

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records
Subgroup/Office of Origin: Council on Environmental Quality
Series/Staff Member: Kathleen (Katie) McGinty
Subseries: [Correspondence]

OA/ID Number: 2257
FolderID:

Folder Title:
CFCs [Chlorofluorocarbons]/Federal Procurement

Stack:	Row:	Section:	Shelf:	Position:
S	61	5	3	2



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 4, 1993

MEMORANDUM FOR PAM MCELWEE

FROM: Mac Reed *MR*

SUBJECT: Executive Order No. 12843, "Procurement Requirements and Policies for Federal Agencies for Ozone-Depleting Substances"

This responds to your memorandum dated May 19, 1993 in which you referred me to Mr. Peter Voight of EPA's Stratospheric Protection Division.

On May 13, 1993, OMB circulated a copy of Executive Order No. 12843 and an explanatory cover memorandum to agency procurement executives. (See attached memorandum.) Among other things, the memorandum provides that information about safe alternatives and other technical requirements concerning ozone-depleting substances may be obtained by contacting Mr. Voight.

Thank you very much for the reference.

Attachment

cc. Charles Clark



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

May 13, 1993

MEMORANDUM FOR AGENCY SENIOR PROCUREMENT EXECUTIVES

FROM:

Allan V. Burman
Allan V. Burman
Administrator

SUBJECT:

Transmittal of Executive Order 12843

Attached is a copy of Executive Order 12843, Procurement Requirements and Policies for Federal Agencies for Ozone Depleting Substances. The Executive Order provides specific policies that agencies must follow in reducing their use and procurement of ozone depleting substances.

Executive Order 12843 is effective as of May 21, 1993, and agencies should begin implementation by that time. Agencies, however, are not required to develop or revise any necessary regulations until after Federal Acquisition Regulation (FAR) provisions have been issued. Section 8 of the Executive Order requires that the FAR changes be issued on or before October 18, 1993.

Questions or inquiries about the procurement policy aspects of the Executive Order may be directed to Charles Clark, Office of Federal Procurement Policy, telephone (202) 395-6805. For information about safe alternatives and other technical requirements concerning ozone depleting substances contact Mr. Peter Voigt, Stratospheric Protection Division, EPA, 6202J, 401 M Street, SW, Washington, DC 20460, telephone (202) 233-9185.

Your cooperation and assistance in carrying out the provisions of the Executive Order will be appreciated.

Attachment



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL PROCUREMENT POLICY
725 SEVENTEENTH STREET, NORTHWEST

FACSIMILE NUMBER: (202) 395-5105

FAX SHEET

DATE: 4-22-93

TO: Pam McElwee
Allan Burman

TELEPHONE NUMBER:

FAX NUMBER:

2710

FROM: Chuck Clark

TELEPHONE NUMBER:

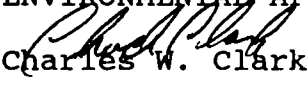
FAX NUMBER:

395-6805

NUMBER OF PAGES (INCLUDING COVER): 2

REMARKS: Pam: See Attached Note. I think
We are short changing ourselves when we say
The ozone Ex. Or. only advances the phase out by
6 months. It is really 18 months + in some instances
30. Again, Thanks for inviting me to hear the
President's speech. I enjoyed going.

APR 22 1993

NOTE TO: PAM McELWEE
ENVIRONMENTAL AFFAIRS, WH
FROM:  Charles W. Clark, OFPP
SUBJECT: President's April 21, 1993 Executive Order on Ozone
Depleting Substances

In future communications regarding the Executive Order on Ozone Depleting Substances, I believe we should make the point, where appropriate, that the Order requires Government agencies to start phasing out their procurement of ozone depleting substances as of May 21, 1993. This is 18 months before the date required by the proposed EPA regulation and some 30 months before some of the phaseout dates specified in the Montreal Protocol.

The background booklet distributed yesterday at the President's Earth Day Address indicates that, "agencies are to begin work now, six months before the EPA regulations are completed." While this is technically correct, the EPA regulations (which will not be completed until October at the earliest) give agencies one full year to develop corresponding procurement policies. Thus, absent the Executive Order, many agencies would not start their phaseout programs until October 1994.

If you have questions, please call me. Thanks.

cc:
Al Burman

TELEFAX**STRATOSPHERIC PROTECTION DIVISION
Program Implementation Branch**

*Office of Atmospheric Programs
Office of Air and Radiation*

Mailing Address:
U.S. EPA/OAR (6202J)
Stratospheric Protection Div.
401 M Street, SW
Washington, DC 20460

Street Address:
U.S. EPA/OAR (6202J)
Stratospheric Protection Div.
501 3rd Street, NW
Washington, DC 20001

Date: _____

To: DAN BLANK

From: DAVID LEE

Telefax# (202) 233-9577

Phone# (202) 233-9200

Number of Pages Including Cover Sheet: _____

Remarks:

ATTACHED ARE COMMENTS
ON EXECUTIVE ORDER

MAC REED

chuck,

This is the change EPA would like to see on the Executive Order. We would like to see the following change:

Sec. ~~101~~

(d) require that Federal agencies modify their procurement practices and implement programs to modify specifications and contracts which require the use of ozone depleting to allow the use of substitutes and alternatives where available.

I have underlined the additional language. Please delete everything after "ozone depleting substances" in the old version

In addition, I have faxed other changes that are not as critical

David Lee

EPA;233-9131

DRAFT

April 7, 1993

Executive Order ---- of ---- ,1993

**Procurement Requirements and Policies for Federal Agencies
Ozone-Depleting Substances**

WHEREAS, the Administration recognized the essential function of the stratospheric ozone layer in shielding the earth from dangerous ultraviolet radiation, and is cognizant of the recent increase in the depletion of the ozone layer; and

WHEREAS, the production and consumption of substances that cause the depletion of stratospheric ozone is being rapidly phased out on a world-wide basis with the support and encouragement of the United States; and

WHEREAS, the Federal Government, as one of the principal users of these substances, is able through affirmative procurement practices to significantly reduce the use of these substances and to provide leadership in their phaseout;

NOW, THEREFORE, I, -----, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Clean Air Act as amended in 1990, Public Law 101-549, hereby order as follows:

PART 1 - PREAMBLE

Section 101. The purpose of this Executive order is to:

(a) Require that Federal Agencies conform their procurement regulations and practices to the policies and requirements of Title VI of the Clean Air Act Amendments, which deals with Stratospheric Ozone Protection.

(b) Mandate that Federal agencies maximize the use of safe alternatives to ozone-depleting substances, *as delineated under Section 612 of the CAA*

(c) Require that Federal agencies evaluate the present and future uses of ozone-depleting substances, including making assessments of existing and future needs of such materials, and their use of and plans for recycling. *in existing, design and functions of products required*

(d) Require that Federal agencies modify their procurement practices and implement programs to modify specifications and contracts which require the use of ozone-depleting substances.

(e) Establish Federal Government leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

PART 2 - DEFINITIONS

For purposes of this order:

Sec. 201. "Federal Agency" means any executive department, military department, or independent establishment within the meaning of 5 U.S.C. § 101, 102, and 104(1), respectively, any wholly-owned Government corporation, the United States Postal Service and Postal rate Commission, and all parts of, and establishments within, the legislative and judicial branches of the United States.

Sec. 202. "Procurement" and "Acquisition" are used interchangeably to refer to the processes through which the Federal agencies purchase products.

Sec. 203 "Procurement Regulation, Policies and Procedures" means the complete acquisition process, including the generation of product descriptions by individuals responsible for determining which substances must be acquired by the agency to meet its mission.

Sec. 204. "Ozone-depleting substances" means the substances controlled internationally under the Montreal Protocol and nationally under Title VI of the Clean Air Act Amendments. This includes both class I and class II substances as follows:

"Class I substance" means any substance designated as Class I in the Federal Register notice of July 30, 1992 (57 FR 33753), including chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by EPA at a later date; and

"Class II substance" means any substance designated as Class II in the Federal Register notice of July 30, 1992 (57 FR 33753), including hydrochlorofluorocarbons and any other substance so designated by EPA at a later date.

Sec. 205. "Recycling" is used to encompass recovery and reclamation, as well as the re-use of ~~controlled substances~~.

ozone depleting substances

PART 3 - FEDERAL PROCUREMENT REGULATIONS, POLICIES AND PROCEDURES

Sec. 301. POLICY. It is the Policy of the Federal government that Executive agencies minimize the use of materials and substances that contribute to the depletion of stratospheric ozone and give preference to the use of alternative chemicals,

products and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere. In implementing this policy, consistent with the phaseout schedules promulgated by EPA under section 604 of the Clean Air Act, agencies shall:

- A. Minimize to the extent possible the procurement of products containing or manufactured with Class I or Class II substances;
- B. Amend previously-awarded contracts to be consistent with the phaseout schedules for Class I and Class II substances;
- C. Implement policies and practices which recognize the ~~increasingly limited availability~~ ^{inadequate for phase-out restrictions on the use} of Class I or Class II substances. Such practices shall include, but are not limited to:
 - 1. Reducing emissions and recycling ozone-depleting substances, as required by sections 608 and 609 of Title VI of the Clean Air Act Amendments;
 - 2. Ceasing the purchase of nonessential products as required in section 610 of Title VI of the Clean Air Act Amendments; and

3. Requiring that any acquired products containing or manufactured with Class I or Class II substances be labeled in accordance with section 611 of the Clean Air Act Amendments.

Sec. 302. RESPONSIBILITIES. Not later than six months after the effective date of this Executive Order, each Federal Agency shall have in place practices which to the extent practicable minimize the use of Class I or Class II substances. Such practices shall include but not be limited to:

- A. Altering existing equipment and/or procedures to make use of safe alternatives;
- B. Specifying the use of safe alternatives and of goods and services, where available, which do not require the use of Class I substances in new procurement and which limit the use of Class II substances consistent with section 612 of the Act;
- C. Amending existing contracts to require the use of safe alternatives.

Sec. 303. REPORTING REQUIREMENTS. Not later than 6 months after the effective date of this Executive Order, each Federal Agency shall report to the Office of Management and Budget, and submit information regarding the implementation of the policies

prescribed in this Order. The report shall include a certification by each Agency that its regulations and procurement practices have been amended to comply with the policies prescribed in this Order.

Sec. 304. EXCEPTIONS. Exceptions to complying with the provisions of Title VI of the Clean Air Act Amendments may be made in accordance with section 604 of this Act, and with the provisions of the Montreal Protocol. Section 604 establishes procedures for requesting exceptions for essential uses such as medical devices, aviation safety, etc.

Sec. 305. EFFECTIVE DATE. This Executive Order is effective 30 days after the date of issuance. While full implementation of this Order must await needed change in the FAR, it is expected that Agencies will take all appropriate actions in the interim to implement those aspects of the Order that are not dependent upon regulatory change.

Sec. 306.. FEDERAL ACQUISITION REGULATORY COUNCILS. Pursuant to section 6(a) of the DFPP Act, as amended, 41 U.S.C. 405(a), the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council shall ensure that the policies established herein are incorporated in the FAR within 180 days from the date this Order is promulgated.

Sec. 307. INFORMATION. Questions or inquiries about the policy aspects of this Order shall be directed to ----- . For

information regarding the requirements of Title VI of the Clean Air Act Amendments and other technical information and requirements contact Peter Voigt, Stratospheric Protection Division, EPA, 6205 J, 401 M St. SW, Washington, DC 20460, telephone (202) 233-9185.

DRAFT DRAFT DRAFT

THE WHITE HOUSE

Office of the Press Secretary

Executive Order No.

PROCUREMENT REQUIREMENTS AND POLICIES
FOR FEDERAL AGENCIES

OZONE-DEPLETING SUBSTANCES

WHEREAS, this Administration recognizes the essential function of the stratospheric ozone layer in shielding the earth from dangerous ultraviolet radiation and is cognizant of the rapidly accelerating depletion of the ozone layer; and

WHEREAS, the production and consumption of substances that cause stratospheric ozone depletion is being phased out on a world-wide basis with the support and encouragement of the United States; and

WHEREAS, the Montreal Protocol on Substances that Deplete the Ozone Layer, to which the U.S. is a signatory, calls for a 6 phaseout of the production of these substances by the year 1995; and
[many class I] *Jan 1*

WHEREAS, the Federal Government, as one of the principal users of these substances, is able through its procurement practices to reduce significantly the use of these substances and to provide leadership in their phaseout; and

WHEREAS, the use of alternative substances and new technologies to replace these ozone-depleting substances can contribute significantly to the economic competitiveness of U.S. manufacturers of these innovative alternatives;

NOW, THEREFORE, I, William Jefferson Clinton, by the authority vested in me as President of the United States by the Constitution and the laws of the United States, including the Clean Air Act as amended in 1990, Public Law 101-549, do hereby order as follows:

PART 1 - PREAMBLE

Sec. 101. The purpose of this Executive order is to:

(a) require that Federal Agencies conform their procurement regulations and practices to the policies and requirements of Title VI of the Clean Air Act Amendments, which deal with Stratospheric Ozone Protection;

(b) mandate that Federal agencies maximize the use of safe alternatives to ozone-depleting substances;

(c) require that Federal agencies evaluate the present and future uses of ozone-depleting substances, including making assessments of existing and future needs of such materials and their use of and plans for recycling;

(d) require that Federal agencies modify their procurement practices and implement programs to modify specifications and contracts which require the use of ozone-depleting substances to use of non-ozone depleting substances for non-essential uses; and

(e) establish Federal Government leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

PART 2 - DEFINITIONS

Sec. 201. "Federal Agency" means any executive department, military department, or independent agency within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, any wholly-owned Government corporation, the United States Postal Service and Postal Rate Commission, and all parts of, and establishments within the legislative and judicial branches of the United States.

Sec. 202. "Procurement" and "acquisition" are used interchangeably to refer to the processes through which Federal agencies purchase products.

Sec. 203. "Procurement regulations, policies and procedures" means the complete acquisition process, including the generation of product descriptions by individuals responsible for determining which substances must be acquired by the agency to meet its mission.

Sec. 204. "Ozone-depleting substances" means the substances controlled internationally under the Montreal Protocol and nationally under Title VI of the Clean Air Amendments. This includes both Class I and Class II substances as follows:

(a) "Class I substance" means any substance designated as Class I in the Federal Register notice of July 30, 1992 (57 FR 33753), including chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by EPA at a later date; and

(b) "Class II substance" means any substance designated as Class II in the Federal Register notice of July 30, 1992 (57 FR 33753), including hydrochlorofluorocarbons and any other substance so designated by EPA at a later date.

Sec. 205. "Recycling" is used to encompass recovery and reclamation, as well as the re-use of controlled substances.

PART 3 - FEDERAL PROCUREMENT REGULATIONS, POLICIES AND PROCEDURES

Sec. 301. POLICY. It is the Policy of the Federal government that Executive agencies minimize the use of materials and substances that contribute to the depletion of stratospheric ozone prior to the guidelines established under Title VI of the CAA and issued in concurrence with this Executive Order and give preference to the use of alternative chemicals, products and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere. In implementing this policy, prior to, but consistent with the phaseout schedules promulgated by EPA under section 604 of the Clean Air Act, federal agencies shall:

where feasible (?) / unavoidable (?)

(a) minimize to the extent possible the procurement of products containing or manufactured with Class I or Class II substances in anticipation of both the phaseout schedule promulgated by EPA to be completed by the end of 1995 and the international deadlines defined under the Montreal Protocol;

for class I substances

schedule for class II substances as well as the

(14)

(b) amend to the extent feasible and economical, previously-awarded contracts to be consistent with the phaseout schedules for Class I and Class II substances;

(c) implement policies and practices which recognize the increasingly limited availability of Class I or Class II substances as production levels capped by the Montreal Protocol decline until final phaseout in 1995.⁶ Such practices shall include, but are not limited to:

(1) reducing emissions and recycling ozone-depleting substances, as required by sections 608 and 609 of Title VI of the Clean Air Act Amendments;

(2) ceasing the purchase of nonessential products as required in section 610 of Title VI of the Clean Air Act Amendments; and

(3) requiring that any acquired products containing or manufactured with Class I or Class II substances be labeled in accordance with section 611 of the Clean Air Act Amendments.

Sec. 302. RESPONSIBILITIES. Not later than six months after the effective date of this Executive Order, each Federal Agency shall have in place practices which to the extent practicable minimize the use of Class I and Class II substances. Such practices shall include but not be limited to:

(a) altering existing equipment and/or procedures to make use of safe alternatives;

(b) specifying the use of safe alternatives and of goods and services, where available, which do not require the use of Class I substances in new procurement and which limit the use of Class II substances consistent with section 612 of the Act;

(c) amending existing contracts to require the use of safe alternatives. [where available?]

Sec. 303. REPORTING REQUIREMENTS. Not later than 6 months after the effective date of this Executive Order, each Federal Agency shall report to the Office of Management and Budget, and submit information regarding the implementation of the policies prescribed in this Order. The report shall include a certification by each Agency that its regulations and procurement practices have been amended to comply with the policies prescribed in this Order.

Sec. 304. EXCEPTIONS. Exceptions to ^{and} complying with this Executive Order are the same as exceptions to the provisions of Title VI of the Clean Air Act Amendments, may be made in accordance with section 604 of this Act, and with the provisions of the Montreal Protocol. Section 604 establishes procedures for requesting exceptions for essential uses such as medical devices, aviation safety, etc.

Sec. 305. EFFECTIVE DATE. This Executive Order is effective 30 days after the date of issuance. While full implementation of this Order must await needed change in the Federal Acquisition Regulations, it is expected that Agencies will take all appropriate actions in the interim to implement those aspects of the Order that are not dependent upon regulatory change.

Sec. 306. FEDERAL ACQUISITION REGULATORY COUNCILS. Pursuant to section 6(a) of the OFPP Act, as amended, 41 U.S.C. 405(a), the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council shall ensure that the policies established herein are incorporated in the FAR within 180 days from the date this Order is promulgated.

HEADLINE:

President signs executive order to speed up phase-out of the use of ozone-depleting substances in the federal government.

SUPPORTING INFORMATION:

President Clinton urged the federal agencies to make preliminary changes in their procurement policies to reflect reductions in the use of substances harmful to the ozone layer. As the Montreal Protocol calls for the complete phase out of the production of Class I and II substances that deplete the ozone layer for non-essential uses by the end of 1995, the federal government should begin preparing now for that forthcoming deadline. Additionally, the Clean Air Act Amendments of 1990 require the EPA to produce, by October of 1993, final regulatory guidelines for the Federal Agencies to implement by the end of 1994 on eliminating procurement of Class I or II substances or products that rely on Class I or II substances. This Executive Order calls for the agencies to begin work now, 6 months before the EPA regulations are finalized, to reduce their procurement of ozone-depleting substances.

LEAD AGENCY: EPA, OMB

WHITE HOUSE CONTACT: Pam McElwee
456-6225

AGENCY CONTACTS: Peter Voigt, EPA 233-9185
Chuck Clark, OMB 395-6805

BACKGROUND INFORMATION:

Section 613 of the Clean Air Act Amendments requires the Administrator of EPA to promulgate regulations requiring each department, agency and instrumentality of the United States to conform its procurement regulations to the policies and requirements of Title VI of the Clean Air Act. Specifically, by the end of 1994, agencies are to have in place procurement guidelines that eliminate the purchase of ozone depleting substances for non-essential uses. Note that Section 613 does not call for a ban on the use of ozone depleting substances; but rather on the procurement of such substances. Section 613 forces agencies to be adjusted, one year early, to the Montreal Protocol's 1995 deadline for the production of CFC's.

In addition to EPA's guidelines directing individual agencies to promulgate policies in compliance with Section 613, there is another option for instituting a policy to reduce procurement of ozone depleting substances. Government-wide procurement regulations are contained in the Federal Acquisition Regulations (FAR), a broad policy outlining all procurement standards for the federal government. An amendment to the FAR is considered by both EPA and the Office of Federal Procurement

Policy (OFFP) at OMB to be an effective manner for helping to implement Section 613. Section 6(a) of the OFPP Act authorizes the Administrator for Federal Procurement Policy to prescribe Government-wide procurement policies to be implemented in the FAR.

The advantage of an amendment to the FAR, done through executive order, is that this tact is faster than the Section 613 EPA regulations, which will not be finalized until October 1993. This executive order is a mechanism that forces, at a high level, agencies to begin consideration of the plans that will be required eventually under Section 613. While the executive order does not speed up the final determination that agencies must stop procurement of ozone-depleting substances by 1994, it does give agencies an extra 6 months -- prior to the October 1993 final regulation issuance by EPA outlining the 1994 end date -- to begin minimizing their use and begin making plans to eliminate procurement. It also sends a high level message to agencies, private companies, and other countries that our federal government is concerned about this issue.

DRAFT DRAFT DRAFT

THE WHITE HOUSE
Office of the Press Secretary

Executive Order No.

PROCUREMENT REQUIREMENTS AND POLICIES
FOR FEDERAL AGENCIES

OZONE-DEPLETING SUBSTANCES

WHEREAS, this Administration recognizes the essential function of the stratospheric ozone layer in shielding the earth from dangerous ultraviolet radiation and is cognizant of the rapidly accelerating depletion of the ozone layer; and

WHEREAS, the production and consumption of substances that cause stratospheric ozone depletion is being phased out on a world-wide basis with the support and encouragement of the United States; and

WHEREAS, the Montreal Protocol on Substances that Deplete the Ozone Layer, to which the U.S. is a signatory, calls for a phase out of the production of these substances by the year 1995; and

WHEREAS, the Federal Government, as one of the principal users of these substances, is able through its procurement practices to reduce significantly the use of these substances and to provide leadership in their phaseout; and

WHEREAS, the use of alternative substances and new technologies to replace these ozone depleting substances can contribute significantly to the economic competitiveness of U.S. manufacturers of these innovative alternatives;

NOW, THEREFORE, I, William Jefferson Clinton, by the authority vested in me as President of the United States by the Constitution and the laws of the United States, including the Clean Air Act as amended in 1990, Public Law 101-549, do hereby order as follows:

PART 1 - PREAMBLE

Sec. 101. The purpose of this Executive order is to:

(a) require that Federal Agencies conform their procurement regulations and practices to the policies and requirements of Title VI of the Clean Air Act Amendments, which deal with Stratospheric Ozone Protection;

(b) mandate that Federal agencies maximize the use of safe alternatives to ozone-depleting substances;

(c) require that Federal agencies evaluate the present and future uses of ozone-depleting substances, including making assessments of existing and future needs of such materials and their use of and plans for recycling;

(d) require that Federal agencies modify their procurement practices and implement programs to modify specifications and contracts which require the use of ozone-depleting substances to use of non-ozone depleting substances for non-essential uses; and

(e) establish Federal Government leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

PART 2 - DEFINITIONS

Sec. 201. "Federal Agency" means any executive department, military department, or independent agency within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, any wholly-owned Government corporation, the United States Postal Service and Postal Rate Commission, and all parts of, and establishments within the legislative and judicial branches of the United States.

Sec. 202. "Procurement" and "acquisition" are used interchangeably to refer to the processes through which Federal agencies purchase products.

Sec. 203. "Procurement regulations, policies and procedures" means the complete acquisition process, including the generation of product descriptions by individuals responsible for determining which substances must be acquired by the agency to meet its mission.

Sec. 204. "Ozone-depleting substances" means the substances controlled internationally under the Montreal Protocol and nationally under Title VI of the Clean Air Amendments. This includes both Class I and Class II substances as follows:

(a) "Class I substance" means any substance designated as Class I in the Federal Register notice of July 30, 1992 (57 FR 33753), including chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by EPA at a later date; and

(b) "Class II substance" means any substance designated as Class II in the Federal Register notice of July 30, 1992 (57 FR 33753), including hydrochlorofluorocarbons and any other substance so designated by EPA at a later date.

Sec. 205. "Recycling" is used to encompass recovery and reclamation, as well as the re-use of controlled substances.

PART 3 - FEDERAL PROCUREMENT REGULATIONS, POLICIES AND PROCEDURES

Sec. 301. POLICY. It is the Policy of the Federal government that Executive agencies minimize the use of materials and substances that contribute to the depletion of stratospheric ozone prior to the guidelines established under Title VI of the CAA and issued in concurrence with this Executive Order and give preference to the use of alternative chemicals, products and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere. In implementing this policy, prior to, but consistent with the phaseout schedules promulgated by EPA under section 604 of the Clean Air Act, federal agencies shall:

(a) minimize to the extent possible the procurement of products containing or manufactured with Class I or Class II substances in anticipation of both the phaseout schedule promulgated by EPA to be completed by the end of 1994 and the international deadlines defined under the Montreal Protocol;

(b) amend to the extent feasible and economical, previously-awarded contracts to be consistent with the phaseout schedules for Class I and Class II substances;

(c) implement policies and practices which recognize the increasingly limited availability of Class I or Class II substances as production levels capped by the Montreal Protocol decline until final phaseout in 1995. Such practices shall include, but are not limited to:

(1) reducing emissions and recycling ozone-depleting substances, as required by sections 608 and 609 of Title VI of the Clean Air Act Amendments;

(2) ceasing the purchase of nonessential products as required in section 610 of Title VI of the Clean Air Act Amendments; and

(3) requiring that any acquired products containing or manufactured with Class I or Class II substances be labeled in accordance with section 611 of the Clean Air Act Amendments.

Sec. 302. RESPONSIBILITIES. Not later than six months after the effective date of this Executive Order, each Federal Agency shall have in place practices which to the extent practicable minimize the use of Class I and Class II substances. Such practices shall include but not be limited to:

(a) altering existing equipment and/or procedures to make use of safe alternatives;

(b) specifying the use of safe alternatives and of goods and services, where available, which do not require the use of Class I substances in new procurement and which limit the use of Class II substances consistent with section 612 of the Act;

(c) amending existing contracts to require the use of safe alternatives.

Sec. 303. REPORTING REQUIREMENTS. Not later than 6 months after the effective date of this Executive Order, each Federal Agency shall report to the Office of Management and Budget, and submit information regarding the implementation of the policies prescribed in this Order. The report shall include a certification by each Agency that its regulations and procurement practices have been amended to comply with the policies prescribed in this Order.

Sec. 304. EXCEPTIONS. Exceptions to complying with this Executive Order are the same as exceptions to the provisions of Title VI of the Clean Air Act Amendments may be made in accordance with section 604 of this Act, and with the provisions of the Montreal Protocol. Section 604 establishes procedures for requesting exceptions for essential uses such as medical devices, aviation safety, etc.

Sec. 305. EFFECTIVE DATE. This Executive Order is effective 30 days after the date of issuance. While full implementation of this Order must await needed change in the Federal Acquisition Regulations, it is expected that Agencies will take all appropriate actions in the interim to implement those aspects of the Order that are not dependent upon regulatory change.

Sec. 306. FEDERAL ACQUISITION REGULATORY COUNCILS. Pursuant to section 6(a) of the OFPP Act, as amended, 41 U.S.C. 405(a), the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council shall ensure that the policies established herein are incorporated in the FAR within 180 days from the date this Order is promulgated.

TELEFAX**STRATOSPHERIC PROTECTION DIVISION**
Substitutes Analysis and Review Branch*Office of Atmospheric Programs*
*Office of Air and Radiation***Mailing Address:**
U.S. EPA/OAR (6202J)
Stratospheric Protection Div.
401 M Street, SW
Washington, DC 20460**Street Address:**
U.S. EPA/OAR (6202J)
Stratospheric Protection Div.
501 3rd Street, NW
Washington, DC 20001Date: 4/7/93To: TRAY LINSETHFrom: PETER VOIGT

Telefax# (202) 233-9577

Phone# (202) 233-⁹¹⁸⁵~~9200~~Number of Pages Including Cover Sheet: 4

Remarks: Tray: Please give me
a call before you deal with
this rule language on Procurement
Charles Peter

25

Title 40, Code of Federal Regulations, Part 82, is proposed to be amended to read as follows:

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

PART 82 - PROTECTION OF STRATOSPHERIC OZONE

Authority: 42 U.S.C. 7671-7671(q)

2. A new Subpart ____ is added to read as follows:

Subpart ____

82.100 Purpose and Scope
82.102 Definitions
82.104 Federal Agency Procurement
82.106 Reporting Requirements

§ 82.100 Purpose and Scope

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

(b) These regulations apply to each department, agency, and instrumentality of the United States.

§ 82.102 Definitions

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

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

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

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

26

Commission, and all parts of and establishments within the legislative and judicial branches of the United States.

§ 82.104 Requirements

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

(1) that purchases of class I and Class II substances, or of products made with or containing such substances, shall maximize the substitution of safe alternatives to the use of ozone-depleting substances to the maximum extent practicable, either by the substitution of safe alternatives, or by the purchase of products made with or containing safe alternatives, identified under 42 U.S.C. s. 7671k;

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

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

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

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

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

§ 82.106 Reporting Requirements

27

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

Certification by the General Services Administration that the FAR has been amended in accordance with this section shall constitute adequate certification for purposes of all agencies subject to the FAR.

DRAFT February 19, 1993

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of Proposed Rulemaking (NPRM)

SUMMARY: With this notice, EPA is today proposing a rule that will require each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of title VI of the Clean Air Act, relating to Stratospheric Ozone Protection, and to maximize the substitution of safe alternatives for ozone-depleting substances as identified under section 612 of the Act. The proposed rule also requires each department, agency, and instrumentality of the United States to certify to OMB within twelve months of the final publication of this regulation that its procurement regulations have been modified in accordance with this rule. The final promulgation of this rule will satisfy EPA's obligation under section 613 of the Clean Air Act.

The substances affected by this proposed rulemaking are ozone-depleting substances which are listed as either class I or class II substances under rules promulgated under sections 604 and 606 of the Act. These proposed regulations have been developed in consultation with the Administrator of the General

Services Administration and the Secretary of Defense, as required by section 613.

DATES: Pursuant to section 307(d) of the Clean Air Act, a public hearing will be held on _____, 1993, at _____, if a request for such a hearing is received on or before [7 days from date of publication]. Any request for such a hearing should be directed to the contact person designated below. If no hearing is requested, written comments on this proposed rule must be submitted on or before [30 days from date of publication]. If a hearing is requested, the comment period will be held open pursuant to section 307(d)(5) for 30 days following the hearing.

ADDRESSES: Comments should be submitted in duplicate to the attention of Air Docket _____ at: U.S. Environmental Protection Agency (LE-) 401 M Street, SW, Washington, D.C. 20460. The Docket is located in room M-1500, First Floor, Waterside Mall. Material relevant to this rulemaking may be inspected from 8:30 a.m. to 12 noon and from 1:30 to 3:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter Voigt at (202) 233-9185, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation, 6202J, 401 M Street, SW, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

Outline

- I. Background
- II. Section 613 - Federal Procurement
- III. Other Requirements of Title VI of the Clean Air Act
 1. Sections 604, 605, and 606 - Phaseout of Ozone-depleting Substances
 2. Section 608 - National Recycling and Emission Reduction Program
 3. Section 609 - Servicing of Motor Vehicle Air Conditioners

4. Section 610 - Nonessential Products Containing Ozone-depleting Substances
5. Section 611 - Labeling
6. Section 612 - Safe Alternatives Policy

IV. Implementation of Section 613 - Federal Procurement

V. Summary of Supporting Analyses

- A. Paperwork Reduction Act
- B. Regulatory Flexibility Act
- C. Executive Order 12291 (regulatory flexibility analyses)

VI. Proposed Rule

1. Purpose and Scope
2. Definitions
3. Requirements
4. Reporting Requirements

I. Background

During the past decade, there has been a significant decrease in the detected amount of stratospheric ozone. Broad scientific consensus has emerged that such continuing depletion of the stratospheric ozone will lead to increased levels of UV-B radiation penetrating to the earth's surface, resulting in potential health and environmental harm, including increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to crops and aquatic organisms, increased formation of ground-level ozone, and increased weathering of outdoor plastics. According to recent information released by the United Nations Environment Programme (UNEP) Scientific Assessment of Ozone Depletion, the rate of ozone depletion is significantly greater than originally estimated. To address this problem, the United Nations Environment Programme sponsored the successful negotiation of the Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol). In effect since 1988, the Protocol requires each nation party to it to control the

production and consumption of substances which deplete stratospheric ozone. These substances include chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform and hydrochlorofluorocarbons. The United States is a party to this international agreement. (For a more detailed explanation of the issues involved, see 57 FR 33755 - 57 (July 30, 1992)).

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

II. Section 613 - Federal Procurement

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

EPA
regulations

with this section." Today's proposed rule would impose that requirement. As required by the statute, EPA is consulting with the General Services Administration and with the Department of Defense in developing this rule.

The aim of today's regulation is the establishment of affirmative procurement programs in all agencies which will:

- (1) give preference to the use of alternative chemicals, product substitutes, and alternative manufacturing processes,
- (2) minimize the use of materials and substances which contribute to the depletion of stratospheric ozone, and (3) further the other policies and requirements of title VI.

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

The rule proposed today would require each federal agency to amend its procurement regulations in Title 48 (or, where it has no such regulations at present, to adopt new regulations) to conform with the requirements and policies of title VI of the Clean Air Act (including, but not limited to, certain policies and requirements specified in this rule), and to direct that purchases of ozone-depleting substances will be minimized to the extent practicable (either by substitution of safe alternatives or otherwise).

At the same time, EPA is working with the councils responsible for amending the FAR, and with the Office of Federal Procurement Policy (OFPP) in the Office of Management

and Budget, to amend the FAR itself in a similar manner. OFPP has already published for public comment a policy letter that would direct federal agencies to adopt procurement practices consistent with today's proposed rule, and if finalized the letter would direct a conforming amendment to the FAR. If the FAR is amended in this fashion, there would be no need for individual agencies subject to the FAR to adopt regulations, and the rule proposed today would relieve them of the need to do so in that event.

Some agencies that fall within the term "department, agency or instrumentality of the United States" as defined in today's proposed rule are not subject to the FAR. Each such entity will be required to adopt its own regulation as provided in today's proposed rule. The entities most clearly affected in this way are the Postal Service, the Postal Rate Commission, the Senate, House of Representatives, and the Architect of the Capitol, all of which do not fall within the scope of the FAR. Nothing in section 613 expressly excludes such entities, and while the focus of section 613 is on procurement, the term "department, agency or instrumentality" is used elsewhere in the Act in context where there would be no reason to limit it to agencies subject to the FAR (most notably, in 42 U.S.C. s. 7418(a), where it is made clear that all three branches of the federal government are included). Absent some specific narrowing of the term (as in 42 U.S.C. s. 7418(b), where only the executive branch is specified), EPA believes the term "department, agency or instrumentality of the United States" should be read to include all agencies and establishments under all three branches.

A practical concern has been identified that decisions about what to purchase, or decisions on specifications for items to be purchased, are generally made by officials other than those who carry out the procurement process. Therefore, the personnel who are familiar with and implement "procurement regulations" are not in most cases the personnel who are in a

position to change the substantive purchases of federal agencies. Therefore, in implementing section 613, EPA has considered how to reconcile the statute's requirement that "procurement regulations" be amended with the aim of affecting substantive purchasing decisions.

EPA has concluded that in accordance with the statute, the requirement to minimize the purchases of ozone-depleting substances and to otherwise conform to title VI should be placed in agency procurement regulations. However, as the implementation of that requirement will fall primarily on persons other than those who manage the procurement process, each agency should take the steps necessary to ensure that officials responsible for substantive purchasing decisions are aware of, and properly implement, the requirements.

The promulgation of regulations under title VI is not the only means through which EPA expects to affect federal use of ozone-depleting substances. In order to assist agencies in amending their Procurement policies, practices and procedures and in implementing the resulting required policy changes, EPA is developing informational materials and model policies designed to assist government agencies in meeting these requirements. In addition, as new regulations on these matters are issued, new alternatives become available, or new chemicals are added to the list of controlled substances, EPA will inform each department or agency of any new requirements in this area. These EPA outreach activities are being coordinated by the Stratospheric Protection Division in the Office of Atmospheric Programs, Office of Air and Radiation. Agencies interested in assistance in developing their procedures related to ozone-depleting substances should contact Peter Voigt, (202) 233-9185, for additional information. EPA views this outreach effort as critical to making the regulation proposed today truly effective.

EPA is aware that a number of Federal agencies have already made significant efforts to phase out the use of ozone-

depleting substances. For example, the Department of Defense (DoD) has issued Directive 6050.9 establishing the policies and responsibilities for managing CFCs and halons within DoD. Similarly, the General Services Administration has issued interim policy guidelines to provide direction on phasing out the use of ozone-depleting substances in the acquisition of new equipment, as well as in the repair of existing HVAC equipment. Nothing in the rule proposed today should require agencies to alter such efforts, and EPA encourages agencies to phase out their use of ozone-depleting substances as expeditiously as possible. Part of EPA's outreach program will be to identify federal efforts such as these which may help to serve as models for other agencies.

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

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

- 1) Phaseout of the Production and Importation of Controlled Substances (Sections 604, 605, and 606);
- 2) Recycling and Reduction in Emissions of Ozone-depleting Substances (Section 608);
- 3) Servicing of Motor Vehicle Air Conditioners (Section 609);
- 4) Bans on Nonessential Products Containing Ozone-depleting Substances (Section 610);
- 5) Labeling of Products Made with or Containing Controlled Substances (Section 611)
- 6) Safe Alternatives Policy (Section 612).

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

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

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

The phaseout of the class I substances addressed in today's rule is governed by regulations contained in 40 C.F.R. Part 82. EPA anticipates that the present rule will be amended by similar regulations that accelerate the phaseout of these substances and include the class II chemicals in the phaseout schedule. An accelerated phaseout will soon be proposed in response to recent scientific findings and to changes in the Montreal Protocol. The proposal would phase out halons by January 1, 1994 and CFCs, carbon tetrachloride, halons, and methyl chloroform by January 1, 1996. In addition, HCFCs will be added and scheduled for phaseout on January 1, 1996, and methyl bromide will be added and scheduled for phaseout on January 1, 2000. HCFCs will also be scheduled for phaseout, beginning with HCFC 141b on January 1, 2003.

The phaseout requirements of section 604, 605, and 606, and the regulations to be promulgated thereunder, do not bear directly on the purchase of goods and services; rather, they are directed at the production, import and export of class I and class II substances. Obviously, however, the phaseout of

the production and imports of these substances will affect the ability of federal agencies to obtain these substances and products containing or made with them, and familiarity with the phaseout is important for agency officials making purchasing decisions. At the same time, compliance with today's proposed rule will reduce the demand for such products by federal agencies; therefore, this rule complements the phaseout requirements.

As the availability of the substances is increasingly and rapidly reduced, it is also critical that agencies take steps to convert existing equipment and processes to the use of alternatives and substitutes. Given the schedule for the accelerated phaseout, it is vital that such efforts be conducted as quickly as possible.

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

The proposed accelerated phaseout rule also contains provisions for considering exemptions for the manufacture of these substances for essential uses after the phaseout. In a separate notice, EPA provides information regarding the requirements for and the procedures to be followed in applying for an "essential use" exemption. Copies of this notice can be obtained by writing or calling the information contact listed in that proposed regulation. It should be noted that while the Act allows exceptions, there is no guarantee that such exceptions will be granted. Such exemptions, if any are granted, must be authorized by the Montreal Protocol as well as by title VI.

2. Section 608 - National Recycling and Emission Reduction Program

Section 608 requires the Administrator of EPA to promulgate regulations establishing standards and requirements regarding the use and disposal of ozone-depleting substances during the service, repair, or disposal of appliances and industrial process refrigeration. Under section 608, EPA will promulgate regulations to limit emissions of controlled substances to the "lowest achievable level" and to maximize the recapture and recycling of these substances. The requirements of section 608 include two stages: (1) regulations covering class I and class II substances used or disposed of during the service and disposal of air conditioning and refrigeration equipment; and (2) regulations covering all other uses of class I and class II substances.

In addition to mandating an earlier effective date for regulations requiring recycling of class I refrigerants, section 608 specifically prohibits deliberate venting of both class I and class II refrigerants during service and disposal of air conditioning and refrigeration equipment, effective July 1, 1992. "De minimis" releases associated with good faith efforts to recycle are exempt from the prohibition.

EPA plans to implement section 608 in three phases. The first phase is the development of refrigerant recycling and safe disposal requirements. EPA research indicates that in all air conditioning or refrigeration sectors, emissions during servicing and disposal of equipment account for between 50 and 94 percent of total emissions during the life cycle of the equipment. Recycling requirements will reduce these emissions. In the next phase of rulemaking, EPA will explore and provide guidance on Lowest Achievable Emissions Levels (LAELs) for those sectors where leakage during use accounts for a significant percentage of total emissions. The third and final phase may encompass regulations for recapture, recycling, and

conservation of non-refrigerant applications of class I and class II compounds.

In developing additional guidance on "the lowest achievable level" of emissions, the Agency will focus on those actions facilitating an orderly transition from class I and then class II compounds while minimizing economic impacts. This guidance will be issued in coordination with the on-going regulatory program, the impact of the current excise tax on the use of these chemicals and the production phase-down schedules and phaseout dates established under sections 604 and 606.

At this time EPA believes that continued use of class I substances in existing equipment through recycling can serve as a useful bridge to alternative products while minimizing disruption of the current capital stock of equipment, preventing costly early retirement of equipment. Agencies will need to be aware of this as they develop their procurement policies.

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

4. Section 609 - Servicing of Motor Vehicle Air Conditioners

Section 609 was established to control the release of refrigerant during servicing of motor vehicle air conditioners. Although each automobile has a relatively small refrigerant charge, it is estimated that motor vehicle air-conditioners consumed over 48,000 metric tons of CFC-12 in 1989. This amounts to 21.3 percent of total CFC use in the United States.

The section provides that any person repairing or servicing motor vehicle air conditioners (MVACs) for consideration must properly use refrigerant recycling equipment that has been approved by EPA. All such persons must be properly trained and certified. For small entities, the

requirements of this section are delayed until January 1, 1993. After January 1, these small entities must obtain approved refrigerant recycling equipment and so certify to the Administrator.

The section 609 final rule, published on July 14, 1992, in the (57 FR 31242), and codified at 40 CFR § 82.30-42, established standards for refrigerant recycling equipment and proper use of such equipment. The rule also established the criteria for technician certification programs and the standard for recycling equipment. Two independent testing organizations were approved by EPA to verify that the equipment meet the established standards. The Agency maintains the list of approved equipment.

The sale or distribution in interstate commerce of any class I or class II substance suitable for use in a motor vehicle air-conditioning system in small containers (less than 20 pounds) is also prohibited. The only exception is for sales or distribution to persons servicing motor vehicle air conditioners for consideration in compliance with all the above requirements.

The requirements of section 609, and the regulations promulgated thereunder, apply to federal agencies independently of today's proposed rule. Therefore, in servicing, replacing or retrofitting their vehicle fleets, agencies need to be cognizant of these requirements. However, compliance with these regulations will reduce the need for agencies to purchase class I substances.

Agency regulations adopted pursuant to today's proposed rule should specifically prohibit the purchase of substances whose sale is prohibited under section 609, except when they will be used by persons employed to service vehicles. Furthermore, agencies would be required to make compliance with section 609 and the regulations promulgated thereunder a condition of any contract involving the performance or a service activity subject to section 609.

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

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

EPA is further required to prohibit at a minimum "other consumer products" that are determined to release class I substances and to be nonessential. In determining whether a product is nonessential, EPA is instructed to consider: "the purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substance, safety, health, and other relevant factors."

Section 610 also states that after January 1, 1994, "it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce--(A) any aerosol product or other pressurized dispenser which contains a class II substance; or (B) any plastic foam product which contains, or is manufactured with, a class II substance."

On January , 1993, the final regulation on the ban of nonessential products releasing class I ozone-depleting substances and requiring elimination of emissions from products using class I substances was published in the Federal Register. See 40 C.F.R. § 82.60-68.

EPA believes that, unlike the class I ban, the class II ban is self-effectuating. EPA believes it has the authority to issue regulations as necessary to implement the class II ban under sections 610 and 301 of the Clean Air Act, as amended, and intends to do so at a later date. More specific

information on the use of class II substances in foams and aerosols will be collected in the near future.

Section 610 and the regulations promulgated thereunder apply to the manufacture and sale, rather than the purchase, of nonessential products. However, to ensure conformity with the requirements and policies of title VI, agency regulations adopted under today's proposed rule must at a minimum prohibit the purchase of any product whose sale has been prohibited under section 610. Of course, to carry out the more general requirement of minimizing the purchases of products containing recontrolled substances, agencies will have to consider their need to purchase all such products, not just those prohibited under section 610.

6. Section 611 - Labeling

Section 611 and the regulations promulgated thereunder specifies labeling requirements beginning on May 15, 1993, for containers of class I and class II substances, and products containing class I substances. See 40 CFR § 82.100 -124. The Act stipulates that "no container in which a class I or class II substance is stored or transported, and no product containing a class I substance, shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating: 'Warning: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere.'"

Section 611 also mandates that this same labeling requirement "shall apply to all products manufactured with a process that uses such class I substances unless the Administrator determines that there are no substitute products or manufacturing processes that (A) do not rely on the use of such class I substance, (B) reduce the overall risk to human health and the environment, and (C) are currently or potentially available." The label for products manufactured with a class I substance is required to state: "Warning: Manufactured with [insert name of substance], a substance which

harms public health and environment by destroying ozone in the upper atmosphere."

After May 15, 1993, the labeling requirement shall apply to products containing or manufactured with a class II substance "if the Administrator determines, after notice and opportunity for public comment, that there are substitute products or manufacturing processes (A) that do not rely on the use of such class II substance, (B) that reduce the overall risk to human health and the environment, and (C) that are currently or potentially available." The label is required to have the same wording as that for class I substances. After 2015, these labeling requirements shall apply to all products containing or manufactured with a class I and a class II substance. Section 611 and the regulations thereunder apply to the labeling of products and containers, not to their purchase. However, to ensure conformity with the regulations and policies of title VI, agency regulations adopted under today's proposed rule must make compliance with section 611 a specification for the purchase of any product or container to which section 611 applies.

7. Section 612 - Safe Alternatives Policy

Section 612 states as a policy that "to the extent practicable, class I and class II substances shall be replaced by chemicals, product substitutes, or alternative manufacturing processes that reduce overall risks to human health and the environment." Substitutes can be either existing or new, currently or potentially available.

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

Under section 612 EPA will publish a list of unacceptable substitutes and a list of corresponding acceptable alternatives as well as establish a petition process to add or remove

substances from either of the two lists. Under section 612(c) EPA will also promulgate regulations making it unlawful to replace any class I or class II substance with any substitute which may present adverse effects to human health or the environment, where an alternative to such a replacement has been identified that reduces overall risk and is currently or potentially available. Based on language in section 612, a substitute is defined as any new or existing chemical, product substitute, or alternative manufacturing process that is currently or potentially available.

In evaluating substitutes, "overall risk" characterization will consider such factors as: chlorine loadings; ozone-depletion potential; toxicity to human health and ecosystems; air, water, and solid/hazardous waste impacts; exposure to workers, consumers, the general population, and aquatic organisms; flammability; and global-warming potential. Substitutes will be evaluated by use and in the context of (1) the risks the substitute is replacing (i.e., the risks of continued use of the class I or class II substances) and (2) the risks from other substitutes. Given the particular application of a substance, impact on human health and the environment can vary significantly. Thus, risk characterizations will be specific for each use sector.

In addition, economic feasibility must be assessed to ensure that the initial list of acceptable substitutes includes alternatives that are available and affordable in the near term. Economics must also be considered in evaluating new substitutes against alternatives that were previously identified as acceptable. The Agency believes that such an examination will help to minimize uncertainty in the marketplace and encourage many to substitute sooner rather than later.

EPA plans to issue a Notice of Proposed Rulemaking for the Significant New Alternatives Program (SNAP) soon. This proposal will include an initial list of acceptable and

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

It should also be noted that, while the statute specifically refers to section 612, EPA expects to take steps that will facilitate substitution even before risk characterizations have been completed and safe alternatives have been identified by EPA under section 612. To ensure that agencies are in a position to proceed rapidly as soon as safe alternatives are identified, EPA will, through its outreach effort, keep agencies informed of available alternatives and of their status under the review process.

Today's rule is closely related to section 612, as the purchase of safe alternatives is expected to be the principal means through which agencies will minimize their purchase of ozone-depleting substances. To ensure conformity with section 612, the regulations adopted by agencies pursuant to today's proposed rule must require agency officials both to comply with the policy in section 612(a) of maximizing the use of alternatives to class I and class II substances in making agency purchasing decisions, and to comply with the regulations to be issued by EPA identifying unacceptable substitutes.

IV. Implementation of Requirements Imposed Under Section 613

Section 613 does not require EPA to issue detailed rules specifying the manner in which federal agencies are to reduce their use of ozone-depleting substances or related products, and substitute safer alternatives, and EPA is not attempting to do so here. Rather, EPA expects that these details will be addressed when agencies adopt and subsequently implement the regulations or other procedures required by today's rule.

Because of the immense variety and complexity of agency

decisions regarding which products to purchase to meet its mission, as well as the variety of agency procurement processes, EPA does not consider it appropriate to specify what agencies must adopt in greater detail than is specified here. As described above, EPA plans, and has already initiated, an extensive outreach effort to provide assistance to other agencies in their efforts.

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

It is important to note that today's regulation is intended to cover new contracts and purchasing agreements, as well as contract renewals. Because the availability of Class I and Class II substances will be severely limited in the near future, agencies may also need to renegotiate existing contracts to ensure the successful conversion to substances and processes which do not require the use of controlled substances.

It should also be noted that, consistent with the policy stated in section 612 of the Act, these proposed regulations require that agencies maximize the substitution of safe alternatives "to the extent practicable". This approach is

intended to give agencies flexibility to deal with conditions resulting from the phaseout of ozone-depleting substances. However, EPA expects that very substantial changes from current practices will be practicable. EPA's view is based on a number of factors, including the following:

1) EPA is proposing to accelerate the phaseout of the class I ozone-depleting substances (ODS) so that U.S. production and imports would, in most cases, cease by January 1, 1996. As a result, equipment and procedures which currently use ODS will, in a preponderance of cases, need to be modified because such substances will simply not be available.

2) Compliance with other requirements of the Clean Air Act, such as the recycling programs under sections 608 and 609, will reduce the need for purchases of ODS. EPA believes, and the public expects, that the Federal government should be at the forefront in the efforts to protect stratospheric ozone. Many agencies have already taken significant steps toward this objective. Given the leadership that Federal agencies should provide vis a vis industry, other governments and the general public, it is imperative that all entities in the Federal government implement major efforts to deal with stratospheric ozone protection.

3) Recent data published by NASA and measured in September 1992 by the Total Ozone Mapping Spectrometer indicates that the annual cycle of ozone depletion is starting earlier in 1992 than ever, and that the extent of depletion is 15 % greater than the previous year. Therefore, activities to control ODS have become even higher national and international priorities. This is reflected by the recent meeting of the Parties to the Montreal Protocol during which it was decided to add substances to the phaseout listing and to significantly accelerate the phaseout.

It is important to note that maximizing the substitution of safe alternatives "to the extent practicable" will require agencies to take steps beyond simply changing the products they

purchase. Agencies must also examine their existing operations and develop procedures to reduce the use of products containing, or manufactured with, ozone-depleting substances.

Not all agency practices that result in the potential release of ozone-depleting substances are within the scope of section 613. For example, existing equipment containing CFCs may be a potential source of releases, and neither section 613, nor today's proposed rule, require that such equipment be immediately taken out of service. However, to the extent that the maintenance of such equipment requires the purchase of replacement CFCs, it would be affected by this rule, and agencies should adopt policies that minimize the further purchase of CFCs to the maximum extent feasible (e.g., recycling at servicing and, in some cases, by retrofitting equipment so that it can be operated without CFCs). In addition, where the purchase of ozone depleting substances is unavoidable, agencies would be required under today's proposal to further the broad aims of title VI. For example, agencies using halons should purchase them from halon banks.

To the extent that the operation of existing equipment does not incur purchases or substitution and is thus beyond the scope of today's proposed rule, but otherwise involves the use of ODS, EPA urges agencies to adopt policies designed to minimize the release of ozone-depleting substances and to maximize recycling and conservation of the substances. For example, agencies dismantling halon systems should recycle these chemicals and provide them to halon banks. In addition, agencies are required to comply with the prohibitions on venting of section 608 of title VI of the Act and any forthcoming requirements regarding recycling and emission control under that section.

EPA recognizes that there often are substantial financial requirements inherent in making conversions to processes that do not use ODS. The practicability feature of the rule will allow such considerations to be taken into account in selecting

methods to reduce demand for ozone-depleting substances. The immense variety of equipment and processes used by the Federal government make it impossible for EPA to specify in detail what types of actions must be taken and what lengths of time should be allowed to take them. EPA also notes that time is a consideration in determining what is practicable. What is impracticable in the short term may be feasible over a longer period of time. However, EPA expects that procurement practices will be adopted which reduce use of ozone-depleting substances on a very aggressive schedule.

V. Summary of Supporting Analyses

A. Executive Order 12291

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

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

EPA has determined that this proposed regulation does not meet the definition of a major rule under E.O. 12291 and has therefore not prepared a formal regulatory impact analysis. EPA believes that this proposed rule will not have a significant economic impact since its underlying purpose is to prepare Federal agencies to deal with the phaseout of ozone-depleting substances required under title VI of the Clean Air Act.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that Federal Agencies examine the impact of their regulations

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

The Administrator believes that the regulation, if promulgated, will not have a significant impact on a substantial number of small entities and has concluded that a formal RFA is unnecessary.

This proposed regulation requires Federal agencies to conform their procurement regulation to the regulations, policies and procedures governing the phaseout of ozone-depleting substances. EPA believes that most companies in industries supplying goods and services made with or containing ozone-depleting substances to the Federal government are already aware of the requirements of title VI. Therefore, these companies are prepared to offer alternatives to meet amended or new federal procurement specifications required by this regulation. This proposed regulation will primarily affect government procurement specifications, which small entities respond to at a cost level appropriate to the goods and services purchased.

C. Paperwork Reduction Act

As required by § 35.04 of the Paperwork Reduction Act, 44 U.D.C.3501 et sec., EPA submitted an information request to the office of management and Budget for review. (The recordkeeping and reporting requirements contained in this rulemaking were approved by the Office of Management and Budget under control number-----)

The reporting burden for Federal government agencies for this collection is estimated to be an average of 70 hours for each of the responding agencies.

Dated:

Administrator

Title 40, Code of Federal Regulations, Part 82, is proposed to be amended to read as follows:

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

PART 82 - PROTECTION OF STRATOSPHERIC OZONE

Authority: 42 U.S.C. 7671-7671(q)

2. A new Subpart ____ is added to read as follows:

Subpart ____

82.100 Purpose and Scope
82.102 Definitions
82.104 Federal Agency Procurement
82.106 Reporting Requirements

§ 82.100 Purpose and Scope

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

(b) These regulations apply to each department, agency, and instrumentality of the United States.

§ 82.102 Definitions

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

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

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

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

Commission, and all parts of and establishments within the legislative and judicial branches of the United States.

§ 82.104 Requirements

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

(1) that purchases of class I and Class II substances, or products made with or containing such substances, shall be minimized to the maximum extent practicable, either by substitution of safe alternatives, or products made with or containing safe alternatives, identified under 42 U.S.C. s. 7671k, by taking other actions;

(2) that no purchases shall be made of class II substances, or products containing class II substances, for the purpose of any use prohibited under 42 U.S.C. s. 7671d(c);

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

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

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

(6) that where the purchase of class I and class II substances is unavoidable, recycled substances will be used to the maximum extent practicable.

(b) For agencies subject to the Federal Acquisition Regulation, 48 CFR Part 1, amendment of the FAR consistent with the Office of Federal Procurement Policy's Policy Letter No. ---, published at [citation to be inserted at final publication], shall satisfy the requirement of this section.

§ 82.106 Reporting Requirements

No later than one year after the effective date of this rule, each agency, department, and instrumentality of the United States shall submit to the Office of Management and Budget, information regarding the implementation of procurement regulations in accordance with this subpart. This report shall include an analyses of the uses of ozone-depleting substances in each agency, a plan for the phasing out of the use of these substances, and the plans for the use of safe substitutes, recycling, destruction, and "banking" of these substances. This report shall also include a certification by each entity covered by this rule, that its procurement regulations have been amended in accordance with this section.

Certification by the General Services Administration that the FAR has been amended in accordance with this section shall constitute adequate certification for purposes of all agencies subject to the FAR.

DRAFT

April 7, 1993

Executive Order ---- of ---- ,1993

**Procurement Requirements and Policies for Federal Agencies
Ozone-Depleting Substances**

WHEREAS, the Administration recognized the essential function of the stratospheric ozone layer in shielding the earth from dangerous ultraviolet radiation, and is cognizant of the recent increase in the depletion of the ozone layer; and

WHEREAS, the production and consumption of substances that cause the depletion of stratospheric ozone is being rapidly phased out on a world-wide basis with the support and encouragement of the United States; and

WHEREAS, the Federal Government, as one of the principal users of these substances, is able through affirmative procurement practices to significantly reduce the use of these substances and to provide leadership in their phaseout;

NOW, THEREFORE, I, -----, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Clean Air Act as amended in 1990, Public Law 101-549, hereby order as follows:

PART 1 - PREAMBLE

Section 101. The purpose of this Executive order is to:

(a) Require that Federal Agencies conform their procurement regulations and practices to the policies and requirements of Title VI of the Clean Air Act Amendments, which deals with Stratospheric Ozone Protection.

(b) Mandate that Federal agencies maximize the use of safe alternatives to ozone-depleting substances.

(c) Require that Federal agencies evaluate the present and future uses of ozone-depleting substances, including making assessments of existing and future needs of such materials and their use of and plans for recycling.

(d) Require that Federal agencies modify their procurement practices and implement programs to modify specifications and contracts which require the use of ozone-depleting substances.

(e) Establish Federal Government leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

PART 2 - DEFINITIONS

For purposes of this order:

Sec. 201. "Federal Agency" means any executive department, military department, or independent establishment within the meaning of 5 U.S.C. § 101, 102, and 104(1), respectively, any wholly-owned Government corporation, the United States Postal Service and Postal rate Commission, and all parts of, and establishments within, the legislative and judicial branches of the United States.

Sec. 202. "Procurement" and "Acquisition" are used interchangeably to refer to the processes through which the Federal agencies purchase products.

Sec. 203 "Procurement Regulation, Policies and Procedures" means the complete acquisition process, including the generation of product descriptions by individuals responsible for determining which substances must be acquired by the agency to meet its mission.

Sec. 204. "Ozone-depleting substances" means the substances controlled internationally under the Montreal Protocol and nationally under Title VI of the Clean Air Act Amendments. This includes both class I and class II substances as follows:

"Class I substance" means any substance designated as Class I in the Federal Register notice of July 30, 1992 (57 FR 33753), including chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by EPA at a later date; and

"Class II substance" means any substance designated as Class II in the Federal Register notice of July 30, 1992 (57 FR 33753), including hydrochlorofluorocarbons and any other substance so designated by EPA at a later date.

Sec. 205. "Recycling" is used to encompass recovery and reclamation, as well as the re-use of controlled substances.

PART 3 - FEDERAL PROCUREMENT REGULATIONS, POLICIES AND PROCEDURES

Sec. 301. POLICY. It is the Policy of the Federal government that Executive agencies minimize the use of materials and substances that contribute to the depletion of stratospheric ozone and give preference to the use of alternative chemicals,

products and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere. In implementing this policy, consistent with the phaseout schedules promulgated by EPA under section 604 of the Clean Air Act, agencies shall:

- A. Minimize to the extent possible the procurement of products containing or manufactured with Class I or Class II substances;
- B. Amend previously-awarded contracts to be consistent with the phaseout schedules for Class I and Class II substances;
- C. Implement policies and practices which recognize the increasingly limited availability of Class I or Class II substances. Such practices shall include, but are not limited to:
 - 1. Reducing emissions and recycling ozone-depleting substances, as required by sections 608 and 609 of Title VI of the Clean Air Act Amendments;
 - 2. Ceasing the purchase of nonessential products as required in section 610 of Title VI of the Clean Air Act Amendments; and

3. Requiring that any acquired products containing or manufactured with Class I or Class II substances be labeled in accordance with section 611 of the Clean Air Act Amendments.

Sec. 302. RESPONSIBILITIES. ~~Not later than six months after~~ the effective date of this Executive Order, each Federal Agency shall have in place practices which to the extent practicable minimize the use of Class I or Class II substances. Such practices shall include but not be limited to:

- A. Altering existing equipment and/or procedures to make use of safe alternatives;
- B. Specifying the use of safe alternatives and of goods and services, where available, which do not require the use of Class I substances in new procurement and which limit the use of Class II substances consistent with section 612 of the Act;
- C. Amending existing contracts to require the use of safe alternatives.

Sec. 303. REPORTING REQUIREMENTS. Not later than 6 months after the effective date of this Executive Order, each Federal Agency shall report to the Office of Management and Budget, and submit information regarding the implementation of the policies

prescribed in this Order. The report shall include a certification by each Agency that its regulations and procurement practices have been amended to comply with the policies prescribed in this Order.

Sec. 304. EXCEPTIONS. Exceptions to complying with the provisions of Title VI of the Clean Air Act Amendments may be made in accordance with section 604 of this Act, and with the provisions of the Montreal Protocol. Section 604 establishes procedures for requesting exceptions for essential uses such as medical devices, aviation safety, etc.

Sec. 305. EFFECTIVE DATE. This Executive Order is effective 30 days after the date of issuance. ~~While full implementation of this Order must await needed change in the FAR,~~ it is expected that Agencies will take all appropriate actions in the interim to implement those aspects of the Order that are not dependent upon regulatory change.

Sec. 306. FEDERAL ACQUISITION REGULATORY COUNCILS. Pursuant to section 6(a) of the OFPP Act, as amended, 41 U.S.C. 405(a), the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council shall ensure that the policies established herein are incorporated in the FAR within 180 days from the date this Order is promulgated.

Sec. 307. INFORMATION. Questions or inquiries about the policy aspects of this Order shall be directed to ----- . For

information regarding the requirements of Title VI of the Clean Air Act Amendments and other technical information and requirements contact Peter Voigt, Stratospheric Protection Division, EPA, 6205 J, 401 M St. SW, Washington, DC 20460, telephone (202) 233-9185.

DRAFT DRAFT DRAFT

THE WHITE HOUSE

Office of the Press Secretary

Executive Order No.

PROCUREMENT REQUIREMENTS AND POLICIES
FOR FEDERAL AGENCIES

OZONE-DEPLETING SUBSTANCES

WHEREAS, this Administration recognizes the essential function of the stratospheric ozone layer in shielding the earth from dangerous ultraviolet radiation, and is cognizant of the ~~recent increase in the~~ depletion of the ozone layer; and

WHEREAS, the production and consumption of substances that cause the ~~depletion of stratospheric ozone~~ is being ~~rapidly~~ phased out on a world-wide basis with the support and encouragement of the United States; and

WHEREAS, the Montreal Protocol on Substances that Deplete the Ozone Layer, to which the U.S. is a signatory, calls for a phase out of the production of these substances by the year 1995; and

WHEREAS, the Federal Government, as one of the principal users of these substances, is able through affirmative its procurement practices to ~~significantly reduce~~ the use of these substances and to provide leadership in their phaseout; and

WHEREAS, the use of alternative substances and new technologies to replace these ozone depleting substances can contribute ~~positively~~ to the economic competitiveness ~~on the~~ of ~~world market~~ by U.S. manufacturers of these innovative alternatives;

NOW, THEREFORE, I, William Jefferson Clinton, by the authority vested in me as President, by the Constitution and ~~the~~ laws of the United States, ~~of America~~, including the Clean Air Act as amended in 1990, Public Law 101-549, hereby order as follows:

PART 1 - PREAMBLE

Sec. 101. The purpose of this Executive order is to:

TAKE MY
Comments for
WHAT, IF ANYTHING,
they're worth

rapidly
accelerating

?

significantly

of the United
States

do

(a) require that Federal Agencies conform their procurement regulations and practices to the policies and requirements of Title VI of the Clean Air Act Amendments, which deal with Stratospheric Ozone Protection;

(b) mandate that Federal agencies maximize the use of safe alternatives to ozone-depleting substances;

(c) require that Federal agencies evaluate the present and future uses of ozone-depleting substances, including making assessments of existing and future needs of such materials and their use of and plans for recycling;

(d) require that Federal agencies modify their procurement practices and implement programs to modify specifications and contracts which require the use of ozone-depleting substances to use of non-ozone depleting substances for non-essential uses; and

(e) establish Federal Government leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

PART 2 - DEFINITIONS

Sec. 201. "Federal Agency" means any executive department, military department, or independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, any wholly-owned Government corporation, the United States Postal Service and Postal Rate Commission, and all parts of, and establishments within the legislative and judicial branches of the United States.

Sec. 202. "Procurement" and "acquisition" are used interchangeably to refer to the processes through which Federal agencies purchase products.

Sec. 203. "Procurement regulations, policies and procedures" means the complete acquisition process, including the generation of product descriptions by individuals responsible for determining which substances must be acquired by the agency to meet its mission.

Sec. 204. "Ozone-depleting substances" means the substances controlled internationally under the Montreal Protocol and nationally under Title VI of the Clean Air Amendments. This includes both Class I and Class II substances as follows:

(a) "Class I substance" means any substance designated as Class I in the Federal Register notice of July 30, 1992 (57 FR 33753), including chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by EPA at a later date; and

(b) "Class II substance" means any substance designated as Class II in the Federal Register notice of July 30, 1992 (57 FR 33753), including hydrochlorofluorocarbons and any other substance so designated by EPA at a later date.

Sec. 205. "Recycling" is used to encompass recovery and reclamation, as well as the re-use of controlled substances.

PART 3 - FEDERAL PROCUREMENT REGULATIONS, POLICIES AND PROCEDURES

Sec. 301. POLICY. It is the Policy of the Federal government that Executive agencies minimize the use of materials and substances that contribute to the depletion of stratospheric ozone prior to the guidelines established under Title VI of the CAA and issued in concurrence with this Executive Order and give preference to the use of alternative chemicals, products and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere. In implementing this policy, prior to (but consistent with) the phaseout schedules promulgated by EPA under section 604 of the Clean Air Act, agencies shall:

(a) minimize to the extent possible the procurement of products containing or manufactured with Class I or Class II substances in anticipation of both the phaseout schedule promulgated by EPA to be completed by the end of 1994 and the international deadlines defined under the Montreal Protocol;

???

(b) amend previously-awarded contracts to be consistent with the phaseout schedules for Class I and Class II substances;

(c) implement policies and practices which recognize the increasingly limited availability of Class I or Class II substances as production levels capped by the Montreal Protocol decline until final phaseout in 1995. Such practices shall include, but are not limited to:

(1) reducing emissions and recycling ozone-depleting substances, as required by sections 608 and 609 of Title VI of the Clean Air Act Amendments;

(2) ceasing the purchase of nonessential products as required in section 610 of Title VI of the Clean Air Act Amendments; and

(3) requiring that any acquired products containing or manufactured with Class I or Class II substances be labeled in accordance with section 611 of the Clean Air Act Amendments.

what if there are huge cost consequences?

1
federal

to the extent feasible and economical

Sec. 302. RESPONSIBILITIES. Not later than six months after the effective date of this Executive Order, each Federal Agency shall have in place practices which to the extent practicable minimize the use of Class I and Class II substances. Such practices shall include but not be limited to:

(a) altering existing equipment and/or procedures to make use of safe alternatives;

(b) specifying the use of safe alternatives and of goods and services, where available, which do not require the use of Class I substances in new procurement and which limit the use of Class II substances consistent with section 612 of the Act;

(c) amending existing contracts to require the use of safe alternatives.

SPACES Sec. 303. REPORTING REQUIREMENTS. Not later than 6 months after the effective date of this Executive Order, each Federal Agency shall report to the Office of Management and Budget, and submit information regarding the implementation of the policies prescribed in this Order. The report shall include a certification by each Agency that its regulations and procurement practices have been amended to comply with the policies prescribed in this Order.

Sec. 304. EXCEPTIONS. Exceptions to complying with this Executive Order are the same as exceptions to the provisions of Title VI of the Clean Air Act Amendments may be made in accordance with section 604 of this Act, and with the provisions of the Montreal Protocol. Section 604 establishes procedures for requesting exceptions for essential uses such as medical devices, aviation safety, etc.

Sec. 305. EFFECTIVE DATE. This Executive Order is effective 30 days after the date of issuance. While full implementation of this Order must await needed change in the Federal Acquisition Regulations, it is expected that Agencies will take all appropriate actions in the interim to implement those aspects of the Order that are not dependent upon regulatory change.

Sec. 306. FEDERAL ACQUISITION REGULATORY COUNCILS. Pursuant to section 6(a) of the OFPP Act, as amended, 41 U.S.C. 405(a), the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council shall ensure that the policies established herein are incorporated in the FAR within 180 days from the date this Order is promulgated.

Sec. 307. INFORMATION. Questions or inquiries about the policy aspects of this Order shall be directed to ----- . For information regarding the requirements of Title VI of the Clean Air Act Amendments and other technical information and requirements contact Peter Voigt, Stratospheric Protection Division, EPA, 6205 J, 401 M Street, S.W., Washington, D.C. 20460, telephone (202) 233-9185.



OFFICE OF FEDERAL
PROCUREMENT POLICY

MASTER FOR CHANGES
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FAX COVER SHEET

TODAY'S DATE: 2-22-93

TO:

Peter Voigt

TELEPHONE No.:

FAX No.:

233-9577

FROM:

Chuck Clark

TELEPHONE No.:

(202) 395- 6805

FAX No.:

(202) 395-5105

NUMBER OF PAGES

(including cover sheet): 7

REMARKS:

Peter: This is latest OEP draft.
Our Counsel's office wants to know if
you concur so pls. give me a call after
you've reviewed. Thanks.
P.S. Still need p. 10 of your rule. I'm
not having much luck with Walz's.

**OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF FEDERAL PROCUREMENT POLICY**

(Issuance of Policy Letter 93-X)

Prohibition on Acquiring and Using Ozone Depleting Substance

AGENCY: Executive Office of the President, Office of Management and Budget, Office of Federal Procurement Policy (OFPP).

ACTION: Solicitation of public comments on a draft OFPP Policy Letter that would require Federal agencies to minimize the use of material and substances which contribute to the depletion of stratospheric ozone.

SUMMARY: The proposed Policy Letter is issued in cooperation with the Environmental Protection Agency (EPA) to assist EPA in its implementation of Section 613 of the Clean Air Act Amendments of 1990 (42 U.S.C. 76711). As proposed, the Policy Letter would require that the single Government-wide procurement regulation, the Federal Acquisition Regulation (FAR), be amended within 180 days to curtail the acquisition and use of Class I and Class II ozone depleting substances.

A Class I ozone depleting substance means any substance designated as Class I in the Federal Register notice of July 30, 1992 (57 FR 33753) including chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by EPA at a later date. A Class II substance means any substance designated as Class II in the Federal Register notice of July 30, 1992 (57 FR 33753) including hydrochlorofluorocarbons and any other substance so designated by EPA at a later date.

Concurrent with the issuance of this proposed Policy Letter, EPA is issuing a proposed rule pursuant to its authority under Section 613. EPA's proposed rule states that incorporation of the Policy Letter in the FAR would provide the Government-wide implementation required by Section 613 for agencies subject to the FAR.

COMMENT DATE: Comments on the proposed Policy Letter must be received on or before [30 days from date of publication]. Comments on EPA's proposed rule should be sent to EPA.

ADDRESS AND INFORMATION CONTACT: Comments should be sent to Charles W. Clark, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503. Questions may be addressed to Mr. Clark

2

on (202) 395-6805. Comments concerning whether the proposed Policy Letter would meet the requirements of Section 613 should be sent to EPA, in response to its proposed rule.

Allan V. Burman
Administrator

Date: _____



**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**

**OFFICE OF FEDERAL
PROCUREMENT POLICY**

POLICY LETTER NO. 93-X

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

**SUBJECT: Prohibition on the Acquisition and Use of Ozone
Depleting Substances**

1. **Purpose.** This Policy Letter is issued in cooperation with the Environmental Protection Agency (EPA) to assist in implementing Section 613 of the Clean Air Act Amendments of 1990 (42 U.S.C. 76711). The Policy Letter requires that Executive agencies:
 - a. Conform their procurement regulations and practices to protect stratospheric ozone in accordance with the requirements of Title VI of the Clean Air Act Amendments;
 - b. Maximize the use of safe alternatives to ozone depleting substances;
 - c. Evaluate their present and future uses of ozone depleting substances, to include assessments of existing and future needs and the use of, and plans for, recycling such materials;
 - d. Modify their procurement practices and implement programs to amend specifications and contracts which require the use of ozone depleting substances, and
 - e. Develop exemplary practices minimizing the use of ozone depleting substances and disseminate information on their phase out.
2. **Authority.** This Policy Letter is issued pursuant to Section 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, 41 U.S.C. 405(a).
3. **Definitions.**
 - a. **Executive Agency.** Means an Executive department, and an independent establishment within the meaning of 5 U.S.C. 101, 102, 103(1) and 104(1), respectively.

2

b. Ozone Depleting Substances. Means the substances controlled internationally under the Montreal Protocol and nationally under Title VI of the Clean Air Act Amendments. This includes Class I and Class II substances as follows:

- Class I substance means any substance designated as Class I in the Federal Register notice of July 30, 1992 (57 FR 33753) including chloro-fluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by EPA at a later date; and
- Class II substance means any substance designated as Class II in the Federal Register notice of July 30, 1992 (57 FR 33753) including hydrochloro-fluorocarbons and any other substance so designated by EPA at a later date.

4. Background.

- a. Section 613 of the Clean Air Act Amendments requires the Administrator of EPA to promulgate regulations requiring each department, agency and instrumentality of the United States to conform its procurement regulations to the policies and requirements of Title VI of the Clean Air Act.
- b. Inasmuch as Government-wide procurement regulations are contained in the Federal Acquisition Regulation (FAR), amendment of the FAR is considered to be an effective manner for helping to implement Section 613. Section 6(a) of the OFPP Act authorizes the Administrator for Federal Procurement Policy to prescribe Government-wide procurement policies to be implemented in the FAR.
- c. While some Executive agencies such as the Department of Defense and the General Services Administration (GSA), have already made significant advances in phasing out their use of ozone depleting substances, the policies prescribed in Paragraph 5 below shall serve to guide the procurement decisions and programs of all Executive agencies pending the development and implementation of changes to the FAR.

5. Policy. It is the policy of the Federal Government that Executive agencies minimize the use of materials and substances which contribute to the depletion of stratospheric ozone and give preference to the use of alternative chemicals, products and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper

3

atmosphere. In implementing this policy agencies shall, consistent with the phaseout schedules promulgated by EPA under Section 604 of the Clean Air Act:

- a. Minimize to the extent possible, the procurement of products containing or manufactured with Class I or Class II substances;
- b. Amend previously awarded contracts to ~~delete to the extent possible, the use of any Class I or Class II substances;~~ *✓ BE CONSISTENT WITH THE PHASEOUT SCHEDULES FOR*
- c. Implement policies and practices which recognize the increasingly limited availability of Class I or Class II substances. Such practices shall include, but are not limited to:
 - Reducing emissions and to recycling ozone depleting substances, as required in Sections 608 and 609 of Title VI of the Clean Air Act Amendments;
 - Ceasing the purchase of nonessential products as required in Section 610 of Title VI of the Clean Air Act Amendments, and
 - Requiring that any acquired products containing Class I or Class II substances be labeled in accordance with Section 611 of the Clean Air Act Amendments.

6. Responsibilities. Not later than one year after the effective date of this policy, each Executive agency shall have in place practices which to the extent practicable minimize (consistent with the Clean Air Act phaseout schedules) the use of Class I or Class II substances as defined in Paragraph 3. Such practices should include but are not limited to:

- a. Altering existing equipment and/or procedures to make use of safe alternatives;
- b. Specifying the use of safe alternatives and of goods and services, where available, which do not require the use of Class I or ~~Class II~~ substances in new procurements; and
- c. Amending existing contracts to require the use of safe alternatives.

AND WHICH LIMIT THE USE OF CLASS II SUBSTANCES CONSISTENT WITH SECTION 612 OF THE ACT

7. **Reporting Requirements.** Not later than 6 months after the effective date of this policy, each Executive agency shall report to OFFP and submit information regarding the implementation of the procurement policies prescribed in this Policy Letter. This report shall include a certification by each Executive agency that its regulations and practices have been amended to comply with the policies prescribed by this Policy Letter.
8. **Exceptions.** Exceptions to complying with the provisions of this Policy Letter may be made in accordance with Section 604 of the Clean Air Act Amendments, and with the provisions of the Montreal Protocol. Section 604 provides exceptions for essential uses of methyl chloroform and other specific substances for use in medical devices and aviation safety and for national security purposes.
9. **Effective Date.** This Policy Letter is effective 30 days after the date of issuance. While full implementation of these policies must await needed change to the FAR, it is expected that agencies will take all appropriate actions in the interim to implement those aspects of the policy that are not dependant upon regulatory change.
10. **Federal Acquisition Regulatory Councils.** Pursuant to Section 6(a) of the OFFP Act, as amended, 41 U.S.C. 405(a), the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council shall ensure that the policies established herein are incorporated in the FAR within 180 days from the date this Policy Letter is published in the Federal Register. The 180 day period is considered a "timely manner" as prescribed in 41 U.S.C. 405(b).
11. **Information.** Questions or inquiries about the procurement aspects of this Policy Letter should be directed to Cyndi Vallina, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone (202) 395-3501. For information about safe alternatives and other technical requirements contact Mr. Peter Voigt, Stratospheric Protection Division, EPA, 6202J, 401 M Street, SW, Washington, DC 20460, telephone (202) 233-9185.

Allan V. Burman
Administrator



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FEB 26 1993

MEMORANDUM FOR ALLAN V. BURMAN

FROM:

JAMES B. MACRAE *JBM*

SUBJECT:

Draft Office of Federal Procurement Policy (OFPP)
Policy Letter: "Prohibition on the Acquisition and
Use of Ozone Depleting Substances"

Thank you for the opportunity to review the draft OFPP policy letter titled "Prohibition on the Acquisition and Use of Ozone Depleting Substances." I understand that the purpose of this letter is to assist the Environmental Protection Agency (EPA) in meeting the statutory requirements of Section 613 of the Clean Air Act Amendments of 1990 (CAAA). Section 613 directs EPA, in consultation with other Federal agencies, to promulgate regulations requiring all Federal agencies to conform their procurement regulations with the specific requirements of Title VI of the CAAA, which covers Stratospheric Ozone Protection. I recommend against issuance of this OFPP policy letter at this time and suggest that EPA proceed with its own rulemaking.

balance cost/benefit
First I am concerned that the OFPP policy letter does not incorporate a balancing of benefits and costs and so is inconsistent with the Title VI regulations promulgated to date. In interpreting the statutory requirements of Title VI, EPA has explicitly incorporated a balancing of the costs and benefits of regulatory actions. This balancing can be seen in EPA's interpretation of Title VI statutory directives to "maximize recycling," or "reduce the use and emissions of such substances to the lowest achievable level." EPA has stated that they do not believe these standards are:

"...solely technical in nature, but rather contemplates a role for economic factors in determining the lowest 'achievable' level of emissions and the maximum amount of recycling."¹

While the Section 613 statutory language on Federal procurement does not explicitly mention a balancing of regulatory costs and benefits, it is logical that such balancing be incorporated into the development of procurement policies as has been done with other related Title VI provisions. However, OFPP's policy letter

¹ Section 608 Notice of Proposed Rulemaking, 57 FR 58648, December 10, 1992.

-2-

does not include any such balancing of costs, stating, for example, in Section 5, "Policy", that:

"It is the policy of the Federal Government that Executive agencies minimize the use of materials and substances which contribute to the depletion of the stratospheric ozone and give preference to the use of alternative chemicals, products and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere." (Emphasis added)

Such broad statements of Federal Policy to "minimize" and "give preference" without consideration of economic factors conflict with the Title VI regulations that have been promulgated to date. I believe that these procurement regulations must be developed in full consideration of "economic factors," and that EPA is the agency with the technical expertise and experience to undertake this and insure consistency with other Title VI regulations.

EPA lead agency

Secondly, Section 613 places the lead responsibility for promulgating these regulations with EPA. The statute states that, "the Administrator, in consultation with the Administrator of the General Services Administration and the Secretary of Defense, shall promulgate regulations requiring each department, agency, and instrumentality of the United States to conform its procurement regulations" to the requirements of Title VI. This language clearly charges EPA as the lead agency in the development of these regulations. A draft policy letter in tandem with an EPA draft regulation might take the lead responsibility away from EPA and create confusion about ultimate responsibility for the regulation. Further, Section 613 appears to envision Federal agency revision of procurement policies only after promulgation of an EPA final rule.² For these reasons, I feel that EPA is both primarily responsible and best equipped to promulgate a procurement regulation that will satisfy the requirements of Section 613 and be consistent with the Title VI regulations promulgated to date.

We understand that EPA has had a draft proposed regulation prepared for several weeks already, but that they are not

² Section 613 directs EPA's Administrator to promulgate procurement regulations, "[n]ot later than 18 months after the enactment of the Clean Air Act Amendments of 1990", or by May 15, 1992. The statute goes on to set a subsequent deadline for Federal departments and agencies to conform, "[n]ot later than 30 months after the enactment" of the CAAA, i.e. 12 months after EPA's promulgation of a final regulation. The statute appears to intend that agency and department changes in procurement policies follow and be based upon the final EPA rule.

-3-

pursuing this approach in deference to OFPP action on the policy letter. Since EPA has entered into a settlement agreement with a plaintiff to propose a draft rule by March 1, 1993, further delay in this rulemaking will jeopardize development of a proposal in response to this agreement. In our view, EPA should proceed with an EPA regulation to implement Section 613, including submitting it to OMB for Executive Order 12291 review.

NOTE TO KATIE FROM DAN
RE: FEDERAL PROCUREMENT OF NON-CFC EQUIPMENT

BOTTOM LINE:

While being careful not to compromise your position on regulatory issues as exclusively the court of last appeal, you should call OMB to shake loose the Policy Letter which will greatly expedite the US government procurement of ozone-safe technologies.

Procurement Letter/Regulation:

There is an internal conflict within OMB over whether to issue a Policy Letter which will in effect greatly expedite the impact of the federal procurement regulations required under Clean Air Act section 613. A phone call from you to Allan Burman, Administrator of OMB's Office of Federal Procurement Policy, could be enough to get the process moving again over OIRA's flimsy objections (of which I think you are aware). The regulations themselves are on the right track (and will need to be promulgated regardless of what happens to the policy letter).

DuPont's Perspective:

As you know, DuPont has its own reasons for wanting to get out of CFCs ASAP (mainly to sell the higher-priced alternatives). Who will still be in the business of making CFCs after the phaseout in 1996 for any possible "essential uses" through 2000 is obviously an unanswered question (although it clearly won't be DuPont). I think that, given the delays in issuing the policy letter and the regulations, GSA called DuPont because it was just trying to cover its behind.

Stockpiling:

Stockpiling isn't necessarily a big problem. It certainly isn't against any CAA regulations. In fact, EPA has argued that, to the extent that product remains available after the phaseout date (either by recycling or stockpiling within the proscribed limits), the useful life of capital equipment would be extended and the need for any additional production for essential uses after 1996 would be eliminated. For example, the asthma inhaler folks are stockpiling because they don't need much product, but they need it until 1998 when the substitutes will have gone through all necessary FDA testing.

Recommendation:

Call and shake that sucker loose--its good for the environment and good for promoting environmental technologies.

Cathy — 3/3

Copy of the
Procurement Policy
Letter on Strat.

Dzone and the

OIRA response.

Please give me a
call if you have questions
— Peter 233-9185

Participants.

OFFICE OF FEDERAL PROCUREMENT
POLICY

ALLAN BURMAN
ADMINISTRATOR

CHARLES CLARK

OUR CONTACT

OIRA

JAMES MACRAE
(ACTING CHIEF ?)

CHRIS WOLZ
ANALYST.

THE WHITE HOUSE

WASHINGTON

March 8, 1993

*Let's see how
much we can
get from
this.*

MEMORANDUM FOR THE VICE PRESIDENT

FROM: KATIE MCGINTY

SUBJECT: MEETING TODAY WITH EDGAR WOOLARD OF DUPONT

You will be meeting today with Edgar Woolard, Chairman of the Board of DuPont, regarding CFC phase out in the federal government. You need to discuss possible changes in procurement policy and your commitment to seeing that the General Services Administration and other federal agencies can prepare for the Montreal Protocol deadline of a 1995 CFC production ban.

1) Woolard recently let our office know that the folks at the General Services Administration asked Dupont to supply CFC's for needs which DuPont suspects are intended to meet government requirements beyond the year 2000. They believe that the government does not have adequate plans in place for CFC conversion nor has the government committed the necessary funds for the retrofit of existing equipment that will be needed.

2) However, to some degree, there is action within the federal government on this front. In Section 613 of the Clean Air Act Amendments, EPA was to issue regulations stating that federal agencies must modify their procurement policies to minimize the use of products made with ozone depleting chemicals by April 1, 1993. The final regs are due in October of 1993. The regulations will state that each department agency and instrumentality of the United States must certify to OMB by October of 1994 that their procurement guidelines have been modified to:

- (1) Give preference to the use of alternative chemicals, product substitutes, and alternative manufacturing processes; and
- (2) minimize the use of materials and substances which contribute to the depletion of stratospheric ozone.

Federal procurement is in general governed by the Federal Acquisition Regulation (FAR) - a comprehensive procurement statement for the entire federal government. The FAR is prepared, issued and maintained jointly by the Secretary of Defense, the Administrator of GSA and the Administrator of NASA. EPA's regs would apply to each agency that implements the FAR.

However, some industrious staff level folks in the Office on Procurement Policy at OMB got the idea that an amendment to the FAR, not just regulations that change the implementation of the FAR for each agency, would speed up the change in procurement by six months or so by complementing the EPA regs. (The EPA regs would start in Oct 1993 -- if they are finalized by that time -- while the OMB policy letter amendment to FAR would go into effect 30 days after issuance of the letter -- which could be as soon as we wanted.) This move would send a strong message that we are committed at the White House level to CFC federal procurement. However, this policy letter is bogged down by some higher ups at OMB who believe that:

- (1) EPA should be let alone to issue these regs
- (2) The policy letter does not mention "a balancing of regulatory costs and benefits." The letter says that it is the policy of the Federal government that agencies minimize the use of ozone depleting substances and give preference to the use of alternative chemicals. The OMB folks think that this letter makes "broad statements of Federal policy ... without consideration of economic factors". Of course, we could easily modify this policy letter to address this concern.

The question then becomes whether we want to work with OMB, GSA and EPA to broker this kind of policy letter to speed up the phaseout. (EPA folks would love to do it.) EPA also tells me that DOD and GSA have started issuing internal regulations to provide direction on phasing out the use of ozone-eaters in new equipment acquisition and in HVAC repair.

- 3) I do not believe that Woolard is aware of this OMB policy letter. You should explore with Woolard what his suggestions and thoughts are on it, and what he believes we can do to help the federal government move away from CFC use.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL PROCUREMENT POLICY
725 SEVENTEENTH STREET, NORTHWEST

FACSIMILE NUMBER: (202) 396-6106

FAX SHEET

DATE: 4-7-93

TO:

Troy Lindseth

TELEPHONE NUMBER:

FAX NUMBER:

395-2710

FROM:

Chuck Clark

TELEPHONE NUMBER:

FAX NUMBER:

395-6905

NUMBER OF PAGES (INCLUDING COVER):

6

REMARKS:

Troy: Attached is The proposed policy
letter and a copy of a memo that
Allan Burman sent to OIRA last week.
Any help you can give us will be appreciated.



OFFICE OF FEDERAL
PROCUREMENT POLICY

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MAR 31 1993

MEMORANDUM FOR JAMES B. MACRAE

FROM: Allen V. Burman Allan V. Burman

SUBJECT: Draft Office of Federal Procurement Policy (OFPP)
Policy Letter: "Prohibition on the Acquisition
and Use of Ozone Depleting Substances"

Thank you for your February 26, 1993 memorandum regarding our proposed Policy Letter on ozone depleting substances. Your concurrence in the Policy Letter is now requested as:

1. We have added "cost effective" and "economic feasibility" provisions to 6 paragraphs in the Policy Letter;
2. Carol Browner's Office has requested my assistance in expediting issuance of the Policy Letter;
3. OIRA has approved the publication of the proposed EPA regulation dealing with this subject;
4. It is more cost effective for OFPP to promulgate a policy requiring a single change to the Federal Acquisition Regulation than it is for each agency, department and instrumentality of the Government to issue its own regulation; and
5. It is good policy for OMB and the Administration to show leadership on this issue.

Again, thanks for your help. Your comments helped improve the Policy Letter.

CC:
OFPP File/Chron
ABurman
CClark
OFPP:CClark:rjh 3/31/93
MACRAE.MM



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

POLICY LETTER NO. 93-X

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Prohibition on the Acquisition and Use of Ozone
Depleting Substances

1. Purpose. This Policy Letter is issued in cooperation with the Environmental Protection Agency (EPA) to assist EPA in its implementing of Section 613 of the Clean Air Act Amendments of 1990 (42 U.S.C. 76711). The Policy Letter requires that Executive agencies:
 - a. Conform their procurement regulations and practices to protect stratospheric ozone in accordance with the requirements of Title VI of the Clean Air Act Amendments;
 - b. Maximize the use of cost effective safe alternatives to ozone depleting substances;
 - c. Evaluate their present and future uses of ozone depleting substances, to include assessments of existing and future needs and the use of, and plans for, recycling such materials;
 - d. Modify their procurement practices and implement cost effective programs to amend specifications and contracts which require the use of ozone depleting substances, and
 - e. Develop exemplary practices minimizing the use of ozone depleting substances and disseminate information on their phase out.
2. Authority. This Policy Letter is issued pursuant to Section 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, 41 U.S.C. 405(a).
3. Definitions.
 - a. Executive Agency. Means an Executive department, and an independent establishment within the meaning of 5 U.S.C. 101, 102, 103(1) and 104(1), respectively.

- b. Ozone Depleting Substances. Means the substances controlled internationally under the Montreal Protocol and nationally under Title VI of the Clean Air Act Amendments. This includes Class I and Class II substances as follows:
- Class I substance means any substance designated as Class I in the Federal Register notice of July 30, 1992 (57 FR 33753) including chloro-fluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by EPA at a later date; and
 - Class II substance means any substance designated as Class II in the Federal Register notice of July 30, 1992 (57 FR 33753) including hydrochloro-fluorocarbons and any other substance so designated by EPA at a later date.
4. Background.
- a. Section 613 of the Clean Air Act Amendments requires the Administrator of EPA to promulgate regulations requiring each department, agency and instrumentality of the United States to conform its procurement regulations to the policies and requirements of Title VI of the Clean Air Act.
 - b. Inasmuch as Government-wide procurement regulations are contained in the Federal Acquisition Regulation (FAR), amendment of the FAR is considered to be an effective manner for helping to implement Section 613. Section 6(a) of the OFPP Act authorizes the Administrator for Federal Procurement Policy to prescribe Government-wide procurement policies to be implemented in the FAR.
 - c. While some Executive agencies such as the Department of Defense and the General Services Administration (GSA), have already made significant advances in phasing out their use of ozone depleting substances, the policies prescribed in Paragraph 5 below shall serve to guide the procurement decisions and programs of all Executive agencies pending the development and implementation of changes to the FAR.
5. Policy. It is the policy of the Federal Government that Executive agencies implement cost effective programs to minimize the use of materials and substances which contribute to the depletion of stratospheric ozone and give preference to the use of safe alternative chemicals, products and manufacturing processes that reduce overall risks to human health and the environment by lessening the

depletion of ozone in the upper atmosphere. In implementing this policy agencies shall, consistent with the phaseout schedules promulgated by EPA under Section 604 of the Clean Air Act:

- a. Minimize, where economically feasible, the procurement of products containing or manufactured with Class I or Class II substances;
 - b. Amend previously awarded contracts to delete, where feasible, the use of any Class I or Class II substances;
 - c. Implement policies and practices which recognize the increasingly limited availability of Class I or Class II substances. Such practices shall include, but are not limited to:
 - Reducing emissions and to recycling ozone depleting substances, as required in Sections 608 and 609 of Title VI of the Clean Air Act Amendments;
 - Ceasing the purchase of nonessential products as required in Section 610 of Title VI of the Clean Air Act Amendments, and
 - Requiring that any acquired products containing Class I or Class II substances be labeled in accordance with Section 611 of the Clean Air Act Amendments.
6. Responsibilities. Not later than one year after the effective date of this policy, each Executive agency shall have in place practices which minimize, where economically feasible, (consistent with the Clean Air Act phaseout schedules) the use of Class I or Class II substances as defined in Paragraph 3. Such practices should include but are not limited to:
- a. Altering existing equipment and/or procedures to make use of safe alternatives;
 - b. Specifying the use of safe alternatives and of goods and services, where available, which do not require the use of Class I or Class II substances in new procurements; and
 - c. Amending existing contracts to require the use of safe alternatives.

7. Reporting Requirements. Not later than 6 months after the effective date of this policy, each Executive agency shall report to OFPP and submit information regarding the implementation of the procurement policies prescribed in this Policy Letter. This report shall include a certification by each Executive agency that its regulations and practices have been amended to comply with the policies prescribed by this Policy Letter.
8. Exceptions. Exceptions to complying with the provisions of this Policy Letter may be made in accordance with Section 604 of the Clean Air Act Amendments, and with the provisions of the Montreal Protocol. Section 604 provides exceptions for essential uses of methyl chloroform and other specific substances for use in medical devices and aviation safety and for national security purposes.
9. Effective Date. This Policy Letter is effective 30 days after the date of issuance. While full implementation of these policies must await needed change to the FAR, it is expected that agencies will take all appropriate actions in the interim to implement those aspects of the policy that are not dependent upon regulatory change.
10. Federal Acquisition Regulatory Councils. Pursuant to Section 6(a) of the OFPP Act, as amended, 41 U.S.C. 405(a), the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council shall ensure that the policies established herein are incorporated in the FAR within 180 days from the date this Policy Letter is published in the Federal Register. The 180 day period is considered a "timely manner" as prescribed in 41 U.S.C. 405(b).
11. Information. Questions or inquiries about the procurement aspects of this Policy Letter should be directed to Cyndi Vallina, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone (202) 395-3501. For information about safe alternatives and other technical requirements contact Mr. Peter Voigt, Stratospheric Protection Division, EPA, 6202J, 401 M Street, SW, Washington, DC 20460, telephone (202) 233-9185.

Allan V. Burman
Administrator

TO: Earth Day Team:
Cottingham
Connolly
Chupka
Blank
Shafer
McElwee

FROM: Zoi

SUBJECT: Schedule for President's Earth Day Address

As we discussed, everyone should have for me by COB, Wednesday, April 7th a one-pager(s) on what the President will be announcing in your designated subject area(s) (see attached outline). Please confer with the right people at the agencies as needed -- we will get much more support for the whole Earth Day package if the agencies are involved from the beginning. I suggest the following format for the one-pagers:

HEADLINE:

3-4 SENTENCE SUPPORTING INFO: (the who, what, where, when, why of each item -- that is, what he is likely to say to elaborate on his headline)

LEAD AGENCY:

WHITE HOUSE CONTACT (with phone number):

AGENCY CONTACT(S) (with phone numbers):

BACKGROUND INFORMATION: (can be a paragraph or two)

In addition to the one-pager, please prepare and/or attach supporting materials (e.g. the draft executive order, the official forest principles, etc.).

We will discuss these initiatives and distribute the associated materials **as a package** to the Cabinet Secretaries' Chiefs of Staff on THURSDAY, APRIL 8TH AT 4:00 PM for their overnight review. Please mark your calendars to attend that meeting.

=====

EXAMPLE:

=====

HEADLINE: President signs executive order to help reduce the federal deficit by buying energy-efficient computers.

3-4 SENTENCE SUPPORTING INFO: President Clinton committed the federal government to purchasing (the who, what, where, when, why of each item -- that is, what he is likely to say to elaborate on his headline)

LEAD AGENCY:

WHITE HOUSE CONTACT (with phone number):

AGENCY CONTACT(S) (with phone numbers):

BACKGROUND INFORMATION: (can be a paragraph or two)

Jack Quinn - Executive Order

- Allowed to get free

MEMORANDUM
OF CALL

Previous editions usable

TO:

Ram

☐ YOU WERE CALLED BY—

☐ YOU WERE VISITED BY

Chuck Clark

OF (Organization)

+ 6805

☐ PLEASE PHONE ▶

☐ FTS

☐ AUTOVON

OMB

☐ WILL CALL AGAIN

☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL

☐ WISHES AN APPOINTMENT

MESSAGE

*Deputy
Policy Att*

RECEIVED BY

PK

DATE

TIME

63-110 NSN 7540-00-634-4018
☆ U.S.G.P.O. 1991 281-781/40011

STANDARD FORM 63 (Rev. 8-81)
Prescribed by GSA
FPMR (41 CFR) 101-11.6

THE WHITE HOUSE
WASHINGTON

ask Peter Voigt EPA
233-9185

Status of EPA
phase out plan

by 1995 should be
none produced

should have come out
April 1 to be
implemented October 1993
will basically give them
1 year to implement in
agencies

ask

how can this office
help?

OMB letter re: Procurement
Policy?

Executive Order?

* signed by Administrator
should be out next week
most Chuck 395 6805

**PHOTOCOPY
PRESERVATION**

Initially toyed w/ Exec Order
letter deals directly
w/ procurement

DRAFT DRAFT DRAFT

THE WHITE HOUSE

Office of the Press Secretary

Executive Order No.

PROCUREMENT REQUIREMENTS AND POLICIES
FOR FEDERAL AGENCIES

OZONE-DEPLETING SUBSTANCES

WHEREAS, this Administration recognizes the essential function of the stratospheric ozone layer in shielding the earth from dangerous ultraviolet radiation, and is cognizant of the recent increase in the depletion of the ozone layer; and

WHEREAS, the production and consumption of substances that cause the depletion of stratospheric ozone is being rapidly phased out on a world-wide basis with the support and encouragement of the United States; and

WHEREAS, the Federal Government, as one of the principal users of these substances, is able through affirmative procurement practices to significantly reduce the use of these substances and to provide leadership in their phaseout;

NOW, THEREFORE, I, ~~W. J. Clinton~~ ^{W. J. Clinton}, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Clean Air Act as amended in 1990, Public Law 101-549, hereby order as follows:

PART 1 - PREAMBLE

Sec. 101. The purpose of this Executive order is to:

(a) require that Federal Agencies conform their procurement regulations and practices to the policies and requirements of Title VI of the Clean Air Act Amendments, which deals with Stratospheric Ozone Protection;

(b) mandate that Federal agencies maximize the use of safe alternatives to ozone-depleting substances;

(c) require that Federal agencies evaluate the present and

WHEREAS the Montreal Protocol on Substances that deplete the ozone layer which the U.S. is a signatory calls for a phaseout of these substances by the year 1995;

WHEREAS, the use of alternative substances and new technologies to replace these ozone depleting substances can positively contribute to the economic well-being of the world and on the market by U.S. manufacturers of innovative alternatives

future uses of ozone-depleting substances, including making assessments of existing and future needs of such materials and their use of and plans for recycling;

(d) require that Federal agencies modify their procurement practices and implement programs to modify specifications and contracts which require the use of ozone-depleting substances; and

(e) establish Federal Government leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

*to use of
non-ozone
depleting
substances
for non-essential
uses.*

PART 2 - DEFINITIONS

Sec. 201. "Federal Agency" means any executive department, military department, or independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, any wholly-owned Government corporation, the United States Postal Service and Postal Rate Commission, and all parts of, and establishments within the legislative and judicial branches of the United States.

Sec. 202. "Procurement" and "acquisition" are used interchangeably to refer to the processes through which Federal agencies purchase products.

Sec. 203. "Procurement regulations, policies and procedures" means the complete acquisition process, including the generation of product descriptions by individuals responsible for determining which substances must be acquired by the agency to meet its mission.

Sec. 204. "Ozone-depleting substances" means the substances controlled internationally under the Montreal Protocol and nationally under Title VI of the Clean Air Amendments. This includes both Class I and Class II substances as follows:

(a) "Class I substance" means any substance designated as Class I in the Federal Register notice of July 30, 1992 (57 FR 33753), including chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by EPA at a later date; and

(b) "Class II substance" means any substance designated as Class II in the Federal Register notice of July 30, 1992 (57 FR 33753), including hydrochlorofluorocarbons and any other substance so designated by EPA at a later date.

Sec. 205. "Recycling" is used to encompass recovery and reclamation, as well as the re-use of controlled substances.

PART 3 - FEDERAL PROCUREMENT REGULATIONS, POLICIES AND PROCEDURES

Prior to the guidelines established under section Title VI of the CAA and issued in concurrence with this ex. order.

Sec. 301. POLICY. It is the Policy of the Federal government that Executive agencies minimize the use of materials and substances that contribute to the depletion of stratospheric ozone and give preference to the use of alternative chemicals, products and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere. In implementing this policy, *prior to but* consistent with the phaseout schedules promulgated by EPA under section 604 of the Clean Air Act, agencies shall:

- in anticipation of both the phaseout schedule promulgated by EPA to be completed by end of 1990 and the interim deadlines defined under the Montreal Protocol.*
- (a) minimize to the extent possible the procurement of products containing or manufactured with Class I or Class II substances;
 - (b) amend previously-awarded contracts to be consistent with the phaseout schedules for Class I and Class II substances;
 - (c) implement policies and practices which recognize the increasingly limited availability of Class I or Class II substances. Such practices shall include, but are not limited to:

As production levels mandated capped by the M.P. schedule until final phaseout in 95.

- (1) reducing emissions and recycling ozone-depleting substances, as required by sections 608 and 609 of Title VI of the Clean Air Act Amendments;

- (2) ceasing the purchase of nonessential products as required in section 610 of Title VI of the Clean Air Act Amendments; and

- (3) requiring that any acquired products containing or manufactured with Class I or Class II substances be labeled in accordance with section 611 of the Clean Air Act Amendments.

Sec. 302. RESPONSIBILITIES. Not later than six months after the effective date of this Executive Order, each Federal Agency shall have in place practices which to the extent practicable minimize the use of Class I and Class II substances. Such practices shall include but not be limited to:

- (a) altering existing equipment and/or procedures to make use of safe alternatives;

- (b) specifying the use of safe alternatives and of goods and services, where available, which do not require the use of Class I substances in new procurement and which limit the use of Class II substances consistent with section 612 of the Act;

- (c) amending existing contracts to require the use of safe alternatives.

Sec. 303. REPORTING REQUIREMENTS. Not later than 6 months after the effective date of this Executive Order, each Federal Agency shall report to the Office of Management and Budget, and submit information regarding the implementation of the policies prescribed in this Order. The report shall include a certification by each Agency that its regulations and procurement practices have been amended to comply with the policies prescribed in this Order.

Sec. 304. EXCEPTIONS. Exceptions to complying with the provisions of Title VI of the Clean Air Act Amendments may be made in accordance with section 604 of this Act, and with the provisions of the Montreal Protocol. Section 604 establishes procedures for requesting exceptions for essential uses such as medical devices, aviation safety, etc.

this executive order and the same as each exception to

Sec. 305. EFFECTIVE DATE. This Executive Order is effective 30 days after the date of issuance. While full implementation of this Order must await needed change in the FAR, it is expected that Agencies will take all appropriate actions in the interim to implement those aspects of the Order that are not dependent upon regulatory change.

spell out

Sec. 306. FEDERAL ACQUISITION REGULATORY COUNCILS. Pursuant to section 6(a) of the OFPP Act, as amended, 41 U.S.C. 405(a), the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council shall ensure that the policies established herein are incorporated in the FAR within 180 days from the date this Order is promulgated.

Sec. 307. INFORMATION. Questions or inquiries about the policy aspects of this Order shall be directed to ----- . For information regarding the requirements of Title VI of the Clean Air Act Amendments and other technical information and requirements contact Peter Voigt, Stratospheric Protection Division, EPA, 6205 J, 401 M Street, S.W., Washington, D.C. 20460, telephone (202) 233-9185.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

October 31, 1991

Executive Order No. 12780

FEDERAL AGENCY RECYCLING
AND
THE COUNCIL ON FEDERAL RECYCLING AND PROCUREMENT POLICY

WHEREAS, this Administration is determined to secure for future generations of Americans their rightful share of our Nation's natural resources, as well as a clean and healthful environment in which to enjoy them; and

WHEREAS, two goals of this Administration's environmental policy, cost-effective pollution prevention and the conservation of natural resources, can be significantly advanced by reducing waste and recycling the resources used by this generation of Americans; and

WHEREAS, the Federal Government, as one of the Nation's largest generators of solid waste, is able through cost-effective waste reduction and recycling resources to conserve local government disposal capacity; and

WHEREAS, the Federal Government, as the Nation's largest single consumer, is able through affirmative procurement practices to encourage the development of economically efficient markets for products manufactured with recycled materials;

NOW, THEREFORE, I, GEORGE BUSH, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Solid Waste Disposal Act, Public Law 89-272, 79 Stat. 997, as amended by the Resource Conservation and Recovery Act ("RCRA"), Public Law 94-580, 90 Stat. 2795 (1976), hereby order as follows:

PART 2 - DEFINITIONS

For purposes of this order:

Sec. 201. "Federal agency" means any department, agency, or other instrumentality of the executive branch.

Sec. 202. "Procurement" and "acquisition" are used interchangeably to refer to the processes through which Federal agencies purchase products.

Sec. 203. "Recovered materials" is used as defined in sections 1004 (19) and 6002 (h) of the Resource Conservation and Recovery Act (42 U.S.C. 6903 (19) and 6962 (h), as amended.

Sec. 204. "Recycling" means the diversion of materials from the solid waste stream and the beneficial use of such materials. Recycling is further defined as the result of a series of activities by which materials that would become or otherwise remain waste, are diverted from the solid waste stream by collection, separation and processing and are used as raw materials in the manufacture of goods sold or distributed in commerce or the reuse of such materials as substitutes for goods made of virgin materials.

Sec. 205. "Waste reduction" means any change in a process, operation, or activity that results in the economically efficient reduction in waste material per unit of production without reducing the value output of the process, operation, or activity, taking into account the health and environmental consequences of such change.

PART 3 - SOLID WASTE RECYCLING PROGRAMS

Sec. 301. Recycling Programs. Each Federal agency that has not already done so shall initiate a program to promote cost-effective waste reduction and recycling of reusable materials in all of its operations and facilities. These programs shall foster (a) practices that reduce waste generation, and (b) the recycling of recyclable materials such as paper, plastic, metals, glass, used oil, lead acid batteries, and tires and the composting of organic materials such as yard waste. The recycling programs implemented pursuant to this

PART 6 - RECYCLING COORDINATORS AND THE COUNCIL ON FEDERAL RECYCLING AND PROCUREMENT POLICY

Sec. 601. Federal Recycling Coordinator. Within 90 days after the effective date of this order, the Administrator of the Environmental Protection Agency shall designate a senior official of that Agency to serve as the Federal Recycling Coordinator. The Federal Recycling Coordinator shall review and report annually to OMB, at the time of agency budget submissions, the actions taken by the agencies to comply with the requirements of this order.

Sec 602. Designation of Recycling Coordinators. Within 90 days after the effective date of this order, the head of each Federal agency shall designate an agency employee to serve as Agency Recycling Coordinator. The Agency Recycling Coordinator shall be responsible for:

(a) coordinating the development of an effective agency waste reduction and recycling program that complies with the comprehensive implementation plan developed by the Council on Federal Recycling and Procurement Policy;

(b) coordinating agency action to develop benefits, costs, and savings data measuring the effectiveness of the agency program; and

(c) coordinating the development of agency reports required by this Executive order and providing copies of such reports to the Environmental Protection Agency.

Sec. 603. The Council on Federal Recycling and Procurement Policy. (a) A Council on Federal Recycling and Procurement Policy is hereby established. It shall comprise the Federal Recycling Coordinator, the Chairman of the Council on Environmental Quality, the Administrator of the Office of Federal Procurement Policy, and the Agency Recycling Coordinator and the Procurement Executive of each of the following agencies: the Environmental Protection Agency, the Department of Defense, the General Services Administration, the National Aeronautics and Space Administration, the Department of Energy, the Department of Commerce, and the Department of the Interior. The Federal

(7) review Federal agency compliance with section 103 of this order.

PART 7 - LIMITATION

Sec. 701. This order is intended only to improve the internal management of the executive branch and shall not be interpreted to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, or any other person.

Sec. 702. Section 502 and Part 6 of this order shall be effective for 5 years only, beginning on the effective date of this order.

Sec. 703. This order shall be effective immediately.

GEORGE BUSH

**THE WHITE HOUSE,
October 31, 1991.**

#

Retyped by Office of Federal Recycling Coordinator

DRAFT

April 7, 1993

Executive Order ---- of ---- ,1993

**Procurement Requirements and Policies for Federal Agencies
Ozone-Depleting Substances**

WHEREAS, the Administration recognized the essential function of the stratospheric ozone layer in shielding the earth from dangerous ultraviolet radiation, and is cognizant of the recent increase in the depletion of the ozone layer; and

WHEREAS, the production and consumption of substances that cause the depletion of stratospheric ozone is being rapidly phased out on a world-wide basis with the support and encouragement of the United States; and

WHEREAS, the Federal Government, as one of the principal users of these substances, is able through affirmative procurement practices to significantly reduce the use of these substances and to provide leadership in their phaseout;

NOW, THEREFORE, I, -----, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Clean Air Act as amended in 1990, Public Law 101-549, hereby order as follows:

PART 1 - PREAMBLE

Section 101. The purpose of this Executive order is to:

(a) Require that Federal Agencies conform their procurement regulations and practices to the policies and requirements of Title VI of the Clean Air Act Amendments, which deals with Stratospheric Ozone Protection.

(b) Mandate that Federal agencies maximize the use of safe alternatives to ozone-depleting substances.

(c) Require that Federal agencies evaluate the present and future uses of ozone-depleting substances, including making assessments of existing and future needs of such materials and their use of and plans for recycling.

(d) Require that Federal agencies modify their procurement practices and implement programs to modify specifications and contracts which require the use of ozone-depleting substances.

(e) Establish Federal Government leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

PART 2 - DEFINITIONS

For purposes of this order:

Sec. 201. "Federal Agency" means any executive department, military department, or independent establishment within the meaning of 5 U.S.C. § 101, 102, and 104(1), respectively, any wholly-owned Government corporation, the United States Postal Service and Postal rate Commission, and all parts of, and establishments within, the legislative and judicial branches of the United States.

Sec. 202. "Procurement" and "Acquisition" are used interchangeably to refer to the processes through which the Federal agencies purchase products.

Sec. 203 "Procurement Regulation, Policies and Procedures" means the complete acquisition process, including the generation of product descriptions by individuals responsible for determining which substances must be acquired by the agency to meet its mission.

Sec. 204. "Ozone-depleting substances" means the substances controlled internationally under the Montreal Protocol and nationally under Title VI of the Clean Air Act Amendments. This includes both class I and class II substances as follows:

"Class I substance" means any substance designated as Class I in the Federal Register notice of July 30, 1992 (57 FR 33753), including chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by EPA at a later date; and

"Class II substance" means any substance designated as Class II in the Federal Register notice of July 30, 1992 (57 FR 33753), including hydrochlorofluorocarbons and any other substance so designated by EPA at a later date.

Sec. 205. "Recycling" is used to encompass recovery and reclamation, as well as the re-use of controlled substances.

PART 3 - FEDERAL PROCUREMENT REGULATIONS, POLICIES AND PROCEDURES

Sec. 301. POLICY. It is the Policy of the Federal government that Executive agencies minimize the use of materials and substances that contribute to the depletion of stratospheric ozone and give preference to the use of alternative chemicals,

products and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere. In implementing this policy, consistent with the phaseout schedules promulgated by EPA under section 604 of the Clean Air Act, agencies shall:

- A. Minimize to the extent possible the procurement of products containing or manufactured with Class I or Class II substances;
- B. Amend previously-awarded contracts to be consistent with the phaseout schedules for Class I and Class II substances;
- C. Implement policies and practices which recognize the increasingly limited availability of Class I or Class II substances. Such practices shall include, but are not limited to:
 - 1. Reducing emissions and recycling ozone-depleting substances, as required by sections 608 and 609 of Title VI of the Clean Air Act Amendments;
 - 2. Ceasing the purchase of nonessential products as required in section 610 of Title VI of the Clean Air Act Amendments; and

3. Requiring that any acquired products containing or manufactured with Class I or Class II substances be labeled in accordance with section 611 of the Clean Air Act Amendments.

Sec. 302. RESPONSIBILITIES. Not later than six months after the effective date of this Executive Order, each Federal Agency shall have in place practices which to the extent practicable minimize the use of Class I or Class II substances. Such practices shall include but not be limited to:

- A. Altering existing equipment and/or procedures to make use of safe alternatives;
- B. Specifying the use of safe alternatives and of goods and services, where available, which do not require the use of Class I substances in new procurement and which limit the use of Class II substances consistent with section 612 of the Act;
- C. Amending existing contracts to require the use of safe alternatives.

Sec. 303. REPORTING REQUIREMENTS. Not later than 6 months after the effective date of this Executive Order, each Federal Agency shall report to the Office of Management and Budget, and submit information regarding the implementation of the policies

prescribed in this Order. The report shall include a certification by each Agency that its regulations and procurement practices have been amended to comply with the policies prescribed in this Order.

Sec. 304. EXCEPTIONS. Exceptions to complying with the provisions of Title VI of the Clean Air Act Amendments may be made in accordance with section 604 of this Act, and with the provisions of the Montreal Protocol. Section 604 establishes procedures for requesting exceptions for essential uses such as medical devices, aviation safety, etc.

Sec. 305. EFFECTIVE DATE. This Executive Order is effective 30 days after the date of issuance. While full implementation of this Order must await needed change in the FAR, it is expected that Agencies will take all appropriate actions in the interim to implement those aspects of the Order that are not dependent upon regulatory change.

Sec. 306. FEDERAL ACQUISITION REGULATORY COUNCILS. Pursuant to section 6(a) of the OFPP Act, as amended, 41 U.S.C. 405(a), the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council shall ensure that the policies established herein are incorporated in the FAR within 180 days from the date this Order is promulgated.

Sec. 307. INFORMATION. Questions or inquiries about the policy aspects of this Order shall be directed to ----- . For

information regarding the requirements of Title VI of the Clean Air Act Amendments and other technical information and requirements contact Peter Voigt, Stratospheric Protection Division, EPA, 6205 J, 401 M St. SW, Washington, DC 20460, telephone (202) 233-9185.

MEMORANDUM
OF CALL

Previous editions usable

TO:

Trey

☐

YOU WERE CALLED BY--

☐

YOU WERE VISITED BY--

Peter Vought EPA

OF (Organization)

233-9185

☐

PLEASE PHONE ►

☐

FTS

☐

AUTOVON

ret yr call

☐

WILL CALL AGAIN

☐

IS WAITING TO SEE YOU

☐

RETURNED YOUR CALL

☐

WISHES AN APPOINTMENT

MESSAGE

RECEIVED BY

DATE

TIME

63-110 . NSN 7540-00-634-4018
☆ U.S.G.P.O. 1991 281-781/40011

STANDARD FORM 63 (Rev. 8-81)
Prescribed by GSA
FPMR (41 CFR) 101-11.6

THE WHITE HOUSE
WASHINGTON

Differences in timing

NO Htr & NO Exec Order
EPA^{will} issue proposed regulation
public comment →
final regulations for Oct 93
giving this agencies
1 yr. to change the
procurement policies

w/ Htr

no difference

acquisition

rules amended

w/ Exec Order

Agencies working on specs

Key is accelerated phase-out proposal
will take place

@ end of except for exempted

Military already has
Authorization Bill on the
books to this extent.

6 mo. to allow
to change policies
& testing

**PHOTOCOPY
PRESERVATION**

THE WHITE HOUSE
WASHINGTON

Practical

phase out will happen no matter
what

— Exec order or Hx tells
agencies that this is coming
so people are ready for the
change
will not cost more

paints
comp. chips manufacturers
GSA - car refrigerants

Exec. Order

THE WHITE HOUSE
WASHINGTON

ask if ltr coming
from OMB —

how did everyone
sign off on it b/c
heard that there
was disagreement

Exec Order followed w/ substantive outreach

THE WHITE HOUSE
WASHINGTON

will be effective?
NOT VERY EFFECTIVE

Procurement people
dealt

Spec writers

? Policy ltr
benefit allows
agencies some
comments

EPA in proposed regulation
would cause agencies to

Change procurement policy

long drawn out process
published referred to ltr.
w/o signed going to
Federal Register

Policy ltr.

An executive order
would be more effective
in implementation

They plan on w/ Itr
doing outreach
program

**PHOTOCOPY
PRESERVATION**

MEMORANDUM
OF CALL

Previous editions usable

TO:

Katie

☐ YOU WERE CALLED BY-- ☒ YOU WERE VISITED BY--

Al Burman

OF (Organization)

Admin. Fed. Procurement

☐ PLEASE PHONE ☐ FTS ☐ AUTOVON

OMB

p 5802

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

Discuss recycling

? Others.

This is the omb guy who
has problems w/ the LFC policy
change.

RECEIVED BY

CM

DATE

3/11

TIME

4:55 PM

MEMORANDUM
OF CALL

Previous editions usable

TO:

Idm

☐

YOU WERE CALLED BY--

☐

YOU WERE VISITED BY--

OF (Organization)

☐

PLEASE PHONE ►

☐

FTS

☐

AUTOVON

☐

WILL CALL AGAIN

☐

IS WAITING TO SEE YOU

☐

RETURNED YOUR CALL

☐

WISHES AN APPOINTMENT

MESSAGE

Can Peter Wright, EPA

233-9185

re: procurement issue

RECEIVED BY

DATE

TIME

63-110 NSN 7540-00-634-4018

☆ U.S.G.P.O. 1992 312-070-40024

STANDARD FORM 63 (Rev. 8-81)
Prescribed by GSA
FPMR (41 CFR) 101-11.6

MEMORANDUM
OF CALL

Previous editions usable

TO:

KAT
☐ YOU WERE CALLED BY-- ☐ YOU WERE VISITED BY--

MARK Nelson
OF (Organization)

De Pont
☒ PLEASE PHONE ► ☐ FTS ☐ AUTOVON

202F-3661
☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT
MESSAGE

RECEIVED BY	DATE	TIME

63-110 NSN 7540-00-634-4018

☆ U.S.G.P.O. 1992 312-070-40024

STANDARD FORM 63 (Rev. 8-81)
Prescribed by GSA
FPMR (41 CFR) 101-11.6

Previous editions usable

☐ YOU WERE CALLED BY-- ☐ YOU WERE VISITED BY--

☐ PLEASE PHONE ☐ FTS ☐ AUTOVON

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU
☐ RETURNED YOUR CALL ☒ WISHES AN APPOINTMENT

MESSAGE

RECEIVED BY DATE TIME

10-22-3339

Mr. [unclear]
[unclear] [unclear]
[unclear] [unclear]

ADD [unclear] = [unclear]

[illegible]

KM

pls advise. How to
respona? Directive to
GSA? Chuck Fox is preparing
CPA rep on federal PDM procurement
now. Perhaps he can help?

MEMORANDUM
OF CALL

Previous editions usable

TO:

Pan

☐ YOU WERE CALLED BY--

☐ YOU WERE VISITED BY--

Sue Stendebach

OF (Organization)

EPA

☐ PLEASE PHONE ►

☐ FTS

☐ AUTOVON

233-9117

☐ WILL CALL AGAIN

☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL

☐ WISHES AN APPOINTMENT

MESSAGE

Re: Fed Procurement;
Chuck Fox

RECEIVED BY

AT

DATE

3/8

TIME

2:15

63-110 NSN 7540-00-634-4018

STANDARD FORM 63 (Rev. 8-81)

☆ U.S.G.P.O. 1992 312-070-40024

Prescribed by GSA
FPMR (41 CFR) 101-11.6

• Chuck Clark
Bill Kolman

395-6805

Office of Procure Pol

→ P.P. letter.

NASA Wind Tunnel - only one
at Langley - try use on
small amounts.

Cabin

0522
- 649

meals used

THE WHITE HOUSE
WASHINGTON

Sec 613 -

need to put together

conform to Title 6

Use safe alternatives

put together draft proposal.

OMB - Alan Berman - put together ex
order have happen sooner. Does
not negate ^{all} EPA resp.

1 yr soon: federal including military

DOD, GSA. No objection -

Policy letter. Final in Oct. 94

Prop. April 7.



Wilmington, Delaware 19898

Chairman of the Board

February 19, 1993

The Honorable Albert Gore, Jr.
The Vice President of the United States
Washington, D.C. 20501

Dear Mr. Vice President:

In our discussion the other day I mentioned that it appeared to people at Du Pont that portions of the Federal government may not be adequately prepared to move away from dependence on chlorofluorocarbons (CFCs). Under the Montreal Protocol, production for sale of CFCs in developed countries will cease no later than December 31, 1995. The EEC has already indicated that production for sale within the Community will cease no later than December 31, 1994. Du Pont's facility in Europe will follow the EEC timeline, and it is possible that Du Pont's remaining facilities in the United States could terminate production for sale earlier than year-end 1995.

Recently, the General Services Administration asked us to supply CFCs for needs which we believe are intended to meet government requirements beyond the year 2000. We are not at all comfortable that the government has adequate plans in place for CFC conversion or has committed the necessary funds for the retrofit of existing equipment that will be needed.

Our people at Du Pont have a great deal of experience in this area. We know how to develop plans for the retrofit of existing equipment and we have products available that can assist in some of this conversion. We would be happy to make our knowledge available to you or to anyone else in the government in order to assist with the transition.

I would like to meet with you directly to discuss this and several other aspects of the CFC issue.

Sincerely,

ES. Woolard, Jr.

ESW:pbk

TELEFAX

STRATOSPHERIC PROTECTION DIVISION Program Implementation Branch

*Office of Atmospheric Programs
Office of Air and Radiation*

Mailing Address:
U.S. EPA/OAR (6202J)
Stratospheric Protection Div.
401 M Street, SW
Washington, DC 20460

Street Address:
U.S. EPA/OAR (6202J)
Stratospheric Protection Div.
501 3rd Street, NW
Washington, DC 20001

Date: 3/8/93

To: Pam Elwee

From: Sue Stendebach

Telefax# (202) 233-9577

Phone# (202) 233-9200

Number of Pages Including Cover Sheets: 28

Remarks:



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

C. Clark

FEB 26 1993

MEMORANDUM FOR ALLAN V. BURMAN

FROM: JAMES B. MACRAE *JBM*

SUBJECT: Draft Office of Federal Procurement Policy (OFPP)
Policy Letter: "Prohibition on the Acquisition and
Use of Ozone Depleting Substances"

Thank you for the opportunity to review the draft OFPP policy letter titled "Prohibition on the Acquisition and Use of Ozone Depleting Substances." I understand that the purpose of this letter is to assist the Environmental Protection Agency (EPA) in meeting the statutory requirements of Section 613 of the Clean Air Act Amendments of 1990 (CAAA). Section 613 directs EPA, in consultation with other Federal agencies, to promulgate regulations requiring all Federal agencies to conform their procurement regulations with the specific requirements of Title VI of the CAAA, which covers Stratospheric Ozone Protection. I recommend against issuance of this OFPP policy letter at this time and suggest that EPA proceed with its own rulemaking. ✓

First, I am concerned that the OFPP policy letter does not incorporate a balancing of benefits and costs and so is inconsistent with the Title VI regulations promulgated to date. In interpreting the statutory requirements of Title VI, EPA has explicitly incorporated a balancing of the costs and benefits of regulatory actions. This balancing can be seen in EPA's interpretation of Title VI statutory directives to "maximize recycling," or "reduce the use and emissions of such substances to the lowest achievable level." EPA has stated that they do not believe these standards are:

"...solely technical in nature, but rather contemplates a role for economic factors in determining the lowest 'achievable' level of emissions and the maximum amount of recycling."¹

While the Section 613 statutory language on Federal procurement does not explicitly mention a balancing of regulatory costs and benefits, it is logical that such balancing be incorporated into the development of procurement policies as has been done with other related Title VI provisions. However, OFPP's policy letter

¹ Section 608 Notice of Proposed Rulemaking, 57 FR 58648, December 10, 1992.

does not include any such balancing of costs, stating, for example, in Section 5, "Policy", that:

"It is the policy of the Federal Government that Executive agencies **minimize the use** of materials and substances which contribute to the depletion of the stratospheric ozone and **give preference** to the use of alternative chemicals, products and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere." (Emphasis added)

Such broad statements of Federal Policy to "minimize" and "give preference" without consideration of economic factors conflict with the Title VI regulations that have been promulgated to date. I believe that these procurement regulations must be developed in full consideration of "economic factors," and that EPA is the agency with the technical expertise and experience to undertake this and insure consistency with other Title VI regulations.

Secondly, Section 613 places the lead responsibility for promulgating these regulations with EPA. The statute states that, "the Administrator, in consultation with the Administrator of the General Services Administration and the Secretary of Defense, shall promulgate regulations requiring each department, agency, and instrumentality of the United States to conform its procurement regulations" to the requirements of Title VI. This language clearly charges EPA as the lead agency in the development of these regulations. A draft policy letter in tandem with an EPA draft regulation might take the lead responsibility away from EPA and create confusion about ultimate responsibility for the regulation. Further, Section 613 appears to envision Federal agency revision of procurement policies only after promulgation of an EPA final rule.² For these reasons, I feel that EPA is both primarily responsible and best equipped to promulgate a procurement regulation that will satisfy the requirements of Section 613 and be consistent with the Title VI regulations promulgated to date.

We understand that EPA has had a draft proposed regulation prepared for several weeks already, but that they are not

² Section 613 directs EPA's Administrator to promulgate procurement regulations, "[n]ot later than 18 months after the enactment of the Clean Air Act Amendments of 1990", or by May 15, 1992. The statute goes on to set a subsequent deadline for Federal departments and agencies to conform, "[n]ot later than 30 months after the enactment" of the CAAA, i.e. 12 months after EPA's promulgation of a final regulation. The statute appears to intend that agency and department changes in procurement policies follow and be based upon the final EPA rule.

pursuing this approach in deference to OFPP action on the policy letter. Since EPA has entered into a settlement agreement with a plaintiff to propose a draft rule by March 1, 1993, further delay in this rulemaking will jeopardize development of a proposal in response to this agreement. In our view, EPA should proceed with an EPA regulation to implement Section 613, including submitting it to OMB for Executive Order 12291 review.

HANDLING

☐ Urgent!
(Hand-carry)☐ Expedite
(Time sensitive)☐ Regular Handling☐ Decision Memo☐ Information Memo

Control # _____

☒ CorrespondenceOutgoing to Ms. Martha Girard
Director, Office of the Federal Register

SPECIAL HANDLING INSTRUCTIONS

SHORT SUMMARY OF MATERIAL

Attached is a draft OFPP Policy Letter to be published in the Federal Register for public comment. The Policy Letter has been developed in cooperation with the Environmental Protection Agency (EPA) and will lead to the implementation of Section 613 of the Clean Air Act Amendments of 1990. The Clean Air Act Amendments require that Federal agencies minimize the acquisition and use of materials and substances which contribute to the depletion of stratospheric ozone. The Policy Letter requires that the Clean Air Act provisions be incorporated in the Federal Acquisition Regulation, and EPA plans to use the proposed Letter to respond to a "Consent Order." The Order requires EPA to publish procurement regulations pursuant to Section 613 by March 1, 1993. Accordingly, it is important that the Policy Letter be coordinated as expeditiously as possible to ensure publication before March 1, 1993.

Your concurrence is requested.

Attachment

	PREPARED BY	CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY
SURNAME AND DIVISION (Typed)	Clark OFPP	Baker/ Coleman OFPP	Wong/Fair- weather NR	MacRae OIRA	Burman OFPP	Damus GC	Foley DO
INITIALS AND DATE	PWC 2/3/93	WFC 2/4/ JLB 2/4	WFC 2/4 RML 2/4				

	Cleared By	CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY
SURNAME AND DIVISION (Typed)	Angell EAD	Arthur ADMIN					
INITIALS AND DATE							

OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF FEDERAL PROCUREMENT POLICY

(Issuance of Policy Letter 93-X)

Prohibition on Acquiring and Using Ozone Depleting Substance

AGENCY: Executive Office of the President, Office of Management and Budget, Office of Federal Procurement Policy (OFPP).

ACTION: Solicitation of public comments on a draft OFPP Policy Letter that would require Federal agencies to minimize the use of material and substances which contribute to the depletion of stratospheric ozone.

SUMMARY: The proposed Policy Letter is issued in cooperation with the Environmental Protection Agency (EPA) to assist EPA in its implementation of Section 613 of the Clean Air Act Amendments of 1990 (42 U.S.C. 76711). As proposed, the Policy Letter would require that the single Government-wide procurement regulation, the Federal Acquisition Regulation (FAR), be amended within 180 days to curtail the acquisition and use of Class I and Class II ozone depleting substances.

A Class I ozone depleting substance means any substance designated as Class I in the Federal Register notice of July 30, 1992 (57 FR 33753) including chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by EPA at a later date. A Class II substance means any substance designated as Class II in the Federal Register notice of July 30, 1992 (57 FR 33753) including hydrochlorofluorocarbons and any other substance so designated by EPA at a later date.

Concurrent with the issuance of this proposed Policy Letter, EPA is issuing a proposed rule pursuant to its authority under Section 613. EPA's proposed rule states that incorporation of the Policy Letter in the FAR would provide the Government-wide implementation required by Section 613 for agencies subject to the FAR.

COMMENT DATE: Comments on the proposed Policy Letter must be received on or before [30 days from date of publication]. Comments on EPA's proposed rule should be sent to EPA.

ADDRESS AND INFORMATION CONTACT: Comments should be sent to Charles W. Clark, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503. Questions may be addressed to Mr. Clark

on (202) 395-6805. Comments concerning whether the proposed Policy Letter would meet the requirements of Section 613 should be sent to EPA, in response to its proposed rule.

Allan V. Burman
Administrator

Date: _____



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

POLICY LETTER NO. 93-X

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Prohibition on the Acquisition and Use of Ozone
Depleting Substances

1. Purpose. This Policy Letter is issued in cooperation with the Environmental Protection Agency (EPA) to assist in implementing Section 613 of the Clean Air Act Amendments of 1990 (42 U.S.C. 76711). The Policy Letter requires that Executive agencies:
 - a. Conform their procurement regulations and practices to protect stratospheric ozone in accordance with the requirements of Title VI of the Clean Air Act Amendments;
 - b. Maximize the use of safe alternatives to ozone depleting substances;
 - c. Evaluate their present and future uses of ozone depleting substances, to include assessments of existing and future needs and the use of, and plans for, recycling such materials;
 - d. Modify their procurement practices and implement programs to amend specifications and contracts which require the use of ozone depleting substances, and
 - e. Develop exemplary practices minimizing the use of ozone depleting substances and disseminate information on their phase out.
2. Authority. This Policy Letter is issued pursuant to Section 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, 41 U.S.C. 405(a).
3. Definitions.
 - a. Executive Agency. Means an Executive department, and an independent establishment within the meaning of 5 U.S.C. 101, 102, 103(1) and 104(1), respectively.

b. Ozone Depleting Substances. Means the substances controlled internationally under the Montreal Protocol and nationally under Title VI of the Clean Air Act Amendments. This includes Class I and Class II substances as follows:

- Class I substance means any substance designated as Class I in the Federal Register notice of July 30, 1992 (57 FR 33753) including chloro-fluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by EPA at a later date; and
- Class II substance means any substance designated as Class II in the Federal Register notice of July 30, 1992 (57 FR 33753) including hydrochloro-fluorocarbons and any other substance so designated by EPA at a later date.

4. Background.

- a. Section 613 of the Clean Air Act Amendments requires the Administrator of EPA to promulgate regulations requiring each department, agency and instrumentality of the United States to conform its procurement regulations to the policies and requirements of Title VI of the Clean Air Act.
- b. Inasmuch as Government-wide procurement regulations are contained in the Federal Acquisition Regulation (FAR), amendment of the FAR is considered to be an effective manner for helping to implement Section 613. Section 6(a) of the OFPP Act authorizes the Administrator for Federal Procurement Policy to prescribe Government-wide procurement policies to be implemented in the FAR.
- c. While some Executive agencies such as the Department of Defense and the General Services Administration (GSA), have already made significant advances in phasing out their use of ozone depleting substances, the policies prescribed in Paragraph 5 below shall serve to guide the procurement decisions and programs of all Executive agencies pending the development and implementation of changes to the FAR.

5. Policy. It is the policy of the Federal Government that Executive agencies minimize the use of materials and substances which contribute to the depletion of stratospheric ozone and give preference to the use of alternative chemicals, products and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper

atmosphere. In implementing this policy agencies shall, consistent with the phaseout schedules promulgated by EPA under Section 604 of the Clean Air Act:

- a. Minimize to the extent possible, the procurement of products containing or manufactured with Class I or Class II substances;
 - b. Amend previously awarded contracts to delete to the extent possible, the use of any Class I or Class II substances;
 - c. Implement policies and practices which recognize the increasingly limited availability of Class I or Class II substances. Such practices shall include, but are not limited to:
 - Reducing emissions and to recycling ozone depleting substances, as required in Sections 608 and 609 of Title VI of the Clean Air Act Amendments;
 - Ceasing the purchase of nonessential products as required in Section 610 of Title VI of the Clean Air Act Amendments, and
 - Requiring that any acquired products containing Class I or Class II substances be labeled in accordance with Section 611 of the Clean Air Act Amendments.
6. Responsibilities. Not later than one year after the effective date of this policy, each Executive agency shall have in place practices which to the extent practicable minimize (consistent with the Clean Air Act phaseout schedules) the use of Class I or Class II substances as defined in Paragraph 3. Such practices should include but are not limited to:
- a. Altering existing equipment and/or procedures to make use of safe alternatives;
 - b. Specifying the use of safe alternatives and of goods and services, where available, which do not require the use of Class I or Class II substances in new procurements; and
 - c. Amending existing contracts to require the use of safe alternatives.

7. Reporting Requirements. Not later than 6 months after the effective date of this policy, each Executive agency shall report to OFPP and submit information regarding the implementation of the procurement policies prescribed in this Policy Letter. This report shall include a certification by each Executive agency that its regulations and practices have been amended to comply with the policies prescribed by this Policy Letter.
8. Exceptions. Exceptions to complying with the provisions of this Policy Letter may be made in accordance with Section 604 of the Clean Air Act Amendments, and with the provisions of the Montreal Protocol. Section 604 provides exceptions for essential uses of methyl chloroform and other specific substances for use in medical devices and aviation safety and for national security purposes.
9. Effective Date. This Policy Letter is effective 30 days after the date of issuance. While full implementation of these policies must await needed change to the FAR, it is expected that agencies will take all appropriate actions in the interim to implement those aspects of the policy that are not dependent upon regulatory change.
10. Federal Acquisition Regulatory Councils. Pursuant to Section 6(a) of the OFPP Act, as amended, 41 U.S.C. 405(a), the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council shall ensure that the policies established herein are incorporated in the FAR within 180 days from the date this Policy Letter is published in the Federal Register. The 180 day period is considered a "timely manner" as prescribed in 41 U.S.C. 405(b).
11. Information. Questions or inquiries about the procurement aspects of this Policy Letter should be directed to Cyndi Vallina, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone (202) 395-3501. For information about safe alternatives and other technical requirements contact Mr. Peter Voigt, Stratospheric Protection Division, EPA, 6202J, 401 M Street, SW, Washington, DC 20460, telephone (202) 233-9185.

Allan V. Burman
Administrator

**AMERICAN FOREST & PAPER ASSOCIATION
FOREST RESOURCES GROUP
FAX COVER SHEET**

To: Katie McInty
Fax Number: 450-2710

From: Jim Sweeney
Fax Number (202) 463-2708
Phone Number (202) 463-2707

Date: April 24, 93 Time: 3:30 pm

Number of pages (Including this cover sheet): 12

Comments: Due to there being no
answer as to whether
your office has received
our package via carrier,
we are sending this copy
via fax.

Thank you
GC
JS

Climatran Corporation

P.O. Box 3627
Englewood, CO 80155

Urgent

-----FAX MESSAGE-----

TO: **Katie McGinty/Ken Connelly**
Presiden't Office of Environmental Policy

FAX NO: **(202) 456-2710**

Date: **20 April 1993**

No. Pages **1**

FROM: **James F. Mattil**
Phone: **(303) 696-6466**
FAX No. **(303) 699-1538**

MESSAGE:

"UNHERALDED NEWS" is being sent to your office to inform you of the problems that face companies attempting to advance environmentally-safe products.

Over the next few days you will receive articles exposing bureaucratic bungling that blocks ozone-safe products and which beg the question is it bungling, or is it treason?

Your office is in a position to change this situation.

UNHERALDED NEWS

G.S.A. sidesteps Clean Air Act to outmanuever Ozone-man, Al Gore

WASHINGTON- For the third consecutive year since passage of the 1990 Clean Air Act, the General Services Administration has avoided compliance with the law requiring federal government to promote and maximize adoption of safe alternatives to Chloro-fluorocarbons, the chemicals used in air conditioners that destroy the Earth's Ozone Layer.

Despite pressure from at least one private firm that produces commercially available CFC-free, evaporative air conditioning (EAC) systems, GSA has secretly modified approved military specifications for transit buses to delete any reference to safe, evaporative air conditioning, allowing bus manufacturers to continue supplying buses that use CFC-12, the most damaging of all ozone destroyers.

According to informed sources, GSA staffers still take their marching orders from President Reagan, not Congress. Reagan's Executive "Federalism" Order is taken as gospel. "We let our suppliers dictate what we buy, regardless of what alternative products are available", says GSA fleet engineer Bryce Frye.

The Clean Air Act directs that all federal agencies, "maximize substitution of safe alternatives" and promote transition by the federal government to safe alternatives as expeditiously as possible". The Act also requires agencies to certify to the President that they are in compliance by May 15, 1993.

According to GSA's Frye, "We're not in a position to assist emerging technology". He also stated his belief that the Clean Air Act wasn't in effect until 1995.

GSA has apparently dodged the May 15th legal requirement requiring federal agencies to adopt safe CFC alternatives by moving up the closing date of its present procurements to April 13th, 1993, two months sooner than normal. And by allowing a two-year contract extension, GSA can defer compliance until 1995, according to Frye.

Government reports indicate that EAC equipped buses cut fuel consumption by 15-20% and have a life cycle cost half as expensive as those that use CFC systems. A surprisingly objective letter from DuPont Corporation, the major producer of

CFCs, states, "With the new Administration emphasizing government cost savings, the timing seems right to strongly consider EAC systems for government vehicles".

When asked about the potential fuel and cost saving benefits of EAC technology, Frye said, "that's not my concern."

In a letter to Colorado Senator, Hank Brown, GSA Commissioner Roger Daniero took exception to the Clean Air Act requirements stating that, "We do not feel it would be appropriate to use GSA requirements or funds to promote the product of a particular air conditioning system manufacturer." Advised that more than one firm produces EAC equipment, GSA had "no comment".

"Apparently, GSA suffers from Freon addiction and just can't break the habit..."

James Mattil, president of Climatron Corp., one of the firms that produces EAC equipment says, "Apparently, GSA suffers from Freon addiction and just can't break the habit, or maybe it's a golf addiction supported by suppliers that entertain them."

Over 400 city buses have already been equipped with CFC-free, EAC systems, yet GSA contends that the market has not adopted EAC technology. According to Mattil, "They just don't get it. They're the customer and they're supposed to tell suppliers what to supply, not vice versa. It's little wonder hammers cost \$800."

Vice President Al Gore, in his book *Earth in the Balance*, has suggested that government should lead the way in adopting new environmental products and has expressed serious concerns for ozone protection, leading George Bush to call him the "Ozone Man".

With EPA failing to implement even the non-discretionary requirements of the Clean Air Act's Ozone protection plan, it remains to be seen what action Clinton/Gore may take to reverse this curious state of affairs.