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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2004-0507, FRL-8291-3]

RIN 2060-AN11

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today the Environmental Protection Agency (EPA) is taking final action to determine that HCFC-22 and HCFC-142b are unacceptable for use in the foam sector under the Significant New Alternatives Policy (SNAP) program under section 612 of the Clean Air Act. The SNAP program reviews alternatives to Class I and Class II ozone depleting substances and approves use of alternatives which do not present a substantially greater risk to public health and the environment than the substance they replace or than other available substitutes. In prior rulemakings, the Agency listed HCFC-22 and HCFC-142b as unacceptable substitutes in several foam end uses; here, EPA is amending a determination for one category of end-uses and taking the following actions for remaining applications. First, EPA is finding HCFC-22 and HCFC-142b unacceptable as substitutes for HCFC-141b in commercial refrigeration, sandwich panels, and slabstock and “other” rigid polyurethane foams and removing narrowed use limits previously established in those applications. Second, EPA is finding HCFC-22 and HCFC-142b unacceptable as substitutes for CFCs in all foam end-uses. Third, the Agency is establishing a grandfathering period to allow existing users of HCFC-22 and HCFC-142b in pour foam applications, including commercial refrigeration, sandwich panels, and

slabstock and “other” rigid polyurethane foams other than foam for marine applications, until March 1, 2008 to implement alternatives; existing users of HCFC-22 and HCFC-142b foam blowing agents in the manufacture of foam for marine applications (*e.g.*, flotation foam) will be allowed to continue use of these blowing agents until September 1, 2009. Fourth, the Agency is grandfathering existing users of HCFC-22 and HCFC-142b in extruded polystyrene (XPS) foam and in all other foam end uses until January 1, 2010 in order to allow time for those users to complete their transition to alternatives.

DATES: This final rule is effective on May 29, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2004-0507. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Jeff Cohen, Stratospheric Protection Division, Office of Atmospheric Programs (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343-9005; fax number: (202) 343-2363; e-mail address: cohen.jeff@epa.gov. The published versions of notices and rulemakings under the SNAP program are available

on EPA’s Stratospheric Ozone Web site at <http://www.epa.gov/ozone/snap/regs>.

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I. Regulated Entities

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

- Businesses that manufacture polyurethane/polyisocyanurate foam systems.
 - Businesses that use polyurethane/polyisocyanurate systems to apply insulation to buildings, roofs, pipes, etc.
 - Businesses that manufacture extruded polystyrene foam insulation for buildings, roofs, pipes, etc.
- Table 1 lists potentially regulated entities:

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

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

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

II. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act (CAA) requires EPA to develop a program for evaluating alternatives to ozone depleting substances (ODS). EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- **Rulemaking**—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) Reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

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

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

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

- **Outreach**—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of

such substances in key commercial applications.

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

B. Regulatory History

On March 18, 1994, EPA published a rule (59 FR 13044) describing the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning, foam manufacturing, solvents cleaning, fire suppression and explosion protection, sterilants, aerosols, adhesives, coatings and inks, and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone-depleting compounds.

EPA defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance (40 CFR 82.172). Anyone who produces a substitute must provide EPA with health and safety studies about the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative (40 CFR 82.174(a)). This requirement applies to chemical manufacturers, but may include importers, formulators, or end users when they are responsible for introducing a substitute into commerce.

C. Listing Decisions

In the original 1994 SNAP rule, the Agency identified four possible decision categories: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable (40 CFR 82.180(b)). Fully acceptable substitutes, *i.e.*, those with no restrictions, can be used for all applications within the relevant sector end use.

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

Even though EPA can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute

acceptable with narrowed use limits must first ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation must include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives (*e.g.*, performance, technical or safety standards), and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. The use of such substitutes in applications and end uses which are not specified as acceptable in the narrowed use limit is unacceptable and violates Section 612 of the CAA and the SNAP regulations (40 CFR 82.174).

EPA does not believe that notice and comment rulemaking procedures are required to list alternatives as acceptable with no restrictions. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings (59 FR 13044). Updates to the acceptable lists are published as separate Notices of Acceptability in the **Federal Register**.

As described in the original March 18, 1994 rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes.

III. Background

A major goal of the SNAP program is to facilitate the transition away from ODS to alternatives that pose less risk to human health and the environment. In 1994, EPA listed several HCFCs as acceptable replacements for CFCs¹ because the Agency believed that HCFCs provided a temporary bridge to alternatives that do not deplete stratospheric ozone. At that time, EPA believed that HCFCs were necessary transitional alternatives to CFC blowing agents in thermal insulating foam (59 FR 13083). As a result, HCFC-141b, HCFC-22 and HCFC-142b became common

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

foam blowing agents in place of CFCs. Pursuant to the CAA and the *Montreal Protocol on Substances that Deplete the Ozone Layer*, HCFC-141b was phased out of production and import in the United States on January 1, 2003, and HCFC-22 and HCFC-142b are scheduled to be phased out of production and import on January 1, 2010.² Since the time EPA initially listed HCFC-22 and HCFC-142b as acceptable in certain foam blowing uses, the Agency has listed several other non-ODS alternative blowing agents, including hydrofluorocarbons (HFCs), hydrocarbons, carbon dioxide, and other compounds, as acceptable substitutes in foam blowing.³

In a final rule published on July 22, 2002, EPA: (1) Found HCFC-22 and HCFC-142b acceptable substitutes for HCFC-141b with narrowed use limits in the foam end uses of commercial refrigeration, sandwich panels, and rigid polyurethane slabstock and "other" foams end uses; (2) deferred a final decision on our proposed decision to list HCFC-22 and HCFC-142b as unacceptable substitutes for CFCs for all foam end uses; (3) listed HCFC-22 and HCFC-142b as unacceptable substitutes for HCFC-141b in the foam end uses of rigid polyurethane/polyisocyanurate laminated boardstock, rigid polyurethane appliance foam and rigid polyurethane spray foam; and (4) listed HCFC-124 as an unacceptable substitute in all foam end uses.⁴

The Notice of Proposed Rulemaking (NPRM) published on November 4, 2005 (70 FR 67120) proposed again taking action with respect to two of the actions addressed in the July 2002 rule. First, in response to a court ruling vacating the Narrowed Use Limits established in the 2002 final rule (*Honeywell Int'l v. EPA*, 374 F.3d 1363 (D.C. Cir 2004), *modified on rehearing* 393 F.3d 1315 (DC Cir.

2005)),⁵ EPA proposed to list HCFC-22 and HCFC-142b as unacceptable substitutes for HCFC-141b in commercial refrigeration, sandwich panels, and slabstock and "other" foam, but proposed to grandfather existing users until January 1, 2010. Second, EPA proposed to list HCFC-22 and HCFC-142b as unacceptable substitutes for CFCs in all foam end uses, but to grandfather existing users until January 1, 2010.

The Agency published a Notice of Data Availability (NODA) on May 26, 2006 to make available to the public additional information received subsequent to the public comment period for the November 4, 2005 NPRM. The NODA summarized two reports on the availability and technical viability of alternatives in the polyurethane "pour foam" and the extruded polystyrene (XPS) foam industries, and produced evidence that a shorter grandfathering period for existing users in pour foam applications was appropriate. Pour foam applications include commercial refrigeration foam, sandwich panels, and slabstock and "other" foam.

Based on the information contained in the NPRM and the NODA, the information published in the corresponding docket (EPA-HQ-OAR-2004-0507), and the comments to the NPRM and to the NODA, EPA is establishing a shorter grandfathering period than what we proposed in the 2005 NPRM for pour foam applications, while finalizing the proposed grandfathering date for XPS and other foam applications. The section below presents a detailed discussion of the decisions being made today.

⁵ After publication of the July 22, 2002 final rule, Honeywell International filed suit in the United States Court of Appeals for the District of Columbia Circuit (the Court), challenging the Narrowed Use Limits that the Agency established for HCFC-22 and HCFC-142b. Honeywell alleged that EPA improperly considered costs in establishing Narrowed Use Limits instead of finding HCFC-22 and HCFC-142b unacceptable for certain end uses. EPA argued that the decision was based solely on technical feasibility and, though not precluded from considering costs, it had not done so as part of the decision. The Court upheld Honeywell's challenge, explaining that various preamble statements indicated that EPA had considered costs, but that EPA had not explained the basis for doing so. In light of the Court's decision, EPA was required to reassess its action with respect to the acceptability of HCFC-22 and HCFC-142b as substitutes for HCFC-141b in commercial refrigeration, sandwich panels, and slabstock and "other" foam. After considering new information on alternatives, the Agency proposed finding HCFC-22 and HCFC-142b unacceptable as substitutes for HCFC-141b in commercial refrigeration, sandwich panels, and slabstock and "other" foam applications based on the technical viability of alternatives.

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

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

Commercial refrigeration, sandwich panels, and slabstock and "other" foam end uses (also referred to as "pour foam") comprise a diverse set of products manufactured by pour foam processes with a wide range of applications including walk-in coolers, garage doors, water heaters, refrigerated transport, refrigerated vending machines and ice bins, insulated drink dispensers, residential architectural panels, tank and pipe insulation, marine flotation foams, floral foam and taxidermy foam. For these pour foam end uses and applications, the information received by the Agency since 2002 demonstrates that several SNAP-approved, non-ODS alternatives including hydrocarbons, HFC-245fa, HFC-134a, methyl formate and water, are widely available, technically viable, and are being sold in the market today. (Docket # EPA-HQ-OAR-2004-0507, Documents 0002 through 0042).

This listing will be effective 60 days following publication in the **Federal Register**. However, EPA is allowing (*i.e.*, grandfathering) existing users of HCFC-22 and HCFC-142b, as of November 4, 2005, in these end uses other than marine applications to continue use of those HCFCs until March 1, 2008; use of HCFC-22 and HCFC-142 in manufacture of foam for marine applications will be allowed to continue until September 1, 2009.⁶ The Agency believes this time is needed for existing users to transition to alternatives (see discussion below on grandfathering existing users in pour foam applications).

This listing replaces the July 22, 2002 rulemaking that listed HCFC-22 and HCFC-142b as unacceptable substitutes for HCFC-141b, subject to narrowed use limits, in commercial refrigeration,

⁶ In this context, existing use is defined as current use of HCFC-22 and/or HCFC-142b to manufacture actual foam products that are sold into commercial markets. The decision to grandfather is based on the criteria established in *Sierra Club v. EPA* (719 F.2d 436 (DC Cir. 1983)). The criteria EPA examines to judge the appropriateness of grandfathering include: (1) Is the new rule an abrupt departure from Agency practice, (2) what is the extent the interested parties relied on the previous rule, (3) what is the burden of the new rule on the interested parties and (4) what is the statutory interest in making the new rule effective immediately, as opposed to grandfathering interested parties (59 FR 13057).

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

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

⁴ At the time of the 2002 final rule, EPA concluded that viable alternatives to HCFC-141b had not been fully developed across all applications, particularly those with thermal performance requirements (67 FR 47707) and established Narrowed Use Limits for specific end uses to provide formulators and manufacturers who found that alternatives to HCFC-141b were not technically viable the flexibility to switch to the less harmful ozone depleting chemicals of HCFC-22 and HCFC-142b.

sandwich panels, and slabstock and other foams.

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

EPA's final determination that the use of HCFC-22 and HCFC-142b as substitutes for CFCs in all foam end uses is unacceptable is based on the availability and potential availability of a number of viable alternatives, including HFC-134a, HFC-152a, CO₂, hydrocarbons, ethanol, water, and formulations under development.

This final action applies to all foam end uses although we are unaware of any current use of HCFC-22 and HCFC-142b foam blowing agents other than in pour foam applications and XPS. As with existing users who substituted for HCFC-141b, EPA is grandfathering existing users of HCFC-22 and HCFC-142b in pour foam applications. Existing users can continue their use of HCFC-22 and HCFC-142b until March 1, 2008 for pour foam applications other than marine, and September 1, 2009 for marine applications, because of the time needed to implement alternatives.

Unlike pour foam applications, U.S. extruded polystyrene (XPS) manufacturers have not yet implemented alternatives to HCFC-22 and HCFC-142b due to technical challenges. Accordingly, EPA is grandfathering existing users of HCFC-22 and HCFC-142b, as of November 4, 2005, in the (XPS) foam end-use⁷ and all other foam applications besides pour foam until January 1, 2010. As discussed below, the Agency believes this time is needed for existing XPS users to complete a transition to alternatives while meeting technical and performance requirements related to building codes and insulation efficiency.

This listing will be effective 60 days following publication in the **Federal Register**, with the grandfathering dates of March 1, 2008 for existing users in pour foam applications other than marine, September 1, 2009 for existing users in marine applications, and January 1, 2010 for existing users in XPS and all other foam applications.

⁷ For simplicity, polystyrene used here refers to polystyrene extruded boardstock or billet (plank), rather than all polystyrene products—some of which never used HCFCs, such as thin polystyrene foam sheet used for plates and cups.

(3) Grandfathering Existing Users of HCFC-22 and HCFC-142b in Pour Foam Applications Other Than Marine, Including Commercial Refrigeration, Sandwich Panels, and Slabstock and "Other" Foam

Grandfathering allows those who made a good faith transition to a SNAP-approved alternative sufficient time to transition to a different alternative while prohibiting new users from investing in an alternative that no longer meets the test for being SNAP-approved (*i.e.*, other alternatives that provide less risk to human health and the environment are available). In the November 4, 2005 NPRM, EPA proposed to find HCFC-22 and HCFC-142b unacceptable as substitutes for HCFC-141b in pour foam end uses, but proposed to grandfather existing users, as of November 4, 2005 (the date of the proposal), until January 1, 2010. Similarly, EPA proposed to find HCFC-22 and HCFC-142b unacceptable as substitutes for CFCs in all foam end uses, but proposed to grandfather existing users, as of November 4, 2005, until January 1, 2010. At the time of the 2005 proposal, the Agency believed that existing users of HCFC-22 and HCFC-142b in all foam applications could require up to four years (*i.e.*, until January 1, 2010 based on the projected effective date of the final rule) for a safe transition to non-ODS alternatives. Nevertheless, the Agency strongly encouraged all existing users of HCFC-22 and HCFC-142b to begin their transition to alternatives immediately and to complete the transition as soon as possible prior to January 1, 2010.⁸

The comments received on the 2005 NPRM can be split into two major categories, those related to pour foam applications and those related to XPS foam applications. The majority of commenters that addressed pour foam applications disagreed with the proposed grandfathering date of January 1, 2010 and argued for acceleration in the required transition, specifically, the elimination of any grandfathering provision whatsoever, or alternatively, a grandfathering date between 2006 and 2008. These commenters noted that several SNAP-approved non-ozone depleting alternatives, including

⁸ Similarly, at the time of the 2002 final rule, the Agency stated: "EPA is continuing to review the commercial refrigeration, sandwich panels, and slabstock and other foams end uses to determine the progress of non-ozone depleting alternatives. As non-ozone depleting alternatives become more widely available, the Agency will reevaluate the acceptability of HCFCs in these end uses. Therefore, foam manufacturers within these applications that are using HCFCs should begin using non-ozone depleting alternatives as soon as they are available in anticipation of future EPA action restricting the use of HCFCs" (67 FR 47704).

hydrocarbons, HFC-245fa, HFC-134a, HFC-152a, CO₂, water, methyl formate, and others are readily available through multiple formulators or systems houses⁹ and technically viable (Docket # EPA-HQ-OAR-2004-0507, Documents 0004-0007, 0010, 0011, 0015, 0017, 0020, 0021, 0025, 0026, 0028, 0031, 0041, 0045). Based on these comments, the Agency commissioned Stratus Consulting Inc. to evaluate the transition to non-ODS blowing agents in the different pour foam applications. The study, made available to the public as part of the May 26, 2006 NODA (71 FR 30353), was based on available information on the industry and alternative blowing agents, as well as on a series of interviews with representatives of systems houses and end use manufacturers (Docket # EPA-HQ-OAR-2004-0507, Document 0038).

Key conclusions from the 2006 Stratus evaluation, summarized in the May 2006 NODA, were consistent with the majority of public comments to the 2005 NPRM on pour foam, and are presented here (Docket # EPA-HQ-OAR-2004-0507, Document 0038):

- Non-ODS alternatives for pour foam applications are available, currently being formulated by systems houses, and technically viable across all pour foam applications.
- No technical performance hurdles to using non-ODS alternatives in pour foam were identified that cannot be overcome either through design changes or with support from suppliers and systems houses.
- EPA's 2000 proposal on the use of HCFCs in foam manufacturing stated that it can take up to four years to complete blowing agent transitions. The transition requires six steps: (1) Obtaining new permits or modifying existing permits, (2) changing equipment to optimize production and ensure worker safety, (3) establishing raw material suppliers, (4) developing formulations, (5) testing final products, and (6) obtaining final product review and approval by relevant boards and agencies. Companies that chose to plan ahead for the eventual phase-out of HCFC-22 and HCFC-142b could have

⁹ Pour foam manufacturers purchase formulations of blowing agents and other materials as part of pour foam systems from formulators or "systems houses." There are approximately 20 systems houses in the U.S. that formulate pour foam systems and include both large and small businesses. The onus is typically on the systems houses to research, test and implement alternatives and develop systems that meet technical, safety, and performance requirements. Both the formulators and pour foam manufacturers are subject to SNAP regulations because both use the blowing agent—formulators blend the blowing agent into a foam formulation, and manufacturers produce the foam with aid of the blowing agent.

initiated this process in the period from 2002 to 2003, when the current suite of alternatives became available, if not before, and could have completed the first four steps by the current date. Thus, these companies could anticipate completing their conversion by 2006 or 2007 in pour foam applications.

- Those companies that have not taken the initial steps to transition to non-ODS blowing agents in pour foam should be able to have market-ready products by January 2008. This is based on two findings. First, most if not all, systems houses have already developed non-ODS formulations; and second, several manufacturers of finished pour foam products (including walk-in storage coolers, reach-in storage coolers, metal panels, insulated beverage dispensers, picnic coolers, and entry and garage doors) were able to convert to non-ODS formulations within 18 months, and in many cases, as rapidly as 6 to 8 months.

- Pour foam formulators and manufacturers should be allowed sufficient time to complete the conversions, including testing final products, obtaining final review and approval from customers, code bodies, and agencies. Based on their findings, RJR Consulting and Stratus Consulting (2006a) concluded that "it is probable that end users will be able to complete the final steps for a successful conversion in 9–14 months."

The 2006 Stratus evaluation did not explicitly address the use of HCFC–22 and HCFC–142b in marine applications which are discussed below. Comments to the May 2006 NODA, summarized below, supported the major conclusions of the Stratus evaluation and help form the basis for the Agency's determination in this action. Based on the information provided to EPA since the publication of the final rule in July 2002, including the comments to the 2005 NPRM and the 2006 NODA, EPA believes today that alternatives are widely available, technically viable, and in use in pour foam applications (Docket # EPA–HQ–OAR–2004–0507, Documents 0004–0017 and Comments 0020, 0022, 0025, 0026, 0028, 0031, 0041 and 0045). The Agency also concludes based on the available information that existing users of HCFC–22 and HCFC–142b in pour foam, other than marine applications, will be able to transition to non-ODS alternatives by March 1, 2008.

It is possible that a foam manufacturer may have unique technical constraints in making a transition to non-ODS alternatives by March 1, 2008. One possible scenario is that of a manufacturer that currently operates in only one facility that does not own (and

leases), and is scheduled to transition to a non-ODS alternative to coincide with the move to a new facility and installation of new process equipment that cannot be completed by March 1, 2008. In addition, for this situation, making an interim transition to a non-ODS alternative at the current facility would not be possible because of the time needed to get fire safety and industry code approvals. In this specific situation, the Agency believes it is appropriate for that manufacturer's use of HCFC–22 or HCFC–142b to be grandfathered until January 1, 2010. For this situation, the manufacturer should retain documentation for possible inspection that includes the following information:

- 1—Description of the applications served by the use of HCFC–22 or HCFC–142b;

- 2—verifiable documentation showing that the manufacturer operates out of only one facility that the manufacturer does not own;

- 3—verifiable documentation of land purchase or construction plans for a new facility that pre-dates publication of this rule;

- 4—verifiable documentation showing that the manufacturer has contracted for purchase of new process equipment to use a non-ODS alternative;

(4) Grandfathering Existing Users of HCFC–22 and HCFC–142b in Marine Applications

Boats use foam for buoyancy and for structural integrity. Comments received subsequent to publication of the NODA raised concern that boat manufacturers would not be able to accelerate their conversion to non-ODS alternatives at the same pace as in other pour foam sectors (NMMA, 2006, Lewit, 2007). Unlike other pour foam applications, new blowing agent formulations used for marine flotation have to meet U.S. Coast Guard buoyancy tests. In addition, new formulations must be tested to ensure that the boat structure can withstand pressure under stressful conditions. For many boat manufacturers, these tests must be done with assistance from systems houses who will be also working with customers in other pour foam end-uses. EPA believes that non-ODS alternatives are available for marine applications, and that boat manufacturers working with systems houses can convert from HCFCs to non-ODS within the same time frame discussed previously for other pour foam applications. However, the Agency also believes that boat manufacturers need additional time compared to other pour foam applications to ensure that new

formulations produce flotation foam that meets the safety and performance requirements for boats. Based on the available information pertaining to the projected workload of systems houses and of the technological feasibility in adopting new formulations, the Agency believes that existing users of HCFC–22 and HCFC–42b for foam in marine applications will be able to transition to non-ODS alternatives by September 1, 2009.

(5) Grandfathering Existing Users of HCFC–22 and HCFC–142b in Extruded Polystyrene Foam (XPS)

As stated above, in the 2005 NPRM, EPA proposed to find HCFC–22 and HCFC–142b unacceptable as substitutes for CFCs in all foam end uses, but proposed to grandfather existing users, as of November 4, 2005 (the date of the proposal) until January 1, 2010. For the XPS foam end use only, EPA is finalizing its proposal to allow existing users of HCFC–22 and HCFC–142b, as of November 4, 2005, until January 1, 2010 to transition to non-ODS alternatives based on our analysis under the four-part test for grandfathering established in *Sierra Club v. EPA*.¹⁰ The Agency believes this transition period is needed based on continuing technical challenges in developing non-ODS alternatives for XPS that meet product performance specifications related to building codes and insulation efficiency.

U.S. XPS manufacturers have invested in the research and development of alternatives and are in final stages of formulation to conform to the January 1, 2010 production phase-out deadline for HCFC–142b and HCFC–22 (Docket # EPA–HQ–OAR–2004–0507, Documents 0002 and 0039). XPS manufacturers project that based on the January 1, 2010 phase-out date, formulations of non-ODS alternatives will need to be developed by mid-2007, with the remaining time used to install manufacturing line upgrades, which can take up to 18 months; perform plant qualification runs, which can take 6–9 months; and obtain code body and agency product approvals, which can take 9–12 months. Accordingly, existing manufacturing lines need until January 1, 2010, to complete equipment conversions, produce the new products at full scale, and get the products qualified by builders and other XPS

¹⁰Other than pour foam applications, discussed above, and extruded polystyrene, the Agency is not aware of other foam end uses still dependent on HCFC–22 or HCFC–142b blowing agents; however, if there are users of HCFC–22 or HCFC–142b in other foam end uses, they will also be grandfathered.

customers, and code bodies (Docket # EPA-HQ-OAR-2004-0507, Documents 0002 and 0039). Based on the transition requirements described above, EPA believes it is appropriate that existing users of HCFC-22 and HCFC-142b, as of November 4, 2005, in XPS applications be allowed to continue using these chemicals until January 1, 2010 in order to ensure a safe transition to non-ODP alternative blowing agents.

Regarding EPA's decision to allow grandfathering in both pour foam and XPS foam applications, the SNAP program is designed to encourage the transition away from ozone depleting chemicals. However, the balance of the factors specific to existing use of HCFC-22 and HCFC-142b in pour foam and XPS foam applications outweigh EPA's statutory interest in applying the unacceptability determination immediately to all users. EPA believes its goal of encouraging the transition away from ozone depleting chemicals is still satisfied as new use of these substances will not be permitted, and existing users will continue their transition to non-ODP alternatives as quickly as is feasible. EPA strongly encourages all existing users of HCFC-22 and HCFC-142b to begin their transition to alternatives immediately and to complete the transition as soon as possible prior to the applicable grandfathering deadlines.

V. Response to Comments

Grandfathering Existing Users of HCFC-22 and HCFC-142b in the Pour Foam End Use

A number of comments from the different components of the polyurethane pour foam industry (chemical manufacturing, formulator/systems house, end-product manufacturing) supported the Agency's proposal to list HCFC-22 and HCFC-142 as unacceptable substitutes for HCFC-141b in commercial refrigeration, sandwich panels, and slabstock and other foam; and the proposal to list HCFC-22 and HCFC-142b as unacceptable substitutes for CFCs (for pour foam applications). Many of these same comments, however, disagreed with the Agency's proposal to grandfather existing use of HCFC-22 and HCFC-142b in pour foam until 2010. Some comments argued for elimination of the grandfathering period while others advocated a shorter period ranging from July 1, 2006 to January 1, 2008. These comments were based on experiences in successfully converting to non-HCFC blowing agents either at the formulation stage or at the end-product stage considerably faster (*i.e.*,

less than 1–2 years) than the four years the Agency originally projected to be needed. One of those commenting noted that a two-year grandfathering period to January 2008 would be “excessively generous” to those few systems houses which have not already transitioned to non-ODS alternatives given today's wide availability of non-ODS, off-the-shelf products (Docket # EPA-HQ-OAR-2004-0507, Documents 0022, 0022.1 and 0027). Several comments on this issue made in response to the May 2006 NODA also advocated the elimination or shortening of the grandfathering period to either January 1, 2007 or 2008.

In contrast, one systems house agreed with the Agency's proposal to allow users of HCFC-22 until January 1, 2010 before transitioning to non-ODS alternatives, claiming the pour foam manufacturers originally switched to HCFC-22 with the understanding they would face no restrictions on the use of the chemical until it was phased out of production in 2010. This commenter stated the “final rulemaking has to be perfectly clear, free of any risk of further meddling, either by EPA or big business, and must fairly consider those who spent the money and time to change to 22 (sic) ahead of schedule. Prematurely forcing users out of HCFC-22 is forcing them out of business.” (Docket # EPA-HQ-OAR-2004-0507, Documents 0008 and 0029).

Another formulator provided similar comments on the May 2006 NODA, arguing that many of its customers who are small businesses have not begun new product trials and the conversion process. This commenter disagreed with a conclusion in the Stratus report that end users will be able to complete the final steps for a successful conversion in 9–14 months because that was not enough time for a systems house to support each of its customer's unique technical needs in completing a transition (Docket # EPA-HQ-OAR-2004-0507, Documents 0044 and 0044.1).

Two comments representing boat builders indicated that unique safety and structural testing were required for marine flotation applications and that the numerous small businesses in that industry would be challenged to safely accelerate their conversions to non-ODS alternatives (Docket # EPA-HQ-OAR-2004-0507, Documents 0046 and 0047). They claimed that the boat manufacturing industry was not aware of EPA's May 2006 NODA.

The Agency agrees with commenters who argued a shorter grandfathering period is appropriate as it applies to pour foam applications. Numerous non-

ODS alternatives are available proven to meet technical specifications and market needs, and the majority, if not all systems houses, have developed non-ODS formulations. There are now numerous examples of systems houses and pour foam manufacturers, across multiple product sectors and end uses, who have successfully converted to non-ODS alternatives within 6–18 months (Docket # EPA-HQ-OAR-2004-0507, Documents 0010, 0015, 0038 and 0041).

Furthermore, since at least 1992, the foam industry has been aware of the 2010 production phaseout of HCFC-22 and HCFC-142b and all users should by now have made substantial progress in transitioning to alternatives. Since at least 2000, the Agency has consistently explained its intention of reviewing the availability and viability of alternatives in the context of a SNAP restriction on use of HCFC-22 and HCFC-142b, and has consistently encouraged users of these chemicals to complete their transition as soon as possible (65 FR 42653, 67 FR 47703, 70 FR 67120, and 71 FR 30353). For these reasons, the Agency disagrees with the comments in support of the January 1, 2010 grandfathering deadline for pour foam applications.

The argument that small businesses will be severely affected if they cannot continue to use HCFC-22 after January 1, 2008 is not consistent with the fact that many small businesses completed transitions to non-ODS alternatives within 12 months, and in several cases, as early as 6–8 months (Docket # EPA-HQ-OAR-2004-0507, Documents 0010, 0015, 0038 and 0041). Further, small and large businesses who manufacture doors, commercial refrigeration equipment, and other pour foam products typically rely on systems houses to develop and test formulations specific to their products. There are now a wide range of “off the shelf” non-ODS formulations available to these users (Docket # EPA-HQ-OAR-2004-0507, Documents 0022, 0022.1, 0027 and 0038), and the Agency sees no substantive obstacle for pour foam manufacturers to complete a transition to non-ODS alternatives by March 1, 2008 for applications other than marine.

For marine flotation foam and other marine foam applications, the Agency recognizes the need to ensure sufficient time for boat builders to complete their testing of new formulations to meet performance and safety standards (*e.g.*, Coast Guard), especially considering the diverse nature of the boat industry and the number of boat manufacturers in the U.S. (approximately 3000 according to one commenter, see Docket # EPA-HQ-

OAR-2004-0507, Document 0047). Therefore, the Agency has concluded that an additional 18 months compared to other pour foam applications (September 1, 2009) is an appropriate deadline.

Grandfathering Existing Users of HCFC-22 and HCFC-142b in the Polystyrene (XPS) End Use

Although pour foam applications and XPS applications both use HCFC-22 and HCFC-142b, the two sets of applications use entirely different foam manufacturing processes and thus face different technical challenges when transitioning to non-ODS alternatives. In commenting on the 2005 NPRM and the 2006 NODA, representatives of XPS manufacturers made the following points:

- EPA should withdraw its proposal to list HCFC-142b and HCFC-22 as unacceptable in the foams sector;
- The Agency has no authority to designate a substitute previously listed as acceptable as unacceptable without a specific SNAP petition;
- If EPA promulgates this unacceptability determination the grandfathering deadline should be January 1, 2010.

The Agency disagrees with comments that HCFC-142b and HCFC-22 should not be listed as unacceptable, but agrees that the grandfathering deadline should be January 1, 2010 for XPS foam applications. There are numerous non-ODS alternatives across the foam sector, including for XPS, that are available or potentially available, but the XPS manufacturers have not yet completed implementation of them. While the XPS manufacturers have been working diligently to develop alternatives, the Agency recognizes that there are technical challenges involved in making the transition to the new formulations. Based on the comments from the XPS industry and other available information (Docket # EPA-HQ-OAR-2004-0507, Documents 0002, 0018, 0018.1, 0019, 0019.1, 0023, 0023.1, 0039), the Agency believes that U.S. XPS manufacturers will not be able to complete a transition to non-ODS products that meet technical product specifications related to building codes and insulation efficiency until January 1, 2010.

The Agency disagrees with the comment that EPA does not have authority to list previously acceptable substitutes as unacceptable without a specific petition. Section 612 of the Clean Air Act requires the Agency to respond to petitions but places no restriction on the Agency's ongoing review of SNAP determinations. In the preamble to the original SNAP

rulemaking, the Agency stated its belief that "section 612 authorizes it to initiate changes to the SNAP determinations independent of any petitions or notifications received. These amendments can be based on new data on either additional substitutes or on characteristics of substitutes previously reviewed." (59 FR 13047). The Agency has previously listed as unacceptable substitutes that previously were acceptable when new data on their environmental or health risks have become available, or when substitutes that pose less overall risk become available (e.g., HCFC-141b in foam blowing at 69 FR 58269, HBFC-22B1 in fire suppression at 67 FR 4185, and MT-31 in refrigeration at 64 FR 3861).

Definition of Use and Existing User

Some of those commenting asked the Agency to clarify the terms "use" and "existing user" of HCFC-22 and/or HCFC-142b, and how the Agency's grandfathering provisions would apply to existing users who are developing expanded or new manufacturing individual facilities that would use HCFC-22 or HCFC-142b. One commenter asked that the Agency only allow operating facilities, or at least, fully permitted facilities, to be grandfathered.

The 2005 NPRM defined existing use as "current use of HCFC-22 and/or HCFC-142b to manufacture actual foam products that are sold into commercial markets" (70 FR 67124). EPA explained in the preamble to the 2005 NPRM that grandfathering allows those who had made the good faith transition to a SNAP approved alternative sufficient time to transition to a different alternative while prohibiting new investment in an alternative that no longer meets the test for being SNAP-approved (i.e., other alternatives that provide less risk to human health and the environment are available)" (70 FR 67124). Grandfathering allows existing users time to adjust their manufacturing processes for a safe transition to non-ODP alternatives. (70 FR 67125). The Agency maintains these principles in establishing the grandfathering provisions in the final rule.

In the case of an expanded or new facility where use of HCFC-22 or HCFC-142b has not actually begun, but is being developed by a manufacturer who has another facility where HCFC-22 or HCFC-142b has been in use, the Agency believes that it is consistent with the grandfathering to consider the new facility as part of the existing use if those new or expanded facilities are for the primary purpose of supplying the market, without disruption, with

product that meets all codes and standards (i.e., building, energy efficiency and fire) while they transition their existing facilities to alternatives. However, it would not be consistent with the grandfathering provisions if the primary purpose of a new facility or an expansion of an existing facility were to increase the manufacturer's production of foam products.

The SNAP program's goal is to prevent unnecessary use of chemicals that pose a more significant risk to human health and the environment than other chemicals that the Agency has found acceptable. EPA proposed to grandfather existing users of HCFC-22 and HCFC-142b for foam manufacturing in order to allow them time to transition safely to acceptable substitutes. If expansion of existing capacity is needed by manufacturers as an integral part of their transition timeline to non-ODS alternatives, it would be consistent with EPA's rationale for grandfathering existing users of HCFC-22 and HCFC-142b in some end uses.

Another clarification in response to the comments with respect to the term "use of HCFC-22 and/or HCFC-142b" is that end-users will be allowed to use "systems" containing these blowing agents to manufacture foam-containing products after the applicable grandfathering date as long as the formulations were made prior to that grandfathering date. This is consistent with the original 1994 SNAP rulemaking which defines use as "any use of a substitute for Class I or Class II ozone-depleting compound, including but not limited to use in a manufacturing process or product, in consumption by the end-user, or in intermediate uses, such as formulation or packaging for other subsequent uses" (59 FR 13148). In this case, for example, boat manufacturers will be able to use their inventory of HCFC-22 formulations after September 1, 2009 but only if those formulations were manufactured prior to that date.

Unique Applications Requiring Continued Use of HCFC-22 or HCFC-142b

In the 2005 proposal, as in past rulemakings, the Agency requested comment about any specific, unique applications that would require continued use of HCFC-22 or HCFC-142b beyond the effective date of the unacceptability determination. For example, in the recent SNAP final rule published on September 30, 2004, EPA found the use of HCFC-141b unacceptable in all foam applications. However, based on technical information submitted to EPA during

the comment period, the Agency exempted “the use of HCFC–141b for space vehicle, nuclear and defense foam applications from the unacceptability determination” (69 FR 58272). For this current rulemaking, EPA did not receive any comment about such unique applications and we are not aware of any specialized foam applications that would require continued use of HCFC–22 or HCFC–142b beyond either March 1, 2008 for pour foam applications other than marine applications; September 1, 2009 for marine applications (e.g., flotation foam); or January 1, 2010 for XPS applications. Therefore, the Agency is not providing any exception to its decision today.

VI. Summary

The major objective of the SNAP program is to facilitate the transition from ozone-depleting chemicals by promoting the use of substitutes which present a lower risk to human health and the environment (40 CFR 82.170(a)). In this light, a key policy interest of the SNAP program is promoting the shift from ODSs to alternatives posing lower overall risk that are currently or potentially available (59 FR 13044). Non-ozone depleting alternatives are technically viable and commercially available for nearly all foam applications, including in the pour foam products found in the end uses of commercial refrigeration, sandwich panels, slabstock, and “other” foam. Continued use of HCFCs in those end uses would contribute to unnecessary depletion of the ozone layer, and will delay the transition to alternatives that pose lower overall risk to health and the environment. Accordingly, EPA is (1) Listing HCFC–22 and HCFC–142b as unacceptable substitutes for HCFC–141b in commercial refrigeration, sandwich panels, and slabstock and “other” foam; and (2) listing HCFC–22 and HCFC–142b as unacceptable substitutes for CFCs in all foam end uses. These listings would be effective 60 days after the publication of the final rule in the **Federal Register**. Existing users of HCFC–22 and HCFC–142b, as of November 4, 2005, in pour foam applications including commercial refrigeration, sandwich panels, and slabstock and “other” foam end uses, other than foam for marine applications (e.g., flotation foam), will be grandfathered until March 1, 2008. Existing users of HCFC–22 and HCFC–142b, as of November 4, 2005, to manufacture foam for marine applications, will be grandfathered until September 1, 2009. These listings for pour foam applications replace those established in the July 22, 2002

rulemaking which established narrowed use limits for continued use of HCFC–22 and HCFC–142b. Existing users of HCFC–22 or HCFC–142b, as of November 4, 2005, in the extruded polystyrene end use and other foam end uses will be grandfathered until January 1, 2010. EPA is allowing existing users of HCFC–22 and HCFC–142b to continue use for a limited time to ensure that they will be able to adjust their manufacturing processes to safely accommodate the use of non-ODS alternatives.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action” because it raises novel legal or policy issues. Accordingly, EPA conducted a preliminary screening analysis of cost impacts (Stratus and RJR Consulting, 2006). Results of this analysis using the highest identified set of cost assumptions indicate the total annual national costs of a 2008 phase-out will be less than one-half of the \$100 million threshold that defines a significant regulatory action in terms of economic impact. EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Today’s rule contains no new reporting requirements. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0226, EPA ICR number 1596.06. This Information Collection Request (ICR) included five types of respondent reporting and recordkeeping activities pursuant to SNAP regulations: Submission of a SNAP petition, filing a SNAP/Toxic Substances Control Act (TSCA) Addendum, notification for test marketing activity, record-keeping for substitutes acceptable subject to use restrictions and recordkeeping for small volume uses.

A copy of the ICR may be obtained from Susan Auby, by mail at the Office

of Environmental Information, Office of Information Collection, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at auby.susan@epa.gov, or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility Act

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

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

(1) A small business that is primarily engaged in the operations described below with fewer than 500 employees (based on Small Business Administration size standards);

(2) A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and

(3) A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The types of businesses subject to today's final rule include businesses that manufacture polyurethane/polyisocyanurate foam systems (NAICS 326150), businesses that use polyurethane/polyisocyanurate systems to apply insulation to buildings, roofs, pipes, etc. (NAICS 326150), and manufacturers of extruded polystyrene (NAICS 326140). After considering the economic impacts of today's final rule on small entities, I certify this action will not have a significant economic impact on a substantial number of small entities. EPA does not believe small businesses will be adversely impacted by this final rule. The majority of the small businesses in the foam industry operate in polyurethane foam end uses as opposed to extruded polystyrene (XPS) foam applications (this rule covers both). In the context of this rule, small businesses (if they are still using an HCFC at all) are likely using HCFC-22 to manufacture pour foam in applications such as commercial refrigeration, sandwich panels, and slabstock and "other" foam. As explained below, polyurethane pour foam applications operate differently than other SNAP applications in that a small number of companies supply a much larger number of actual pour foam manufacturers.

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

Information in the docket EPA-HQ-OAR-2004-0507 demonstrates that non-ODP alternatives are technically viable and commercially available. In fact, small businesses at both the formulator and pour foam manufacturer levels are already supplying and using non-ODP alternatives in applications such as commercial refrigeration, sandwich panels and slabstock and "other" foam. Therefore, those small businesses will

not be adversely affected by the rule to find HCFC-22 and HCFC-142b unacceptable for use because they have already implemented alternatives.

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

In addition, manufacturers and users of HCFCs have had more than 10 years to prepare for the January 1, 2010 deadline for phasing out production of HCFC-22 and HCFC-142b in the U.S. since the HCFC phaseout schedule was established by a separate EPA regulation in 1993 (58 FR 65018). Today's final rule would allow continued use of these chemicals until March 1, 2008 for pour foam manufacturers other than those making foam for marine applications, and September 1, 2009 for those manufacturing foam for marine applications, (and until January 1, 2010 for XPS applications). Furthermore, the costs of the HCFC phaseout and the transition to non-ozone depleting alternatives were accounted for in a Regulatory Impact Analysis (RIA) that was performed in 1993 for the phaseout rule mentioned above. A memo in the docket at EPA-HQ-OAR-2004-0507-0012 details the impacts of this final rule, including a discussion of the related 1993 phaseout rule and RIA, on both the pour foam formulators and pour foam manufacturers and concludes there will not be significant impact on a substantial number of small businesses. In fact, most formulators that are still using HCFC-22 and/or HCFC-142b also have implemented alternatives and sell both types of systems to their customers, the manufacturers (EPA-HQ-OAR-2004-0507-0008). Based on this, it is clear that alternatives to ODS have been identified and there are no technical constraints to implementing those alternatives.

EPA updated these analyses and developed a screening analysis of small business impacts stemming from the proposed acceleration of the phase-out schedules (Docket # OAR 2004-0507,

Documents 0038 and 0039). Based on a current market assessment, it appears that most companies in the affected applications already have converted to alternatives. By our estimates, there are about 40 companies continuing to use HCFC-22 for pour-foam applications, of which 29 have fewer than 500 employees. Using the highest identified set of cost assumptions, the annual costs of a 2008 phase-out exceed the impact screening threshold of one percent of sales in 10 companies. No firms have an impact exceeding the next threshold of three percent of sales. Under more likely mid-range assumptions, the impacts will be smaller. These results indicate there will not be a significant impact on a substantial number of small entities. Although this rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless tried to further reduce the impact of this rule on small entities. Based on acceptability decisions in previous final rules, the Agency believes that some existing users of HCFC-22 and HCFC-142b, including small businesses, invested in good faith in SNAP-approved alternatives that EPA now finds unacceptable. Accordingly, it is appropriate for EPA to balance their interest against our statutory obligation to facilitate the transition away from ozone depleting chemicals as required by the four part test established in *Sierra Club v. EPA*. Grandfathering existing users of HCFC-22 and HCFC-142b, some of which are small businesses, allows those users approximately 1-2 years to transition to non-ODS alternatives. (This is the time cited by small businesses when explaining their transition process in comments to the 2005 NPRM and 2006 NODA.)

Similarly, this final rule does not negatively impact XPS manufacturers because the rule grandfathered existing use of HCFC-22 and HCFC-142b for XPS applications until January 1, 2010. While the XPS industry has been working to implement alternatives, EPA recognizes there are remaining technical challenges to completing the transition in XPS (Docket # OAR-2004-0507, Documents 0002 and 0039). Accordingly, the Agency agreed with the comments from the XPS manufacturers and grandfathered them until January 1, 2010 to allow the time necessary to develop non-ODS XPS foam products that meet all technical and building specifications.

As discussed in the preamble and noted in the docket, there are numerous alternatives that are technically viable and available for all foam applications. In fact, some users have already transitioned away from HCFC-22 and

HCFC-142b, particularly in pour foam applications (Docket # EPA-HQ-OAR-2004-0507, Documents 0004-0042). The actions in the final rule may well provide benefits to small businesses which have transitioned to alternatives and made good faith efforts and investments in the transition because they will be able to compete on a level playing field with those that are still using ODS blowing agents.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's final rule does not affect State, local, or tribal governments. The

enforceable requirements of the rule for the private sector affect only a small number of foam manufacturers that could potentially have switched to use HCFC-22 and HCFC-142b in the United States and those currently using HCFC-22 and HCFC-142b. With regard to potential new users, there are technically viable alternatives for those manufacturers. With regard to existing users, there are viable alternatives that will be feasible to use once the manufacturers have made the necessary adjustments to its facility and products. The impact of this rule on the private sector is less than \$100 million per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This regulation applies directly to facilities that use these substances and not to governmental entities.

E. Executive Order 13132: Federalism

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

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

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR

67249 (November 9, 2000)), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule applies directly to facilities using these substances and does not significantly or uniquely affect the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: Protection of Children from Environmental Health & Safety Risks (62 FR 19885 (April 23, 1997)) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The use of HCFC-22 and HCFC-142b in foam manufacture occurs in the workplace where we expect adults are more likely to be present than children, and thus, the agents do not put children at risk disproportionately.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. This action would impact the manufacture of foam using HCFC-22 and HCFC-142b. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 29, 2007.

VIII. Additional Information

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

IX. References

The documents below are referenced in the preamble. All documents are

located in the Docket at the address listed in Section I at the beginning of this document. Unless specified otherwise, all documents are available in Docket ID No. EPA-HQ-OAR-2004-0507 at <http://www.regulations.gov>.

- Beauchamp, B., 2005. Comments from Stepan Company. (EPA-HQ-OAR-2004-0507 item -0011, -0017, -0021, and -0025)
- Begbie, R., 2005. Comment from Exxon Mobil Chemical Company. (EPA-HQ-OAR-2004-0507 item -0007)
- Berglund, T., 2005. Comment from Dynaplast Products. (EPA-HQ-OAR-2004-0507 item -0006)
- Bernhardt, S., 2005. Comments from Honeywell Chemicals. (EPA-HQ-OAR-2004-0507 item -0009, -0016, -0016.1, and -0042)
- Boyer, K., 2005. Comment from Centria. (EPA-HQ-OAR-2004-0507 item -0005)
- Coyle, M., 2005. Comment from Bally Refrigerated Boxes, Inc. (EPA-HQ-OAR-2004-0507 item -0004)
- Federal Register** (FR), vol. 65, p.42653.
- Federal Register** (FR), vol. 67, p.47703.
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- Federal Register** (FR), vol. 71, p.30353.
- Henderson, J., 2005. Comment from Jeanne Henderson. (EPA-HQ-OAR-2004-0507 item -0032)
- Herrenbruck, S., 2005. Comments from Extruded Polystyrene Foam Association. (EPA-HQ-OAR-2004-0507 item -0023 and -0023.1)
- Kalinowski, T., 2005. Comments from Foam Supplies, Inc. (EPA-HQ-OAR-2004-0507 item -0008 and -0029)
- Kasakevich, J. 2006. Comments from The Dow Chemical Company. (EPA-HQ-OAR-2004-0507 item -0044 and -0044.1)
- Kraus, T., 2005. Comments from The Manitowoc Company Inc. (EPA-HQ-OAR-2004-0507 item -0010, -0015, and -0041)
- LaPlante, A. and M. Powers., 2005. Comments from Pacific Environmental Advocacy Center. (EPA-HQ-OAR-2004-0507 item -0024, -0024.1, and -0036)
- Lewandowski, P., 2005. Comments from Owens Corning. (EPA-HQ-OAR-2004-0507 item -0018 and -0018.1)
- Mathis, P., 2005. Comments from National Cooler Division of Hill Phoenix. (EPA-HQ-OAR-2004-0507 item -0020, -0026, -0028, -0031, and -0045)
- Memo from Small Business Regulatory Enforcement Act. 2005. Potential Impacts on Small Businesses of a SNAP Proposed Rulemaking on the Use of HCFC-22 and HCFC-142b in Foam Applications. (EPA-HQ-OAR-2004-0507 item -0012)
- RJR Consulting, Inc., 2005. XPS (Extruded Polystyrene Foam) Technical Support-Status of C Conversion from HCFC Blowing Agents. (EPA-HQ-OAR-2004-0507 item 0002)
- RJR Consulting, Inc. and Stratus Consulting, Inc., 2006a. Technical Viability of SNAP Approved Non-Ozone Depleting Blowing Agents Available for Pour Foam Blowing Applications. (EPA-HQ-OAR-2004-0507 item 0038)

- RJR Consulting, Inc. and Stratus Consulting, Inc., 2006b. Review of SNAP Approved Non-Ozone Depleting Blowing Agents Available to the Extruded Polystyrene Foam Industry. (EPA-HQ-OAR-2004-0507 item 0039)
- Stratus Consulting, Inc., and RJR Consulting, Inc., 2006. E.O. 12866, RFA, and SBREFA Screening Analyses.
- US EPA, 2005. E-mail to the Dow Chemical Company. (EPA-HQ-OAR-2004-0507 item -0034)
- US EPA, 2005. Memo to File Regarding Conversation with Foam Supplies, Inc. (EPA-HQ-OAR-2004-0507 item -0013)
- US EPA, 2005. Memo to File Regarding Meeting with The Dow Chemical Company. (EPA-HQ-OAR-2004-0507 item -0033)
- US EPA, 2006. Memo to File Regarding Meeting with Pacific Environmental Advocacy Center. (EPA-HQ-OAR-2004-0507 item -0035)
- US EPA, 2006. Memo to File Regarding Meeting with Congressman Petri and Manitowoc Company, Inc. (EPA-HQ-OAR-2004-0507 item -0037)
- US EPA, 2005. Memo to File Regarding A Blowing Agent Transition. (EPA-HQ-OAR-2004-0507 item -0014)
- USEPA, 2005. Protection of Stratospheric Ozone: Listing of Ozone Depleting Substitutes in Foam Blowing. (EPA-HQ-OAR-2004-0507 item 0001)
- US EPA, 2006. Protection of Stratospheric Ozone: Notice of Data Availability; New Information Concerning SNAP Program Proposal on Ozone Depleting Substitutes in Foam Blowing (EPA-HQ-OAR-2004-0507 item 0040)
- Watson, S., 2005. Comments from Carpenter Co. (EPA-HQ-OAR-2004-0507 item -0022, -0022.1, and -0027)
- Weick, M., 2005. Comments from The Dow Chemical Company. (EPA-HQ-OAR-2004-0507 item -0019, -0019.1, -0043, and -0043.1)

List of Subjects in 40 CFR Part 82

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

Dated: March 19, 2007.

Stephen L. Johnson,
Administrator.

■ For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

Subpart G—Significant New Alternatives Policy Program

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

**Appendix Q to Subpart G of Part 82—
Unacceptable Substitutes Listed in the
March 28, 2007 Final Rule, Effective
May 29, 2007.**

FOAM BLOWING UNACCEPTABLE SUBSTITUTES

End use	Substitute	Decision	Further information
—Rigid polyurethane commercial refrigeration —Rigid polyurethane sandwich panels.	HCFC-22; HCFC-142b as substitutes for HCFC-141b.	Unacceptable ¹	Alternatives exist with lower or zero-ODP.
—Rigid polyurethane slabstock and other foams. —Rigid polyurethane and polyisocyanurate laminated boardstock. —Rigid polyurethane appliance. —Rigid polyurethane spray and commercial refrigeration, and sandwich panels. —Rigid polyurethane slabstock and other foams. —Polystyrene extruded insulation boardstock and billet. —Phenolic insulation board and bunstock. —Flexible polyurethane. —Polystyrene extruded sheet.	HCFC-22; HCFC-142b as substitutes for CFCs.	Unacceptable ²	Alternatives exist with lower or zero-ODP.

¹ For existing users of HCFC-22 and HCFC-142b as of November 4, 2005 other than in marine applications, the unacceptability determination is effective on March 1, 2008; for existing users of HCFC-22 and HCFC-142b as of November 4, 2005 in marine applications, including marine flotation foam, the unacceptability determination is effective on September 1, 2009. For an existing user of HCFC-22 or HCFC-142b that currently operates in only one facility that it does not own, and is scheduled to transition to a non-ODS, flammable alternative to coincide with a move to a new facility and installation of new process equipment that cannot be completed by March 1, 2008, the unacceptability determination is effective January 1, 2010.

² For existing users of HCFC-22 and HCFC-142b in polystyrene extruded insulation boardstock and billet and the other foam end uses, as of November 4, 2005, the unacceptability determination is effective on January 1, 2010.

■ 3. In Appendix K to Subpart G, the second table (Foam Blowing—Acceptable Substitutes) is removed.

[FR Doc. E7-5491 Filed 3-27-07; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 180

[EPA-HQ-OPP-2006-481; FRL-8120-1]

Fluopicolide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluopicolide in or on imported grape at 2.0 parts per million (ppm), and grape, raisin at 6.0 ppm with no U.S. registration. Bayer CropScience AG requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerance petition and data was transferred to Valent U.S.A. Corporation on January 9, 2006.

DATES: This regulation is effective March 28, 2007. Objections and requests for hearings must be received on or before May 29, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also

**Unit I.C. of the SUPPLEMENTARY
INFORMATION).**

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2006-0481. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Janet Whitehurst, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6129; e-mail address: janet.whitehurst@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult