

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-6129-3]

RIN 2060-AG48

Protection of Stratospheric Ozone: Reconsideration of Petition Criteria and Incorporation of Montreal Protocol Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: With this action, EPA is proposing revisions to the accelerated phaseout regulation that governs the production, import and export of substances that deplete the ozone layer under the authority of sections 602, 604, 605, 606, and 614 of the Clean Air Act Amendments of 1990 (CAA). Today's proposed amendments are made to reflect changes in U.S. obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) due to recent decisions by signatory countries to this international agreement. Additionally, in response to a petition submitted to EPA, the Agency is proposing to remove the requirement in the petition process for imports of used class I controlled substances that a person must certify knowledge of tax liability. Other proposed amendments are made to ease the burden on affected companies while continuing to ensure compliance with Title VI of the CAA and meet U.S. obligations under the Protocol.

Elsewhere in this issue of the **Federal Register**, EPA is amending the accelerated phaseout regulation as a direct final rule without prior proposal because the Agency views many of these distinct revisions as noncontroversial and anticipates no relevant adverse comments. A detailed list of the many distinct revisions is set forth in the direct final rule. If no relevant adverse comments are received on the direct final rule, no further activity is contemplated in relation to this proposed rule. The EPA believes that many of the distinct revisions are noncontroversial because they address various implementation issues without major changes in policy.

DATES: Written comments must be received by September 3, 1998, 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

August 14, 1998. If a hearing is requested it will be held September 1, 1998, and EPA will publish a document in the **Federal Register** announcing the hearing information and the extended comment period.

ADDRESSES: Comments on the 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, 401 M Street, SW, Room M-1500, Washington, DC, 20460. Comments must be identified with Docket No. A-92-13. 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 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, Stratospheric Protection Division, Office of Atmospheric Programs, 6205J, 401 M Street, SW., Washington, DC, 20460, (202) 564-9185.

SUPPLEMENTARY INFORMATION: The EPA believes that many of the distinct revisions in the direct final rule published in today's **Federal Register** are noncontroversial; however, should the Agency receive relevant adverse comment on the companion direct final rule, it will publish a timely withdrawal informing the public that the rule will 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. For additional information, see the direct final rule published in the Final Rules section of this **Federal Register**.

For ease of reference to the distinct revisions, the table of contents for the direct final rule published in the Final Rules section of this **Federal Register** is as follows:

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8. Changes to the Recordkeeping and Reporting Requirements for Entities Allocated Essential-Use Allowances
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III. Miscellaneous Additional Changes

Summary of Supporting Analysis

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a written statement is required under section 202, 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, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Section 203 of the UMRA 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 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more by State, local and tribal governments, in the aggregate, or by the private sector, in any one year. Most of the provisions in today's rule fulfill the obligations of the United States under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer, as well as those requirements specifically set forth by Congress in sections 604, 606 and 614 of the Clean Air Act Amendments of 1990. The remainder merely serve to clarify existing regulatory text and therefore impose no new additional enforceable duties on governmental entities or the private sector. The majority of the amendments do not create significant additional costs for either the public or the private sector because they address various implementation issues without major changes in policy. Viewed as a whole, today's amendments do not create a Federal mandate resulting in costs of \$100 million or more in any one year for State, local and tribal governments, in the aggregate, or for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this proposal 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

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.

The Agency performed an initial screening analysis and determined that this regulation does not have a significant economic impact on a substantial number of small entities. EPA characterized the regulated community by identifying the SIC codes of the companies affected by this rule. The Agency determined that the members of the regulated community affected by today's rule are generally not

small businesses. Small governments and small not-for-profit organizations are not subject to the provisions of today's rule. The provisions in the accelerated phaseout rule and today's action regulate large, multinational corporations that either produce, import, export, transform or destroy ozone-depleting chemicals controlled by this rule. To the extent that today's actions affect entities other than large, multinational corporations, there are few that are small entities and the economic impact is negligible. Thus, today's rule will not have a significant economic impact on a substantial number of small entities. The rule includes changes to recordkeeping or reporting requirements. Those changes included in today's rule that increase reporting burden only apply to large companies (pharmaceutical companies holding essential-use allowances). In general, for small entities, the changes in today's action reduce reporting and recordkeeping.

EPA concluded that this proposed rule would not have a significant impact on a substantial number of small entities, therefore, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

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 EPA and OMB that this rule is not a "significant regulatory action" within the meaning of the Executive Order.

D. Applicability of E.O. 13045— Children's Health Protection

This proposed rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

E. Paperwork Reduction Act

The revised information collection requirements in these amendments have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1432.17) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the internet at <http://www.epa.gov/icr>. The additional information requirements in these amendments are not effective until OMB approves them.

The information collection under this rule is authorized under sections 603(b) and 114 of the Clean Air Act Amendments of 1990 (CAA). This information collection is conducted to

meet U.S. obligations under Article 7, Reporting Requirements, of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol); and to carry out the requirements of Title VI of the CAA, including sections 603 and 614.

The reporting requirements included in the amendments to the current rule are designed to:

(1) Ensure compliance with the restrictions on production, import and export of controlled ozone-depleting substances after the phaseout of class I substances (except methyl bromide) after January 1, 1996;

(2) Allow exempted production and import for certain essential uses and the consequent tracking of that production and import;

(3) Address industry and Federal concerns regarding the illegal import of mislabelled used controlled substances that are claimed to be undercutting U.S. markets;

(4) Respond to industry comments on the functioning of the program to streamline reporting and eliminate administrative inefficiencies;

(5) Satisfy U.S. obligations under the international treaty, the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7;

(6) Fulfill statutory obligations under Section 603(b) of Title VI of the Clean Air Act Amendments of 1990 (CAA) for reporting and monitoring;

(7) Provide information to report to Congress on the production, use and consumption of class I and class II controlled substances as statutorily required in Section 603(d) of Title VI of the CAA.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B, and will be disclosed only if EPA determines that the information is not entitled to confidential treatment. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

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

The estimate includes the time needed to comply with EPA's reporting requirements, as well as that used for the completion of the reports under the amended regulations.

Collection activity	Number of respondents	Responses/ respondent	Total responses	Hours per response	Total hours
Producer's Report	8	4	32	16	512
Importer's Report	12	4	48	16	768
Notification of Trade	2	1	2	2	4
Export Report	10	1	10	80	800
Lab Certification	1000	1	1000	1	1000
Class II Report	14	4	56	16	896
Transformation & Destruction	15	1	15	80	1200
Essential Use Allowance Holders	12	4	48	32	1536
Lab Suppliers	4	4	16	24	384
Lab Suppliers—Reference Standards	10	1	10	16	160
Total burden hours	7260

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.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked

“Attention: Desk Officer for EPA.”
Include the ICR number in any
correspondence.

F. Executive Order 12875

Today’s action does not impose any unfunded mandate upon any State, local, or tribal government; therefore, Executive Order 12875 does not apply to this rulemaking.

List of Subjects in 40 CFR Part 82

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

Dated: July 17, 1998.

Carol M. Browner,

Administrator.

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