

FINAL FEDERAL PROCUREMENT RULE

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4792-6]

RIN 2060-AD51

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA promulgates stratospheric ozone protection regulations required under Title VI of the Clean Air Act Amendments of 1990. This action promulgates regulations implementing the requirements of section 613 of the Act. The regulations also complement the Executive Order issued by President Clinton on April 21, 1993. This rule requires each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of Title VI of the Clean Air Act and to maximize the substitution of safe alternatives for ozone-depleting substances as identified under section 612 of the Act. The rule also requires each department, agency, and instrumentality of the United States to certify to OMB within twelve months of the final publication of this regulation that its procurement regulations have been modified in accordance with this rule. The promulgation of this rule satisfies EPA's obligation under section 613 of the Clean Air Act.

The substances affected by this rule are ozone-depleting substances which are listed as either class I or class II substances under rules promulgated under sections 604 and 606 of

the Act. This regulation has been developed in consultation with the Administrator of the General Services Administration and the Secretary of Defense, as required by section 613.

EFFECTIVE DATE: This rule is effective on [Insert 30 days after publication.]

ADDRESSES: Materials relevant to this rulemaking are contained in Air Docket A-93-12 at the U.S. Environmental Protection Agency (LE-131) 401 M Street, SW., Washington, DC 20460. The Docket is located in room M-1500, First Floor, Waterside Mall. Material relevant to this rulemaking may be inspected from 8:30 a.m. to 12 noon and from 1:30 to 3:30 p.m. Monday through Friday.

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I. Background

During the past decade, there has been a significant decrease in the detected amount of stratospheric ozone. Broad scientific consensus has emerged that such continuing depletion of the stratospheric ozone will lead to increased

levels of UV-B radiation penetrating to the earth's surface, resulting in potential health and environmental harm, including increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to crops and aquatic organisms, increased formation of ground-level ozone, and increased weathering of outdoor plastics. According to information released on December 17, 1991, by the United Nations Environment Programme (UNEP) Scientific Assessment of Ozone Depletion, the rate of ozone depletion is significantly greater than originally estimated in 1989. To address this problem, the United Nations Environment Programme sponsored the successful negotiation of the Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol). In effect since 1988, the Protocol requires each nation party to it to control the production and consumption of substances which deplete stratospheric ozone. These substances include chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform and hydrochlorofluorocarbons. The United States is a party to this international agreement. (For a more detailed explanation of the issues involved, see 57 FR 33755 - 33757 (July 30, 1992.)

The Clean Air Act, like the Montreal Protocol, establishes controls in the production and consumption of ozone-depleting substances and also creates additional regulatory programs aimed at reversing the trend of ozone depletion. As a result, EPA has issued, or will be issuing, a series of regulations which deal with the production, consumption, use, and treatment of ozone-depleting chemicals.

II. Section 613 - Federal Procurement

Among the regulations that EPA must issue to address the use of ozone-depleting substances is a rule requiring federal agencies to modify their procurement regulations to maximize the use of safe alternatives to ozone-depleting substances and otherwise conform those regulations to the Clean Air Act's policies and requirements regarding ozone protection. This rule is required by section 613 of the Act which states: "Not later than 18 months after the enactment of the Clean Air Act Amendments of 1990, the Administrator, in consultation with the Administrator of the General Services Administration and the Secretary of Defense, shall promulgate regulations requiring each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of this Title and to maximize the substitution of safe alternatives identified under section 612 for class I and class II substances. Not later than 30 months after the enactment of the Clean Air Act Amendments of 1990, each department, agency and instrumentality of the United States shall conform its procurement regulations and certify to the President that its regulations have been modified in accordance with this section." As required by the statute, EPA consulted with the General Services Administration and with the Department of Defense in developing this rule.

In a separate action on April 21, 1993, President Clinton issued Executive Order No. 12843 titled "Procurement Requirements and Policies For Federal Agencies For Ozone-Depleting Substances." The Executive Order requires that Federal agencies revise their procurement practices and implement cost-effective programs both to modify specifications and contracts that require the use of ozone-depleting substances and to substitute non-ozone-depleting

substances to the extent economically practicable. The terms of this order are similar to the regulation being issued today. However, today's rule applies to broader groups of Federal entities than are covered by the executive order.

The aim of section 613, E.O. 12843, and today's regulation is the establishment of affirmative procurement programs in all federal agencies that will maximize the substitution of safe alternatives to ozone-depleting substances and further implementation of the other policies and requirements of Title VI.

Most Federal procurement is governed by the Federal Acquisition Regulation ("FAR"). The FAR is prepared, issued and maintained jointly by the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration. Revisions to the FAR are issued through two councils, the Defense Acquisition Regulations Council, and the Civilian Agency Acquisition Council. (See generally 48 CFR Subparts 1.1 and 1.2.) In addition, many, but not all, federal agencies have promulgated regulations to supplement the FAR, which appear at 48 CFR parts 2 through 63.

This rule requires each federal agency to amend its procurement regulations in Title 48 (or, where it has no such regulations at present, to adopt new regulations) to conform with the requirements and policies of Title VI of the Clean Air Act and the policies and requirements specified in this rule, and to direct that purchasing of safe substitutes for ozone-depleting substances will be maximized to the extent practicable. EPA believes that in implementing Title VI and these regulations, agencies should take into account the technical feasibility and costs of conversion as changes are

made. These considerations are discussed in greater detail in section VI of this preamble.

At the same time, the councils responsible for amending the FAR and the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget are working with EPA to amend the FAR itself in a similar manner. Once the FAR is amended in this fashion, there would be no need for individual agencies subject to the FAR to adopt regulations, and the rule published today would relieve them of the need to do so in that event.

As noted at the time of the proposed rule, some agencies that fall within the term "department, agency or instrumentality of the United States" as defined in today's rule are not subject to the FAR, and each such entity will be required by this rule to adopt its own regulation, whether or not they are within the scope of the Executive Order. The entities most clearly affected in this way are the Postal Service, the Postal Rate Commission, the Senate, House of Representatives, and the Architect of the Capitol, all of which do not fall within the scope of the FAR or of the Executive Order.

It was also noted at proposal that decisions about what to purchase, or decisions on specifications for items to be purchased, are generally made by officials other than those who carry out the procurement process. Each agency should, therefore, take the steps necessary to ensure that officials responsible for substantive purchasing decisions are aware of, and properly implement, the requirements imposed by the regulations adopted pursuant to today's rule.

III. Summary of and Response to Comments on the Proposed Rule

A. Class II Substances as Substitutes For Class I

The Agency received a number of comments regarding the proposed rule. The most frequent comment indicated that the notice of proposed rulemaking seemed to treat class I and class II as equivalent and require agencies to find substitutes for both immediately, whereas class II substances are in fact frequently viable substitutes for class I substances. Commenters suggested that the preamble to the rule should indicate clearly that class II substances are viewed as viable substitutes for class I substances under both Title VI and under section 612, Significant New Alternative Program, regulations (58 FR 28094). It was indicated that the Agency should distinguish between the urgency of phasing out class I substances and the use of class II substances as viable interim alternatives.

In response, EPA intends that this rule mirror the policies enacted in Title VI, and these policies clearly indicate that class II substances may serve as interim substitutes for class I substances (i.e., prior to the statutory phaseout of class II substances). The Agency does not intend in today's rule to require or suggest to federal agencies that they should not use a class II ozone-depleting substance where such substitution is not precluded by section 612 and not precluded by the section 610 bans on nonessential products. The rule has been modified to make this clear.

Federal officials should look to section 612 requirements as they deal with the acquisition of ozone-depleting substances. The regulation implementing section 612, which was issued as a proposal on May 12, 1993 (58 FR 28093), will provide agencies with a source of information regarding acceptable and unacceptable substitutes and will promote the

use of safe substitutes and processes in the elimination of ozone-depleting substances.

It should be noted that class I and class II substances are being phased out on different schedules. These schedules reflect both the variation in the ozone-depletion potential of these substances as well as the intended use of class II substances as substitutes for class I substances. Agencies should be aware of the phaseout schedules of these substances, the requirements of section 612, and all of the requirements of title VI when making purchasing decisions. Nothing in today's rule, however, precludes using class II substances in place of class I substances prior to the phaseout of class II substances.

B. Stringency of Procurement Policies

One commenter indicated that federal agencies should not be allowed to adopt procurement requirements that are inconsistent with any section of Subtitle VI of the Clean Air Act. It was suggested EPA prohibit agencies from adopting that differing requirements or policies that are more stringent than the recently published section 612 regulations because such policies could impact the marketplace, economics, product availability and the competitive bidding process.

EPA agrees with the principle that agencies' procurement policies and practices should be consistent with the policies and requirements of Subtitle VI. However, phasing out uses of ozone-depleting substances more quickly than the law requires that production be phased out is not inconsistent with the statute. Moreover, purchasing decisions rest with the individual agencies. EPA believes that federal agencies making purchasing decisions, like other consumers of goods and

services, are influenced by product price and availability. As a result, it is believed that these market forces will continue to be the primary determinant in buying decisions made by agencies under this rule. However, it is within the discretion of agencies to eliminate the use of ozone-depleting substances on any schedule that satisfies these requirements.

The primary thrust of Subtitle VI is to phase out the availability of ozone-depleting substances under sections 604 and 606. Therefore, it is anticipated that the decreasing availability of class I substances, coupled with the guidance on safe substitutes promulgated under section 612, will play a major role in changing the buying practices of federal agencies consistent with the intent of Title VI. This policy is reflected in § 82.84(a)(2) as promulgated in this rule.

C. Section 610 Requirements

One commenter indicated that the preamble to the proposed rule specifically cited banning the distribution of "any plastic foam product which contains or is manufactured with a class II substance" under section 610 without indicating that under section 610(d)(3)(4), foam insulation products are excluded from that prohibition. The commenter is correct in noting that section 610 contains certain exclusions, and the purchase of such products would not be prohibited under today's rule. No change from the proposed rule is required by this comment.

D. Compliance with Title VI Requirements

A commenter indicated that the federal government should be mindful of the leeway granted to industry in complying with

the labeling regulation that became effective in May, 15, 1993, but which, according to the commenter, "EPA will not enforce for 9 months to give the industry an opportunity to comply."

EPA recognizes that because of concerns over the short time period in which companies had to comply, no enforcement actions will be taken until nine months after the date of the publication of the rule on labeling (i.e., before November 11, 1993). This nine month period is intended to recognize that some companies are making their best faith efforts to be in compliance with the regulations by either switching to an alternative technology/substance, or by implementing a labeling process. This is not meant as an extension of the May 15, 1993, effective date. However, it is not anticipated that the amendments to agency purchasing regulations pursuant to today's rule are likely to be finalized prior to November 1993, and certainly purchases under the amended rule are unlikely to occur prior to that date. Therefore, EPA does not expect that today's rule will have any impact inconsistent with its enforcement approach with respect to labeling.

The commenter further indicated that EPA should: (1) Encourage agencies to participate in a refrigerant banking program and bank only with an EPA-certified reclaimer; (2) maintain existing equipment in good working order and repair all substantial leaks; (3) require the certification of service technicians of [refrigeration] equipment.

EPA recognizes that several of these suggestions may be sound policy for adoption by some federal agencies. The use of halon banking was specifically recommended in the preamble to the proposed rule. However, this regulation is limited in scope to federal agency procurement regulations. It is beyond

the scope of this regulation to mandate specific purchases or agency policies to reduce the need for purchases of class I or class II substances. Further, in developing policies and practices to meet the Title VI requirements, agencies should rely on the specific regulations governing each of the sections of Title VI as they are outlined below.

E. Impact of the Rule on Suppliers

One commenter raised several questions regarding the impact of amending federal procurement regulations on government contractors and suppliers. The questions centered on the allocation of cost burdens of implementing new processes under existing contracts, the costs of acceptance testing, whether preferential treatment would be given in awarding contracts if ozone-depleting substances are eliminated, and whether procurement regulations will promote the use of unsafe processes in order to achieve such elimination.

In response, these are issues to be dealt with by federal agencies in adopting and implementing revisions to their procurement regulations. They are beyond the scope of today's rule, which simply requires agencies to make such revisions. EPA notes, however, that the safety of alternative products and substances is a consideration that agencies might choose to take into account in determining whether substitution is practicable.

F. EPA Outreach Activities

Several agencies requested that EPA establish activities to keep federal agencies informed of requirements and

developments in this area. In addition, information on the requirements of all of the sections of Title VI was requested by agencies.

As was discussed at greater length in the preamble to the proposed rule, EPA is prepared to assist agencies in implementing the requirements of EO 12843, as well as the requirements of this regulation. In addition, as indicated previously, the section 612 regulation will be the definitive source of information regarding safe alternatives. In addition, the Agency is collecting information on model processes, specifications and substitution efforts. Materials regarding successful practices should be sent to and can be obtained from the contact person identified in the summary section at the beginning of this regulation.

IV. Other Requirements of Title VI of the Clean Air Act

Because the rule requires all agencies to conform their procurement regulations to the whole range of ozone protection policies and requirements, familiarity with many of the other regulations to be issued by EPA is important. Provisions of Title VI particularly relevant to today's proposed rule include the following:

- (1) Phaseout of the Production and Importation of Controlled Substances (Sections 604, 605, and 606);
- (2) Recycling and Reduction in Emissions of Ozone-depleting Substances (Section 608);
- (3) Servicing of Motor Vehicle Air Conditioners (Section 609);
- (4) Bans on Nonessential Products Containing Ozone-depleting Substances (Section 610);
- (5) Labeling of Products Made with or Containing Controlled Substances (Section 611); and

(6) Safe Alternatives Policy (Section 612).

Familiarity with those requirements and policies will be essential to the development of agency regulations and practices under this rule. Therefore, a more detailed description of the proposed regulations follows.

1. Sections 604, 605, and 606 - Phaseout of Ozone-depleting Substances

Section 604 and 605 of the Act place production and consumption limits on class I and Class II ozone-depleting chemicals, respectively. The same sections also require the phasing out of the production and consumption of these chemicals. Section 606 allows the Administrator of EPA to accelerate the phaseout of these chemicals if: (1)--"the Administrator determines that a more stringent schedule may be necessary to protect human health and the environment"--; (2)--"the Administrator determines that a more stringent schedule is practicable"--; or (3)--" the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this Title".

The phaseout of the class I substances addressed in today's rule is governed by regulations contained in 40 CFR part 82. An accelerated phaseout was proposed on March 18, 1993 (58 FR 15014) in response to recent scientific findings and to changes in the Montreal Protocol. The proposal would phase out halons by January 1, 1994, and CFCs, carbon tetrachloride, halons, and methyl chloroform by January 1, 1996. In addition, hydrobromofluorocarbons (HBFCs) would be added and scheduled for phaseout on January 1, 1996, and methyl bromide would be added and scheduled for phaseout on

January 1, 2001. HCFCs would also be scheduled for phaseout, beginning with HCFC 141b on January 1, 2003.

The phaseout requirements of section 604, 605, and 606, and the regulations to be promulgated thereunder, do not bear directly on the purchase of goods and services; rather, they are directed at the production, import and export of class I and class II substances. Therefore, the phaseout of the production and imports of these substances will affect the ability of federal agencies to obtain these substances, and products containing or made with them. As a result, familiarity with the phaseout is important for agency officials making purchasing decisions. At the same time, compliance with today's rule will reduce the demand for such products by federal agencies; therefore, this rule complements the phaseout requirements.

Given the proposed schedules for the accelerated phaseout, it is vital that efforts to implement the use of substitute chemicals and processes be conducted as quickly as possible. Agencies should take steps to convert existing equipment and processes to the use of alternatives in order to ensure compliance with the impending regulatory deadlines under Title VI of the Act.

Further, the accelerated phaseout proposal also addresses the phaseout of certain HCFCs on an accelerated schedule based on their ozone depletion potential. The faster phaseout of these substances was proposed as a result of longer term concerns regarding ozone depletion, and the actual or anticipated availability of non-ozone-depleting substitutes. These substances are at this time used primarily as substitutes for CFCs in refrigeration and cooling systems and insulation.

The proposed accelerated phaseout rule also contains provisions for considering exemptions for the manufacture of these substances for essential uses after the phaseout. In separate notices, EPA provided information regarding the requirements for and the procedures to be followed in applying for an "essential use" exemption. Copies of these notices (58 FR 6788 and 58 FR 29410) can be obtained by writing or calling the information contact listed in that proposed regulation. It should be noted that while the Act allows very limited exceptions, there is no guarantee that such exceptions will be granted. Such nominations for exemptions, if accepted by EPA and the United States, must also be authorized by Parties to the Montreal Protocol.

2. Section 608 - National Recycling and Emission

Reduction

Program

Section 608 requires the Administrator of EPA to promulgate regulations establishing standards and requirements regarding the handling of ozone-depleting refrigerants during the service, repair, or disposal of refrigeration and air-conditioning equipment. Under section 608, EPA promulgated final regulations on May 14, 1993, (58 FR 28660) to recapture and recycle these substances. The requirements of section 608 include regulations covering class I and class II substances used or disposed of during the service, maintenance, repair, and disposal of air-conditioning and refrigeration equipment. In addition to mandating an effective date for regulations requiring recycling of class I refrigerants, section 608 specifically prohibits knowingly venting of both class I and class II refrigerants during service, maintenance, repair and disposal of air-conditioning and refrigeration equipment,

effective July 1, 1992. "De minimis" releases associated with good faith efforts to recover or recycle are exempt from the prohibition.

EPA's final rule for section 608 has five main elements, which, taken together, satisfy the criteria for recycling, emission reduction, and disposal. First, the Agency requires technicians servicing and disposing of air-conditioning and refrigeration equipment to observe certain service practices that reduce refrigerant emissions. Second, EPA requires technicians servicing air-conditioning and refrigeration equipment to obtain certification through an EPA-approved testing organization and restricts sales of refrigerant to these certified technicians. Third, EPA regulations establish equipment and reclaimer certification programs. These have the goal of verifying: (1) That all recycling and recovery equipment sold is capable of minimizing emissions; and (2) that reclaimed refrigerant on the market is of known and acceptable quality to avoid equipment failures from contaminated refrigerant. Fourth, EPA requires repairs of substantial leaks, based on annual leak rates which vary according to two categories of refrigeration equipment. Fifth, to implement the safe disposal requirements, EPA requires ozone-depleting refrigerants in appliances, machines and other goods to be removed from these items prior to their disposal, and that all air-conditioning and refrigeration equipment except for small appliances and room air-conditioners be provided with a servicing aperture that would facilitate the recovery of refrigerant.

At this time EPA believes that continued use of class I substances in existing equipment through recycling can serve as a useful bridge to alternative products while minimizing

disruption of the current capital stock of equipment, preventing costly early retirement of equipment. Agencies will need to be aware of this as they develop their procurement policies, their plans for the management of refrigerants, and their schedules for retrofitting equipment currently requiring the use of ozone-depleting substances.

The requirements of section 608, and the regulations promulgated thereunder, apply to federal agencies independently of today's proposed rule. In addition, compliance with section 608 is a requirement of the procurement regulation being issued today.

3. Section 609 - Servicing of Motor Vehicle Air Conditioners

Section 609 was established to control the release of refrigerant during servicing of motor vehicle air conditioners. Although each automobile has a relatively small refrigerant charge, it is estimated that motor vehicle air-conditioners consumed over 48,000 metric tons of CFC-12 in 1989. This amounts to 21.3 percent of total CFC use in the United States. Section 609 provides that any person repairing or servicing motor vehicle air conditioners (MVACs) for consideration must properly use refrigerant recycling equipment that has been approved by EPA. All such persons must be properly certified.

The section 609 rule, 40 CFR 82.30-82.42, established standards for refrigerant recycling equipment and proper use of such equipment. The rule also established the criteria for technician certification programs and the standard for recycling equipment. Two independent testing organizations were approved by EPA to verify that the equipment meets the

established standards. The Agency maintains the list of approved equipment. The sale in interstate commerce of any class I or class II substance suitable for use in a motor vehicle air-conditioning system in small containers (less than 20 pounds) is also restricted to certified technicians.

The requirements of section 609, and the regulations promulgated thereunder, apply to federal agencies independently of today's proposed rule. Therefore, in servicing, replacing or retrofitting their vehicle fleets, agencies need to be cognizant of these requirements. However, compliance with these regulations will reduce the need for agencies to purchase class I substances. Agency regulations adopted pursuant to today's rulemaking action, should specifically restrict the purchase of substances whose sale is restricted under section 609. Furthermore, agencies would be required to make compliance with section 609 and the regulations promulgated thereunder a condition of any contract involving the performance of a service activity subject to section 609.

4. Section 610 - Nonessential Products Containing Ozone-depleting Substances.

Section 610 of the Act requires EPA to "identify nonessential products that release class I substances into the environment (including any release during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce." Specific products to be prohibited that use class I substances include "chlorofluorocarbon-propelled plastic party streamers and noise horns" and "chlorofluorocarbon-containing cleaning

fluids for noncommercial electronic and photographic equipment."

EPA is further required to prohibit at a minimum "other consumer products" that are determined to release class I substances and to be nonessential. In determining whether a product is nonessential, EPA is instructed to consider: "the purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substances, safety, health, and other relevant factors." EPA promulgated regulations that include a ban on congressionally banned products and flexible packaging foam and certain aerosol products not covered by the statutory ban. On January 15, 1993, the final regulation on the ban of nonessential products releasing class I ozone-depleting substances and requiring elimination of emissions from products using class I substances was promulgated. See 40 CFR 82.60-82.68.

In addition, section 610(d) states that after January 1, 1994, "it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce--(A) Any aerosol product or other pressurized dispenser which contains a class II substance; or (B) any plastic foam product which contains, or is manufactured with, a class II substance." Some exceptions that can be made by EPA are specified in the statute.

EPA believes that, unlike the class I ban, the class II ban is self-effectuating. EPA believes it has the authority to issue regulations as necessary to implement the class II ban under section 610 of the Clean Air Act, as amended, and is currently preparing a proposal.

Section 610 and the regulations promulgated thereunder apply to the sale, rather than the purchase, of nonessential products. However, to ensure conformity with the requirements and policies of Title VI, agency regulations adopted under today's rule prohibit the purchase of any product whose sale has been prohibited under section 610. Of course, to carry out the more general requirement of maximizing the substitution of safe alternatives to ozone-depleting substances, agencies will have to consider their need to purchase all such products, not just those prohibited under section 610.

5. Section 611 - Labeling

Section 611 and the regulations promulgated thereunder specify labeling requirements, effective May 15, 1993, for containers of class I and class II substances, and products containing or manufactured with class I substances. See 58 FR 8136, 40 CFR 82.100 -82.124. The Act stipulates that "no container in which a class I or class II substance is stored or transported, and no product containing a class I substance, shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating: "Warning: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere."

Section 611 also mandates that this same labeling requirement "shall apply to all products manufactured with a process that uses such class I substances, unless the Administrator determines that there are no substitute products or manufacturing processes that: (A) Do not rely on the use of such class I substance; (B) reduce the overall risk to human health and the environment; and (C) are currently or

potentially available." The label for products manufactured with a class I substance is required to state: "Warning: Manufactured with [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere."

After May 15, 1993 and before 2015, the labeling requirement shall apply to products containing or manufactured with a class II substance only "if the Administrator determines, after notice and opportunity for public comment, that there are substitute products or manufacturing processes: (A) That do not rely on the use of such class II substance; (B) that reduce the overall risk to human health and the environment; and (C) that are currently or potentially available." The label is required to have the same wording as that for class I substances. After 2015, these labeling requirements shall apply to all products containing or manufactured with a class I and a class II substance.

Section 611 and the regulations thereunder apply to the labeling of products and containers, not to their purchase. However, to ensure conformity with the regulations and policies of Title VI, agency regulations adopted today's rule must make compliance with section 611 a specification for the purchase of any product or container to which section 611 applies.

6. Section 612 - Significant New Alternatives Policy (SNAP) Program

Section 612 states as a policy that "to the extent practicable, class I and class II substances shall be replaced by chemicals, product substitutes, or alternative manufacturing processes that reduce overall risks to human

health and the environment." Substitutes can be either existing or new, currently or potentially available.

Section 613 specifically refers to the substitution of safe alternatives identified under section 612 for class I and class II substances. Thus, the above policy, as well as the other requirements of section 612, are relevant to this final rule.

Under section 612, EPA published on May 12, 1993, (58 FR 28094) a proposed list of unacceptable substitutes and a preliminary list of acceptable alternatives. In the same Notice of Proposed Rulemaking, EPA also described the structure of the SNAP Program, including the mechanism for ongoing expansion of the lists as new substitutes are developed, as well as the requirements for a petition process to add or remove substances from either of the two lists once they are finally issued. The authority provided in section 612(c) allows EPA to promulgate regulations making it unlawful to replace any class I or class II substance with any substitute which may present adverse effects to human health or the environment, where an alternative to such a replacement has been identified that reduces overall risk and is currently or potentially available. Based on language in section 612, EPA's proposal defined a substitute as any new or existing chemical, product substitute, or alternative manufacturing process that is currently or potentially available. It should be noted that section 612 does not mandate the use of safe substitutes. Rather this section bans the use of unacceptable substitutes.

In evaluating substitutes, EPA's characterization of overall risk includes such factors as chlorine loadings, ozone-depletion potential, toxicity to human health, air,

water, and solid/hazardous waste effects, exposure to workers, consumers, the general population, and aquatic organisms, flammability, and global-warming potential. Substitutes are evaluated by use and in the context of: (1) The risks the substitute is replacing (i.e., the risks of continued use of the class I or class II substances); and (2) the risks from other substitutes. Given the particular use of a substance within a given sector, effects on human health and the environment can vary significantly. Thus, risk characterizations are specific to each use sector and application.

In addition, economic feasibility must be assessed to ensure that the initial list of acceptable substitutes includes alternatives that are available and reasonable in terms of the cost of conversion. The Agency believes that such an examination helps to minimize uncertainty in the marketplace and encourage many to substitute sooner rather than later. EPA intends to issue the final SNAP rulemaking in early 1994.

At the same time as the publication of the final SNAP rule, EPA will also publish its revised list of acceptable substitutes and will promulgate the list of prohibited substitutes. Any substitute not reviewed by the Agency prior to the promulgation of the rules implementing the SNAP program will need to be submitted for review under the SNAP program once it becomes effective.

Today's rule is closely related to section 612, as the purchase of safe alternatives is expected to be the principal means through which agencies will minimize their purchase of ozone-depleting substances. To ensure conformity with section 612, the regulations adopted by agencies pursuant to today's

rule require agency officials both to comply with the policy in section 612(a) of maximizing the use of alternatives to class I and class II substances in making agency purchasing decisions, and to comply with the regulations issued by EPA identifying unacceptable substitutes. It must be noted that class II substances are frequently considered safe alternatives to class I substances under the SNAP rule, and purchase of these substances as appropriate will be in compliance with section 612.

V. Implementation of Requirements Imposed Under Section 613

As indicated earlier, Executive Order 12843 has already directed agencies to take the actions necessary to take into account the phaseout of ozone-depleting substances. Many agencies are already implementing these requirements. However, the following discussion may provide additional information to agencies and assist them in their implementation activities. Much of this discussion appeared in the preamble to the proposed rule, but is restated here for the benefit of agency personnel affected by the rule.

Section 613 does not require EPA to issue detailed rules specifying the manner in which federal agencies are to reduce their use of ozone-depleting substances or related products, and substitute safer alternatives, and EPA is not attempting to do so here. Rather, EPA expects that these details will be addressed when agencies adopt and subsequently implement the regulations or other procedures required by today's rule. Because of the immense variety and complexity of agency decisions regarding which products to purchase to meet its mission, as well as the variety of agency procurement processes, EPA does not consider it appropriate to specify

what agencies must adopt in greater detail than is specified here.

Translating the general requirement of this proposed rule into actual purchasing decisions will of course require further efforts by agencies to identify alternatives to currently used products, or to find entirely different approaches that avoid the need to purchase such products altogether. For example, agencies may change the specifications for cleaning requirements of electronic components from solvents that are ozone-depleting to cleaning agents that are safe, non-ozone-depleting substitutes. Based upon these efforts, agencies will need to develop internal plans, policies or guidance that will ensure compliance with the general requirement of maximizing the use of safe substitutes for ozone-depleting substances. However, EPA does not consider it appropriate to specify in this rule the precise nature of how such policies should be developed and structured in each agency, which is a matter of internal management.

It is important to note that today's regulation is intended to cover both new contracts and purchasing agreements, and contract renewals. Because the availability of class I and class II substances will be severely limited in the near future, agencies may also need to renegotiate existing contracts, or contract renewals, to ensure the successful conversion to substances and processes which do not require the use of controlled substances in time to comply with the requirements of Title VI of the Act.

It should also be noted that, consistent with the policy stated in section 612 of the Act, these proposed regulations require that agencies maximize the substitution of safe

alternatives "to the extent practicable." This approach is intended to give agencies flexibility to deal with conditions resulting from the phaseout of ozone-depleting substances.

Not all agency practices that result in the potential release of ozone-depleting substances are within the scope of section 613. For example, existing equipment containing CFCs may be a potential source of releases, and neither section 613, nor today's proposed rule, requires that such equipment be immediately taken out of service. However, to the extent that the maintenance of such equipment requires the purchase of replacement CFCs, it would be affected by this rule, and agencies should adopt appropriate policies that maximize the substitution of safe alternatives to ozone-depleting substances to the extent practicable. This may include modifying existing equipment, or replacing it on a more rapid schedule than would otherwise be the case. In addition, where the purchase of ozone-depleting substances is unavoidable, agencies are strongly encouraged under today's proposal to further the broad aims of Title VI.

To the extent that the operation of existing equipment does not incur purchases or substitution and is thus beyond the scope of today's proposed rule, but otherwise involves the use of ozone-depleting substances, EPA urges agencies to adopt policies designed to minimize the release of ozone-depleting substances and to maximize recycling and conservation of the substances as required by sections 608 and 609 of the Act. For example, agencies dismantling halon systems might consider recycling these chemicals and providing them to halon banks. In addition, agencies are required to comply with the prohibitions on venting under section 608 of Title VI of the

Act and any requirements regarding recycling and emission control under that section and section 609.

EPA recognizes that there often are substantial financial requirements inherent in making conversions to processes that do not use ozone-depleting substances. The practicability feature of the rule will allow such considerations to be taken into account in selecting methods to reduce demand for ozone-depleting substances. The immense variety of equipment and processes used by the federal government make it impossible for EPA to specify in detail what types of actions must be taken and what lengths of time should be allowed to take them. EPA also notes that time is a consideration in determining what is practicable. What is impracticable in the short-term may be feasible over a longer period of time.

VI. Summary of Supporting Analyses

A. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, federal or state government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this regulation does not meet the definition of a major rule under E.O. 12291 and has therefore

not prepared a formal regulatory impact analysis. EPA believes that this rule will not have a significant economic impact, since its underlying purpose is to prepare Federal agencies to deal with the phaseout of ozone-depleting substances required under Title VI of the Clean Air Act.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that Federal Agencies examine the impact of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that the regulation will not have a significant impact on a substantial number of small entities and has concluded that an RFA is unnecessary. This regulation requires Federal agencies to conform their procurement regulations to the regulations, policies and procedures governing the phaseout of ozone-depleting substances. EPA believes that most companies in industries supplying goods and services made with or containing ozone-depleting substances to the Federal government are already aware of the requirements of Title VI. Therefore, these companies are prepared to offer alternatives to meet amended or new federal procurement specifications required by this regulation. This regulation primarily affects government procurement specifications, to which small entities respond at a cost level appropriate to the goods and services purchased.

C. Paperwork Reduction Act

There are no information collection requirements under this rule which are covered by the Paperwork Reduction Act, 44 U.S. C. 3501 et. seq. Rather, this rule requires that those agencies that are not covered by the FAR certify to the Office of Management and Budget that their procurement regulations have been modified as required. Therefore, no Information Collection Request document has been prepared.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce.

Dated: October 15, 1993.

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 7671-7671(q).

2. A new subpart D is added to read as follows:

Subpart D-Federal Procurement

Sec.

- 82.80 Purpose and scope.
- 82.82 Definitions.
- 82.84 Requirements.
- 82.86 Reporting requirements.

SUBPART D-FEDERAL PROCUREMENT

§ 82.80 Purpose and scope .

(a) The purpose of this subpart is to require federal departments, agencies, and instrumentalities to adopt procurement regulations which conform to the policies and requirements of Title VI of the Clean Air Act as amended, and which maximize the substitution in federal procurement of safe alternatives, as identified under section 612 of the Clean Air Act, for class I and class II substances.

(b) The regulations in this subpart apply to each department, agency, and instrumentality of the United States.

§ 82.82 Definitions .

(a) Class I substance means any substance designated as class I by EPA pursuant to 42 U.S.C. 7671(a), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform.

(b) Class II substance means any substance designated as class II by EPA pursuant to 42 U.S.C. 7671(a), including but not limited to hydrochlorofluorocarbons.

(c) Controlled substance means a class I or class II ozone-depleting substance.

(d) Department, agency and instrumentality of the United States refers to any executive department, military department, or independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, any wholly owned Government corporation, the United States Postal Service and Postal Rate Commission, and all parts of and establishments within the legislative and judicial branches of the United States.

§ 82.84 Requirements .

(a) No later than [Insert date one year from the date of final publication], each department, agency and instrumentality of the United States shall conform its procurement regulations to the requirements and policies of Title VI of the Clean Air Act, 42 U.S.C. 7671-7671g. Each such regulation shall provide, at a minimum, the following:

(1) That in place of class I or class II substances, or of products made with or containing such substances, safe alternatives identified under 42 U.S.C. 7671k (or products made with or containing such alternatives) shall be

substituted to the maximum extent practicable. Substitution is not required for class II substances identified as safe alternatives under 42 U.S.C. 7671k, or for products made with or containing such substances, and such substances may be used as substitutes for other class I or class II substances.

(2) That, consistent with the phaseout schedules for ozone-depleting substances, no purchases shall be made of class II substances, or products containing class II substances, for the purpose of any use prohibited under 42 U.S.C. 7671d(c);

(3) That all active or new contracts involving the performance of any service or activity subject to 42 U.S.C. 7671g or 7671h or regulations promulgated thereunder include, or be modified to include, a condition requiring the contractor to ensure compliance with all requirements of those sections and regulations;

(4) That no purchases shall be made of products whose sale is prohibited under 42 U.S.C. 7671h, except when they will be used by persons certified under section 609 to service vehicles, and no purchase shall be made of nonessential products as defined under 42 U.S.C. 7671i;

(5) That proper labeling under 42 U.S.C. 7671j shall be a specification for the purchase of any product subject to that section.

(b) For agencies subject to the Federal Acquisition Regulation, 48 CFR part 1, amendment of the FAR, consistent with this subpart, shall satisfy the requirement of this section.

§ 82.86 Reporting requirements .

(a) No later than one year after [Insert date of publication], each agency, department, and instrumentality of the United States shall certify to the Office of Management and Budget that its procurement regulations have been amended in accordance with this section.

(b) Certification by the General Services Administration that the Federal Acquisition Regulation has been amended in accordance with this section shall constitute adequate certification for purposes of all agencies subject to the Federal Acquisition Regulation.

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