

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 82**

[FRL-5658-7]

RIN 2060-AG19

Protection of Stratospheric Ozone: Reconsideration of the Ban on Fire Extinguishers Containing HCFCs**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: Through this action EPA is amending the Class II Nonessential Products Ban promulgated under Section 610 of the Clean Air Act Amendments to provide an exemption for portable fire extinguishing equipment that contains hydrochlorofluorocarbons (HCFCs) for non-residential applications. EPA proposed and is today promulgating this exemption based on new and compelling information. EPA believes an exemption from the ban on sales and distribution for portable fire extinguishers used in non-residential applications that contain HCFCs is necessary to ensure that an effective substitute to halon, a class I ozone depleter, is readily available.

EPA believes that this amendment, while decreasing the regulatory burden on HCFC extinguishant manufacturers and distributors, will not compromise the goals of protecting public health and the environment.

EFFECTIVE DATE: January 3, 1997.

ADDRESSES: Comments and additional supporting materials are contained in the Air Docket Office, Public Docket No. A-93-20, Waterside Mall (Ground Floor), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M-1500. Dockets may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), 401 M Street, SW., Washington, DC 20460, (202) 233-9729. The Stratospheric Ozone Information Hotline at 1-800-296-1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

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I. Regulated Entities

Entities regulated by this action are those that wish to manufacture, sell, or distribute in interstate commerce portable fire extinguishers that contain hydrochlorofluorocarbons (HCFCs) for non-residential applications. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers of fire extinguishants. Manufacturers and distributors of portable fire extinguishers. Fire protection specialists.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria contained in Section 610(d) of the Clean Air Amendments of 1990; discussed in regulations published on December 30, 1993 (58 FR 69638); and discussed below. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

In 1993, EPA promulgated a rulemaking to establish regulations that implemented the statutory ban on nonessential products containing or manufactured with class II ozone-depleting substances under Section 610(d) of the Clean Air Act Amendments of 1990 (58 FR 69638). This final rule was developed by EPA to clarify definitions and to provide exemptions, as authorized under Section 610(d). EPA was not required to promulgate regulations since the ban was self-executing. The substances

affected by the Class II Ban are plastic foam products, aerosol products and pressurized dispensers. For additional information concerning this rulemaking and for a complete list of exempted and excluded products, the reader should review the final regulations published in the Federal Register December 30, 1993 (58 FR 69638). These rules are also codified at 40 CFR Part 82 Subpart C.

III. Portable Fire Extinguishers**A. Background**

In the December 30, 1993 initial rulemaking, the Agency exempted from the Class II Ban the use of HCFCs in portable fire extinguishers until such time as "suitable" substitutes for HCFCs in this application became "commercially available" (58 FR 69646). The inclusion of fire extinguishers in the class II ban was intended to be consistent with the class I ban, whereby CFCs used in fire extinguishers were banned since suitable substitutes were commercially available (January 15, 1993, 58 FR 4768). EPA distinguished between total flooding fire suppression systems, which were not identified as pressurized dispensers, and portable fire extinguishers, which the Agency interpreted as falling into the category of pressurized dispensers (58 FR 69647).

Since that final rule was promulgated, EPA learned new information as to significant complications in determining broad suitability of substitute fire extinguishants. EPA received two petitions requesting that the Agency reconsider the Class II Ban as it relates to portable fire extinguishers. Copies of these petitions are in Air Docket A-93-20. Through these petitions, subsequent verbal and written communications with industry representatives, and additional research by the Agency, EPA learned new and compelling information concerning the availability of fire extinguishants suitable to replace halon and CFCs in streaming applications. Based on this information, EPA determined that it was appropriate to propose revising the Class II Ban as it relates to portable non-residential fire extinguishers. A Notice of Proposed Rulemaking (NPRM) was published in the Federal Register on July 18, 1996 (61 FR 37430).

B. Notice of Proposed Rulemaking

In the NPRM, EPA stated that portable fire extinguishers for commercial applications present a unique dilemma, for a variety of reasons. First, their specific intended use is to protect human life and property. The fire extinguishant is typically discharged

only in response to a threat to life or property. Second, one type of extinguishant is not universally suitable for all situations, in that different types of fires, different environments in which fires are potentially to be fought, and different types of property being protected, each dictate a particular set of characteristics, found in varying degrees in various extinguishants. Third, the fire protection industry's codes, standards and regulations are extremely complex, such that states and localities adopt standards parallel to a national standard at vastly divergent times. Furthermore, some states and localities have adopted different versions of fire codes. Additionally, typical insurance industry requirements mandate conformance with local codes before proper insurance coverage can be obtained.

Given these unique circumstances, for purposes of section 610(d), determining the suitability and thus, commercial availability, of a substitute for use generally in portable fire extinguishers for non-residential applications becomes extremely elusive. Therefore, since suitability and commercial availability cannot be determined adequately for purposes of the Class II Ban, the NPRM proposed replacing the limited exemption that already exists with a total exemption for portable fire extinguishers for non-residential applications from the Class II Ban. This change in the regulatory language would simply reflect the present situation and provide a consistent determination regarding suitability based on current information for the regulated community. Furthermore, it would relieve the regulated community from the burdensome task of monitoring federal, state, and local activities concerning the review of other substitutes and attempting to assess at what point the standard of commercial availability has been achieved.

EPA also stated that if at some future date, compelling information is brought to the Agency's attention indicating that suitable substitutes are widely available for fire extinguishing applications, EPA may ultimately conclude that suitable substitutes are commercially available and undertake appropriate notice and comment procedures to remove this exemption. A more complete discussion of what information EPA considered appears in the NPRM.

C. Major Comments Received

EPA requested comment and received fifteen comments on the NPRM. Thirteen comments supported the proposed changes to the Class II Ban. Below is a summary of the comments and EPA's responses.

EPA received two comments from other federal agencies, the Department of Energy (DOE) and the Federal Aviation Administration (FAA). DOE indicated that to date, its efforts to replace Halon 1211 have been unsuccessful. Several DOE facilities require clean agents. Therefore, DOE indicated that DOE would benefit from having extinguishers that use HCFCs available for their special needs. EPA recognizes that clean agents are used in unique environments.

FAA stated that it has approved the use of HCFC Halotron I, an American Pacific product, for uses pertaining to airport rescue and fire fighting, and that this agent is listed as acceptable with use restrictions under EPA's Significant New Alternatives Policy (SNAP) Program. FAA stated that it "concurs with [EPA's] decision to provide an exemption for the use of hydrachlorofluorocarbons (sic) (HCFC) in either fixed or mobile portable fire extinguishers under section 610 of the Clean Air Act." EPA would like to clarify that the NPRM was a proposal, and at that time no final decision had been made. Also, since the FAA's listing of Halotron I as approved for uses regulated by FAA was consistent with a separate exemption in the original class II ban, today's action should not directly affect FAA's decision.

The comment from FAA refers to the SNAP program; therefore, EPA believes it is appropriate to delineate the differences between SNAP and the Class II Ban. Under Section 610(d), the burden is on EPA to actually decide that one kind of extinguishant cannot be exempted from the ban by determining that the substitute will be just as effective and available as the replaced extinguishant. Under Section 612, the burden on EPA is merely to deem substitutes acceptable if they do not present other health or environmental hazards. The latter task does not extend to banning those substances that the substitute claims to replace, nor does it include an examination of efficacy. In addition, the SNAP use conditions for Halotron I correspond to the regulations implementing the Class II Ban.

American Pacific Corporation submitted seven separate comments that were copies of letters sent to EPA's Administrator, Carol Browner, from members of Congress. Six of these letters were sent during the summer of 1995 and one letter was sent in April 1996. These letters all express support for the petition filed on behalf of Halotron and contained in Air Docket A-93-20. EPA responded to each of these letters at the time the letters were received.

EPA received one comment from a trade association representing the airline industry. This comment stated that the process of identifying suitable substitutes for halon for aircraft application has been very demanding. Since there are currently no approved "drop-in" replacements fully developed for specific aircraft applications, the commenter stated that it is essential that alternatives such as HCFC extinguishants be available. EPA understands these concerns.

Two additional commenters indicated their support for the regulatory changes. The first commenter, a distributor of fire suppression equipment, agreed with EPA's analysis. The commenter stated that the fire protection industry is highly regulated; however, these regulations are not necessarily consistent throughout the country. EPA agrees that there exists a myriad of fire protection requirements. The second commenter indicated that for their uses, HCFC-based portable fire extinguishers would be a suitable substitute to Halon 1211. EPA recognizes the need to use a clean agent for specific situations.

One commenter, supporting the proposed regulatory changes, stated that Halotron I had an ozone-depleting potential (ODP) of less than 0.025, 130 times lower than the ODP for Halon 1211. This commenter suggested that EPA revise the proposed language to include an ODP upper limit for HCFCs used in portable fire extinguishers. This commenter suggested that a limit of 0.025 should be established. EPA was intrigued by this suggested limitation. However, since no other product exempted from the Class II Ban has an ODP limit, EPA did not believe it was appropriate to establish such a limit for portable fire extinguishers. In addition, it is unclear what EPA's authority would be to impose such a limit, since § 610 only authorizes EPA to create exemptions where no other substitutes, other than a class I or class II substance, is available.

One commenter, the National Fire Protection Association (NFPA), neither endorsed nor opposed the NPRM. Instead, NFPA indicated that it was in the process of determining the suitability of extinguishers containing HCFCs and other replacements for non-residential fire protection applications through its consensus standards writing process. NFPA requested that EPA consider commenting on a Tentative Interim Amendment (TIA) that would permit HCFCs and other alternatives to be used to satisfy the minimum selection and replacement requirements for any non-residential building requiring fire extinguishers. EPA

recognizes the important role NFPA standards play in fire protection. EPA did not specifically comment on the TIA. EPA believes that the rulemakings concerning acceptable and unacceptable substitutes for halon promulgated under Section 612 of the Act, indicates what criteria EPA considers and how information is evaluated by the Agency.

EPA received one comment opposing the potential exemption. The commenter, Friends of the Earth (FOE), stated that a permanent exemption will have adverse impacts on human health and the environment and is unnecessary, given the availability of effective alternatives. FOE further stated that this exemption would translate into a significant chlorine loading burden for the stratosphere over the coming decades. FOE stated that recent scientific research indicates the need to take more aggressive action to protect human health and the environment. Moreover, FOE stated that suitable and commercially available alternatives are already being used to replace halon fire extinguishers in a wide variety of settings. FOE stated that water, carbon dioxide, dry chemicals, and foam agents have been proven safe and reliable alternatives. Also, recent research has led to the development and use of new agents and technologies such as inert gas mixtures, water-mist or fogging systems, and powdered aerosols. Based on this information, FOE does not believe that EPA should amend the Class II Ban.

While EPA agrees that it is necessary to take appropriate measures to eliminate the use of ozone-depleting substances, EPA disagrees with FOE's analysis regarding the availability of substitutes for all non-residential fire extinguishing. Since substitutes are not universally available, Class II substances are currently being used and EPA does not believe that this amendment will increase such use primarily for economic reasons. EPA agrees that many uses of HCFCs should be discouraged, particularly emissive uses. Generally, the Class II ban has been successful in limiting the uses of HCFCs. However, EPA has not found any indication that there would be significant human health or environmental effects associated with modifying the Class II Ban, as proposed, to revise the current exemption for portable fire extinguishers. Since substitutes are not universally available, Class II substances can currently be used and EPA does not believe this rule amendment will increase such use primarily for economic reasons. As one commenter stated, the ODP for Halotron I is less than 0.025. EPA reviewed

information concerning the cumulative adjusted chlorine loading that could be attributed to Halotron I. It appears that given the narrow use for such a product and its low ODP, any noticeable increase in the chlorine loading will be negligible. In 1999, 2017, 2024, and 2025, there could be an increase of only 0.001 parts per billion (ppb) attributed to permitting HCFC portable fire extinguishers in the United States.

FOE's comment listed various substitutes for halon that are non-ozone-depleting. EPA agrees that these substitutes should be evaluated by anyone planning to replace Halon 1211. As EPA stated in the initial rulemaking and in the July 18, 1996 NPRM, "non-halocarbon alternatives to Halon 1211 are already in widespread use in selected commercial applications because of their effectiveness, and due to the current regulatory climate, their use has been increasingly adopted wherever possible" (58 FR 69647, 61 FR 37431). In the NPRM, EPA further states that the Agency believes where non-gaseous agents can be used, appropriate consideration for these substitutes already occurs (61 FR 37431). However, such substitutes are not available for all fire extinguishing uses and EPA believes that they are already being used wherever appropriate. In essence, this amendment preserves the status quo and EPA does not believe it will lead to increased HCFC use. Therefore, EPA does not believe that the regulatory changes as proposed would have significant human health or environmental impacts. Moreover, EPA stated in the NPRM at some future date, if compelling information is brought to the Agency's attention indicating that suitable substitutes are widely available, EPA could undertake appropriate notice and comment procedures to remove this exemption (61 FR 37432).

D. Today's Action

EPA is today promulgating regulatory changes to the Class II Ban. These changes, consistent with the NPRM, are based on information regarding the suitability and commercial availability of substitutes for purposes of the Class II Ban. As proposed, EPA is today replacing the limited exemption that already exists with a total exemption for portable fire extinguishers for non-residential applications from the Class II Ban. If at some future date, compelling information is brought to the Agency's attention indicating that suitable substitutes are widely and consistently available for fire extinguishing applications, EPA may ultimately conclude that suitable substitutes are commercially available and undertake

appropriate notice and comment procedures to remove this exemption.

IV. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this action to promulgate an amendment to the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") 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.

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 must be 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 this action is estimated to result in the expenditure by State, local, and tribal governments or 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. As discussed in this preamble, this action provides relief by permitting the use of non-residential portable fire extinguishers that contain HCFCs; and therefore, would increase the flexibility in choosing a particular fire extinguishant, thus reducing the net effect of the burden of part 82 subpart C of the Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities.

C. Paperwork Reduction Act

Any information collection requirements in a rule must be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because no informational collection requirements are adopted by today's action, EPA has determined that

the Paperwork Reduction Act does not apply to this rulemaking and no Information Collection Request document has been prepared.

D. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule. Any impact this rule will have on small entities will be to provide relief from regulatory burdens. EPA has determined that this action will not have a significant adverse economic impact on a substantial number of small businesses.

V. Submission To Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 82

Aerosols, Administrative practice and procedure, Air pollution control, Environmental protection, Chemicals, Exports, Government procurement, Hydrochlorofluorocarbons, Imports, Labeling, Nonessential products,

Portable fire extinguishers, Pressurized dispensers, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: November 27, 1996.

Carol M. Browner,
Administrator.

Title 40, Code of Federal Regulations, Part 82, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

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

2. Section 82.62 is amended by removing paragraphs (j) and (k).

3. Section 82.68 is amended by removing and reserving paragraphs (f) and (g).

4. Section 82.70 is amended by revising paragraph (a)(2)(vii) to read as follows:

§ 82.70 Nonessential Class II products and exceptions.

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(a) * * *

(2) * * *

(vii) Portable fire extinguishing equipment used for non-residential applications; and

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