

also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 (64 FR 43255, August 10, 1999), because it merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule proposing to approve the redesignation of the SNP area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: October 28, 2005.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

[OAR-2003-0228, FRL-7993-2]

RIN 2060-AN11

### Protection of Stratospheric Ozone: Listing of Ozone Depleting Substitutes in Foam Blowing

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

**ACTION:** Proposed rule.

**SUMMARY:** Today the Environmental Protection Agency (EPA) is proposing to determine that HCFC-22 and HCFC-142b are unacceptable for use in the foam sector under the Significant New Alternatives Policy (SNAP) Program under section 612 of the Clean Air Act. The SNAP program reviews alternatives to Class I and Class II ozone depleting substances and approves use of alternatives which do not present a greater risk to public health and the environment than the substance they replace or than other available substitutes. Specifically, EPA is taking two actions. First, in response to a court decision upholding a challenge to EPA's July 2002 final rule finding HCFC-22 and HCFC-142b acceptable subject to Narrowed Use Limits in three foam end uses, we are proposing to find HCFC-22 and HCFC-142b unacceptable as substitutes for HCFC-141b in the foam end uses of commercial refrigeration, sandwich panels, slabstock and "other" foams. Second, in the July 2002 final rule, EPA withdrew a proposed action to find HCFC-22 and HCFC-142b unacceptable as substitutes for CFCs in all foam end uses. We are now issuing a new proposal to find HCFC-22 and HCFC-142b unacceptable as substitutes for CFCs in all foam end uses.

**DATES:** Comments on this proposed rule must be received on or before December 5, 2005, unless a public hearing is requested. If requested by November 21, 2005 a hearing will be held on December 5, 2005 and the comment period will be extended until January 3, 2006 by a document published in the **Federal Register**. Inquires regarding a public hearing should be directed to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR-2004-0507 by one of the following methods:

- Federal eRulemaking portal [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments;

• Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments;

• Fax comments to (202) 566-1741; or

• Mail/hand delivery: Submit comments to Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202) 566-1742.

**Instructions:** Direct your comments to Docket ID No. OAR-2004-0507. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties

and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

**Docket:** All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Suzie Kocchi, Stratospheric Protection Division, Office of Atmospheric Programs (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343-9387; fax number: (202) 343-2363; e-mail address: [kocchi.suzanne@epa.gov](mailto:kocchi.suzanne@epa.gov). The published versions of notices and rulemakings under the SNAP program are available on EPA's Stratospheric Ozone Web site at <http://www.epa.gov/ozone/snap/regs>.

#### SUPPLEMENTARY INFORMATION:

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#### I. Regulated Entities

Today's rule regulates the use of HCFC-22 and HCFC-142b as foam blowing agents used in the manufacture of rigid polyurethane/polyisocyanurate and extruded polystyrene foam products. Businesses that currently might be using HCFC-22 and HCFC-142bb, or might want to use it in the future, include:

- Businesses that manufacture polyurethane/polyisocyanurate foam systems
- Businesses that use polyurethane/polyisocyanurate systems to apply insulation to buildings, roofs, pipes, etc.
- Businesses that use manufacture extruded polystyrene foam insulation for buildings, roofs, pipes, etc.

Table 1 lists potentially regulated entities:

TABLE 1.—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE OR SUBSECTOR

| Category       | NAICS code or subsector | Description of regulated entities                                   |
|----------------|-------------------------|---------------------------------------------------------------------|
| Industry ..... | 326150                  | Urethane and Other Foam Product (except Polystyrene) Manufacturing. |
| Industry ..... | 326140                  | Polystyrene Foam Product Manufacturing.                             |

This table is not intended to be exhaustive, but rather a guide regarding entities likely to be regulated by this action. If you have any questions about whether this action applies to a particular entity, consult the person listed in the preceding section, **FOR FURTHER INFORMATION**.

#### II. Section 612 Program

##### A. Statutory Requirements

Section 612 of the Clean Air Act (CAA) requires EPA to develop a program for evaluating alternatives to ozone depleting substances (ODS). EPA refers to this program as the Significant

New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- **Rulemaking**—Section 612(c) 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*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. When the Agency grants a petition, EPA must publish the revised lists within an additional six months.

- *90-day Notification*—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify EPA not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide EPA with the producer's health and safety studies on such substitutes.

- *Outreach*—Section 612(b)(1) states that the Administrator shall 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*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

### B. Regulatory History

On March 18, 1994, EPA published a rule (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning, foam manufacturing, 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 compounds.

EPA defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance (40 CFR 82.172). Anyone who produces a substitute must provide EPA 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 (40 CFR 82.174(a)). This requirement applies to chemical manufacturers, but may include importers, formulators, or end-users when they are responsible for introducing a substitute into commerce.

### C. Listing Decisions

Under section 612, EPA has considerable discretion in the risk management decisions it can make under the SNAP program. In the 1994 SNAP rule, the Agency identified four possible decision categories: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable (40 CFR 82.180(b)). Fully acceptable substitutes, i.e., those with no restrictions, can be used for all applications within the relevant sector end-use.

After reviewing a substitute, EPA may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risk to human health and the environment. Such substitutes are described as "acceptable subject to use conditions."

Even though EPA can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must first 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 must 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. The use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit is unacceptable and violates Section 612 of the CAA and the SNAP regulations. (40 CFR 82.174).

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 (59 FR 13044). Updates to the acceptable lists are published as separate Notices of Acceptability in the **Federal Register**.

As described in the original March 18, 1994 rule for the SNAP program (59 FR 13044), 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. In this proposed rule, EPA is revising its determination regarding the acceptability of HCFC-22 and HCFC-142b as substitutes for HCFC-141b and CFCs in the foam blowing sector. The section below presents a detailed discussion of the proposal being made today.

## III. Listing Decisions on HCFC-22 and HCFC-142b in the Foam Sector

### A. Background

A major goal of the SNAP program is to facilitate the transition away from ODS to alternatives that pose less risk to human health and the environment. In 1994, EPA listed several HCFCs as acceptable replacements for CFCs<sup>1</sup> because the Agency believed that HCFCs provided a temporary bridge to alternatives that do not deplete stratospheric ozone (i.e., "ozone-friendly" alternatives). At that time, EPA believed that HCFCs were necessary transitional alternatives to CFC blowing agents in thermal insulating foam (59 FR 13083). As a result, HCFC-22 and HCFC-142b have become common foam blowing agents in place of CFCs. Pursuant to the CAA and the *Montreal Protocol on Substances that Deplete the Ozone Layer*, HCFC-22 and HCFC-142b are scheduled to be phased out of production and import in the United States on January 1, 2010.<sup>2</sup> Since the time EPA initially listed HCFC-22 and

<sup>1</sup> Historically, CFC-11, CFC-12, CFC-113 and CFC-114 have all been used as blowing agents in the foam industry, with CFC-11 in polyurethane applications and CFC-12 in extruded polystyrene boardstock applications being the two most popular CFC blowing agents (March 18, 1994, 59 FR 13082).

<sup>2</sup> The phaseout schedule was established on December 10, 1993 (58 FR 65018) as authorized under section 606 of the Clean Air Act.

HCFC-142b as acceptable in certain foam blowing uses, the Agency has listed several other non-ODS alternative blowing agents, including hydrofluorocarbons (HFCs), hydrocarbons, carbon dioxide, and other compounds, as acceptable substitutes in foam blowing.<sup>3</sup>

In a final rule published on July 22, 2002, EPA did the following: (1) Found HCFC-22 and HCFC-142b acceptable substitutes for HCFC-141b with Narrowed Use Limits in the foam end uses of commercial refrigeration, sandwich panels, and rigid polyurethane slabstock and "other" foams end uses; (2) withdrew a proposed decision to list HCFC-22 and HCFC-142b as unacceptable substitutes for CFCs for all foam end uses; (3) listed HCFC-22 and HCFC-142b as unacceptable substitutes for HCFC-141b in the foam end uses of rigid polyurethane/polyisocyanurate laminated boardstock, rigid polyurethane appliance foam and rigid polyurethane spray foam; and (4) listed HCFC-124 as an unacceptable substitute in all foam end uses. This proposal again takes action with respect to two of the actions addressed in the July 2002 rule. First, in light of a recent court decision (*Honeywell Int'l v. EPA*, 374 F.3d 1363 (D.C. Cir. 2004), *modified on rehearing* 393 F.3d 1315 (D.C. Cir. 2005)), EPA is proposing to list HCFC-22 and HCFC-142b as unacceptable substitutes for HCFC-141b in commercial refrigeration, sandwich panels, and slabstock and "other" foam, but is proposing to grandfather existing users until January 1, 2010. Second, EPA is once again proposing to list HCFC-22 and HCFC-142b as unacceptable substitutes for CFCs in all foam end uses, but is proposing to grandfather existing users until January 1, 2010.

#### HCFC-22 and HCFC-142b Unacceptable as Substitutes for HCFC-141b

After the publication of the July 22, 2002 final rule, Honeywell International filed suit in the United States Court of Appeals for the District of Columbia Circuit (the Court), challenging the Narrowed Use Limits that the Agency established for HCFC-22 and HCFC-142b. Among other things, Honeywell alleged that EPA improperly considered

costs in determining to establish Narrowed Use Limits instead of finding HCFC-22 and HCFC-142b unacceptable for certain end uses. EPA argued that the decision was based solely on technical feasibility and, though not precluded from considering costs, it had not done so as part of the decision. The Court upheld Honeywell's challenge, explaining that various preamble statements indicated that EPA had considered costs, but that EPA had not explained the basis for doing so (*Honeywell Int'l v. EPA*, 374 F.3d 1363 (DC Cir 2004), *modified on rehearing* 393 F.3d 1315 (D.C. Cir. 2005)). In light of the Court's decision, EPA is required to reassess its action with respect to the acceptability of HCFC-22 and HCFC-142b as substitutes for HCFC-141b in commercial refrigeration, sandwich panels, and slabstock and "other" foam. After considering new information on alternatives, the Agency is proposing to find HCFC-22 and HCFC-142b unacceptable as substitutes for HCFC-141b in commercial refrigeration, sandwich panels, and slabstock and "other" foam applications based on the technical viability of alternatives, as detailed in a section below. Therefore, EPA does not need to address whether other alternatives are so costly that they justify some limited acceptability determination for these substitutes.

The majority of the applications in the end uses covered by the Narrowed Use Limits are applications referred to as "pour foam". Pour foam represents a diverse sector of the polyurethane industry comprised of a wide range of applications and fragmented HCFC use including: commercial refrigeration (such as walk-in coolers), doors (such as entry doors or garage doors), refrigerated transport, vending machines, residential architectural panels, tank and pipe insulation, marine flotation foams, floral foam and taxidermy foam.

The pour foam sector operates differently than many other end uses regulated under SNAP. Rather than the end user directly buying and using an alternative, the alternative is first processed by a formulator, known as a "systems house". The formulators purchase raw materials, including the blowing agent (e.g. HCFC-22 or HCFC-142b), isocyanates, surfactants, and fire retardants from suppliers, and then blend the materials into a foam system. Formulators tend to sell pour foam systems in drums or other containers where the isocyanate is kept separate from the blowing agent and other ingredients. Because the re-formulating and testing is done by the formulators, they are relied upon for much of the technical expertise and support

provided to the ultimate end user, in this case, pour foam manufacturers. The pour foam manufacturers purchase these systems from the formulators in order to produce the actual foam product (e.g., walk-in coolers). Thus, in the pour foam sector, formulators are responsible for implementing alternatives to the ozone-depleting blowing agents and providing the pour foam manufacturers with systems that produce foam meeting technical, safety, and performance requirements. Both the formulators and pour foam manufacturers are subject to SNAP regulations because both use the blowing agent—formulators blend the blowing agent into a foam formulation, and manufacturers produce the foam with aid of the blowing agent.

There are approximately 15–20 systems houses in the U.S. that formulate pour foam systems and include both large and small businesses. EPA concluded in the 2002 final rule, that at that time, some pour foam applications, particularly those with thermal performance requirements, did not have technically viable ozone-friendly alternatives available. As the Agency explained, "EPA believes that ozone-friendly alternatives to HCFC-141b have not been fully developed and implemented across the spectrum of applications within these end-uses" (67 FR 47707). Therefore, EPA established the Narrowed Use Limits to provide the formulators of pour foam systems who found alternatives were not technically viable in certain applications the flexibility to switch to the less harmful ozone depleting chemicals of HCFC-22 and HCFC-142b.

EPA did not intend for the 2002 Narrowed Use Limits to remain in place permanently. As the Agency stated in the final rule, "EPA is continuing to review the commercial refrigeration, sandwich panels, and slabstock and other foams end-uses to determine the progress of non-ozone depleting alternatives. As non-ozone depleting alternatives become more widely available, the Agency will reevaluate the acceptability of HCFCs in these end-uses. Therefore, foam manufacturers within these applications that are using HCFCs should begin using non-ozone depleting alternatives as soon as they are available in anticipation of future EPA action restricting the use of HCFCs" (67 FR 47704). Based on the information provided to EPA since the publication of the final rule in July 2002, EPA believes today that, alternatives are now widely available, technically viable, and in use in the end uses covered by the Narrowed Use Limits determination that was vacated

<sup>3</sup> These listings are published in the following Federal Register notices: September 3, 1996 (61 FR 47012), March 10, 1997 (62 FR 10700), June 3, 1997 (62 FR 30275), February 24, 1998 (63 FR 9151), June 8, 1998 (634 FR 30410), December 6, 1999 (64 FR 68039), April 11, 2000 (65 FR 19327), June 19, 2000 (65 FR 37900), December 18, 2000 (65 FR 78977), August 21, 2003 (68 FR 50533) and October 1, 2004 (69 FR 58903).

by the Court (Docket # OAR-2004-0507, Documents 0004 through 0011).

#### HCFC-22 and HCFC-142b Unacceptable as Substitutes for CFCs

The 2002 final rule withdrew a proposal published in 2000 to change the listing of HCFC-22 and HCFC-142b as substitutes for CFCs from acceptable to unacceptable. EPA had proposed to list these substitutes as unacceptable for new users effective 60 days after publication of the final rule in the **Federal Register**, but to allow existing users of HCFC-22 and HCFC-142b to continue use of those substitutes (i.e., be “grandfathered”) until January 1, 2005. The Agency explained that it was appropriate to grandfather existing use of HCFC-22 and HCFC-142b, because EPA believed “that it could take foam manufacturers up to four years to transition to alternatives” (65 FR 42659).<sup>4</sup> Commenters on the proposal largely agreed with EPA’s assessment of the amount of time it takes to transition to alternatives in many foam applications. Additionally, the recent phaseout of HCFC-141b and the implementation of alternatives in those foam applications in which HCFC-141b was previously used has further demonstrated the accuracy of that four-year transition timeline. Grandfathering allows those who had made a good faith transition to a SNAP-approved alternative sufficient time to transition to a different alternative while prohibiting new investment in an alternative that no longer meets the test for being SNAP-approved (i.e., availability of other alternatives that provide less risk to human health and the environment).

At the time of the proposal, the information available to EPA suggested that non-ozone depleting chemicals were technically viable as replacements and existing users of HCFC-22 and HCFC-142b could switch to these alternatives within four years. After the proposal, EPA gathered additional information regarding the technical viability of alternatives and presented that information in a Notice of Data Availability (NODA) (May 23, 2001, 66 FR 28408). Based on all of the information before the Agency,

including comments on the proposed rule and the information made available through the NODA, EPA withdrew the proposal to list HCFC-22 and HCFC-142b as unacceptable substitutes for CFCs in the July 22, 2002 final rule. In particular, the extruded polystyrene industry, the largest user of HCFC-142b, and the polyurethane manufacturers using HCFC-22, cited technical constraints in implementing non-ODP alternatives. The Agency agreed and withdrew that portion of the proposal because EPA believed, at that time, there were technical constraints “in switching to ozone-friendly alternatives for these users within the next several years” (67 FR 47707).

Since the July 2002 final rule, the phaseout of HCFC-141b in 2003, and the action of the Court in 2004, EPA has gathered new information on the technical viability of non-ODP alternatives to HCFC-22 and HCFC-142b in the foam industry (Docket # OAR-2004-0507, Documents 0004 through 0011). Today, EPA is proposing two actions regarding the acceptability of HCFC-22 and HCFC-142b in the foam sector. First, EPA is proposing to find HCFC-22 and HCFC-142b unacceptable as substitutes for HCFC-141b in the foam end uses of commercial refrigeration, sandwich panels, and slabstock and “other” foam, but is proposing to grandfather existing users until January 1, 2010. Second, EPA is proposing to find HCFC-22 and HCFC-142b unacceptable as substitutes for CFCs in all foam end uses, but is proposing to grandfather existing users until January 1, 2010. EPA’s decisions are based on the technical viability of alternatives.

#### B. Proposal

(1) HCFC-22, HCFC-142b and Blends Thereof Are Proposed as Unacceptable as Substitutes for HCFC-141b in the Foam End-Uses of Commercial Refrigeration, Sandwich Panels, and Slabstock and “Other” Foam

This proposal would prohibit users of HCFC-141b to switch to HCFC-22 and HCFC-142b in commercial refrigeration, sandwich panels, and slabstock and “other” foams end uses. Based on the information EPA has received since 2002, the Agency believes that ozone-friendly alternatives are now technically viable and available in these three end uses. The information found in docket OAR-2004-0507 demonstrates that several SNAP-approved non-ODP alternatives, including hydrocarbons, HFC-245fa, HFC-134a, methyl formate and water, are widely available, technically viable in the foam end uses

addressed by this proposal, and are being sold in the market today across the commercial refrigeration, sandwich panels, and slabstock and “other” foam end uses (Docket # OAR-2004-0507, Documents 0004 through 0011).

This listing would be effective 60 days following publication of a final action in the **Federal Register**. However, EPA is proposing that existing users of HCFC-22 and HCFC-142b as of the date of publication of this proposal in the **Federal Register** be grandfathered (i.e., allowed to continue their use) until January 1, 2010.<sup>5</sup> EPA is proposing to grandfather existing users from the unacceptability determination based on our analysis under the four-part test established in *Sierra Club v. EPA*. The four parts of this test are described earlier in the preamble and are discussed on page 13057 of EPA’s original SNAP rule (published on March 18, 1994). The Agency believes it is appropriate to grandfather these users for the same reasons provided below with respect to users of HCFC-22 and HCFC-142b who switched to these substitutes as an alternative for CFCs.

(2) HCFC-22, HCFC-142b and Blends Thereof Are Proposed as Unacceptable as Substitutes for CFCs in All Foam End Uses

Due to the technical viability and availability of ozone-friendly alternatives, this proposal, if finalized, would prohibit any new use of HCFC-22 and HCFC-142b as substitutes for CFCs in all foam end uses. This listing would be effective 60 days following publication of a final action in the **Federal Register**. However, EPA is proposing that existing users of HCFC-22 and HCFC-142b as of the date of publication of this proposal in the **Federal Register** be grandfathered (i.e., allowed to continue their use) until January 1, 2010 based on our analysis under the four-part test established in *Sierra Club v. EPA*.

EPA listed HCFCs as acceptable substitutes for CFCs in 1994 and although HCFCs are transitional substances, clearly users relied on the Agency’s prior acceptability listing of HCFC-22 and HCFC-142b when they transitioned from CFCs in foam applications.<sup>6</sup> Thus, for the existing

<sup>4</sup> The decision to grandfather is based on the criteria established in *Sierra Club v. EPA* (719 F.2d 436 (DC CIR. 1983)). The criteria EPA examines to judge the appropriateness of grandfathering includes: (1) Is the new rule an abrupt departure from Agency practice, (2) what is the extent the interested parties relied on the previous rule, (3) what is the burden of the new rule on the interested parties and (4) what is the statutory interest in making the new rule effective immediately, as opposed to grandfathering interested parties (59 FR 13057).

<sup>5</sup> In this context, existing use is defined as current use of HCFC-22 and/or HCFC-142b to manufacture actual foam products that are sold into commercial markets.

<sup>6</sup> Similarly, even through the 2002 final rule was eventually vacated by the Court in 2004, at that time users of HCFC-141b that transitioned to HCFC-22 and HCFC-142b in commercial refrigeration, sandwich panels, and slabstock and other foam relied on EPA’s acceptability determination as it appeared in the 2002 final rule.

users of HCFC-22 and HCFC-142b that invested in good faith in these chemicals as replacements for CFC blowing agents, EPA believes it is appropriate to provide time for these users to transition to ozone-friendly alternatives.

As explained earlier, EPA believes that in some foam applications, particularly thermal insulation applications, it can take up to four years to complete a blowing agent transition. Requiring all existing users of HCFC-22 and HCFC-142b to comply immediately with the proposed unacceptability determination could place an undue burden on those entities mainly due to the amount of time and actions necessary to complete a successful blowing agent transition. For example, a recent review of the extruded polystyrene foam sector (which encompasses the largest use of HCFC-142b) found that companies in that industry would "likely experience technical constraints with the alternatives" if they had to transition before January 1, 2010 because of the time it takes to test and implement a new blowing agent, including completing equipment and process modifications as well as gaining building code approval for the new products (Docket # OAR-2004-0507-003). Equally, many of the polyurethane manufacturers using HCFC-22 are making foam products that have thermal insulation requirements, such as walk-in coolers or metal panels. Before transitioning, those manufacturers would need to undertake several preparatory actions, such as:

- (1) Making changes to existing equipment in order to optimize production and ensure worker safety;
- (2) Establish raw material suppliers;
- (3) Develop formulations;
- (4) Test final products; and
- (5) Obtain final product review and approval by industry and governmental standard setting bodies for flammability, building codes, and other safety and performance requirements).

Based on the transition requirements described above, EPA believes it is appropriate that existing users of HCFC-22 and HCFC-142b in foam applications be allowed to continue using these chemicals until January 1, 2010 in order to ensure a safe transition to non-ODP alternative blowing agents. The SNAP program is designed to encourage the transition away from ozone depleting chemicals, however, the balance of the factors related to existing users of HCFC-22 and HCFC-142b discussed above outweigh EPA's statutory interest in applying the unacceptability determination immediately to all users.

EPA believes its goal of encouraging the transition away from HCFC-22 and HCFC-142b is still satisfied as new use of these substances will not be permitted in the foam sector and existing users will begin their transition to non-ODP alternatives. Due to the fact that ozone-friendly alternatives are available in nearly all foam applications, EPA strongly encourages all existing users of HCFC-22 and HCFC-142b to begin their transition to alternatives immediately and to complete the transition as soon as possible prior to January 1, 2010.

#### Request for Comments on Unique Applications Requiring HCFC-22 and HCFC-142b

In past rulemakings, where necessary, EPA has allowed specific, unique applications to continue use of a substitute that EPA has found to be unacceptable. For example, in the recent SNAP final rule published on September 30, 2004, EPA found the use of HCFC-141b unacceptable in all foam applications. However, based on technical information submitted to EPA during the comment period, the Agency exempted "the use of HCFC-141b for space vehicle, nuclear and defense foam applications from the unacceptability determination" (69 FR 58272). EPA is not aware of any specialized foam applications that would require continued use of HCFC-22 or HCFC-142b beyond January 1, 2010; however, the Agency is requesting comment about any applications that would require the use of HCFC-22 or HCFC-142b as blowing agents beyond January 1, 2010. When submitting information about such an application, please provide as much detail as possible about the application, the technical constraints to using alternatives, and the specific plan to implement alternatives, as well as any other relevant information.

As discussed above, ozone-friendly alternatives exist for nearly all foam applications, particularly in the pour foam products found in the end uses of commercial refrigeration, sandwich panels, and slabstock and "other" foam. Accordingly, EPA is proposing to (1) list HCFC-22 and HCFC-142b as unacceptable substitutes for HCFC-141b in commercial refrigeration, sandwich panels, and slabstock and "other" foam; and (2) list HCFC-22 and HCFC-142b as unacceptable substitutes for CFCs in all foam end uses. These listings would be effective 60 days after the publication of the final rule in the **Federal Register**. Existing users of HCFC-22 and HCFC-142b as of November 4, 2005 would be grandfathered until January 1, 2010.

## IV. Summary

A major objective of the SNAP program is to facilitate the transition from ozone-depleting chemicals by promoting the use of substitutes which present a lower risk to human health and the environment (40 CFR 82.170(a)). In this light, a key policy interest of the SNAP program is promoting the shift from ODSs to alternatives posing lower overall risk and that are currently or potentially available (59 FR 13044). Today's proposal to list HCFC-22 and HCFC-142b as unacceptable substitutes for HCFC-141b in certain foam applications and as unacceptable substitutes for CFCs in all foam end uses is based on EPA's finding that the use of HCFC-22 and HCFC-142b in applications where non-ozone depleting alternatives are technically viable and commercially available, would contribute to unnecessary depletion of the ozone layer, and will delay the transition to alternatives that pose lower overall risk to the health and the environment. EPA is allowing existing users of HCFC-22 and HCFC-142b to continue use until no later than January 1, 2010 to ensure that they will be able to adjust their manufacturing processes to safely accommodate the use of non-ODP alternatives.

## V. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (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 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.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this proposal a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

#### *B. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0226.

This action does not impose any new information collection burden. OMB has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0226. This Information Collection Request (ICR) included five types of respondent reporting and recordkeeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/Toxic Substances Control Act (TSCA) Addendum, notification for test marketing activity, recordkeeping for substitutes acceptable subject to use restrictions, and recordkeeping for small volume uses.

Copies of the ICR document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Office of Information Collection, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at [auby.susan@epa.gov](mailto:auby.susan@epa.gov), or by calling (202) 566-1672. A copy may also be downloaded off the internet at <http://www.epa.gov/icr>. Include the ICR and/or OMB number in any correspondence.

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.

#### *C. Regulatory Flexibility Act*

The RFA requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule, a small entity is defined as:

- (1) A small business that has fewer than 500 employees;
- (2) A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and
- (3) A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The types of businesses that are subject to today's final rule include businesses that manufacture polyurethane/polyisocyanurate foam systems (NAICS 326150) and businesses that use polyurethane/polyisocyanurate systems to apply insulation to buildings, roofs, pipes, etc. (NAICS 326150).

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA does not believe that small businesses will be adversely impacted by this proposal. The majority of the small businesses in the foam industry operate in the polyurethane foam sector as opposed to the extruded polystyrene foam sector (this rule covers both sectors). In the context of this proposal, small businesses (if they are still using an HCFC at all) are likely using HCFC-22 to manufacture pour foam applications such as commercial refrigeration, sandwich panels, and slabstock and "other" foam. As explained below, the polyurethane pour foam sector operates differently than

other SNAP sectors in that a small number of companies supply a much larger number of actual pour foam manufacturers.

There are approximately 20 formulators in the U.S. that supply pour foam manufacturers foam systems which consist of two drums of ingredients including the blowing agent (e.g., HCFC-22). Some of the formulators are large businesses but many are small and their customers, the manufacturers, number in the thousands. The pour foam manufacturers use the foam system to produce the actual foam product (e.g., vending machine or metal panel). In this situation, the formulators are responsible for implementing alternatives to the ozone-depleting blowing agent and providing the pour foam manufacturers with systems that produce foam meeting the necessary requirements, technical or otherwise. However, both the formulators and pour foam manufacturers are subject to SNAP regulations because both use the blowing agent.

Information in the docket OAR-2004-0507 demonstrates that non-ODP alternatives are technically viable and commercially available. In fact, small businesses at both the formulator and pour foam manufacturer levels are already supplying and using non-ODP alternatives in applications such as commercial refrigeration, sandwich panels and slabstock and "other" foam. Therefore, those small businesses will not be adversely affected by the proposal to find HCFC-22 and HCFC-142b unacceptable for use because they have already implemented alternatives.

Equally, those small businesses that are still using HCFC-22 in pour foam applications will not be significantly impacted by this rulemaking. It is estimated that there are thousands of pour foam manufacturers, many of which are small businesses. However, these manufacturers will not be adversely impacted by this proposed rule because they buy their pour foam systems from the approximately 20 pour foam formulators discussed above. It is those 20 formulators that are responsible for implementing the alternatives to ozone depleting blowing agents (HCFC-22 and HCFC-142b) and providing a foam system to the pour foam manufacturers that meets all technical and performance requirements.

In addition, manufacturers and users of HCFCs have had more than 10 years to prepare for the January 1, 2010 deadline for phasing out production of HCFC-22 and HCFC-142 in the U.S. since the HCFC phaseout schedule was

established by a separate EPA regulation in 1993 (58 FR 65018). Today's proposal does not effect that long-standing phaseout date but rather would allow continued use of these chemicals until the phaseout deadline of January 1, 2010. Furthermore, the costs of the HCFC phaseout and the transition to non-ozone depleting alternatives were accounted for in a Regulatory Impact Analysis (RIA) that was performed in 1993 for the phaseout rule mentioned above. A memo found in the docket at OAR-2004-0507-0012 details the impacts of this proposal, including a discussion of the related 1993 phaseout rule and RIA, on both the pour foam formulators and pour foam manufacturers and concludes there will not be significant impact on a substantial number of small businesses. In fact, most formulators that are still using HCFC-22 and/or HCFC-142b have also implemented alternatives and sell both types of systems to their customers, the manufacturers (OAR-2004-0507-0008). Based on this, it is clear that alternatives to ODS have been identified and there are no technical constraints to implementing those alternatives.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to further reduce the impact of this rule on small entities. Based on acceptability decisions in previous final rules, the Agency believes that some existing users of HCFC-22 and HCFC-142b, including small businesses, invested in good faith in SNAP-approved alternatives that EPA now finds unacceptable. Accordingly, it is appropriate for EPA to balance their interest against our statutory obligation to facilitate the transition away from ozone depleting chemicals as required by the four part test established in *Sierra Club v. EPA*. Grandfathering existing users of HCFC-22 and HCFC-142b, some of which are small businesses, allows those users approximately four years to transition to ozone-friendly alternatives. This is the time cited by small businesses when explaining their transition process in comments to separate but related rulemakings (see Air Docket A-2000-18) as well as being the time that has been needed for the transitions from other ODS, the most recent one being HCFC-141b.

Grandfathering existing use of HCFC-22 and HCFC-142b until January 1, 2010 aligns the unacceptability determination with the production phaseout date of those two chemicals. In many cases, companies plan their transition to non-ODP alternatives

around the production and import phaseout deadline, due to both the greatly restricted supply and higher prices associated with the phased out ODS. Companies, in commenting on EPA's 2000 proposal to find HCFC-22 and HCFC-142b unacceptable as substitutes for CFCs objected to the fact that EPA was proposing an unacceptability determination before the production and import phaseout. Those commenters suggested EPA move the unacceptability determination to a later date that was in line with the phaseout (i.e., January 1, 2010). The 2003 phaseout of HCFC-141b demonstrated that restricted supply of that chemical resulted in higher prices for the foam sector which inevitably had some impact on the small businesses both at the formulator and manufacturer level. This proposed unacceptability determination would avoid that situation and level the playing field in the foam industry by requiring all businesses to transition from HCFC-22 and HCFC-142b on the same date, and in accordance with the production and import phaseout date (the date many of them are likely planning on completing their transition). Therefore, this proposal does not place any additional burden on existing users of HCFC-22 and HCFC-142b in the foam sector that have both had sufficient advance notice and had planned to transition to non-ODP alternatives on or before the production phaseout date.

As discussed in the preamble and noted in the docket, there are numerous alternatives that are technically viable and available for all foam applications. In fact, some users have already transitioned away from HCFC-22 and HCFC-142b, particularly in pour foam applications (Docket # OAR-2004-0507, Documents 0004 through 0011). The actions proposed here may well provide benefits to small businesses who have transitioned to alternatives and made good faith efforts and investments in the transition because they will be able to compete on a level playing field with those that are still using ODS blowing agents. EPA continues to be interested in the potential impacts of the proposed rule on small entities, and welcome comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written

statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's proposed rule does not affect State, local, or tribal governments. The enforceable requirements of the rule for the private sector affect only a small number of foam manufacturers that could potentially have switched to use HCFC-22 and HCFC-142b in the United States and those currently using HCFC-22 and HCFC-142b. With regard to potential new users, there are technically viable alternatives for those manufacturers. With regard to existing users, there are viable alternatives that will be feasible to use once the manufacturers have made the necessary adjustments to its facility and products. The impact of this rule on the private sector is less than \$100 million per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory

requirements that might significantly or uniquely affect small governments. This regulation applies directly to facilities that use these substances and not to governmental entities.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled “Federalism” (64 FR 43255 (August 10, 1999)), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposal applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249 (November 9, 2000)), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today’s proposal applies directly to facilities that use these substances and does not significantly or uniquely affect the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

#### *G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

Executive Order 13045: Protection of Children from Environmental Health & 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. The use of HCFC–22 and HCFC–142b in foam manufacture occurs in the workplace where we expect adults are more likely to be present than children, and thus, the agents do not put children at risk disproportionately.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action would impact the manufacture of foam using HCFC–22 and HCFC–142b. Further, we have concluded that this rule is not likely to have any adverse energy effects.

#### *I. National Technology Transfer Advancement Act*

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or

otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

## **VI. Additional Information**

For more information on EPA’s process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as EPA publications on protection of stratospheric ozone, are available from EPA’s Ozone Depletion Web site at “<http://www.epa.gov/ozone/>” and from the Stratospheric Protection Hotline number at (800) 296–1996.

### **List of Subjects in 40 CFR Part 82**

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

Dated: October 28, 2005.

**Stephen L. Johnson,**  
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. 7414, 7601, 7671–7671q.

### **Subpart G—Significant New Alternatives Policy Program**

2. Subpart G is amended by adding Appendix N to read as follows:

Appendix N to Subpart G of Part 82—Unacceptable Substitutes Listed in the [date of publication of final rule in the **Federal Register**] final rule, effective [date 60 days after **Federal Register** publication date of final rule].

## FOAM BLOWING UNACCEPTABLE SUBSTITUTES

| End-use                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Substitute              | Decision                        | Comments                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------------------------------|--------------------------------------------|
| Replacements for HCFC-141b in the following rigid polyurethane applications:<br>—Commercial Refrigeration<br>—Sandwich Panels<br>—Slabstock and Other Foams                                                                                                                                                                                                                                                                                                   | HCFC-22, HCFC-142b .... | Unacceptable <sup>1</sup> ..... | Alternatives exist with lower or zero-ODP. |
| Replacements for CFCs in the following foam applications:<br><br>—Rigid polyurethane and polyisocyanurate laminated boardstock<br>—Rigid polyurethane appliance<br>—Rigid polyurethane spray and commercial refrigeration, and sandwich panels<br>—Rigid polyurethane slabstock and other foams<br>—Polystyrene extruded insulation boardstock and billet<br>—Phenolic insulation board and bunstock<br>—Flexible polyurethane<br>—Polystyrene extruded sheet | HCFC-22, HCFC-142b .... | Unacceptable <sup>2</sup> ..... | Alternatives exist with lower or zero-ODP. |

<sup>1</sup> The unacceptability determination is effective on January 1, 2010 for existing users of HCFC-22 and HCFC-142b as of November 4, 2005 of this proposed rule.

<sup>2</sup> The unacceptability determination is effective on January 1, 2010 for existing users of HCFC-22 and HCFC-142b as of November 4, 2005 of this proposed rule.

[FR Doc. 05-21927 Filed 11-3-05; 8:45 am]

BILLING CODE 6560-50-P

## COMMISSION ON CIVIL RIGHTS

### 45 CFR Part 703

#### Membership Requirement of State Advisory Committees

**AGENCY:** U.S. Commission on Civil Rights Commission.

**ACTION:** Notice of proposed rule change in the State Advisory Committee (SAC) membership criteria with request for comments.

**SUMMARY:** The United States Commission on Civil Rights proposes to amend its regulation on the SAC membership criteria to ensure both diversity and nondiscrimination are considered in its SAC member appointment process.

**DATES:** Comments should be received on or before December 5, 2005 to be considered in the formulation of final rule.

**ADDRESSES:** Address all comments about the proposed rule change in the SAC membership criteria to: U.S. Commission on Civil Rights, Office of General Counsel, Attn: Christopher Byrnes, Acting Deputy General Counsel, 624 Ninth Street, NW., Suite 620, Washington, DC 20425. If you prefer to send your comments via e-mail, use the following address: [cbyrnes@usccr.gov](mailto:cbyrnes@usccr.gov). You must include the term "SAC Membership Comments" in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** Christopher Byrnes, Acting Deputy

General Counsel, Telephone: (202) 376-7700 or via e-mail: [cbyrnes@usccr.gov](mailto:cbyrnes@usccr.gov).

**SUPPLEMENTARY INFORMATION:** On October 31, 2005, the U.S. Commission on Civil Rights approved the proposed rule for public comments. The Commission invites you to submit comments regarding the proposed change in the SAC membership criteria. Please clearly identify the specific proposed criteria each comment addresses.

We will announce the final SAC membership criteria in a notice in the **Federal Register**. We will determine the final regulation on SAC membership criteria after considering responses to this notice and other information available to the Commission.

#### List of Subjects in 42 CFR Part 703

Advisory committees, Organization and functions (Government agencies).

For the reasons stated in the preamble, the Commission on Civil Rights proposes to amend 45 CFR part 703 as follows:

#### PART 703—OPERATIONS AND FUNCTIONS OF STATE ADVISORY COMMITTEES

1. The authority citation for Part 703 continues to read as follows:

**Authority:** 42 U.S.C. 1975a(d).

2. Revise § 703.5 to read as follows:

##### § 703.5 Membership.

(a) Subject to exceptions made from time to time by the Commission to fit special circumstances, each Advisory Committee shall consist of at least 11 members appointed by the Commission. Members of the Advisory Committees

shall serve for a fixed term to be set by the Commission upon the appointment of a member subject to the duration of Advisory Committees as prescribed by the charter, provided that members of the Advisory Committee may, at any time, be removed by the Commission.

(b) No person is to be denied an opportunity to serve on a State Advisory Committee because of race, age, sex, religion, national origin, or disability. The Commission shall encourage membership on the State Advisory Committee to be broadly diverse.

(c) State Advisory Committee members shall represent a diversity of skills and experiences, including, but not limited to, social science research, legal research and analysis, and statistical analysis. Educators, lawyers, business and labor leaders, social scientists, researchers, and news gatherers are some of the more important professions or activities or avocations that should be represented on the State Advisory Committees. The State Advisory Committees should also contain people knowledgeable of the State's governmental machinery and public service sector, and people involved in and drawn from such influential sectors as business and financial communities, organized labor, the news media, and religious groups.

(d) Each State Advisory Committee should contain men or women who have demonstrated an interest in the civil rights issues of color, race, religion, sex, age, disability, and national origin and in voting rights.

(e) Both political parties should be represented in each State Advisory Committee.