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