List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.368–2 is amended by adding paragraph (d)(4) to read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(d) * * *

(4) (i) For purposes of paragraphs (d)(1) and (2)(ii) of this section, prior ownership of a portion of the stock of the target corporation by an acquiring corporation will not by itself prevent the solely for voting stock requirement of such paragraphs from being satisfied. In a transaction in which the acquiring corporation has prior ownership of a portion of the stock of the target corporation, the requirement of paragraph (2)(ii) is satisfied only if the sum of the money or other property that is distributed in pursuance of the plan of reorganization to the shareholders of the target corporation other than the acquiring corporation and to the creditors of the target corporation pursuant to section 361(b)(3), and all of the liabilities of the target corporation assumed by the acquiring corporation (including liabilities to which the properties of the target corporation are subject), does not exceed 20 percent of the value of all of the properties of the target corporation. If, in connection with a potential acquisition by an acquiring corporation of substantially all of a target corporation's properties, the acquiring corporation acquires the target corporation's stock for consideration other than the acquiring corporation's own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation's properties), whether from a shareholder of the target corporation or the target corporation itself, such consideration is treated, for purposes of paragraphs (d)(1) and (2) of this section, as money or other property exchanged by the acquiring corporation for the target corporation's properties. Accordingly, the transaction will not qualify under section 368(a)(1)(C) unless, treating such consideration as money or other property, the requirements of section 368(a)(2)(B) and paragraph (d)(2)(ii) of this section are met. The determination of whether there has been an acquisition in connection with a potential reorganization under section 368(a)(1)(C) of a target corporation's stock for consideration other than an acquiring corporation's own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation's properties) will be made on the basis of all of the facts and circumstances.

(ii) The following examples illustrate the principles of this paragraph (d)(4):

Example 1. Corporation P (P) holds 60 percent of the Corporation T (T) stock that P purchased several years ago in an unrelated transaction. T has 100 shares of stock outstanding. The other 40 percent of the T stock is owned by Corporation X (X), an unrelated corporation. T has properties with a fair market value of $110 and liabilities of $10. T transfers all of its properties to P. In exchange, P assumes the $10 of liabilities, and transfers to T $30 of P voting stock and $10 of cash. T distributes the P voting stock and $10 of cash to X and liquidates. The transaction satisfies the solely for voting stock requirement of paragraph (d)(2)(ii) of this section because the sum of $10 of cash paid to X and the assumption by P of $10 of liabilities does not exceed 20% of the value of the properties of T.

Example 2. The facts are the same as in *Example 1* except that P purchased the 60 shares of T for $60 in cash in connection with the acquisition of T's assets. The transaction does not satisfy the solely for voting stock requirement of paragraph (d)(2)(ii) of this section because P is treated as having acquired all of the T assets for consideration consisting of $70 of cash, $10 of liability assumption and $30 of P voting stock, and the sum of $70 of cash and the assumption by P of $10 of liabilities exceeds 20% of the value of the properties of T.

(iii) This paragraph (d)(4) applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**, except that this paragraph (d)(4) does not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on the date the regulations are published as final regulations in the **Federal Register**, and at all times thereafter.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–14889 Filed 6–11–99; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6358–4]

RIN 2060–AH99

Protection of Stratospheric Ozone: Reconsideration of the 610 Nonessential Products Ban

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking proposes changes to the current regulations that implement the statutory ban on nonessential products that release class I ozone-depleting substances under section 610 of the Clean Air Act, as amended. This proposed rulemaking was developed by EPA based on new and compelling information that has been gathered and indicates that some sectors continue to use class I substances in products where the use of those substances today should be considered a ''nonessential use of class I substances in a product.'' The products affected by this rulemaking are aerosol products, pressurized dispensers, plastic foam products, and air-conditioning and refrigeration products that contain or are manufactured with chlorofluorocarbons.

DATES: Comments must be received by August 13, 1999 unless a public hearing is held. A public hearing, *if requested*, will be held in Washington, D.C. If such a hearing is requested, it will be held on June 29, 1999. Anyone who wishes to request a hearing should call Cindy Newberg at 202/564–9729 by 5 pm Eastern Time June 21, 1999. Ater that time, interested parties may contact the Stratospheric Protection hotline regarding if a hearing will be held as well as the time and place of such a hearing. If a public hearing is held, the comment period will be extended until August 30, 1999.

ADDRESSES: Comments on this action should be addressed to Public Docket No, A–98–31 at the address below. Comments and materials supporting this rulemaking are contained in Public Docket No. A–98–31 Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 in room M–1500. Dockets may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, Program Implementation Branch, Stratospheric

Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, D.C. 20460, (202)564–9729. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information. Interested persons may contact the Stratospheric Protection Hotline to learn if a hearing will be held and to obtain the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal.

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

I. Regulated Entities

Entities potentially regulated by this action are those that wish to sell and/or distribute in interstate commerce aerosols, pressurized dispensers, plastic foam products, refrigerators and air-conditioning equipment that contain chlorofluorocarbons (CFCs). Regulated categories and entities include:

Category	Example of regulated entities
Industry	Aerosol packagers. Aerosol manufacturers. Air-conditioning and refrigeration equipment manufacturers. Specialty chemical manufacturers. Foam manufacturers. Air conditioning and refrigeration distributors. Air conditioning and refrigeration retailers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria contained in Section 610 of the Clean Air Amendments of 1990, discussed in regulations codified at 40 CFR Part 82, subpart C and published on January 15, 1993 (58 FR 4768); December 30, 1993 (58 FR 69672) and discussed below. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

Title VI of the Act divides ozone-depleting chemicals into two distinct classes. Class I is comprised of chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform, methyl bromide and hydrobromofluorocarbons. Class II is comprised of hydrochlorofluorocarbons (HCFCs). (See listing notice January 22, 1991; 56 FR 2420.) Section 610(b) of the Act, as amended, requires EPA to promulgate regulations banning nonessential products releasing class I substances. EPA published a final rule for the Class I Nonessential Products Ban on January 15, 1993 (58 FR 4768). A final rule establishing regulations that implemented the statutory ban on nonessential products containing or manufactured with class II ozone-depleting substances under section 610(d) of the Clean Air Act, as amended, was issued December 30, 1993 (58 FR 69637). That final rule was developed to clarify definitions and provide exemptions, as authorized under section 610(d). All of the regulations are codified at 40 CFR Part 82 subpart C. Comments and materials supporting those rulemakings are contained in Public Dockets A–91–39 and in A–93–20.

A. Class I Ban

Section 610(b) of the Act directs EPA to identify nonessential products that ''release Class I substances into the environment (including any release during manufacture, use, storage, or disposal)'' and to ''prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce.''

Section 610(b)(1) and (2) specify products to be prohibited under this requirement, including ''chlorofluorocarbon-propelled plastic party streamers and noise horns'' and ''chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment.''

Section 610(b)(3) extends the prohibition to other products determined by EPA to release class I substances and to be nonessential. In determining whether a product is nonessential, EPA is to consider the following criteria: ''the purpose or intended use of the product, the technological availability of substitutes for such product and for such Class I substance, safety, health, and other relevant factors.''

The regulatory Class I Ban currently identifies as nonessential, and therefore subject to the prohibitions:

(A) plastic party streamers and noise horns propelled by chlorofluorocarbons;

(B) cleaning fluids for electronic and photographic equipment which contain a chlorofluorocarbon, including but not limited to liquid packaging, solvent wipes, solvent sprays, and gas sprays, except for those sold or distributed to a commercial purchaser;

(C) plastic flexible or packaging foam product which is manufactured with or contains a chlorofluorocarbon, including but not limited to,

- Open cell polyurethane flexible slabstock foam,
- Open cell polyurethane flexible molded foam,
- Open cell rigid polyurethane poured foam,
- Closed cell extruded polystyrene sheet foam,
- Closed cell polyethylene foam, and
- Closed cell polypropylene foam,

except flexible or packaging foam used in coaxial cable; and

(D) any aerosol product or other pressurized dispenser which contains a chlorofluorocarbon, *except:*

- Medical devices listed in 21 CFR 2.125(e),
- Lubricants for pharmaceutical and tablet manufacture,
- Gauze bandage adhesives and adhesive removers,

- Topical anesthetic and vapocoolant products,
- Lubricants, coatings or cleaning fluids for electrical or electronic equipment, which contain CFC–11, CFC–12, or CFC–113 for solvent purposes, but which contain no other CFCs,
- Lubricants, coatings or cleaning fluids used for aircraft maintenance, which contain CFC-11 or CFC–113, but which contain no other CFCs,
- Mold release agents used in the production of plastic and elastomeric materials, which contain CFC–11 or CFC–113, but which contain no other CFCs,
- Spinnerette lubricant/cleaning sprays used in the production of synthetic fibers, which contain CFC–114, but which contain no other CFCs,
- Containers of CFCs used as halogen ion sources in plasma etching,
- Document preservation sprays which contain CFC–113, but which contain no other CFCs, and
- Red pepper bear repellent sprays which contain CFC–113, but which contain no other CFCs.

Verification and public notice requirements have been established for distributors of certain products intended exclusively for commercial use.

The preamble to the 1993 rulemaking established that EPA should in the future reconsider exceptions granted and limitations of the ban under that rulemaking based on new and compelling information regarding the availability of substitutes for class I substances. In 1993 EPA limited consideration of banned products to aerosols, pressurized dispensers, and foams. These sectors traditionally used ozone-depleting substances and were subject to the Class I Ban. Since that rulemaking was issued, the phaseout of production and consumption of class I substances has become effective and the Significant New Alternatives Policy (SNAP) program established under Section 612 of the Act has been promulgated. The phaseout of newly manufactured class I substances and the identification of acceptable substitutes provide compelling reasons to reconsider the initial decisions regarding both product-specific exemptions and the decision to limit the ban's effect to major sectors that traditionally used ozone-depleting substances. Therefore, it is appropriate now to reconsider the applicability of the Class I Ban to both specific products and product categories.

1. Reconsideration

The regulations implementing the Class I Ban provide for EPA to reconsider decisions that were made regarding specific products and product categories. EPA indicated in 1993 that the Agency would reconsider decisions in the future based on developments of product substitutes not containing class I substances. EPA has previously reconsidered specific decisions. In December 1993 (58 FR 69672), EPA reconsidered the application of the Class I Ban to replacement parts that were previously manufactured and stored for future use, such as car seats designed and manufactured for a particular model vehicle.

Based on development of new substitutes and the characterization of the criteria for nonessentiality discussed below, particularly as applied to the use of class I substances in products that are themselves not nonessential, EPA believes that it is now appropriate for EPA to reconsider previous determinations. Specifically, it is appropriate to reconsider the determinations for the air-conditioning and refrigeration, solvents, and foam-blowing sectors.

2. Determinations Under 610

As stated above, Section 610(b)(3) extends the prohibition to other products determined by EPA to release class I substances and to be nonessential. In determining whether a product is nonessential, EPA is to consider the following criteria: ''the purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substance, safety, health, and other relevant factors.'' The statute requires EPA to consider each criterion but did not outline either a ranking or a methodology for comparing their relative importance, nor does it require that any minimum standard within each criterion be met. To develop the initial rulemaking, EPA considered all of these criteria in determining whether a product was nonessential. In addition, EPA reviewed the criteria used in the development of its 1978 ban on aerosol propellant uses of CFCs under the Toxic Substances Control Act (TSCA). Today's action follows the same methodology of that rulemaking.

3. The Purpose or Intended Use of the Product

This criterion relates to the importance of the product, specifically whether the product is sufficiently important that the benefits of its continued production outweigh the associated danger from the continued use of a class I ozone-depleting substance in it, or alternatively, whether the product is so unimportant that even a lack of available substitutes might not prevent the product from being considered nonessential. The initial class I final rulemaking includes a discussion about the contributions of a product to the quality of life.

The distinction between a ''nonessential product'' and a ''nonessential use of class I substances in a product'' is a relevant criterion. For example, while foam cushioning products for beds and furniture are not ''frivolous,'' the use of a class I substance in the manufacturing process for foam cushioning where substitutes are readily available is considered nonessential. The ability of manufacturers to switch from using a class I substance is a relevant indicator for this criterion. The class I final rule states that ''the Agency believes that in sectors where the great majority of manufacturers had already shifted to substitutes, the use of a class I substance in that product may very well be nonessential.'' Consequently, EPA believes it is appropriate under this criteria to examine sectors where most of the market has previously switched out of CFCs.

4. The Technological Availability of Substitutes

EPA has previously interpreted this criterion to mean the existence and accessibility of alternative products or alternative chemicals for use in, or in place of, products releasing class I substances. EPA believes that the phrase ''technological availability'' includes both currently available substitutes (i.e., presently produced and sold in commercial quantities) and potentially available substitutes (i.e., determined to be technologically feasible, environmentally acceptable and economically viable, but not yet produced and sold in commercial quantities). However, EPA considered the current availability of substitutes more compelling than the potential availability of substitutes in determining whether a product was nonessential.

The corresponding criterion from the 1978 aerosol ban is the ''nonavailability of alternative products.'' In its supporting documentation, EPA stated that this was the primary criterion for determining if a product had an ''essential use'' under the 1978 rule. EPA emphasized, however, that the absence of an available alternative did not alone disqualify a product from being banned as nonessential.

The availability of substitutes is clearly a critical criterion for determining if a product containing a class I substance is nonessential. In certain cases, a substitute that is

technologically feasible, environmentally acceptable and economically viable, but not yet produced and sold in commercial quantities, may meet this criterion with respect to certain products. However, EPA believes that, where substitutes are readily available, the use of controlled substances could be considered nonessential even in a product that is extremely important. It should be noted, however, that EPA does not necessarily advocate all substitutes that are currently being used in place of CFCs in the products EPA identifies as nonessential. In many cases potential substitutes are subject to other regulatory programs. For example, the SNAP program promulgated under CAA 612 carefully considers the relative risks and merits of different substitutes for ozone-depleting substances. Substitutes are listed under that regulatory program as acceptable, unacceptable, or acceptable subject to use restrictions for specific uses. Within the limited purposes of the nonessential products bans, EPA considers the existence and accessibility of alternative products or alternative chemicals for use in, or in place of, products releasing class I substances. Any future use of such substitutes must comport with any conditions of the SNAP program, if applicable.

5. Safety and Health

EPA interprets these two criteria to mean the effects on human health and the environment of the products releasing class I substances or their substitutes. In evaluating these criteria, EPA considered the direct and indirect effects of product use, and the direct and indirect effects of alternatives, such as ozone depletion potential, flammability, toxicity, corrosiveness, energy efficiency, ground level air hazards, and other environmental factors.

If any safety or health issues prevented a substitute from being used in a given product, EPA then considered that substitute to be ''unavailable'' at the time for that specific product or use. EPA noted in the initial rulemaking that as new information becomes available on the health and safety effects of possible substitutes, EPA could reevaluate determinations made regarding the nonessentiality of products.

6. Medical Devices

Section 610(e) states that ''nothing in this section shall apply to any medical devices as defined in section 601(8).'' Section 601(8) defines ''medical device'' as ''any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—(A) if such device, product, drug, or drug delivery system utilizes a Class I or Class II substance for which no safe and effective alternative has been developed and, where necessary, approved by the Commissioner of the Food and Drug Administration (FDA); and (B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator.''

The FDA currently is reviewing its determinations under 21 CFR 2.125(e). At this time, the FDA lists 12 medical devices for human use as essential uses of CFCs in 21 CFR 2.125(e). These devices consist of certain metered dose inhalers (MDIs), contraceptive vaginal foams, intra-rectal hydrocortisone acetate, polymyxin B sulfate-bacitracin-zinc-neomycin sulfate soluble antibiotic powder without excipient for topical use, and anesthetic drugs for topical use on accessible mucous membranes where a cannula is used for application. For additional information regarding FDA determinations and plans for potential regulatory changes, see 62 FR 10242 (March 6, 1997).

Medical products as determined by FDA and listed as essential at 21 CFR 2.125(e) are exempt from the Class I Ban at 40 CFR part 82, subpart C. This notice does not propose any changes to this current exemption. However, other medical related products not contained in the FDA's list of essential uses (21 CFR 2.125(e)), and therefore not subject to 610(e), that were considered in the initial Class I Ban rulemaking, and given exemptions, under 610(b) are reconsidered in this action. Those products are gauze bandage adhesives and adhesive removers, lubricants for pharmaceutical and tablet manufacture, and topical anesthetic and vapocoolant products.

7. Other Products

In drafting the initial rulemaking to prohibit certain products under section 610(b)(3), the Agency considered every major use sector that used class I substances including: refrigeration and air-conditioning, solvent use, fire extinguishing, foam blowing, and aerosol use. Based on that review, EPA identified three broadly defined product categories for further evaluation: aerosol products and pressurized dispensers containing CFCs or halons, plastic flexible and packaging foams, and halon fire extinguishers for residential use.

EPA believed that in each of these sectors two important conditions existed: substitutes were already available for the product or the class I substance used or contained in that product; and, either the affected industry had, for the most part, moved out of the use of class I substances or the market share of products using or containing class I substances was small and shrinking. In addition, in the case of aerosols and plastic flexible and packaging foams, section 610(d) imposed a self-effectuating ban on the sale or distribution of such products containing or produced with class II substances after January 1, 1994.

The 1993 rulemaking specifically discussed the other sectors and provided information regarding the Agency's determinations. Refrigeration and air-conditioning, including mobile air-conditioning, represented the largest total use of class I substances in the United States in 1993. At the time the initial rulemaking was promulgated, substitutes were available for some refrigeration and air-conditioning products. For example, the automotive manufacturers were in the process of switching to HFC–134a for new models rather than CFC–12 in their air-conditioning systems. However, potential substitutes for other refrigeration and air-conditioning uses were still being evaluated.

EPA did not include prohibitions on the use of class I substances in refrigeration or air-conditioning in the 1993 rulemaking because determinations regarding substitutes for all such uses were not anticipated to be available within the time-frame of that rulemaking. Accordingly, EPA could not conclude that the use of class I refrigerants in any refrigeration or air-conditioning uses were nonessential at the time of that rulemaking. Furthermore, at that time, EPA had not yet issued final regulations that specifically addressed non-automotive refrigeration and air-conditioning uses of class I substances (subsequently promulgated under CAA Section 608 and codified at 40 CFR part 82, subpart F). These regulations addressed standards for the recovery and reuse of refrigerants.

Solvent uses of class I substances, including commercial electronics de-fluxing, precision cleaning, metal cleaning and dry cleaning also represented a significant use in 1993. Industry had already identified potentially available substitutes for nearly all of the thousands of products then manufactured with class I solvents,

and many companies had already phased out the use of CFCs in certain products. EPA did not address solvent use in that rulemaking (accept where the solvent application was within an aerosol or pressurized dispenser) because the sheer number of products and the range of potential substitutes made it impossible for EPA to conclude definitively that substitutes were available for any of these specific uses, and thus that such uses were nonessential, within the short statutory time-frame for the Class I Ban rulemaking. However, EPA believed a ban on such uses would be unnecessary as most manufacturers were phasing out use as particular substitutes became available, in anticipation of the impending production phaseout.

EPA considered the use of class I substances in fire extinguishing applications in its initial review as well. Halons were widely used in fire extinguishing systems. These fire extinguishing systems include both total flooding systems (such as stationary fire suppression systems in large computer facilities) and streaming systems (such as hand-held fire extinguishers). In evaluating possible nonessential uses of halons in fire fighting, the Agency divided the fire protection sector into six broad end uses: (1) Residential/ Consumer Streaming Agents, (2) Commercial/Industrial Streaming Agents, (3) Military Streaming Agents, (4) Total Flooding Agents for Occupied Areas, (5) Total Flooding Agents for Unoccupied Areas, and (6) Explosion Inertion. Substitutes for halons, whether other halocarbons or alternatives such as water, should meet four general criteria to provide a basis for determining that the use of halon in residential fire extinguishers is nonessential. They must be effective fire protection agents, they must have an acceptable environmental impact, they must have a low toxicity, and they must be relatively clean or volatile. In addition, they must be commercially available as a halon replacement in the near future. EPA concluded that while satisfactory substitutes were not yet available in most commercial and military applications within the short statutory time-frame of the rulemaking, certain substitutes were already commercially available for hand-held halon fire extinguishers in residential settings. Consequently, the Agency decided to evaluate this application more closely in order to determine whether residential fire extinguishers containing halon should be designated nonessential products, or whether the continued use of halons, despite the imposition of the excise tax and the impending production phaseout, indicated that this application did not meet the criteria for nonessentiality. Ultimately, after reviewing the issue and soliciting comment, the final rulemaking did establish a ban on the use of halon in residential streaming applications. Furthermore, the use of CFCs in fire extinguishing equipment was also restricted.

EPA considered aerosols and pressurized dispensers likely candidates for designation as nonessential products in 1993 because a great deal of information on substitutes for CFCs in these applications already existed. Research on substitutes for CFCs in aerosol applications began in the 1970s in response to the early studies on stratospheric ozone depletion and the 1978 ban on the use of CFCs as aerosol propellants. Consequently, extensive data already existed on possible substitutes for most remaining aerosol uses.

The 1978 aerosol ban prohibited the manufacture of aerosol products using CFCs as propellants. Other uses of CFCs in aerosols (such as solvents, active ingredients, or sole ingredients) were not included in the ban. In addition, certain ''essential uses'' of CFCs as aerosol propellants were exempted from the ban because no adequate substitutes were available at the time. Consequently, although the use of CFCs in aerosols was reduced dramatically by the 1978 ban, the production of a number of specific aerosol products containing CFCs were still legal including: metered dose inhalant drugs; medical solvents such as bandage adhesives and adhesive removers; skin chillers for medical purposes; aerosol tire inflators; mold release agents; lubricants, coatings, and cleaning fluids for industrial/institutional applications to electronic or electrical equipment; special-use pesticides; aerosols for the maintenance and operation of aircraft; diamond grit spray; single-ingredient dusters and freeze sprays; noise horns; mercaptan stench warning devices; pressurized drain openers; aerosol polyurethane foam dispensers; and whipped topping stabilizers. In 1993, EPA concluded that satisfactory substitutes were available for most uses of CFCs in aerosols and pressurized dispensers. As a result, the Agency banned all uses of CFCs in aerosols and pressurized dispensers except for certain products, such as medical devices, that it specifically exempted. EPA further concluded that the implementation of the production phaseout of CFCs on January 1, 1996, would serve to eliminate the continued use of CFCs in all but the most essential applications, such as the permitted production for metered dose inhalant drugs.

8. Reconsidering Nonessential Determinations

New and compelling information has been gathered recently by EPA that indicates that some sectors continue to use class I substances in products where the use of the substance today should be considered a ''nonessential use of class I substances in a product.'' Since the promulgation of the initial regulations under Section 610, the SNAP program has been established and now provides information regarding acceptable substitutes for various applications. While the SNAP program does not consider the efficacy of the substitute substance as a replacement for the ozone-depleting substances, for most applications there are sources of information regarding the effectiveness of the substitutes, such as laboratory testing and information provided by major users and trade associations. For example, many substitutes have been listed by SNAP as acceptable for various refrigeration applications. Domestically, newly manufactured refrigerators for residential use are employing these available substitutes. Therefore, it is reasonable for the Agency at this time to reconsider applying the 610 Class I ban to include refrigeration applications by determining if the use of a class I substance in refrigeration applications now meets the definition of nonessentiality, as described in this notice.

Today's action proposes to amend the class I ban to meet the Agency's obligations to eliminate the nonessential uses of class I substances. Specifically, EPA has determined that it is appropriate to reconsider the determinations for the air-conditioning and refrigeration, foam-blowing, aerosols, and pressurized dispensers product categories. Today's action proposes amending the class I ban to include additional nonessential uses of CFCs for these end-use applications.

B. Class II Ban

On December 30, 1993, EPA published a final rulemaking (58 FR 69637) addressing issues related to the statutory prohibition against the sale or distribution, or offer for sale or distribution in interstate commerce of nonessential products containing or manufactured with a class II substance, imposed by Section 610(d) of the Act. Section 610(d)(1) 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.'' Section 610(d)(2) authorizes EPA to grant certain exceptions and Section 610(d)(3) creates exclusions from the Class II Ban in certain circumstances.

Section 610(d)(2) authorizes the Administrator to grant exceptions from the Class II Ban for aerosols and other pressurized dispensers where ''the use of the aerosol product or pressurized dispenser is determined by the Administrator to be essential as a result of flammability or worker safety concerns,'' and where ''the only available alternative to use of a class II substance is use of a class I substance which legally could be substituted for such class II substance.''

Section 610(d)(3) states that the ban of class II substances in plastic foam products shall not apply to ''foam insulation products'' or ''an integral skin, rigid, or semi-rigid foam utilized to provide for motor vehicle safety in accordance with Federal Motor Vehicle Safety Standards where no adequate substitute substance (other than a class I or class II substance) is practicable for effectively meeting such standards.'' Unlike the Class I Ban, the Class II Ban was self-executing. Section 610(d) bans the sale of the specified class II products by its own terms, without any reference to required EPA regulations. However, EPA did issue regulations implementing the Class II Ban in order to better define the products banned under Section 610(d) and to grant authorized exceptions under Section 610(d)(2). Section 301(a) of the Act gives EPA the authority to promulgate such regulations as are necessary to carry out its functions under the Act, and EPA determined that it was necessary to issue the Class II Ban regulations for those purposes.

1. Reconsideration

Since the issuance of the final rule providing exemptions from the statutory Class II Ban, EPA amended the final rule with regards to fire suppression based on compelling information that the Agency received. That amended regulation was issued in the **Federal Register** on December 4, 1996 (61 FR 64424) and subsequently codified at 40 CFR Part 82, subpart C.

EPA has received information indicating that it may be appropriate to reconsider the continued relevance of the current list of exemptions for specific aerosol products and pressurized dispensers. The Agency is aware that since the issuance of that initial final rulemaking, there has been further substitution away from ozone-depleting substances for a variety of aerosol products and pressurized dispensers.

2. Determinations Under Section 610(d)

The statutory criteria for providing an exemption from the Class II Ban are explicit. For any potential exemption the use of the aerosol product or pressurized dispenser must be found to be essential based on flammability or worker safety concerns and EPA must find that the only available alternative to use of a class II substance is use of a class I substance which could legally be substituted for such class II substance.

The initial final rulemaking regarding the Class II Ban provided exemptions for:

- Lubricants, coatings, or cleaning fluids for aircraft maintenance containing HCFCs as solvents;
- Lubricants, coatings, or cleaning fluids for electrical, electronic or photographic equipment containing HCFCs as solvents;
- Aircraft pesticides; • Mold release agents containing HCFCs as solvents;
- Mold release agents containing HCFC–22 as a propellant, for use where no alternative, including an alternative formulation, is available and where the seller must notify purchaser about the restriction;
- Spinnerette lubricant/cleaning sprays containing HCFCs as solvents and/or propellants;
- Document preservation sprays containing HCFCs as solvents;
- Document preservation sprays containing HCFCs as propellants, for use on thick books, books with coated or dense paper, and tightly bound documents, only;
- Portable fire extinguishing equipment containing HCFCs as fire extinguishants, for use in non-residential applications only; and
- Wasp and hornet sprays, for use near high-tension power lines only and where the seller must notify purchaser about restrictions.

3. Future Notice of Proposed Rulemaking

EPA is currently reviewing information concerning the above aerosol products and pressurized dispensers given exemptions in the December 1993 rulemaking. In particular, the Agency is evaluating whether there are technologically available substitutes for the HCFCs used in these products. Since the implementation of the Class II Ban on January 1, 1994, progress has been made to further identify substitutes for various applications. In addition, as stated above, the SNAP program has been established and provides lists of acceptable substitutes for various applications, including applications affected by the Class II Ban. When EPA completes its evaluation of the existing exemptions for HCFCs in pressurized dispensers and aerosol products, the Agency plans to issue a notice of proposed rulemaking and request comments, should the Agency determine that any rule revisions are appropriate.

III. Today's Action

Today, EPA is proposing to revise the Class I Ban to include additional products and to eliminate exemptions. EPA is proposing to expand the scope of the Class I Ban to include additional categories of products.

A. Foam Products

Today, EPA is proposing to ban the sale and distribution and offer of sale or distribution in interstate commerce of all foam products (both insulating and non-insulating) that release class I substances into the environment (including any release during manufacture, use, storage, or disposal). EPA believes there are acceptable substitutes available for replacing any continued use of class I substances as blowing agents for foam products. For example, the SNAP program lists exemptions for various foam applications by providing lists that are specific to the type of foam for which the particular substitute has been listed as acceptable. These categories are rigid polyurethane used in appliances and commercial applications, flexible polyurethane, integral skin polyurethane, polyurethane extruded sheet foam, polyolefin, rigid polyurethane slabstock, polystyrene, extruded boardstock & billet, rigid polyurethane and polyisocyanurate laminated boardstock, and phenolic insulation board and bunstock. The SNAP program does not consider the efficacy of the substitute substance as a replacement for the ozone-depleting substances in each application. However, given the phaseout of production for the class I substances previously used in these products, and the information gathered through trade associations, newsletters, media articles, technical publications, and United Nations Environmental Programme (UNEP) Technical Options Committee reports, it appears that for all foam products, there are currently sufficient

technically available substitutes for the use of a class I substance. EPA requests comments on revising the Class I Ban to ban the sale and distribution or offer of sale and distribution in interstate commerce of *any* foam plastic product or plastic foam product that releases class I substances into the environment (including any release during manufacture, use, storage, or disposal). EPA will consider any specific data indicating that substitutes are not available for certain foam products.

B. Aerosol Products and Pressurized Dispensers

As stated above, EPA initially provided exemptions for a narrow list of aerosol products and pressurized dispensers that release class I substances into the environment. EPA today, is proposing to eliminate exemptions for: gauze bandage adhesives & adhesive removers, topical anesthetic and vapocoolant products, lubricants for pharmaceutical tablet manufacture, containers of CFCs used as halogen ion sources in plasma etching, and red pepper bear repellent sprays containing CFC–113 as a solvent. EPA believes that substitutes are available for such uses of class I products and therefore that such use is no longer essential. EPA is not proposing any changes to the exemption for medical devices that are determined to be essential by the Food and Drug Administration and are listed at 21 CFR 2.125(e). Products such as metered dose inhalers (MDIs) are listed at 21 CFR 2.125(e). The Class I Ban will continue to provide an exemption for the sale and distribution or offer of sale or distribution in interstate commerce of MDIs that release class I substances into the environment, as well as any other essential medical device listed at 21 CFR 2.125(e).

Given the statutory links established between the Class I and Class II Bans for aerosol products and pressurized dispensers, namely the criterion in 610(d) that states that the alternative to the use of a class II substance is the legal use of a class I substance, at this time EPA is not proposing to eliminate exemptions for aerosol products or pressurized dispensers from the Class I Ban that are also exempted from the Class II Ban. However, if and when EPA subsequently issues a proposed rulemaking reconsidering those exemptions from the Class II Ban, that notice will also include the reconsideration for the remaining aerosol products and pressurized dispensers under the Class I Ban as well.

EPA requests comments on the proposed changes to the list of exemptions for aerosol and pressurized dispensers that release class I substances into the environment, and specifically any data indicating that such uses are still essential.

C. Air-Conditioning and Refrigeration Appliances

The initial rulemaking implementing the Class I Ban specifically considered refrigeration and air-conditioning. As noted above, at the time the initial rulemaking was promulgated, substitutes were available for some refrigeration and air-conditioning products; however, potential substitutes for other refrigeration and air-conditioning applications were still under development and evaluation. Thus EPA did not include prohibitions on the use of class I substances in refrigeration or air-conditioning in that rulemaking.

Currently there are substitutes identified for a variety of refrigeration and air-conditioning applications. While substitutes continue to be developed and evaluated for these applications, the Agency is confident that there are sufficient technologically available substitutes for the use of class I substances in all refrigeration and air-conditioning applications as documented in the docket for this rulemaking. The SNAP program also provides lists of acceptable substitutes for various applications.

Since the production and importation of CFCs ceased January 1, 1996, EPA believes it is highly unlikely that there would be continued domestically manufactured air-conditioning and refrigeration appliances with CFCs. EPA has raised this question at industry stakeholder meetings and other forums with representatives from the air-conditioning and refrigeration manufacturing community, as well as with the refrigerant suppliers for these manufacturers. EPA recognizes that there may be a limited number of products manufactured abroad and imported into the United States as well as some potential domestic manufacturing of refrigeration and air-conditioning products containing class I substances that EPA is not aware of; however, given the criteria for nonessentiality discussed above, EPA believes that air-conditioning and refrigeration appliances that contain CFCs meet the criteria for nonessential uses of a class I substance. Therefore, it is reasonable for the Agency to consider broadening the applicability of the Class I Ban to include refrigeration applications. EPA is today proposing to amend § 82.66 to add a provision banning the sale and distribution or offer for sale or distribution of air-conditioning and/or refrigeration appliances that contain class I substances.

EPA heard from two manufacturers regarding potential economic impacts of this proposal. A manufacturer has stated that well over 90% of the compact refrigerators are sold by large retailers and very small quantities are sold by small dealers. Another manufacturer reported that several foreign manufacturers have exported compact refrigerators containing CFCs and non-CFC containing compact refrigerators into the U.S. during 1998. Since they are able to produce both types of refrigerators, the use of CFCs should be considered a ''nonessential use of class I substances in a product.'' One manufacturer believed that the differential in manufacturing costs is between $2.00 and $3.00 per unit, which might translate into a $5.00 price differential if the costs are passed on to the consumer. EPA requests comments regarding the costs and sales of these refrigerators.

EPA would like to clarify that consistent with all other products subject to the nonessential products bans, this proposed addition of air-conditioning and refrigeration appliances covers the sale and distribution of new products, not used products. Furthermore, this proposal would not affect the servicing of existing products with class I refrigerants.

EPA requests comments on expanding the Class I Ban to include air-conditioning and refrigeration appliances. In particular, EPA requests comments regarding whether there are sufficient technologically available substitutes for the use of class I substances in all new air-conditioning and refrigeration appliances.

IV. Proposed Effective Dates and Grandfathering

EPA is proposing that the effective date for the proposed changes to this rulemaking 60 days from the date of publication of a final rule in the **Federal Register**. Given the potential harm releases of class I substances represent and given that most products affected by these proposed changes to the ban no longer use class I substances, EPA believes this is an appropriate effective date. The Agency also considered the potential for a longer implementation date for these proposed regulatory changes, such as 6 months from the date of publication of the final rule in the **Federal Register**; however, as stated

above, this additional time did not seem necessary and thus is not the Agency's lead option. However, EPA requests comments and rationale regarding both the proposed 60-day effective date and alternative effective dates for the proposed changes discussed in this notice.

V. Summary of Supporting Analysis

A. Executive Order 12866

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

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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

B. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis for this proposed rule. EPA believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. EPA has received a letter from a manufacturer citing market research from import reports by the Department of Commerce. This manufacturer stated that well over 90% of the compact refrigerators are sold by large retailers and very small quantities are sold by small dealers. Another manufacturer reported that several foreign manufacturers have exported compact refrigerators containing CFCs and non-CFC containing compact refrigerators into the U.S. during 1998. Since they are able to produce both types of refrigerators, the use of CFCs should be considered a ''nonessential use of class I substances in a product.'' Our assessment indicates that replacing the CFC portion of the import market with more non-CFC refrigerators is economically and technically feasible. One manufacturer believes that the differential in manufacturing costs is between $2.00 and $3.00 per unit, which might translate into a $5.00 price differential if the costs are passed on to the consumer.

In light of the ready supply, coupled with a low price differential, EPA certifies that very little if any negative impact would be felt by the small distributors.

C. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any action containing a significant Federal intergovernmental mandate. Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this proposed rule, the Agency is not required to develop a plan with regard to small governments. Finally, because this NPRM does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials.

D. Paperwork Reduction Act

This action requires no information collection subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore no information collection request will be submitted to OMB for review.

E. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

F. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), Public Law 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may

elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This proposed rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this rule.

G. Applicability of Executive Order 13045

This proposed rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined in E.O. 12866 and because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

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

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

List of Subjects in 40 CFR Part 82

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

Dated: June 4, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40, chapter I of the Code of Federal Regulations, is proposed to be amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

Subpart C—[Amended]

2. Section 82.66 is amened by removing paragraphs (d)(2)(ii), (iii), (iv),(ix), and (xi); by redesignating (d)(2)(v) through (d)(2)(viii) as (d)(2)(ii) through (d)(2)(v); by redesignating (d)(2)(x) as (d)(2)(vi); by revising paragraph (c); and by adding paragraph (e) to read as follows:

§ 82.66 Nonessential Class I Products and Exceptions.

* * * * *

(c) Any plastic foam product which is manufactured with or contains a class I substance.

* * * * *

(e) Any air-conditioning or refrigeration appliance which contains a class I substance used as a refrigerant.

[FR Doc. 99–15014 Filed 6–11–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 54, and 69

[CC Docket Nos. 96–45 and 97–160; FCC 99–120]

Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document concerning the Federal-State Joint Board on Universal Service proposes input values for the forward-looking mechanisms cost model for determining support for non-rural high-cost carriers. Comments are sought to supplement the record so that the Commission can select final input values.

DATES: Comments are due on or before July 2, 1999 and reply comments are due on or before July 16, 1999.

Written comments by the public on the modified information collections are due on or before July 2, 1999 and reply comments are due on or before July 16, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the modified information collections on or before August 13, 1999.

ADDRESSES: Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW–A325, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 Twelfth Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725__17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Richard Smith, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400. For additional information concerning the information collections contained in this Further Notice of Proposed Rulemaking contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on May 28, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C. 20554.

Initial Paperwork Reduction Act Analysis

1. This Further Notice of Proposed Rulemaking contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Further Notice of Proposed Rulemaking, as required by