6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2013-0369; FRL-9943-91-OAR]

RIN 2060-AS44

Protection of Stratospheric Ozone: The 2016 Critical Use Exemption from the Phaseout of Methyl Bromide; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: The Environmental Protection Agency (EPA) published a final rule in the Federal Register of October 15, 2015, issuing critical use allowances for 2016 and making non-substantive corrections to the quarantine and preshipment recordkeeping and reporting requirements. This document restores provisions that were inadvertently removed by that final rule.

DATES: This rule is effective [**insert date of publication in the Federal Register**].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2013-0369. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution

Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Jeremy Arling, Stratospheric Protection Division, Office of Atmospheric Programs, Mail Code 6205T, 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460; telephone number (202) 343-9055; e-mail address arling.jeremy@epa.gov. You may also visit the methyl bromide section of the Ozone Depletion website of EPA's Stratospheric Protection Division at www.epa.gov/ozone/mbr for further information about the methyl bromide critical use exemption, other Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities and categories of entities potentially regulated by this action include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; and users of methyl bromide. This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, or organization could be regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

II. What Does This Correction Do?

In a final rule EPA published in the Federal Register of October 15, 2015, (80 FR 61985) EPA made two technical corrections to the quarantine and preshipment recordkeeping and reporting provisions in section 82.13(y) and (z). As discussed in that final rule, section 82.13(y) contained a reference to paragraph (aa) where it should reference paragraph (y). Similarly, section 82.13(z) contained a reference to paragraph (bb) where it should reference paragraph (z). That rule corrected the typographical error and was not intended to substantively change the recordkeeping and reporting requirements or the quarantine and preshipment exemption program. In making that edit, that rule inadvertently removed subparagraphs (y)(1)-(4) and (z)(1)-(2). This correction restores those subparagraphs under (y) and (z). The corrections will become effective immediately (without further rulemaking action) on [**insert date of publication in the Federal Register**].

III. Why Is This Correction Issued as a Final Rule?

Section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's action final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections and do not impose new requirements. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

This rule is subject to the rulemaking procedures in section 553 of the APA. Section 553(d) of the APA generally provides that rules may not take effect earlier than 30 days after they are published in the *Federal Register*. Section 553(d)(3) allows an agency, upon a finding of good cause, to make a rule effective less than 30 days after publication. The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Because today's changes restore pre-existing provisions that are already familiar to affected parties, we find good cause to make these technical corrections effective immediately.

IV. Statutory and Executive Order and Statutory Reviews

This final rule implements a technical correction to the Code of Federal Regulations, and it does not otherwise impose or amend any requirements.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0482. The application, recordkeeping, and reporting requirements have already been established under previous methyl bromide rulemakings.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the Agency has invoked the APA "good cause" exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This is a technical correction to restore text that was inadvertently removed from the Code of Federal Regulations. This rule does not impose any duties or responsibilities on state governments.

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

This action does not have tribal implications as specified in Executive Order 13175. This rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it affects the level of environmental protection equally for all affected populations. This is a technical correction to restore text that was inadvertently removed from the Code of Federal Regulations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States.

Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of [Insert date of publication in the Federal Register].

EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register.

List of Subjects in 40 CFR Part 82

Environmental protection, Chemicals, Exports, Imports, Ozone depletion.

Dated: March 10, 2014.

Janet McCabe,
Acting Administrator for the Office of Air and Radiation

For the reasons stated in the preamble, 40 CFR part 82 is amended as follows:

PART 82- PROTECTION OF STRATOSPHERIC OZONE

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

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

2. In § 82.13, revise paragraphs (y) and (z) to read as follows:

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

* * * * *

(y) Every distributor of methyl bromide (class I, Group VI controlled substances) who purchases or receives a quantity produced or imported solely for quarantine or preshipment applications under the exemptions in this subpart must comply with recordkeeping and reporting requirements specified in this paragraph (y).

(1) Every distributor of methyl bromide must certify to the producer or importer that quantities received that were produced or imported solely for quarantine and preshipment applications under the exemptions in this subpart will be used only for quarantine applications or preshipment applications in accordance with the definitions in this subpart.

(2) Every distributor of a quantity of methyl bromide that was produced or imported solely for quarantine or preshipment applications under the exemptions in this subpart must receive from an applicator a certification of the quantity of class I, Group VI controlled substances ordered, prior to delivery of the quantity, stating that the quantity will be used solely for quarantine or preshipment applications in accordance with definitions in this subpart.

(3) Every distributor of methyl bromide who receives a certification from an applicator that the quantity ordered and delivered will be used solely for quarantine and preshipment applications in accordance with definitions in this subpart must maintain the certifications as records for 3 years.

(4) Every distributor of methyl bromide who receives a certification from an applicator that the quantity ordered and delivered will be used solely for quarantine and preshipment applications in accordance with definitions in this subpart must report to the Administrator within 45 days after the end of each quarter, the total quantity delivered for which certifications were received that stated the class I, Group VI controlled substance would be used solely for quarantine and preshipment applications in accordance with definitions in this Subpart.

(z) Every applicator of class I, Group VI controlled substances who purchases or receives a quantity produced or imported solely for quarantine and preshipment applications under the exemptions in this subpart must comply with recordkeeping and reporting requirements specified in this paragraph (z).

(1) Recordkeeping—Applicators. Every applicator of class I, Group VI controlled substances produced or imported solely for quarantine and preshipment applications under the exemptions of this subpart must maintain, for every application, a document from the commodity owner, shipper or their agent requesting the use of class I, Group VI controlled substances citing the regulatory requirement that justifies its use in accordance with definitions in this subpart. These documents shall be retained for 3 years.

(2) Reporting—Applicators. Every applicator of class I, Group VI controlled substances who purchases or receives a quantity of class I, Group VI controlled substance that was

produced or imported solely for quarantine and preshipment applications under the exemptions in this subpart shall provide the distributor of the methyl bromide, prior to shipment of the class I, Group VI controlled substance, with a certification that the quantity of controlled substances will be used only for quarantine and preshipment applications as defined in this subpart.

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