

analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Reporting and recordkeeping requirements, Particulate matter.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 28, 2000.

Nora McGee,

Acting Regional Administrator, Region IX.

[FR Doc. 00–17492 Filed 7–10–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6729–5]

RIN 2060–AG12

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to impose restrictions or prohibitions on substitutes for ozone-depleting substances (ODSs) under the 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. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. The intended effect of the SNAP program is to expedite movement away from ozone-depleting compounds while avoiding a shift into substitutes posing other environmental problems.

DATES: Written comments or data provided in response to this document must be submitted by September 11, 2000. A public hearing will be held if requested in writing. If a public hearing is requested, EPA will provide notice of the date, time and location of the hearing in a subsequent **Federal Register** document.

ADDRESSES: Written comments and data should be sent to Docket A–2000–18, 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 Anhar Karimjee at the address listed below under **FOR FURTHER INFORMATION**. 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:

Anhar Karimjee at phone: (202) 564–2683, fax: (202) 565–2095 or e-mail: karimjee.anhar@epa.gov, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW, Washington, DC, 20001. The Stratospheric Protection Hotline can be reached at (800) 296–1996 and additional information can be found at EPA's Ozone Depletion World Wide Web site at "http://www.epa.gov/ozone/title6/snap/".

SUPPLEMENTARY INFORMATION: On March 18, 1994, EPA promulgated a rulemaking setting forth its plan for administering the SNAP program (59 FR 13044), and has since issued decisions on the acceptability and unacceptability of a number of substitutes. Today's proposal presents EPA's response to a SNAP submission received in February 1999, requesting review of the following foam blowing agents as substitutes for HCFC–141b: HFC–134a; HCFC–22; HCFC–142b; HCFC–124; and a HCFC–22/142b blend. This proposal also addresses use of HCFC–22 and HCFC–142b as foam blowing agents. In this Notice of Proposed Rulemaking, EPA is proposing the following decisions on the acceptability of substitutes in the foams sector:

To list HCFC–141b and blends thereof as unacceptable as substitutes in all foam end-uses. Current HCFC–141b use would be grandfathered (*i.e.*, allowed to continue) until January 1, 2005. To list HCFC–22, HCFC–142b, and blends thereof as unacceptable as substitutes in all foam end-uses. Current HCFC–22/–142b use would be grandfathered until January 1, 2005.

To list HCFC–124 as unacceptable as a substitute in all foam end-uses. EPA is not proposing to grandfather the use of HCFC–124 because it has not been previously listed as an acceptable foam blowing agent. No further action is proposed on the SNAP submission request for review of HFC–134a. EPA previously listed HFC–134a as an acceptable substitute for HCFC 141b (64 FR 63558).

Outline

- I. Background
 - A. Significant New Alternatives Policy (SNAP) Program
 - B. SNAP Submissions and Listing Decisions
 - C. Hydrochlorofluorocarbon (HCFC) Phase-out
 - D. HCFC-141b Phase-out
 - E. Significant New Alternatives Policy (SNAP) Foams Sector
 - F. Submission Addressed in Today's Proposal
- II. Proposed Significant New Alternatives Policy (SNAP) Listing Decisions
- III. Q's and A's on Today's Proposed Listing Decisions
- IV. Economic Impact
- V. Administrative Requirements

I. Background**A. Significant New Alternatives Policy (SNAP) Program**

On March 18, 1994, EPA published a rulemaking (59 FR 13044) that described the process for administering the SNAP program and issued EPA's first lists of acceptable and unacceptable substitutes for end-uses that historically had been dominated by ozone-depleting substances (ODSs). The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance (40 CFR 82.172). EPA's SNAP regulations define "use" as any use of a substitute for a class I or class II ozone-depleting compound, including but not limited to use in a manufacturing process or product, in consumption by the end-user, or in intermediate uses, such as formulation or packaging for other subsequent uses (40 CFR 82.172). The requirements of the SNAP program include:

- **Rulemaking**—Section 612 of the CAA 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**—EPA must publish a list of the substitutes unacceptable for specific uses and a corresponding list of acceptable alternatives for specific uses.
- **Petition Process**—Any person has the right to petition EPA to add a

substitute or delete a substitute from the lists published under SNAP. 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**—EPA requires any person who produces a new chemical substitute to notify the Agency at least 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.

- **Outreach**—EPA must 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**—The Agency has set up a public clearinghouse (Docket A-91-42) of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances. For more information on how to contact this clearinghouse, please contact the Air Docket with the information in the ADDRESSES section of this document.

SNAP 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 substances. Anyone who produces a new 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 of substitutes, but may also include importers, formulators, or end-users when they are responsible for introducing a substitute into commerce. Any individual who uses a substitute in end-uses within any of the major industrial sectors listed above is subject to SNAP lists.

For copies of all of the current SNAP lists or additional information on SNAP, contact the Stratospheric Protection Hotline at (800) 296-1996, Monday-Friday, between the hours of 10 a.m. and 4 p.m. (EST). You may also contact the Air Docket and Information Center, 401 M Street, SW, Room M-1500, Mail Code 6102, Washington, DC 20460. The docket, which is the administrative

record for EPA's SNAP regulations, 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. For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). This, and subsequent notices and rulemakings under the SNAP program, as well as EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at "http://www.epa.gov/ozone/title6/snap/" and from the Stratospheric Protection Hotline number listed above.

B. SNAP Submissions and Listing Decisions

The SNAP program receives submissions requesting EPA to review alternatives to CFCs and HCFCs for use in various applications. The 90-day review period begins when EPA receives a submission and determines that it includes all of the necessary information. As outlined in 40 CFR 82.180(a)(7), EPA considers the following factors when reviewing a submission:

- (1) Atmospheric effects and related health and environmental impacts;
- (2) General population risks from ambient exposure to compounds with direct toxicity and to increased ground level ozone;
- (3) Ecosystem risks;
- (4) Occupational risks;
- (5) Consumer risks;
- (6) Flammability; and
- (7) Cost and availability of the substitute.

At the conclusion of the 90-day period, EPA makes a determination on the acceptability of the alternative. Under Section 612 of the CAA, the Agency has considerable discretion in the risk management decisions it can make in SNAP. In the SNAP rule, the Agency identified the following possible decision categories (40 CFR 82.180(b); see also 59 FR 13062 Decision-Making Framework):

1. **Acceptable:** Fully acceptable substitutes, *i.e.*, those with no restrictions, can be used for all applications within the relevant sector end-use;
2. **Unacceptable:** It is illegal to replace an ozone depleting substance with a substitute within an end-use for which the substitute is listed by SNAP as unacceptable;
3. **Acceptable subject to use conditions:** To minimize risk to human

health and/or the environment, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met. Use of such substitutes without meeting specified use conditions renders these substitutes unacceptable and subjects the user to enforcement for violation of section 612 of the CAA;

4. Acceptable subject to narrowed use limits: Applied when the Agency determines a need to restrict the use of a substitute based on the potential for adverse effects, while permitting a narrowed range of use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute that is 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 the purpose 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 without meeting specific narrowed use limits subjects the user to enforcement for violation of section 612 of the CAA;

5. Pending: Used for substitutes for which the Agency has not received complete data or has not completed its review of the data.

As described in the final rule for the SNAP program, 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 (50 FR 13044, 13047). 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**.

If EPA does not make a decision within 90 days of receipt of a complete submission, the substitute(s) can be legally used in the end-use for which

they were submitted. EPA can subsequently list the substitute(s) as unacceptable making them illegal for use in specific end-uses. If EPA ultimately determines that the substitute is unacceptable, any company that switched to the alternative after the 90-day period expired must stop using that alternative at the time EPA's unacceptability decision takes effect.

C. Hydrochlorofluorocarbon (HCFC) Phase-Out

The Montreal Protocol on Substances that Deplete the Ozone Layer ("the Montreal Protocol" or "the Protocol") is an international treaty established in 1987 which aims to reduce the harmful effects of man-made ozone-depleting substances. The Protocol has been signed by more than 160 countries, all of whom have agreed to limit or eliminate their production and/or consumption of ozone-depleting substances in a stepwise fashion over time, according to the terms of the treaty and its amendments. The U.S. has adopted the Montreal Protocol and must at a minimum comply with its phase-out schedules and other requirements.

During their second meeting in London in 1990, the countries that are Parties to the Montreal Protocol identified HCFCs as transitional substitutes for chlorofluorocarbons (CFCs) and other more destructive ozone-depleting substances, but agreed to phase out HCFCs because of their significant potential to destroy stratospheric ozone as well. Recognizing the impact this phase-out would have on manufacturers and users of HCFCs, the Protocol provides for a gradual reduction in the consumption of HCFCs and eventual phase-out in developed countries by 2030. (A more extended schedule was agreed upon for developing countries, with a complete HCFC consumption phase-out by 2040.) Beginning in 1996, production of HCFCs in developed countries was capped at the 1989 HCFC production level, plus 2.8% of the 1989 CFC production level. Using the cap as a baseline, the U.S. consumption of HCFCs must be reduced by the following amounts and dates:

- 35% by 2004
- 65% by 2010
- 90% by 2015
- 99.5% by 2020
- 100% by 2030

The phase-out of HCFCs in the U.S. is implemented through regulations published under the authority of the Clean Air Act (CAA) (40 CFR 82 Subpart A). The CAA, as amended in 1990, established a U.S. consumption phase-out schedule for HCFCs and required

EPA to promulgate regulations to implement, and if necessary, accelerate the phase-out to conform to the Montreal Protocol requirements. The phase-out schedule for HCFCs, established in rulemaking promulgated on December 16, 1993, is on a chemical-by-chemical basis, beginning with those with the highest ozone depletion potential (ODP), as outlined below. [Note: Consumption means the amount of a substance produced in the U.S., plus the amount imported, minus the amount exported (CAA, Title VI, § 601)].

(1) In light of the 35% reduction in HCFC consumption required by the Montreal Protocol by 2004, production and import of HCFC-141b will be banned in the U.S. as of January 1, 2003. Under the U.S. consumption phase-out schedule, HCFC-141b is being phased out first because it has the highest ODP of any commonly used HCFC. Petitions received from a number of environmental organizations and industry groups prior to the EPA's December 10, 1993 rulemaking (58 FR 65018) supported the decision to make ODP the key factor in establishing this phase-out schedule. In addition, the formula established by the Montreal Protocol to determine the cap on HCFC consumption weights HCFCs according to their ODP. Phasing out the HCFCs with the highest ODPs yields the greatest environmental benefit, while helping the U.S. meet the phase-out schedule and still allowing the use of other HCFCs in areas where suitable ozone-safe alternatives are not yet available.

(2) Effective January 1, 2010, in light of the 65% reduction in HCFC consumption required by the Montreal Protocol that year, production and import of HCFC-142b and HCFC-22 will be prohibited, except for use in equipment manufactured prior to January 1, 2010. HCFC-142b and HCFC-22 are being phased out before other HCFCs because they have high ODPs relative to other HCFCs (other than HCFC-141b). Together with HCFC-141b, these are the HCFCs that cause the most damage to the stratospheric ozone layer.

(3) Beginning in 2015, in light of the 90% reduction in HCFC consumption required by the Montreal Protocol that year, production and import of the remaining HCFCs will be prohibited beginning January 1, 2015, except for feedstocks or for use as a refrigerant in equipment manufactured before January 1, 2020.

(4) Beginning in 2020, in light of the 99.5% reduction in HCFC consumption required by the Montreal Protocol that year, the exemption for use of HCFC-

142b and HCFC-22 in equipment produced prior to 2010 will end, and all production and consumption of these two HCFCs will be phased out.

(5) All HCFCs will be completely phased out by January 1, 2030. The Montreal Protocol and CAA allow limited production of HCFCs after the January 1, 2030 phase-out for export to developing countries to meet their basic domestic needs.

In addition to a cap on HCFC consumption, the Parties to the Montreal Protocol agreed at their 1999 meeting in Beijing, China to require a cap on HCFC production. According to the formula established in the Beijing amendment to the Protocol, the annual cap on production in the U.S. will be the average of: the sum of 2.8% of our 1989 CFC consumption plus 100% of our 1989 HCFC consumption, and the sum of 2.8% of our 1989 CFC production plus 100% of our 1989 HCFC production. According to this formula, annual production of HCFCs in the U.S. will be capped at 15,537 metric tons beginning in 2004. Pursuant to Section 614 (b) of the CAA, on April 5, 1999, EPA published an Advance Notice of Proposed Rulemaking (64 FR 16373) regarding a proposed system of transferable allowances to produce and consume HCFCs. This system would supplement the chemical-specific phase-out and ensure that the U.S. does not exceed its consumption cap.

D. HCFC-141b Phase-Out

As noted above, production and import of HCFC-141b will be banned in the U.S. as of January 1, 2003. The phase-out related restrictions on HCFC-141b in the U.S. focus on consumption and do not include use. The Montreal Protocol does not restrict the use of HCFCs. Section 605 of the CAA does contain use restrictions on HCFCs, but they are not effective until 2015. Therefore, neither the international nor domestic phase-out requirements would limit the use of HCFC-141b stockpiles between 2003 and 2015. Both manufacturers and users can stockpile for future use, to the extent use will be permitted under the CAA and its implementing regulations. It is important to note, however, that EPA previously determined that HCFC-141b is not acceptable as a substitute cleaning solvent for CFC-113 or methyl chloroform. These determinations were based on the availability of zero-ODP alternatives in these applications. In today's action, EPA is proposing that the use of HCFC-141b as a foam blowing agent in any end-use would be illegal after January 1, 2005. See below for

current information on HCFC-141b and the limits or conditions on its use.

As stated above, the HCFC-141b phase-out refers to consumption of HCFC-141b only. The phase-out does not affect imports of products containing HCFC-141b. Under Section 610 of the CAA, EPA has the authority to prevent interstate sale and distribution of certain products containing or manufactured with ozone-depleting substances. However, insulating foams, as defined in 40 CFR 82 subpart C, are specifically exempt from regulation under Section 610. Title VI of the Act thus does not provide EPA with the authority to prevent imports of products containing these foams.

E. Significant New Alternatives Policy (SNAP) Foams Sector

Class I substances, such as chlorofluorocarbon (CFC) -11, -12, -113, -114 and methyl chloroform, were the substances most widely used in foam sector end-uses at the time of the CAA Amendments of 1990 and EPA's original SNAP rule in March 1994. CFC-11 and -113, liquids at room temperature, were historically used in polyurethane and phenolic foams. CFC-12 and -114, gases at room temperature, were historically used in polyolefin and polystyrene foams. Methyl chloroform was used in some flexible polyurethane foams.

A major goal of the SNAP program is to facilitate the transition away from ozone-depleting substances. To encourage this transition, EPA has taken a stepwise approach to approving CFC and HCFC substitutes. In the original SNAP ruling, EPA created a list of acceptable substitutes for CFCs, which were common foam blowing agents at that time. The list of acceptable substitutes for CFCs includes: Hydrochlorofluorocarbon (HCFC) -123, -141b, -142b, -22; formic acid; saturated light hydrocarbons C3-C6; hydrofluorocarbon (HFC) -134a, -152a, -143a; 2-chloropropane; Electroset Technology; carbon dioxide; vacuum panels; methylene chloride; acetone; AB Technology; and various blends.

EPA listed HCFCs as acceptable replacements for CFCs because the Agency felt that HCFCs provided a bridge to ozone-friendly alternatives. Since then, HCFC-141b, -22 and -142b have become the most common foam blowing agents and consequently, the Agency has identified several new alternatives as substitutes for HCFCs in a second list. SNAP acceptable alternatives to HCFCs include: water; carbon dioxide; HFC-134a, -152a, -245fa; saturated light hydrocarbons C3-C6; formic acid; and acetone. All of

these alternatives have no ozone depleting potential and are available and several companies are using them or plan to use them in the near future (before 2003) in various end-uses such as polyurethane boardstock and appliance foam.

Because CFCs are no longer used as foam blowing agents in the U.S., EPA plans to evaluate the current list of acceptable substitutes for CFC foam blowing agents to determine if there are alternatives on that list that are also acceptable HCFC substitutes. This re-evaluation would eventually result in one list of acceptable substitutes in the foam sector which all users would be subject to. EPA believes that a unified list would minimize confusion and economic disparities among regulated entities. Current users may switch from one acceptable substitute to another without notifying EPA. If, however, a user would like to use something that is not currently listed to replace an ODS, even if this new substance is a non-ODS, the manufacturer must notify EPA. This allows EPA to evaluate the risks of new substitutes and assists in our responsibility to maintain a clearinghouse of current information on environmentally superior alternatives to ozone-depleting compounds.

Lists of the substitutes along with their approval dates and **Federal Register** citations can be obtained through the Air Docket (A-2000-18). EPA has placed a complete list of acceptable alternatives for specific end-uses in the foams sector on the internet at <http://www.epa.gov/ozone/title6/snap>.

F. Submission Addressed in Today's Proposal

The submission addressed in today's proposal was sent to EPA on February 17, 1999 and requests review of the following foam blowing agents as substitutes for HCFC-141b: (1) HFC-134a; (2) HCFC-22; (3) HCFC-142b; (4) HCFC-124; and (5) a HCFC-22/142b blend. HFC-134a was approved as a substitute for HCFC-141b in a **Federal Register** Notice published on June 8, 1999 (64 FR 63558). Therefore, HFC-134a is not discussed in this proposal. The Agency is also proposing SNAP listing decisions for HCFC-141b, -22, and -142b as foam blowing agents. These decisions are based on the availability of zero-ODP alternatives. EPA believes that including them in this proposal would effect a balanced and smooth transition across the entire insulating foams sector. EPA previously reviewed all of the chemicals in the submission, either as CFC substitutes in the foam sector or in other SNAP

sectors. Therefore, the submitter was not required to re-submit information on these chemicals. Instead, they sent a letter to EPA outlining their request along with a Material Safety Data Sheet for a 142b/22 blend and a technical data sheet discussing flammability of the blend. The submission provided EPA with sufficient information to consider the request. You can obtain a copy of the submission (A-2000-18) from EPA's Air Docket located at 401 M Street, SW, Room M-1500, 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. A reasonable fee may be charged for photocopying.

II. Proposed Significant New Alternatives Policy (SNAP) Listing Decisions

A. Unacceptable Substitutes

(1) HCFC-141b and Blends Thereof

HCFC-141b and blends thereof are proposed as unacceptable as substitutes in all foam end-uses. This listing would be effective 30 days following publication of a final action in the **Federal Register**. However, EPA is proposing that existing users would be grandfathered (*i.e.*, allowed to continue their use) until January 1, 2005. In this context, existing users are those using HCFC-141b in foam applications on the date of publication of a final action in the **Federal Register**. EPA is proposing to grandfather existing uses of HCFC-141b from prohibition under the four-part test established in *Sierra Club v. EPA* (719 F.2d 436 (DC Cir. 1983)) and discussed in Section VI.B. of EPA's original SNAP rule (59 FR 13044) published on March 18, 1994. As discussed in Section III, below, the Agency reviewed the considerations outlined in *Sierra Club v. EPA* and believes that this grandfathering period is appropriate.

The basis for EPA's proposed determination to list HCFC-141b as unacceptable is that HCFC-141b, with an atmospheric lifetime of approximately 9 years, has a comparatively high ozone depletion potential (ODP) of 0.11. When HCFC-141b was listed as an acceptable substitute for chlorofluorocarbons (CFCs), there were fewer alternatives available than there are today. Since 1994, EPA has listed alternatives as acceptable in more foam end-uses, and they are being used in a greater number of applications. Non-ozone-depleting substitutes are now available for all foam end-uses. The 1998 report of the United Nations Environment Programme (UNEP) Foams Technical

Options Committee (TOC) concluded that zero-ODP alternatives are the substitutes of choice in many applications, including certain rigid thermal applications (UNEP, 1998). Also, research and development has improved the technical viability of some alternatives that have been available for years. The 1998 UNEP Foams TOC report presents several zero-ODP foam blowing agents that are viable alternatives and states that "there are several significant developments in blowing agents, many of which are applicable to more than one foam sector"; for example, the report states that cost and technical performance of hydrocarbons have been improved and that certain hydrofluorocarbons, which are acceptable under SNAP, are "near drop-in replacements for HCFC-141b" (UNEP, 1998). The available alternatives, including hydrofluorocarbons, hydrocarbons, and carbon dioxide, provide clear paths to the transition away from ozone-depleting substances.

EPA is not proposing to allow for an extension of the grandfathering period beyond January 1, 2005 in today's action, because the Agency is unaware of any situation where it would be necessary. The Agency also believes that the declining availability of HCFC-141b, due to the HCFC-141b production phaseout effective January 1, 2003, makes it unlikely that users will want to pursue an extension of the grandfathering period. However, EPA is interested in comments on whether such extensions may be appropriate, on a case-by-case basis, for those uses where technically feasible alternatives are not available. In order for EPA to extend the grandfathering period, the Agency would need to be convinced that there are no technically feasible alternatives available.

(2) HCFC-22, -142b and Blends Thereof

HCFC-22, -142b, and blends thereof are proposed as unacceptable as substitutes in all foam end-uses. This listing would be effective 30 days following publication of a final action in the **Federal Register**. However, EPA is proposing that existing users would be grandfathered until January 1, 2005. In this context, existing users are those using HCFC-22, -142b, or blends thereof in foam applications on the date of publication of a final action in the **Federal Register**. As discussed in Section VI.B. of EPA's original SNAP rule (59 FR 13044) published on March 18, 1994, EPA is authorized to grandfather existing uses from prohibition where appropriate under the four-part test established in *Sierra Club*

v. EPA (719 F.2d 436 (DC Cir. 1983)). As discussed in Section III, below, the Agency reviewed the considerations outlined in *Sierra Club v. EPA* and believes that this grandfathering period is appropriate.

EPA believes that there are technically feasible zero-ODP substitutes available to replace HCFC-22 and -142b and it is, therefore, appropriate to list these substitutes as unacceptable. The basis for EPA's proposed determination to list HCFC-22 and -142b as unacceptable is that these substances have comparatively high ODPs (0.055 for HCFC-22 and 0.065 for HCFC-142b). The approximate atmospheric lifetimes of HCFC-22 and -142b are 12 years and 18 years, respectively. When HCFC-22 and -142b were listed as acceptable substitutes for CFCs, there were fewer alternatives available than there are today. Since 1994, EPA has listed alternatives as acceptable in more foam end-uses, and they are being used in a greater number of applications. Non-ozone-depleting substitutes are now available for all foam end-uses. The 1998 report of the United Nations Environment Programme (UNEP) Foams Technical Options Committee (TOC) concluded that zero-ODP alternatives are the substitutes of choice in many applications, including certain rigid thermal applications (UNEP, 1998). Also, research and development has improved the technical viability of some alternatives that have been available for years. The 1998 UNEP Foams TOC report presents several zero-ODP foam blowing agents that are viable alternatives and states that "there are several significant developments in blowing agents, many of which are applicable to more than one foam sector"; for example, the report states that cost and technical performance of hydrocarbons have been improved and that certain hydrofluorocarbons, which are acceptable under SNAP, are "near drop-in replacements for HCFC-141b" (UNEP, 1998). The available alternatives, including hydrofluorocarbons, hydrocarbons, and carbon dioxide, provide clear paths to the transition away from ozone-depleting substances.

EPA is not proposing to allow for an extension of the grandfathering period beyond January 1, 2005 in today's action, because the Agency is unaware of any situation where it would be necessary. However, EPA is seeking comment on whether such extensions may be appropriate, on a case-by-case basis, for those uses where technically feasible alternatives are not available. In order for EPA to extend the

grandfathering period, the Agency would need to be convinced that there are no technically feasible alternatives available.

(3) HCFC-124

HCFC-124 is proposed as unacceptable as a substitute in all foam end-uses. HCFC-124 is a low pressure gas with an ODP of 0.02, an atmospheric lifetime of approximately 6 years, and a 100-year global warming potential of approximately 600. Other alternatives exist with lower or no ODP. These alternatives are identified above in Section I.C.

EPA is not proposing to grandfather the use of HCFC-124 because it has not been previously listed as an acceptable foam blowing agent.

III. Q's and A's on Today's Proposed Listing Decisions

Who Is Affected by Today's Proposal?

This proposal would affect anyone who uses HCFC-141b, HCFC-22, HCFC-142b, or HCFC-124 as a foam blowing agent. Affected parties include, but are not limited to, manufacturers of the following products: polyurethane and polyisocyanurate boardstock, appliance foam, spray foam, and sandwich panels; polystyrene boardstock; phenolic foams; and polyolefin foams.

What Is EPA Proposing?

EPA believes that there are sufficient alternatives with zero ozone depletion potential (ODP) currently or potentially available to make these listings. EPA proposes the following:

(1) To list HCFC-141b and blends thereof as unacceptable as substitutes in all foam end-uses. Current HCFC-141b use would be grandfathered until January 1, 2005.

(2) To list HCFC-22, HCFC-142b, and blends thereof as unacceptable as substitutes in all foam end-uses. Current HCFC-22/-142b use would be grandfathered until January 1, 2005.

(3) To list HCFC-124 as unacceptable as a substitute in all foam end-uses. EPA proposes these listings after reviewing a SNAP submission that requested review of several HCFC foam blowing agents (the submission is discussed below) and conducting a comprehensive evaluation of substitutes for both chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs) in the Significant New Alternatives Policy (SNAP) foam sector.

What Did EPA Base This Proposed Decision On?

EPA is basing this proposed listing decision on the potential atmospheric

effects, including the ODP and atmospheric lifetimes associated with the various foam blowing substitutes. According to the Scientific Assessment of Ozone Depletion: 1998 (World Meteorological Organization, 1999), HCFC-141b has an ODP of 0.1, HCFC-142 has an ODP of 0.065, HCFC-22 has an ODP of 0.055, and HCFC-124 has an ODP of 0.02. The atmospheric lifetimes for these chemicals range from 6–18 years. Regarding the other health and environmental factors typically included in SNAP review (40 CFR 82.180(a)(7)), EPA finds no substantive distinction between the HCFCs and other available alternatives listed as acceptable foam blowing agents.

Why Is EPA Proposing To List HCFC-141b, -22, -142b, and -124 as Unacceptable?

In 1994, under the SNAP program, EPA approved the use of HCFCs as transitional foam blowing agents, despite their ozone depletion potential, because technically feasible alternatives were limited at that time. Manufacturers of the class I CFC blowing agents had worked in collaboration to develop transitional substances—HCFCs—for the use in all sectors, as a bridge to the time when ozone-safe alternatives would be technically feasible. Since then, previously available zero-ODP alternatives have been tested, developed, and optimized for a broader range of foam applications, and additional zero-ODP alternatives have become available (59 FR 13083). A major objective of the SNAP program is to promote the use of substitutes which present a lower risk to human health and the environment (40 CFR 82.170). EPA believes that sufficient non-ozone-depleting foam blowing agents are available. EPA is proposing to list HCFC-141b, -22, -142b, and -124 as unacceptable because zero-ODP alternatives are available that will reduce the overall risk to public health and the environment.

EPA Listed HCFC-141b as an Acceptable Replacement for CFCs. Why Is EPA Revisiting the Acceptability of HCFC-141b in Today's Proposal?

As stated above, EPA believes that zero-ODP alternatives are available as substitutes for HCFC-141b in all foam end-uses. EPA is addressing the use of HCFC-141b in this proposal in order to maintain a consistent policy on the use of HCFCs in the foam sector and to ensure that the use of HCFC-141b does not continue in applications where zero-ODP alternatives exist. This decision is consistent with a previous EPA determination, based on the availability

of alternatives with zero-ODP, that HCFC-141b is *not* acceptable as a substitute cleaning solvent for CFC-113 or methyl chloroform. Because EPA has provided an effective means for HCFC-141b users to transition to zero-ODP alternatives, today's proposal on HCFC-141b would have little or no negative effect on the foam industry.

Why Is EPA Proposing To List HCFC-22, -142b, and -124 as Unacceptable Replacements for HCFC-141b, Even Though Their ODPs Are Lower Compared to HCFC-141b?

EPA has concluded that listing these substances as unacceptable substitutes is consistent with the goals of the SNAP program. A major goal of the SNAP program is to facilitate the transition away from ozone-depleting substances (ODSs) by encouraging the use of environmentally safe alternatives. Congress intended to encourage and support research and development of non-ozone-depleting chemicals to replace HCFCs by giving EPA the authority to review potentially available alternatives (see also Section 612(a), (b), and (c) of the CAA). The use of HCFCs was initially considered acceptable as a bridge to zero-ODP foam blowing agents. Many HCFC-141b users and manufacturers have been researching alternatives for several years and are currently transitioning to zero-ODP foam blowing agents. Today's proposal does not disrupt their transition. Even though HCFC-22, -142b and -124 have lower ODPs compared to HCFC-141b, EPA does not believe that the new use of these ODSs as substitutes for HCFC-141b, even for a short period of time, is necessary in light of available zero-ODP foam blowing agents. Switching from HCFC-141b to HCFC-22, -142b or -124 would result in continued damage to the ozone layer and would delay the transition to zero-ODP foam blowing agents which are available.

Although HCFC-141b, -22 and -142b Are Being Proposed as Unacceptable in Today's Action, EPA is Proposing To Grandfather Existing Users of These Substances Until 2005. What Is Grandfathering?

In the original SNAP rulemaking, EPA recognized that, where appropriate, EPA can grandfather the use of a substitute by setting the effective date of its unacceptability listing for one or more specific parties in the future (59 FR 13057–58). EPA is authorized to allow the continuation of activities otherwise restricted where the balance of equities supports such grandfathering. Setting future effective dates allows the Agency to avoid penalizing those who in

specific applications may have already invested in good faith in alternatives that the SNAP program now determines to be unacceptable. Grandfathering also allows EPA to balance the desire not to penalize those who switched early in good faith with the need to avoid creating an incentive for continued investment in alternatives the Agency wishes to discourage.

What Criteria Are Used in Deciding Whether To Grandfather Continued Use of Unacceptable Substitutes?

In *Sierra Club v. EPA* (719 F.2d 436 (DC Cir. 1983)), the court established a four-part test to judge the appropriateness of Agency grandfathering. EPA considers the following when making a grandfathering determination:

- (1) if the new rule represents an abrupt departure from previously established practice;
- (2) the extent to which a party relied on the previous rule;
- (3) the degree of burden which the application of the new rule would impose on the party; and
- (4) The statutory interest in applying the new rule immediately.

Why Does EPA Believe That HCFC-141b, -22 and -142b Users Meet the Grandfathering Criteria?

The Agency recognizes that some foam manufacturers may have switched to HCFC-141b, -22 or -142b in good faith, expecting that these substitutes would sufficiently lower the risk of ozone depletion relative to other foam blowing agents available at the time. To avoid unfairly penalizing these existing users, the Agency is proposing to extend the effective date of the unacceptability listing until January 1, 2005, based on EPA's belief that existing users of HCFC-141b, -22 and -142b meet the grandfathering criteria outlined in *Sierra Club v. EPA*. EPA listed these substances as acceptable substitutes for class I substances in 1994. Prohibiting the use of these chemicals immediately represents an abrupt departure from that established practice for the many foam manufacturers that rely on HCFC-141b, -22 and -142b. These HCFCs were previously listed as acceptable substitutes for CFC foam blowing agents in various end-uses and were not scheduled for phase-out until future years. Additionally, if the proposal was to become effective immediately, it could create a burden on existing users if they currently do not have the means to make a sudden change to their operations. These factors outweigh EPA's statutory interest in applying the new rule immediately to existing users.

EPA believes its goal of encouraging the transition away from ODSs is still satisfied as new use of these substances will not be permitted in the foam sector and existing users will begin transitioning to zero-ODP alternatives.

How Did EPA Determine the Length of the Proposed Grandfathering Period?

EPA believes that it could take foam manufacturers up to four years to transition to alternatives. EPA considered that companies might need to conduct several activities during that time period, including:

- (1) Obtain permits or make modifications to existing permits;
- (2) Make changes to equipment in order to optimize production and ensure worker safety;
- (3) Establish raw material suppliers;
- (4) Develop formulations;
- (5) Test final products; and
- (6) Obtain final product review and approval by relevant boards or agencies.

I Currently Use HCFC-22 and/or HCFC-142b as a Foam Blowing Agent. How Long Could I Continue To Use Them?

In today's action, EPA proposes that all current users of HCFC-22 or -142b in foam applications must transition to an acceptable substitute by January 1, 2005. EPA strongly encourages foam end-users to transition away from these substitutes as their existing stocks are used and/or they recoup their investment in equipment unique to these substitutes.

Why Is EPA Not Proposing To Grandfather the Use of HCFC-124 as Well?

Grandfathering would not apply to HCFC-124 as a foam blowing agent since it has not been previously listed as an acceptable foam blowing agent. Grandfathering allows limited continuation of previously acceptable use which is subsequently determined to be unacceptable.

Why Would I Have To Stop Using HCFC-22 or -142b Before Its Production Phase-Out in 2010?

The production phase-out, which is described in more detail above, does not govern use of HCFCs. As mentioned above, the role of the SNAP program is to promote the use of substitutes believed to present a lower risk to human health and the environment (40 CFR 82.170). EPA believes that sufficient non-ozone-depleting foam blowing agents are available to replace HCFC-22 and -142b. The Agency has listed other ozone-depleting chemicals as unacceptable for specific uses before the production phase-out date specified

in the Montreal Protocol and Clean Air Act (e.g. HCFC-141b was listed unacceptable as a cleaning solvent in the original 1994 SNAP rulemaking (59 FR 13044)).

Does EPA Need To Be Petitioned in Order To List a Substitute as Unacceptable?

No. EPA has the authority to amend its regulations to initiate changes to SNAP determinations independent of any petitions or notifications received.

What if Some Alternatives Are Not Available in Time for Me To Meet the 2005 Deadline?

Some of the alternatives in the SNAP foam sector were only recently listed as acceptable (64 FR 65037). One alternative, HFC-245fa, is not yet commercially available in large quantities. If some alternatives prove to be technically infeasible or do not become available on a large scale, EPA has the ability to re-consider the proposed deadline.

What if There Is a Technical Constraint That Makes It Extremely Difficult for Me To Meet the SNAP Requirements?

You may be able to continue using HCFC-22 or -142b if you determine that there are no alternatives that can replace them in your specific application. In situations where companies have no technically feasible alternatives, EPA may extend the grandfathering of HCFC-22 or -142b for specific users or end-uses. EPA is not considering specific extensions at this time because the Agency feels that the grandfathering period provides everyone sufficient time to further develop and transition to alternatives. At some time prior to the expiration of the proposed grandfathering period, EPA will consider extending the grandfathering period for those applications where the use of alternatives is infeasible.

What Criteria Would I Need To Meet in Order for EPA To Extend the Grandfathering Period?

In order for EPA to extend the proposed grandfathering period, the Agency would need to be convinced that no technically feasible alternatives would be available. Users who believed they needed to use HCFC-22 or -142b past January 1, 2005, might be subject to the criteria laid out in 40 CFR 82.180 (b)(3). EPA might also require descriptions of the following:

- (1) The process or product in which HCFC-22 or -142b is needed;
- (2) Substitutes examined and rejected;
- (3) Reason for rejection; and

(4) Anticipated date other substitutes will be available and projected time for switching to them.

Although the user is not required to submit all of the documentation to EPA, the Agency may request some of this information in order to determine whether continued use of HCFC-141b, -22 or -142b is warranted.

Can I Comment on This Proposed Rule?

Yes. EPA is soliciting comments on this proposal. The Agency welcomes any feedback on this proposal and urges commenters to provide data in support of their views. EPA also requests that commenters be as specific as possible. For example, if you believe that in a certain end-use there are no alternatives to HCFC-22 or blends thereof, you should provide information on that particular application and why the available alternatives are not technically feasible. Information on where to send comments is provided at the beginning of this notice under **ADDRESSES**.

IV. Economic Impact

At the request of the Office of Management and Budget, EPA evaluated the potential cost impacts of today's proposal. EPA considered the implications of appliance manufacturers' obligations to comply with the Department of Energy's (DOE) 1997 Refrigerator Efficiency Standards. These standards require energy consumption of refrigerators, refrigerator-freezers, and freezers to be reduced by 30% by July 2001. Specifically, EPA examined the potential costs associated with complying with the DOE standards while meeting EPA's SNAP requirements. EPA believes that today's proposal will not result in a significant cost to appliance manufacturers or consumers. In fact, when costs associated with manufacturing refrigerators that will meet DOE energy efficiency requirements are considered, EPA estimates that use of non-HCFC foam blowing agents can result in cost savings.

Based in part on confidential information collected from chemical and appliance manufacturers pertaining to various foam blowing agents and their thermal insulation value, price, and equipment and material requirements, EPA estimates that the cost today to convert to zero-ODP blowing agents would range from approximately \$3 to \$10 for a mid-size refrigerator (24 cubic feet with a retail price of approximately \$900). Accounting for the fact that refrigerators will have to be re-designed to meet the DOE energy efficiency standards when

they become effective in July 2001 (e.g., reduced motor power in condenser and/or evaporator motor, reduced gasket heat leak rates, increased insulation, etc.), and because different blowing agents provide different thermal insulation values, EPA estimated the cost impacts associated with different blowing agents after the DOE standards become effective, assuming today's proposal becomes a final rule. For a mid-size refrigerator (24 cubic feet, approximately \$900 retail), we estimate the impacts of this proposal would be a cost savings ranging between approximately \$2.30 and \$3.40 per refrigerator, which in aggregate, would total between approximately \$23 million and \$34 million per year.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the 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.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency 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, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any action containing a significant Federal intergovernmental mandate. Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because EPA estimates that this proposed rule will not result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. Finally, because this NPRM 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.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions. This rule would not have a significant impact on a substantial number of small entities because the costs of the SNAP requirements as a whole are expected to be minor. There are numerous alternatives available and some users have independently begun to transition away from the substances listed as unacceptable because of the HCFC

production phase-out. The actions herein may well provide benefits to businesses who have transitioned to HCFC alternatives. EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposal. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. 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.

E. 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, as the exposure limits and acceptability

listings in this proposed rule primarily apply to the workplace.

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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This NPRM 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. Thus, the requirements of section 6 of the Executive Order do not apply to this proposal.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the

rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposal.

H. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), Public Law 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards. This proposed rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this proposal.

List of Subjects in 40 CFR Part 82

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

Dated: June 27, 2000.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, 40 CFR 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. Sec. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

2. Subpart G is amended by adding the following Appendix J to read as follows:

Appendix J to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes Listed in the [FR publication date] of the final rule.

FOAM BLOWING UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
All foam end-uses	HCFC–141b and blends thereof	Unacceptable	Existing HCFC–141b users are grandfathered until January 1, 2005.
All foam end-uses	HCFC–22, HCFC–142b and blends thereof.	Unacceptable	Existing HCFC–22/–142b users are grandfathered until January 1, 2005.
All foam end-uses	HCFC–124	Unacceptable	Alternatives exist with lower or zero-ODP.

[FR Doc. 00–16966 Filed 7–10–00; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF32

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the Coastal California Gnatcatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of

availability of draft economic analysis; correction.

SUMMARY: This document corrects the electronic mail (e-mail) address listed in a document published in the **Federal Register** on June 29, 2000, regarding the reopening of comment period and notice of availability of draft economic analysis for proposed critical habitat determination for the coastal California gnatcatcher. This clarification provides the correct e-mail address for submission of electronic comments on the proposed critical habitat determination of the coastal California gnatcatcher and the draft economic analysis for the proposed critical habitat determination.

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, 760–431–9440.

Correction

In the document announcing the reopening of comment period and notice of availability of draft economic analysis for proposed critical habitat determination for the coastal California gnatcatcher, FR 00–16511, beginning on page 40073 in the issue of June 29, 2000, make the following correction in the **ADDRESSES** section. On page 40074 in the 1st column, correct the e-mail address from “http://pacific.fws.gov/crithab/cg” to “fw1cagn@fws.gov.”

Dated: June 29, 2000.

Michael J. Spear,
Manager, California/Nevada Operations.
[FR Doc. 00–17566 Filed 7–10–00; 8:45 am]
BILLING CODE 4310–55–P