

US EPA ARCHIVE DOCUMENT

finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 62

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Sulfur oxides, Waste treatment and disposal.

Dated: January 14, 2002.

William Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

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

Subpart R—Kansas

2. Subpart R is amended by adding an undesignated center heading and § 62.4181 to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

§ 62.4181 Identification of plan—negative declaration.

Letter from the Kansas Department of Health and Environment submitted November 16, 2001, certifying that there are no commercial and industrial solid waste incineration units subject to 40 CFR part 60, subpart DDDD.

Subpart AA—Missouri

3. Subpart AA is amended by adding an undesignated center heading and § 62.6360 to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

§ 62.6360 Identification of plan—negative declaration.

Letter from the Missouri Department of Natural Resources submitted May 9, 2001, certifying that there are no commercial and industrial solid waste incineration units subject to 40 CFR part 60, subpart DDDD.

Subpart CC—Nebraska

4. Subpart CC is amended by adding an undesignated center heading and § 62.6916 to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

§ 62.6915 Identification of plan—negative declaration.

Letter from the Nebraska Department of Environmental Quality submitted June 8, 2001, certifying that there are no commercial and industrial solid waste incineration units subject to 40 CFR part 60, subpart DDDD.

[FR Doc. 02–2119 Filed 1–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[PA001–1001; FRL–7134–9]

Approval of Section 112(1) Authority for Hazardous Air Pollutants; City of Philadelphia; Department of Public Health Air Management Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and delegation.

SUMMARY: EPA is taking direct final action to approve Philadelphia Department of Public Health Air Management Services's (AMS's) request for delegation of authority to implement and enforce its hazardous air pollutant regulations which have been adopted by reference from the Federal requirements set forth in the Code of Federal Regulations. This approval will automatically delegate future amendments to these regulations. For sources which are required to obtain a Clean Air Act operating permit, this delegation addresses all existing hazardous pollutant regulations. For sources which are not required to obtain a Clean Air Act operating permit, this delegation presently addresses the hazardous air pollutant regulations for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning and secondary lead smelting. In addition, EPA is taking direct final action to approve of AMS's mechanism for receiving delegation of all future hazardous air pollutant regulations which it adopts unchanged from the Federal requirements. This mechanism entails submission of a delegation

request letter to EPA following EPA notification of a new Federal requirement. EPA is not waiving its notification and reporting requirements under this approval; therefore, sources will need to send notifications and reports to both AMS and EPA. This action pertains to affected sources, as defined by the Clean Air Act's (CAA or the Act's) hazardous air pollutant program. EPA is taking this action in accordance with the CAA.

DATES: This direct final rule will be effective April 1, 2002 unless EPA receives adverse or critical comments by February 28, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be sent concurrently to: Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, and Morris Fine, Director, Air Management Services, Department of Public Health, City of Philadelphia, 321 University Avenue, 2nd Floor, Philadelphia, PA 19104. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and Air Management Services, Department of Public Health, City of Philadelphia, 321 University Avenue, 2nd Floor, Philadelphia, PA 19104.

FOR FURTHER INFORMATION CONTACT: Dianne J. McNally, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street (3AP11), Philadelphia, PA 19103–2029, mcnally.dianne@epa.gov (telephone 215–814–3297). Please note that any formal comments must be submitted, in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Section 112(l) of the Act and 40 Code of Federal Regulations (CFR) part 63, subpart E authorize EPA to approve of State rules and programs to be implemented and enforced in place of certain CAA requirements, including the National Emission Standards for Hazardous Air Pollutants set forth at 40 CFR part 63. EPA promulgated the program approval regulations on November 26, 1993 (58 FR 62262) and subsequently amended these regulations on September 14, 2000 (65 FR 55810).

An approvable State program must contain, among other criteria, the following elements:

(a) A demonstration of the state's authority and resources to implement and enforce regulations that are at least as stringent as the National Emission Standards for Hazardous Air Pollutant (NESHAP) requirements;

(b) A schedule demonstrating expeditious implementation of the regulation; and

(c) A plan that assures expeditious compliance by all sources subject to the regulation.

On March 30, 1998, AMS, through a letter from the Pennsylvania Department of Environmental Protection (PADEP), submitted to EPA a request to receive delegation of authority to implement and enforce the hazardous air pollutant regulations which have been adopted by reference from 40 CFR part 63. On May 13, 1999, PADEP submitted a copy of an Agreement for Implementation of the Philadelphia County Air Pollution Control Program between PADEP and AMS. These two submissions provided detailed information on AMS's legal and enforcement authority, resources, and implementation procedures for addressing the hazardous air pollutant regulations, among other regulations, at facilities required to obtain an operating permit under 40 CFR part 70. On August 29, 2001, AMS submitted to EPA a request to receive delegation of authority to implement and enforce the hazardous air pollutant regulations for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning and secondary lead smelting which have been adopted by reference from 40 CFR part 63, subparts M, N, O, T and X, respectively. In this August 29, 2001 request, AMS also asked that EPA automatically delegate future amendments to these specific regulations and approve AMS's mechanism for receiving delegation of all future hazardous air pollutant regulations which it adopts unchanged from the Federal requirements. This mechanism entails submission of a delegation request letter to EPA following EPA notification of a new Federal requirement.

II. EPA's Analysis of AMS's Submittal

Based on AMS's program approval request and its pertinent laws and regulations, EPA has determined that such an approval is appropriate in that AMS has satisfied the criteria of 40 CFR 63.91. In accordance with 40 CFR 63.91(d)(3)(i), AMS submitted two

written findings by the City Solicitor which demonstrate that AMS has the necessary legal authority to implement and enforce its regulations, including the enforcement authorities which meet 40 CFR 70.11, the authority to request information from regulated sources and the authority to inspect sources and records to determine compliance status. In accordance with 40 CFR 63.91(d)(3)(ii), AMS submitted copies of its statutes, regulations and requirements that grant authority to AMS to implement and enforce the regulations. In accordance with 40 CFR 63.91(d)(3)(iii)–(v), AMS submitted documentation of adequate resources and a schedule and plan to assure expeditious City implementation and compliance by all sources. Therefore, the AMS program has adequate and effective authorities, resources, and procedures in place for implementation and enforcement of the emission standards of 40 CFR part 63 at sources required to obtain an operating permit under 40 CFR part 70 and the emission standards of 40 CFR part 63, subparts M, N, O, T and X at sources which are not required to obtain an operating permit under 40 CFR part 70. In addition, the AMS program has adequate and effective authorities, resources and procedures in place for implementation and enforcement of any future emission standards, should AMS seek delegation for these standards. The AMS automatically adopts the emission standards promulgated in 40 CFR part 63 into its permitting program under Philadelphia Code 3–401 and Air Management Regulation I Section IX pursuant to section 6.6(a) of the Pennsylvania Air Pollution Control Act, 35 P.S. 4006.6(a) and 25 Pa. Code 127.35. The AMS has the primary authority and responsibility to carry out all elements of these programs for all sources covered in Philadelphia, including on-site inspections, record keeping reviews, and enforcement.

III. Terms of Program Approval and Delegation of Authority

In order for AMS to receive automatic delegation of future amendments to the hazardous air pollutant regulations, as they apply to facilities required to obtain a permit under 40 CFR part 70, and to the hazardous air pollutant regulations for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning and secondary lead smelting emission standards, as they apply to facilities not required to obtain a permit under 40 CFR part 70, each

amendment must be legally adopted by the City of Philadelphia. As stated earlier, these amendments are automatically adopted into AMS's permitting program under Philadelphia Code 3–401 and Air Management Regulation I Section IX pursuant to section 6.6(a) of the Pennsylvania Air Pollution Control Act, 35 P.S. 4006.6(a) and 25 Pa. Code 127.35. The delegation of amendments to these rules will be finalized on the effective date of the legal adoption.

EPA has also determined that AMS's mechanism for receiving delegation of future hazardous air pollutant regulations, which it adopts unchanged from the Federal requirements, can be approved. This mechanism requires AMS to submit a delegation request letter to EPA following EPA notification of a new Federal requirement. EPA will grant the delegation request, if appropriate, by sending a letter to AMS outlining the authority to implement and enforce the standard. The delegation will be finalized within 10 days of receipt of the delegation letter unless AMS files a negative response. The official notice of delegation of additional emission standards will be published in the **Federal Register**.

The notification and reporting provisions in 40 CFR part 63 requiring the owners or operators of affected sources to make submissions to the Administrator shall be met by sending such submissions to AMS and EPA Region III. If at any time there is a conflict between a AMS regulation and a Federal regulation, the Federal regulation must be applied if it is more stringent than that of AMS. EPA is responsible for determining stringency between conflicting regulations. If AMS does not have the authority to enforce the more stringent Federal regulation, it shall notify EPA Region III in writing as soon as possible, so that this portion of the delegation may be revoked.

If EPA determines that AMS's procedure for enforcing or implementing the 40 CFR part 63 requirements is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part in accordance with the procedures set out in 40 CFR 63.96(b).

Certain provisions of 40 CFR part 63 allow only the Administrator of EPA to take further standard setting actions. In addition to the specific authorities retained by the Administrator in 40 CFR 63.90(d) and the "Delegation of Authorities" section for specific standards, EPA Region III is retaining the following authorities, in accordance with 40 CFR 63.91(g)(2)(ii):

(1) approval of alternative non-opacity emission standards, *e.g.*, 40 CFR 63.6(g) and applicable sections of relevant standards;

(2) approval of alternative opacity standards, *e.g.*, 40 CFR 63.9(h)(9) and applicable sections of relevant standards;

(3) approval of major alternatives to test methods, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.7(e)(2)(ii) and (f) and applicable sections of relevant standards;

(4) approval of major alternatives to monitoring, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.8(f) and applicable sections of relevant standards; and

(5) approval of major alternatives to recordkeeping and reporting, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.10(f) and applicable sections of relevant standards.

The following provisions are included in this delegation, in accordance with 40 CFR 63.91(g)(1)(i), and can only be exercised on a case-by-case basis. When any of these authorities are exercised, AMS must notify EPA Region III in writing:

(1) applicability determinations for sources during the title V permitting process and as sought by an owner/operator of an affected source through a formal, written request, *e.g.*, 40 CFR 63.1 and applicable sections of relevant standards;¹

(2) responsibility for determining compliance with operation and maintenance requirements, *e.g.*, 40 CFR 63.6(e) and applicable sections of relevant standards;

(3) responsibility for determining compliance with non-opacity standards, *e.g.*, 40 CFR 63.6(f) and applicable sections of relevant standards;

(4) responsibility for determining compliance with opacity and visible emission standards, *e.g.*, 40 CFR 63.6(h) and applicable sections of relevant standards;

(5) approval of site-specific test plans,² *e.g.*, 40 CFR 63.7(c)(2)(i) and (d) and applicable sections of relevant standards;

(6) approval of minor alternatives to test methods, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.7(e)(2)(i) and applicable sections of relevant standards;

(7) approval of intermediate alternatives to test methods, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.7(e)(2)(ii) and (f) and applicable sections of relevant standards;

(8) approval of shorter sampling times/volumes when necessitated by process variables and other factors, *e.g.*, 40 CFR 63.7(e)(2)(iii) and applicable sections of relevant standards;

(9) waiver of performance testing, *e.g.*, 40 CFR 63.7 (e)(2)(iv), (h)(2), and (h)(3) and applicable sections of relevant standards;

(10) approval of site-specific performance evaluation (monitoring) plans³, *e.g.*, 40 CFR 63.8(c)(1) and (e)(1) and applicable sections of relevant standards;

(11) approval of minor alternatives to monitoring methods, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.8(f) and applicable sections of relevant standards;

(12) approval of intermediate alternatives to monitoring methods, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.8(f) and applicable sections of relevant standards;

(13) approval of adjustments to time periods for submitting reports, *e.g.*, 40 CFR 63.9 and 63.10 and applicable sections of relevant standards; and

(14) approval of minor alternatives to recordkeeping and reporting, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.10(f) and applicable sections of relevant standards.

As required, AMS and EPA Region III will provide the necessary written, verbal and/or electronic notification to ensure that each agency is fully informed regarding the interpretation of applicable regulations in 40 CFR part 63. In instances where there is a conflict between a AMS interpretation and a Federal interpretation of applicable regulations in 40 CFR part 63, the Federal interpretation must be applied if

it is more stringent than that of AMS. Written, verbal and/or electronic notification will also be used to ensure that each agency is informed of the compliance status of affected sources in Philadelphia. The AMS will comply with all of the requirements of 40 CFR 63.91(g)(1)(ii). Quarterly reports will be submitted to EPA by AMS to identify sources determined to be applicable during that quarter.

Although AMS has primary authority and responsibility to implement and enforce the hazardous air pollutant regulations, nothing shall preclude, limit, or interfere with the authority of EPA to exercise its enforcement, investigatory, and information gathering authorities concerning this part of the Act.

IV. Final Action

EPA is approving AMS's request for delegation of authority to implement and enforce its hazardous air pollutant emission standards which have been adopted by reference from the Federal requirements set forth in 40 CFR part 63. This approval will automatically delegate future amendments to these regulations. For sources which are required to obtain an operating permit under 40 CFR part 70, this delegation addresses all existing hazardous pollutant emission standards as adopted by reference from 40 CFR part 63. For sources which are not required to obtain an operating permit under 40 CFR part 70, this delegation presently addresses the hazardous air pollutant regulations for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning and secondary lead smelting as adopted by reference from 40 CFR part 63, subparts M, N, O, T and X. In addition, EPA is approving of AMS's mechanism for receiving delegation of all future hazardous air pollutant regulations which it adopts unchanged from the Federal requirements. This mechanism entails submission of a delegation request letter to EPA following EPA notification of a new Federal requirement. The delegation of authority shall be administered in accordance with the terms outlined in section IV., above. This delegation of authority is codified in 40 CFR 63.99. In addition, EPA Region III's address is corrected in 40 CFR 63.13.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial rule and anticipates no adverse comment because AMS's request for delegation of

¹ Applicability determinations are considered to be nationally significant when they:

- (i) are unusually complex or controversial;
- (ii) have bearing on more than one state or are multi-Regional;
- (iii) appear to create a conflict with previous policy or determinations;
- (iv) are a legal issue which has not been previously considered; or
- (v) raise new policy questions and shall be forwarded to EPA Region III prior to finalization.

Detailed information on the applicability determination process may be found in EPA document 305-B-99-004 *How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring*, dated February 1999. The AMS may also refer to the Compendium of Applicability Determinations issued by the EPA and may contact EPA Region III for guidance.

² The AMS will notify EPA of these approvals on a quarterly basis by submitting a copy of the test plan approval letter. Any plans which propose major alternative test methods or major alternative monitoring methods shall be referred to EPA for approval.

³ The AMS will notify EPA of these approvals on a quarterly basis by submitting a copy of the performance evaluation plan approval letter. Any plans which propose major alternative test methods or major alternative monitoring methods shall be referred to EPA for approval.

the hazardous air pollutant regulations and its request for automatic delegation of future amendments to these rules and future standards, when specifically identified, does not alter the stringency of these regulations and is in accordance with all program approval regulations. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve of AMS's request for delegation if adverse comments are filed. This rule will be effective on April 1, 2002 without further notice unless EPA receives adverse comment by February 28, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal

Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing requests for rule approval under CAA section 112, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove requests for rule approval under CAA section 112 for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a request for rule approval under CAA section 112, to use VCS in place of a request for rule approval under CAA section 112 that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 1, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the approval of AMS's delegation of authority for the hazardous air pollutant emission standards (CAA section 112), may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 22, 2002

Judith M. Katz,

Director, Air Protection Division, Region III.

40 CFR part 63 is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. Section 63.13 is amended by correcting the address for EPA Region III as follows:

§ 63.13 Addresses of State air pollution control agencies and EPA Regional Offices.

(a) * * *

EPA Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Director, Air Protection Division, 1650 Arch Street, Philadelphia, PA 19103. * * *

Subpart E—Approval of State Programs and Delegation of Federal Authorities

3. Section 63.99 is amended by adding paragraph (a)(38)(iii) to read as follows:

§ 63.99 Delegated Federal Authorities.

(a) * * *

(38) * * *

(iii) Philadelphia is delegated the authority to implement and enforce all existing 40 CFR part 63 standards and all future unchanged 40 CFR part 63 standards, if delegation is requested by the City of Philadelphia Department of Public Health Air Management Services and approved by EPA Region III, at sources within the City of Philadelphia, in accordance with the final rule, dated January 29, 2002, effective April 1, 2002, and any mutually acceptable amendments to the terms described in the direct final rule.

[FR Doc. 02-2121 Filed 1-28-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-7130-7]

RIN 2060-AG12

Protection of Stratospheric Ozone: Removal of Restrictions on Certain Fire Suppression Substitutes for Ozone-Depleting Substances; and Listing of Substitutes

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to remove restrictions previously imposed on the use of certain substitutes for ozone-depleting substances (ODSs) under the Significant New Alternatives Policy (SNAP) program. Specifically, EPA is rescinding use conditions imposed under the SNAP program that limit human exposure to halocarbon and inert gas agents used in the fire suppression and explosion protection industry. These use conditions are redundant with safety standards that have since been established by the National Fire Protection Association (NFPA). These halocarbon and inert gas agents will now either be acceptable or acceptable subject to narrowed use limits, depending on the specific agent.

Today, EPA is also taking direct final action to change the listing from

acceptable, subject to use conditions, to unacceptable, for a fire suppressant which the manufacturer has withdrawn from the market because of concerns about fetal toxicity; add a substitute to the SNAP list of acceptable substitutes with narrowed use limits in the fire suppression and explosion protection sector; and change a listing decision to remove a restriction from one substitute and to make it an acceptable agent for fire suppression and explosion protection, without use conditions or narrowed use limits. EPA is issuing a companion proposal to this direct final rule elsewhere in today's **Federal Register**. If we receive any adverse comments in response to an amendment, table, or table entry of the rule, EPA will withdraw those amendments, tables, or table entries of this direct final action and will consider and respond to any comments prior to taking any new, final action.

DATES: This rule is effective on April 1, 2002 without further notice, unless EPA receives adverse comment or receives a request for a public hearing by February 28, 2002. If we receive adverse comment or a request for a public hearing, we will publish a timely withdrawal in the **Federal Register** informing the public that all or amendments, tables, or table entries of this rule will not take effect.

ADDRESSES: Send your comments and data specific to this final rule to Docket A-91-42, U.S. Environmental Protection Agency, OAR Docket and Information Center, 1200 Pennsylvania Avenue NW., Mail Code 6102, Washington, DC 20460. The docket is physically located at 401 M Street, SW., Room M-1500. You may inspect the docket between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 260-7548; fax (202) 260-4400. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. To expedite review, send a second copy of your comments directly to Margaret Sheppard at the address listed below under For Further Information. Information designated as Confidential Business Information (CBI) under 40 CFR, part 2, Subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard at (202) 564-9163 or fax (202) 565-2155, U.S. Environmental Protection Agency, Global Programs Division, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW., 4th

floor; Washington, DC 20001. Also contact the Stratospheric Protection Hotline at (800) 296-1996 and EPA's Ozone Depletion World Wide Web site at "<http://www.epa.gov/ozone/title6/snap/>".

SUPPLEMENTARY INFORMATION: In this direct final rule, EPA is removing, or in some cases, modifying, restrictions that were imposed on the use of certain substitutes for ODSs under the SNAP program in the fire suppression and explosion protection industry sector. Today's action also adds a fire suppression agent to the list of acceptable substitutes, subject to narrowed use limits. The regulations implementing the SNAP program are codified at 40 CFR part 82, subpart G. The appendices to subpart G list substitutes for ODSs that have had restrictions imposed on their use. The revisions in this direct final rule modify the appendices to subpart G.

EPA is publishing today's revisions to the SNAP lists without prior proposal because the Agency views them as non-controversial and anticipates no adverse comment. The most significant position of this rule is to simply remove restrictions that are now duplicative of standards of the National Fire Protection Association (NFPA). In addition, we are adding a new agent to the list of acceptable substitutes, subject to narrowed use limits, and changing the listing from acceptable, subject to use conditions, to unacceptable for an agent that is no longer sold or produced because of fetal toxicity and a high ozone depletion potential. This action does not place any significant new burden on the regulated community. Rather, it removes mandatory conditions on use of certain substitutes under the SNAP program while encouraging voluntary compliance with NFPA's 2001 Standard. For the only part of the action creating further restrictions, it is our understanding that the agent we are listing as unacceptable is not currently being used; thus, it should not add significantly to regulatory burden. Today's action decreases the regulatory burden on the fire protection community while continuing to protect human health and the environment. Members of the fire protection community participate on NFPA's technical committee that is responsible for developing and updating the 2001 standard and adhere to the standards set by NFPA. For these reasons, EPA anticipates that this action will be welcomed.

However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a