

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



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EPA Issues Regulations for Substitutes to Ozone Depleting Substances under Clean Air Act Title VI

The United States Environmental Protection Agency (EPA) has recently finalized rulemakings that extend standards promulgated under Title VI of the Clean Air Act (CAA) to substitutes for ozone depleting substances (ODS). The use of such substitutes will now potentially trigger new compliance obligations for many industries.

A final rule published by EPA in November will subject certain substitute refrigerants to new requirements, such as leak rate thresholds, inspection, reporting and corrective action requirements associated with leaks, and sales restrictions of such substances. Under Section 608 of the CAA and 40 CFR 82, subpart F, EPA had previously imposed such requirements exclusively for substances listed as a class I or class II ODS under CAA Section 602. However, within this rulemaking, EPA interpreted its authority under CAA Section 608 to include regulation of many non-ODS, including hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs), based in part on its estimation of such substances' potential to contribute to global warming. Therefore, use of ODS substitute refrigerants that are not exempted from the "venting" prohibition in 40 CFR 82.154 may now trigger additional compliance requirements under Title VI of the CAA, even if such substances are not ODS.

EPA has also finalized a rule pending publication that further restricts the use of many ODS alternatives under its Significant New Alternatives Policy (SNAP) program. Under Section 612 of the CAA, EPA's latest SNAP rule will restrict the use of several HFCs, hydrofluoroolefins (HFOs), and other refrigerant types within many applications based upon their high global warming potential.

These recent rulemakings indicate that companies should not assume CAA Title VI-related regulations to be limited to ODSs. Rather, even the exclusive use of non-ODS substances may nonetheless incur additional compliance obligations under Title VI.

If you have questions related to these rulemakings or EPA's regulations pertaining to refrigerants, please contact Michael H. Winek at mwinek@babstcalland.com or (412) 394-6538, or Varun Shekhar at vshekhar@babstcalland.com or (412) 394-5679.