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Part II

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Allowance System for Controlling HCFC Production, Import and Export; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6929–9]

RIN 2060–AH67

Protection of Stratospheric Ozone: Allowance System for Controlling HCFC Production, Import and Export

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is seeking comment on a proposed allowance system to control the United States (U.S.) production and consumption of class II controlled substances, the hydrochlorofluorocarbons (HCFCs), in accordance with U.S. obligations under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol). Under the Protocol, the U.S. is obligated to limit HCFC consumption (defined by the Protocol and this document as production plus imports, minus exports) under a specific cap, which will be reduced in a step-wise fashion over time. The U.S. is also a signatory to amendments to freeze HCFC production on January 1, 2004. EPA published an Advance Notice of Proposed Rulemaking (ANPRM) on April 5, 1999, laying out a variety of options for developing an allowance system. Having fully considered comments on the ANPRM, EPA is today proposing an HCFC allowance system, similar in many respects to the class I allowance system in place before January 1, 1996. Instituting such a system for HCFCs would allow EPA to ensure that the U.S. maintains compliance with the Protocol caps, while providing certainty and predictability to allowance holders. In addition, the Clean Air Act (CAA) requires EPA to establish an allowance system for HCFCs.

A slightly different version of this document was signed on December 28, 2000, by then Administrator Carol Browner. It was sent forward to the **Federal Register** and made available on the EPA Web site. It was not published in the **Federal Register**, but rather was recalled to EPA for review by the incoming Administration. In the interim, EPA was alerted to some potential discrepancies in baseline allocations; this led to the discovery that the tracking databases manifested some correlation errors. EPA reviewed all paper records to determine accurate baseline numbers, and the corrected numbers are included in this document.

DATES: Comments on this proposed rule must be received on or before September 4, 2001, unless a public hearing is requested. Comments must then be received on or before 45 days following the public hearing. Any party requesting a public hearing must notify the Stratospheric Ozone Protection Hotline listed below by 5 p.m. Eastern Standard Time on July 30, 2001. Following the period for requesting a hearing, you may call the Stratospheric Ozone Protection Hotline to find out whether a hearing will be held, and if a hearing is held, the date and location it will take place.

ADDRESSES: Comments on this proposed rule should be submitted in duplicate to: The Air and Radiation Docket (6102), Air Docket No. A–98–33, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Protection Hotline at 1–800–269–1996.

Materials relevant to this rulemaking are contained in Docket No. A–98–33. The Docket is located in Room M–1500, First Floor, Waterside Mall at the address above. The materials may be inspected from 8 am until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Vera Au, EPA, Global Programs Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, (202) 564–2216 or the Stratospheric Protection Hotline at (800) 296–1996.

SUPPLEMENTARY INFORMATION:

Regulated Entities

The HCFC allowance allocation system would affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing.	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers.
Chlorofluorocarbon gas importers	.....	.....	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas importers	.....	.....	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters.
Urethane and Other Foam Product (Except Polystyrene) Manufacturing.	326150	3086	Insulation and cushioning, foam plastics (except polystyrene) manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine these proposed regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Abbreviations and Acronyms Used in This Document

Act—Clean Air Act
ANPRM—Advance Notice of Proposed Rulemaking
Article 2 countries—industrialized countries
Article 5 countries—developing countries
CAA—Clean Air Act
Cap—limitation in level of production or consumption
CFC—chlorofluorocarbon
CFR—Code of Federal Regulations
EPA—Environmental Protection Agency
FDA—Food and Drug Administration
HCFC—hydrochlorofluorocarbon
NASA—National Aeronautics and Space Administration
ODP—ozone depletion potential (CFR 40, Part 82)
ODS—ozone-depleting substance
Party—Signatory country to the *Montreal Protocol on Substances that Deplete the Ozone Layer*
Protocol—*Montreal Protocol on Substances that Deplete the Ozone Layer*
SBREFA—Small Business Regulatory Enforcement Fairness Act
SNAP—Significant New Alternatives Policy
UNEP—United Nations Environment Program

U.S.—United States

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I. Background

A. How Does the Montreal Protocol Phase Out HCFCs?

Signatory countries that are Parties to the international agreement called the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol) identified HCFCs as transitional substitutes for CFCs and other more destructive ODSs during their second meeting in London in 1990. At the Parties' fourth meeting in Copenhagen in 1992, a detailed phaseout schedule for HCFCs (listed in Annex C, Group I of the Protocol) was created. The Parties established a cap on the consumption of HCFCs for developed countries, or what the Protocol refers to as Article 2 countries, at the same meeting. Note that consumption is defined by the Protocol as production plus imports minus exports. The cap on HCFC consumption for Article 2 countries went into effect on January 1, 1996, and was derived from the formula of 3.1 percent (reduced to 2.8 percent at the seventh meeting of the Parties) of a Party's CFC consumption in 1989, plus the Party's consumption of HCFCs in 1989. This formula puts the current U.S. cap for HCFC consumption at 15,240 ODP-weighted metric tons. The Parties to the Protocol then created a schedule for the gradual reduction and eventual phaseout of the consumption of HCFCs by 2030. The Copenhagen Amendments to the Protocol call for a 35 percent reduction of the cap in 2004, followed by a 65 percent reduction in 2010, a 90 percent reduction in 2015, a 99.5 percent reduction in 2020, and a total phaseout in 2030. The U.S. must, at a minimum, comply with this phaseout schedule under the Protocol.

A freeze on HCFC production for Article 2 countries was agreed to at the eleventh Meeting of the Parties in 1999. This level of production is derived from the average of the Party's consumption cap (2.8 percent of a Party's CFC consumption in 1989, plus the Party's HCFC consumption in 1989) and the result of the same formula for production (2.8 percent of the Party's CFC production in 1989, plus the Party's HCFC production in 1989). The cap for the U.S. for the HCFC production freeze is 15,537 metric tons with each different HCFC chemical being weighted according to its ODP. The ODP of a chemical is determined according to its ability to destroy ozone molecules in the stratosphere. The higher the ODP, the more destructive the chemical is to stratospheric ozone.

EPA was petitioned by environmental organizations and industry groups in 1993 to phase out the most ozone-depleting HCFCs first (58 FR 65018, December 10, 1993; 58 FR 15014, March 18, 1993). Based on the available data at the time, EPA determined that the U.S. could meet, if not exceed, the required Protocol reductions by the specified dates through a chemical-by-chemical phaseout. Therefore, the U.S., as authorized under the CAA, implemented a phaseout schedule carried out on a chemical-by-chemical basis for HCFCs (58 FR 65018), which was intended to meet or exceed the Protocol reductions required. U.S. implementation of the HCFC phaseout is described below in section I.B of this document.

B. How Does Title VI of the CAA Amendments of 1990 Phase Out HCFCs?

Section 605(c) of the CAA Amendments of 1990 requires the Administrator to promulgate, by December 31, 1999, regulations phasing out the production, and restricting the use of, class II substances, in accordance with the schedule in that section and subject to any acceleration of the phaseout of production under section 606. Section 605(c) further states that the Administrator shall promulgate regulations to ensure that the consumption of class II substances is phased out and terminated in accordance with the same schedule. The original phaseout schedule established in the Act has since been accelerated as authorized under section 606 and is outlined below.

Section 605 of the Act established the original U.S. phaseout schedule for class II substances. Section 605(a) states that, ''Effective January 1, 2015, it shall be unlawful for any person to introduce into interstate commerce or use any class II substance unless such substance: (1) Has been used, recovered and recycled; (2) is used and entirely consumed (except for trace quantities) in the production of other chemicals; or (3) is used as a refrigerant in appliances manufactured prior to January 1, 2020.'' Section 605(b) states that, ''Effective

January 1, 2015, it shall be unlawful for any person to produce any class II substance in an annual quantity greater than the quantity of such substance produced by such person during the baseline year. Effective January 1, 2030, it shall be unlawful for any person to produce any class II substance.'' This phaseout schedule has since been accelerated under authority of Section 606.

Section 606(a) specifically requires the Administrator to promulgate regulations accelerating the phaseout of production and consumption of ozone-depleting substances, ''if (1) based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with a class I or class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment against such effects, (2) based on the availability of substitutes for listed substances, the Administrator determines that such 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.''

Thus, section 606(a)(3) requires EPA to accelerate the phaseout to conform to any acceleration under the Protocol. In addition, section 614(b) provides that in the case of a conflict between Title VI of the Act and the Protocol, the more stringent provision shall govern. Based on scientific evidence that losses of stratospheric ozone were occurring more rapidly than anticipated, the Parties accelerated the phaseout of class I substances and established the phaseout schedule for class II substances at the fourth Meeting of the Parties in Copenhagen in 1992.

Pursuant to authorities provided by Title VI, EPA amended its regulations on December 10, 1993 (58 FR 65018) to provide for these accelerations. Targeting the phaseout set by the Protocol, EPA chose to phase out production and consumption of HCFCs on a chemical-by-chemical basis, beginning with those with the highest ODP. EPA accelerated the phaseout of production and import of HCFC–22, HCFC–141b and HCFC–142b, the three HCFCs with the highest ODPs. Specifically, EPA's rule bans the production and import of HCFC–141b as of January 1, 2003. HCFC–141b has an ODP of 0.11. The production and import of HCFC–142b, with an ODP of 0.065, and HCFC–22, with an ODP of 0.055, are prohibited effective January 1, 2010, except for use in equipment manufactured prior to January 1, 2010. Beginning January 1, 2020, the production and import of HCFC–142b and HCFC–22 are banned. Production and import of the remaining HCFCs will be prohibited beginning January 1, 2015, except as a refrigerant in equipment manufactured before January 1, 2020. All HCFCs will be completely phased out by January 1, 2030. Because HCFC consumption did not approach the Protocol cap for the U.S. during mid-1990, EPA did not at that time establish an allocation system for class II substances, as it did for class I substances.

Section 605(d) of the Act speaks to exceptions to the original phaseout schedule for HCFCs. Beginning in 2030, EPA can authorize up to 10 percent of the baseline per year for production of class II substances for medical products considered essential by the U.S. FDA and for which no safe and effective alternative has been developed and approved. In addition, EPA can authorize use of these quantities beginning in 2015 as an exception to the use restrictions contained in 605(a). EPA can authorize this limited amount of production and use, to the extent consistent with the Protocol, if FDA, in consultation with EPA, determines that it is necessary. In addition, beginning in 2015, and continuing up until 2030, EPA may authorize production of up to 110 percent of the baseline per year solely for export to and use in developing countries, referred to as Article 5 countries in the Protocol. This production is intended to be solely for the purpose of satisfying basic domestic needs of the importing developing country. Between 2030 and 2040, no more than 15 percent of the baseline can be produced annually for export to Article 5 countries. Section 605(d) does not permit any production for export to and use in Article 5 countries after January 1, 2040.

Per section 602(b) of the Act, EPA published a list of class II substances in 40 CFR part 82, subpart A, appendix B. All HCFCs fall into one grouping under class II controlled substances, and, since publication of the initial list, no new class II substances have been added to the list.

Section 602(e) requires EPA to assign numerical values representing the ODP of all class II substances; Section 602(e) further states that, ''Where the ozone depletion potential of a substance is specified in the Montreal Protocol, the ozone depletion potential specified for that substance under this section shall be consistent with the Montreal Protocol.'' Appendix B to part 82, subpart A in the regulatory text of this document lists the ODPs for all class II substances as currently specified by the Protocol. Note that some of the ODPs listed under Appendix B to Part 82, Subpart A of this document vary slightly from those listed under the current Appendix B to 40 CFR part 82, subpart A, due to revisions of those ODPs under the Protocol since May 10, 1995. Today's document proposes to amend the list of ODPs currently presented in 40 CFR Part 82, by reflecting the current Protocol list. Unless there are future revisions of the ODPs for class II substances under the Protocol, entities involved in the HCFC market can expect to use the ODPs listed in appendix B to part 82 subpart A of this document for any ODP-weighted calculations that may be necessary as part of an HCFC allowance system.

Section 607(b) of the Act requires EPA to permit the transfer of any class I or class II allowances, within each group or class, on an ozone depletion potential (ODP)-weighted basis. In allowing transfers, under section 607(a) of the Act, EPA must ensure that ''the transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions.'' In other words, transfers cannot be made at a 1:1 ratio. Under the class I allowance system, EPA required an offset of one percent in any U.S. transfer to achieve the environmental benefit required by section 607. Those transfer requirements are set forth in 40 CFR part 82, subpart A, § 82.12 (60 FR 24970, May 10, 1995). Transfers of class II allowances between entities and inter-pollutant transfers on an ODP-weighted basis, along with an appropriate offset, are addressed under Section II.I.8 of today's document.

Section 616 of the Act states that the U.S. may transfer allowances to another Party, under certain conditions. Few countries currently have a system in place for allocating, trading and expending HCFC consumption allowances. As discussed in today's document, differences exist between the manners in which the Protocol and the U.S. have structured their respective HCFC phaseout systems. In addition, the Protocol language in paragraph 5 bis of Article 2 restricts the U.S. from trading away HCFC consumption to another Party because the U.S. per capita consumption of CFCs in 1989 was well above the per capita limit set by the Protocol for transferring HCFC consumption. A trading regime similar

to that implemented by EPA for transferring class I production allowances (40 CFR 82.9) (60 FR 24970, May 10, 1995), however, is possible, since the Parties established a cap on HCFC production for Article 2 countries during the eleventh meeting of the Parties in 1999. A proposed system for international trades of production allowances of class II substances is discussed in Section II.I.5 of this document.

Reporting requirements mandated in section 603 relative to HCFCs are currently in place in 40 CFR 82.13(n) and (o).

C. How Is Today's Document Arranged?

Because this proposed rulemaking follows an ANPRM on which we have received comments, we both respond to those comments and outline the provisions EPA is proposing today. The document is divided by issues. For each issue, we outline options presented in the ANPRM, discuss any relevant comments we received, then present and request comment on the related provision proposed by EPA. Next we propose several provisions that have arisen since the ANPRM was published and request comment on these provisions. Following these sections, we summarize the complete proposal. Proposed regulatory text follows this preamble.

It should be noted that the regulatory text of the class II allowance allocation system is found in the definitions of § 82.3, as well as the new sections being proposed today, §§ 82.15 through 82.24.

In this proposed rulemaking, the word ''you'' may be interpreted as ''producer'', ''importer'', or ''exporter'', depending on the situation under discussion.

II. Response to Comments on the April 5, 1999 ANPRM

Section 607 of the Act requires EPA to issue allowances for the production and consumption of class II substances. With this document, EPA is proposing an allowance system, similar in many respects to that of the class I system, with an allocation of baseline allowances, transfer capability, appropriate exemptions, and recordkeeping and reporting requirements. The proposed allowance system would ensure that U.S. consumption of class II substances does not exceed the consumption cap (currently at 15,240 ODP-weighted metric tons to be reduced over time) agreed to under the Protocol, and that U.S. production of class II substances does not exceed the production cap of 15,537 ODP-weighted metric tons agreed to at the eleventh Meeting of the Parties in 1999. It is important to remember when reading this proposal that consumption in the context of the Protocol, the CAA, and EPA regulations implementing Title VI of the CAA, does not mean use, but instead, represents a formula: *Production + Imports − Exports=Consumption.* When we speak of consumption allowances, then, we are referring to allowances for the calculated amount of production plus imports, minus exports.

For the class I substances, EPA considered many methods for achieving the required reductions that were agreed to under the Protocol (53 FR 30566, August 12, 1988). The approaches distinguished between economic incentives and engineering controls or bans. EPA concluded that the most economically efficient, market-based, and relatively simple to administer system for achieving the Protocol's required reductions for class I ODSs was a marketable allowance system. EPA established such a system for the class I ODSs, which proved highly successful. By January 1, 1996, the production and import of class I substances (other than methyl bromide, slated for phaseout in 2005) were completely phased out, except for narrow exemptions granted by the Parties to the Protocol. Anecdotal evidence from producers and importers indicated that the reduction steps and phaseout of class I ODSs through the allowance system was smooth and had minimal economic impact.

A. When Would the Allowance System Go Into Effect?

In the ANPRM, EPA considered an approach whereby an allowance system for class II substances would only become effective if a certain threshold (i.e., a certain percentage of the total U.S. cap set by the Protocol for class II substances) were reached or exceeded. However, the U.S. HCFC consumption in 1998 jumped to 92 percent. This percentage had been discussed in the ANPRM as a possible threshold that would allow for implementation of the allowance system. Because the average consumption was up to 95.5 percent of the cap by mid-1999, EPA believes we reached and could surpass that threshold unexpectedly. Therefore we are not proposing a threshold point.

Since publication of a final rule is expected during the last quarter of 2001, the requirements of the HCFC allowance system would likely take effect the quarter beginning January 1, 2002. EPA requests comment on any impact of allocating HCFC allowances for less than four quarters of 2002, if necessary, to ensure that EPA remains below the U.S. annual consumption cap. In this event, EPA would propose to allocate the remaining quarters of each entity's allowance allocation for 2002, unless that entity has exceeded past quarters of its allocation during 2002. In the case of an entity having exceeded the relevant quarter(s) of its allocation for 2002, the exceedance would be subtracted from the remaining quarters on a pro rata basis. EPA requests comment on this proposed HCFC allocation for the remaining quarters of 2002, if necessary. EPA also requests comment on the time needed to implement the new recordkeeping and reporting requirements, given their similarity to the class I recordkeeping and reporting.

B. What Types of Allowances Would Be Available?

Under the control system for class I substances, EPA created a unit of measure called an allowance. An allowance, for a class I substance, represented the marketable rights and privileges granted to a company to produce or import a specific quantity of that class I substance. Under the class I allowance program, there were two types of allowances: production allowances and consumption allowances. One allowance in the regulatory program for class I substances was equal to one kilogram of an ODS.

Under the class I phaseout regulations, a company was required to expend both production and consumption allowances to be able to produce. To be able to import a class I controlled substance, a company was required to expend consumption allowances (see 40 CFR 82.4). After proper documentation was presented to EPA reflecting an export of a class I controlled substance, consumption allowances were refunded or returned to the exporting company for future use (see 40 CFR 82.10).

In the ANPRM, EPA discussed two options: Allocating both production and consumption allowances, to be expended in the same manner as those in the class I system, as discussed above; and allocating only a consumption allowance, whereby one consumption allowance would be used to produce or to import one kilogram. One consumption allowance would be returned per kilogram exported.

Twelve commenters addressed this issue, with ten of the twelve favoring consumption allowances only. The proponents cited simplicity, and thus decreased regulatory burden. One commenter had no preference; however, the commenter stated that whichever type of allowance is used should be flexible enough to accommodate any

changes arising from ongoing international negotiations. Another commenter expressed a preference for production and consumption allowances, since this system worked well for class I substances; the commenter also felt that implementation of a proven and familiar system would promote simplification.

One commenter claimed that the use of two types of allowances could artificially alter the marketplace if capacity in the United States was underutilized but companies were not allowed to use other allowance holders' unused production rights for import of the class II substances domestically. This same commenter claimed that it would be equally a problem if import rights could not be used to obtain class II substances from a domestic supplier if the production capacity were available. EPA believes that the continued use of both allowances will not result in marketplace disruption. Under the class I system, companies that produced and imported were granted production and consumption allowances to continue producing and importing in response to market fluctuations; rather than disrupting the marketplace, the allowance system allowed market forces to prevail. EPA believes that import rights would not be necessary to obtain class II substances from a domestic supplier; a U.S. importer could purchase class II substances from any domestic supplier without using allowances. The Agency tried to assign baseline allowances as closely representative of each company's production and consumption as possible.

EPA considered the benefits of using one kind of allowance, the consumption allowance, and found that, on its face, such a system would be administratively easier. However, at the 1999 Beijing meeting of the Parties to the Protocol, the Parties agreed to a cap on production, in addition to the current cap on consumption of class II substances. This will require that EPA allocate both production and consumption allowances.

Additionally, because the majority of companies to whom allowances will be allocated in this action are familiar with expending, trading, reviewing, and reporting allowances according to the class I system, staying with the known and proven method is in many ways simpler for the companies. For example, reporting forms would not change significantly, negating the need to re-learn calculation and reporting of allowances.

For these reasons, EPA proposes to use both production and consumption allowances in its class II allocation system. EPA seeks comment on including both production and consumption allowances in a class II allowance allocation system. EPA also seeks input from commenters on the potential value of an allowance, taking into account the differing values of each HCFC and the proximity in time to that HCFC's phaseout.

C. What Would Be the Unit of Measure for Allowances?

In the class I allowance system, EPA assigned each allowance a value of one kilogram of a class I substance. To produce or import, allowances were expended by kilograms. Because ODSs have different potentials to cause ozone depletion, numbers are assigned to each chemical according to the ODP assigned by the Parties, calculated on the basis of CFC–11 having a potential of one (1.0). Since each chemical has its own ODP, any trades that took place between class I chemicals took into account the difference in ODPs, weighting the resulting allowances accordingly.

In the ANPRM, EPA discussed two options for the unit of measure to be used in allocating allowances and implementing the class II allowance system. One option is to retain the class I allocation and tracking on an absolute chemical-by-chemical basis, which relies on ODP-weighting for any inter-pollutant transfers that may occur. Expending, reporting and tracking of allowances would also be on a chemical-specific basis, with any trades between chemicals reflecting the differences in ODPs.

The second option for an allowance unit of measure discussed in the ANPRM was an ODP-weighted unit, tied to no specific chemical. To expend allowances, you would determine the chemical to be produced or imported, multiply it by its ODP and subtract the result from the total allowance units.

EPA received fourteen comments on the unit of measure to be used in allocating and tracking allowances. Ten of the commenters favored an ODP-weighted system, primarily due to the flexibility they believed it would allow. They argued that such a system would simplify transfers, respond to the needs of the marketplace without added burden, and provide for more trading. Three commenters stated their preference for an absolute chemical-by-chemical basis for allocation and transferring. One of those commenters believed that the class I system worked well on a chemical-by-chemical basis and that extending it to the class II system would likely succeed. One of the three commenters claimed that an entity should not be able to trade HCFC–141b for HCFC–22, because they serve two distinct and non-interchangeable markets. The same commenter stated that EPA could allow for revisions after the 2003 phaseout of HCFC–141b. Another of the three stated that both methods are flexible with no real difference, but expressed a preference for chemical-specific allocation. One commenter indicated no preference for either unit of measure but emphasized the importance of a flexible inter-company trading scheme.

One of the commenters who favored the ODP-weighted system elaborated that reporting would still need to happen on a chemical-by-chemical basis and that, should the 2003 phaseout of HCFC–141b result in a reduction greater than 35 percent, EPA should ensure that total allowances available in 2004 be at the 65 percent level.

After reviewing the comments and analyzing the potential outcomes in using each unit of measure for allowances, EPA is proposing to institute a chemical-by-chemical absolute kilogram system for allocating and transferring allowances. The baseline allocation for each company would be the total or a percentage of the number of kilograms of each chemical produced and consumed during the baseline year. To ensure compliance with the requirements of trading and to be able to report accurately to the Parties to the Protocol on production and importation of each of the class II substances, EPA would need allowance holder reports that included the kilograms of specific chemicals for which allowances are traded and expended. Tracking the associated chemicals, along with its associated ODP weighting, is imperative for reasons described below.

As noted in the Background section of today's document, the U.S. is slated to phase out HCFC–141b in 2003, HCFC–22 and HCFC–142b in 2010 (with some exceptions), and the remaining HCFCs in 2015 (with some exceptions). A complete phaseout is required in 2030. Because the U.S. is making reductions in class II substances by phasing out chemicals, EPA will need to have in its database the baseline allocation of kilograms of each of the chemicals as they are being phased out. On the first HCFC phaseout date of 2003, those companies that received baseline consumption allocations (or received a permanent baseline transfer) (see section II.I.7 of this document) of HCFC–141b would subtract that portion from their total consumption allocation. If permanent inter-pollutant trades had been made, an amount equal to the

ODP-weighted kilograms of baseline HCFC–141b allowances that had been received in the transfer would be deducted from the baseline allocation. Similarly, the person who transferred HCFC–141b permanent baseline allowances to someone else would no longer be responsible for deducting them from their allocation. That should have happened when the trade was made.

The same would occur in 2010 and 2015 for the relevant chemicals being phased out. Without chemicals associated with the various ODPs, EPA would be unable to enforce the regulation adequately. Furthermore, the U.S. would be unable to fulfill its obligation to report under the Protocol the volume of each chemical produced, imported and exported.

Under a chemical-by-chemical approach, allowances representing kilograms of the specific chemical expended would be the only information required, unless an inter-pollutant trade is made, as referenced above. The more rigorous reporting required under an ODP-weighted system would mean deciding which chemicals would be associated with which ODP units. This could both increase the regulatory and recordkeeping burden on companies and EPA and likely lead to inaccuracies. Blends could present further complication by requiring a calculation of the percentage of each HCFC in a substance (e.g., R–401A), that would need to be multiplied by its applicable ODP, then included in the total reported ODP and chemical produced or imported for a quarter. Reporting properly under the ODP-weighted system brings the reporter full-circle to a chemical-by-chemical analysis.

Proponents of an ODP-weighted system extol the ease of tracking and expending generic ODPs, as well as the advantages of avoiding an environmental offset for intra-company transfers, because an ODP-weighted system allows you to expend allowances for any chemical without actually trading internally. However, for the lesser ozone-depleting ODSs, such as HCFCs, EPA is proposing to impose an offset much lower than the one percent required in the class I system. (See discussion on proposed offset in section II.I.8 of today's action.) Therefore, the offset should not be a burden in transferring chemical-specific allowances.

Today's action thus proposes a chemical-by-chemical, absolute kilogram allocation system, whereby the amount of each HCFC produced and each HCFC consumed (production + imports − exports) would require the expending of one (1) allowance for one (1) kilogram of a specific substance. Inter-pollutant trades would involve calculating the ODP of each chemical and translating accordingly. EPA seeks comments on using an absolute chemical-by-chemical approach as presented above for implementing a class II allowance system, as well as on alternatives, including the ODP-weighting scheme described above.

D. How Would Allowances Be Distributed Each Year?

In the ANPRM, EPA discussed three methods for allocating allowances: a one-time allocation, a changing allocation on a periodic rolling basis, and a changing allocation on a year-by-year basis. The first method allocates baseline allowances on a one-time basis; these allowances continue until the time each associated chemical is phased out, unless adjustments are necessary to meet required Protocol reductions. Any distribution system must take into account: the approach of U.S. accelerated phaseouts for individual chemicals (e.g., those for HCFC–141b, HCFC–22 and HCFC–142b); the step-wise reduction of the consumption cap as mandated under the Protocol; and the new production cap agreed upon by the Protocol Parties. For example, in 2003, all production and consumption allowances associated with the HCFC–141b baseline allocation would be subtracted from holders' allowances. The same would happen as other chemicals are phased out in the specified years. At each phaseout, EPA must determine whether the aggregate chemical-specific phaseouts to that date are equal or greater than the reductions required by the Protocol in those years. If chemical-specific reductions are less than the Protocol requirement, EPA would then need to reduce the percentage of baselines to be allocated accordingly.

The one-time allocation of allowances was the method followed in the regulatory program for class I substances. For class I substances, a specified historical quantity of allowances was allocated to listed companies as a baseline in the **Federal Register**. Allocating allowances for the full time period until a phaseout date for a particular chemical provides certainty and stability for the market. Assuming the regulatory program includes smooth procedures for trading allowances, the full-term allocation of allowances establishes the basis for a ''marketable permit'' system.

The second option considered was a system for re-calculating and re-allocating allowances on a ''rolling basis.'' This would essentially move the baseline forward in time so that the baseline would presumably be the most accurate reflection of the current HCFC market. Under this option, EPA would review data on the production, import and export of HCFCs on some periodic basis, establish a new baseline for each entity, and re-allocate the allowances accordingly. A re-allocation of allowances could require an amendment to the original list in the regulation of entities with their respective baseline allowances. Alternatively, an administrative mechanism could be established to re-allocate allowances automatically at regular intervals.

A final option discussed would involve re-allocating allowances on a year-by-year basis. Under the year-by-year approach, actual recalculation of baselines and re-allocations based on past year activity would take place prior to January 1 of each control period.

EPA received fifteen comments on the method of allowance distribution. All of the commenters favored allocating one time, such that allocations are consistent from control period to control period (except for reductions associated with phaseouts). One commenter stated that anything other than the one-time allocation would result in market uncertainty and complicate production planning processes. Another stated a dislike for using a rolling basis, because it encourages speculation, whereas a one-time allocation for the class I system was perceived as fair and unchanging.

EPA agrees with commenters on the disadvantages of using a rolling average. EPA believes that any rolling average allocation system would create administrative complications for both EPA and the regulated community, as well as introduce uncertainty into the market between periods when the allocation would roll over, and thus, change. The ability of producers, importers and exporters to plan for the longer term would also be hampered, and markets could be disrupted. EPA believes that if the regulatory system includes smooth procedures for trading allowances, shifts in demand and changes in market share will be addressed by individual companies, thus avoiding a need to re-allocate allowances. EPA chose not to propose a rolling average allocation system for these reasons.

EPA believes that re-allocating allowances on a year-by-year basis would create administrative complications for EPA and for the regulated community, similar to the reasons cited above regarding the rolling

basis allocation system. Consequently, EPA also chose not to propose allocations on a year-by-year basis.

EPA is proposing a baseline on a one-time basis, whereby the allowance allocations would remain consistent (or be moved through permanent trades) from control period to control period (one calendar year to the next), until each chemical is phased out via subtraction of its commensurate allowances, or until the percentage of baseline allocated is changed to ensure compliance with the Protocol cap. As in the class I allocation system, a baseline is based on one year of a company's production and consumption (as discussed in section II.F below). At the beginning of each year, EPA would notify each allowance holder in writing of the number and type of allowances it had for that control period. If the allowance holder believed there was a discrepancy in the number of allowances it should have for that control period, EPA would work with that entity to resolve the discrepancy. As under the class I system, the allowances for any control period can only be used during that control period and cannot be carried over into the following calendar year.

Because of uncertainties associated with current projections of actual reductions that will be realized through the 2010 phaseout of HCFC–142b and HCFC–22, EPA will likely need to re-evaluate allowance allocations prior to 2010, to ensure that the U.S. can meet the 65 percent reduction of the consumption cap required by the Protocol beginning in 2010. The least certain factor is the demand for these two chemicals after 2010 to be used in equipment manufactured before 2010. Neither the core regulations nor the baseline year would likely change, but the amount of allocations themselves could be adjusted on a pro rata or some other basis to account for any shortfall in reduction that might become imminent. Consequently, throughout the rule, we refer to specific allocation provisions as in effect until 2010. If EPA determines that the U.S. will meet its 65 percent reduction obligation in 2010 with the current allocation, then there may be no reason to adjust the percentage of baseline to be allocated, until it is necessary to re-evaluate them for the 2015 phaseout.

EPA is seeking comment on its proposal to distribute HCFC allowances on a one-time basis, to be adjusted accordingly as individual chemicals are phased out.

E. What Percentage of the Cap and What Percentage of the Baseline Would Be Distributed?

1. Consumption Allowances

As discussed in section I.A of this document, the current U.S. cap for HCFC consumption is 15,240 ODP-weighted metric tons. In the ANPRM, EPA considered a number of options for the percentage of baseline allowances to be allocated under the U.S. HCFC consumption cap. These options included 100 percent allocation under the consumption cap, 100 percent allocation of the baseline production and import, or any percentage under 100 percent. In the latter option, the remaining percentage could be allocated pro rata to those with production or importation activity in the baseline year, allowed to lapse by EPA to ensure a cushion if violations threatened to push the U.S. over its cap, or be set aside for some special situation allocation.

Because the sum of the individual companies' consumption baseline activity could fall under the 15,240-metric-ton consumption cap, the issue arises as to whether and how to allocate any remaining class II consumption allowances falling between the U.S. consumption cap and the sum of baseline consumption allowances (discussed in section II.F of this document). For example, if the year 1996 were chosen as the baseline for consumption allowances, this allocation would represent about 82 percent of the U.S. consumption cap, thus leaving open the question of how to allocate the remaining 18 percent, and also whether the remaining 18 percent should be allocated in its entirety. This remaining percentage, or a lower percentage that would provide for a margin of error, could be auctioned. Alternatively, it could be added pro rata to the allocated baseline consumption allowances of those companies that participated in the HCFC market in the baseline year. It could alternatively be set aside to offset any potential overruns, or it could be used as a set-aside for a specific allocation purpose.

EPA received fifteen comments from producers, importers, and trade associations on how much of the cap should be allocated. Thirteen commenters supported a 100 percent allocation. They stated that the 100 percent allocation under the class I system was successful; therefore, we should anticipate the same allocation for a class II system being successful. Two commenters claimed that companies keep their own allowance buffers, so EPA did not also need to retain a buffer. One commenter believed that EPA's penalties are enough of an incentive to remain within one's allocation. Another commenter said that any amount less than 100 percent would create artificial shortages. One commenter believed no allowances should be held back for new entrants into the market, because there is no certainty these entities will emerge in the future.

EPA agrees with the commenters that a 100 percent allocation of baseline consumption is likely to maintain compliance with the cap. A 100 percent baseline allocation worked well for the class I allocation system, the penalties discouraged people from exceeding their individual allocations, and many allowance holders consciously maintained individual allowance buffers to ensure compliance.

The current aggregate of individual baseline consumption allowances anticipated to be allocated is below the cap of 15,240 ODP-weighted metric tons. EPA believes that it would be prudent to allow the remaining percentage below the cap to be set aside for allocations specifically for narrow situational exemptions from the baseline. As described in Section F below, EPA is proposing a narrow exception for certain new entrants into the HCFC imports market: those businesses newly importing after the end of 1997 and before April 5, 1999, when the publication of the ANPRM put all potential stakeholders on notice of this rulemaking. The necessary portions of the remaining percentage below the cap could be available for allocations to those new entrants according to historical data. See the detailed discussion of this proposed exemption and allocation in the section addressing baseline in Section F.

Given the good faith evidenced by compliance throughout the class I system, EPA believes that allocating the full amount of baseline allowances, as permitted under the Protocol HCFC cap for the U.S. is prudent and equitable to both the allowance holders and their customers. By this action, EPA is proposing to allocate 100 percent of the listed individual companies' consumption baselines under the class II cap established under the Protocol. In 2010, the date at which the Copenhagen Amendments to the Protocol call for a 65 percent reduction in HCFC consumption, as stated earlier in this proposal, it may be necessary to reduce each allowance holder's allocations accordingly, in order to maintain U.S. consumption of HCFCs within limits and avoid possible violation of the cap.

EPA is not proposing to allocate the difference between the Protocol

consumption cap and the aggregate of the baseline consumption allowances on a pro rata basis, for the following reasons. The remaining amount above the aggregate baseline and below the consumption cap is small, and EPA believes it can best be used to allocate allowances to companies described in section F as eligible late entrants, and possibly as credits for reductions of substitutes regulated under Title VI that are created as by-product(s) in the manufacture of an HCFC, as discussed in section IV.E. Because EPA is proposing to individually assign a baseline to each company based on its highest ODP-weighted consumption year among 1989, 1994, 1995, 1996, and 1997 (see section II.F), EPA emphasizes that companies should receive their highest recorded consumption from among those years.

EPA is seeking comments on its proposal to allocate 100 percent of baseline consumption activity. EPA also seeks comment on its proposal to allocate portions of the remaining amount above the aggregate baseline and below the consumption cap to companies described in section F as eligible recent entrants.

2. Production Allowances

The Parties to the Protocol at the recent meeting in late 1999 in Beijing adopted a production cap, in addition to the existing consumption cap. Using the formula agreed to by the Parties for calculating the cap, the U.S. production is frozen at 15,537 metric tons beginning January 1, 2004.

The recent Protocol amendment maintains the production cap at this level through the various phaseout years. Some anticipate that the Parties may make changes in future meetings, which would likely reduce production in a step-wise fashion. If such a change occurs, EPA will amend its regulation to reflect the Protocol requirements.

In the case of production allowances, 100 percent of production activity in the aggregate of all baseline consumption years, as discussed in section II.F. below, is below the production cap allowed by the Protocol. EPA can allocate 100 percent of the production in the baseline year and remain in compliance with the Protocol. The aggregate allocation will equal less than 100 percent of the production cap allowed by the Protocol.

Because production is currently frozen at a constant level that will continue over time, EPA is proposing that entities with baseline production allowances could produce the phased-out HCFC following the respective phaseouts, using export production allowances, for export only to Parties listed in Appendix C as having ratified the Copenhagen Amendments. These entities would be allocated their full production baseline for that chemical in export production allowances, for export only. Following individual HCFC phaseouts, 15 percent of production baseline for that chemical is reserved for export to Article 5 countries to be used for their domestic needs. The manner in which these post-phaseout production allowances for export would be allocated and expended is discussed below in Section II.G.

EPA did not discuss a detailed process for allocating production allowances in the April 1999 ANPRM, because the production freeze had not yet been adopted by the Parties. Therefore, there are no comments in response to the ANPRM on this issue.

F. How Would EPA Establish an Equitable Baseline?

In developing the regulatory program for class I controlled substances, EPA collected information on the amounts of each class I substance produced, imported, and exported during a given calendar year that was established as a baseline in accordance with the CAA. EPA collected the data by publishing two notices in the **Federal Register** under authority of section 114 of the Act (52 FR 47489 (December 14, 1987) and 55 FR 49116 (November 26, 1990)). The data requested from U.S. companies included reports on production runs, quantities of feedstock chemicals used in production, bills of lading, invoices, and other documents for a specific calendar year. The data submitted to EPA was used to assign company-specific class I production and consumption rights (allowances) to companies.

The CAA does not prescribe one specific year to serve as the baseline for allowance allocations for class II substances. For class II substances, the definition of ''baseline year'' in the CAA is ''* * * a representative calendar year selected by the Administrator.'' EPA explored a variety of options for establishing a baseline for HCFC allowances, analyzing available historical data for each company's production and consumption activities (reported to EPA) to identify a representative proposed class II baseline. EPA has been collecting quarterly reports on all HCFCs produced, imported and exported from 1994 on. Reliable data is thus available for years between 1994 and the present. Accurate data also exists for 1989 due to information gathering EPA conducted for class I baseline determinations, as discussed above.

In the ANPRM, EPA discussed some of the multiple options for establishing baseline allowances for class II controlled substances. The familiar use of historical information from one year, using an average of multiple years, or using some type of formula for combining multiple years were all covered in the ANPRM. EPA stated its belief that the process of establishing the baseline should take into account, inter alia, the agreements by the Parties to the Protocol to control and phase out class II substances, the 1990 CAA Amendments, the regulations under Title VI of the Act governing the phaseout of class II substances, and the development of the current HCFC market in the U.S. In arriving at the proposed baseline years for HCFC allowances, we believe we have taken into account each of the legal and policy guides considered above.

It is important to review the recent history of public notification and participation related to development of a class II allowance allocation rule. During the two stakeholder meetings in January and February, 1998, EPA stated that it would not consider the year 1998 or later years in baseline calculations and allocations. A primary reason was that once public discussion on a potential allowance system began, companies had much to gain by significantly increasing 1998 and 1999 activity—or entering the HCFC import market during those years to have activity on record—and subsequently advocating the use of those years as baseline years. EPA's opening the process to the public should not give unfair advantage to some and allow artificial market changes and baseline increases based on anticipated profit potentials. Consequently, EPA announced its intention not to include 1998 or later years in baseline calculations at both stakeholder meetings, in its subsequent ANPRM publication of April 1999, and in individual discussions with stakeholders.

All seventeen commenters stated their preferences for establishing a baseline. One company preferred 1989 as the baseline year. Five commenters believe that 1998 is most representative of the HCFC market. Two companies stated that 1997 reflects the current situation. Two commenters preferred 1996, one of them leaving open the option of 1996 or 1997 or an average of both. The second of the two commenters preferred 1996, because they stated that 1997, 1998, and 1999 include uncharacteristically high production and import for many

companies. Another commenter cited the growing HCFC market as we transition away from CFCs, and claimed that using an earlier year than 1998, which was a year of particularly high consumption, would not accurately reflect the continuing transition away from CFCs.

One commenter suggested recent years on a weighted basis, giving as an example, 100 percent of 1997 consumption plus 50 percent of 1996 consumption. This commenter also suggested that in 1998, industry may have artificially increased consumption in response to early EPA stakeholder meetings exploring the possibility of an ANPRM on this topic. Therefore, this commenter believed only 50 percent of 1998 numbers should be used. Two commenters believed that a single year baseline is necessary, one to avoid excessive record compilation and processing and the other because an averaged allocation would not adequately reflect the continuing transition away from CFCs. Four commenters preferred the average of 1996–1998 if the averaging option were selected; one commenter selected an even weighting of the years 1989, 1992, and 1995.

EPA did receive one general comment on allocations, however. Three commenters believed that producers exiting the HCFC market early should be required to return the unused allowances to EPA for distribution among the remaining allowance-holders on a pro rata basis. EPA believes otherwise. Under today's proposal, the allowances granted to the various companies would be the companies' to do with what they will.

If a company decides to decrease production, or importation, from its baseline, EPA believes the market should drive the outcome, in that the company can choose to transfer its excess allowances for the year or let those allowances lapse, and thereby benefit the environment. One advantage of the one-time allocation favored by commenters is that it provides certainty to all the players. Having EPA taking allowances from those who decrease production or import from their baseline and re-distributing allowances to other allowance holders would disrupt the market forces. It would also defeat the environmental purpose of encouraging companies to move toward substitutes. Consequently, EPA is proposing not to re-distribute unexpended allowances resulting from a company's decision to decrease or stop its production or importation of HCFCs.

EPA believes that because it is allocating to entities who have had very different production and import histories, there is no one year that is representative for all companies. Picking only one year, regardless of the year, could disadvantage many. EPA's intent is to find the most representative baseline possible within the constraints of the consumption cap and production freeze. EPA disagrees with the comments opposing an averaging or formula of multiple years. Once a multi-year allocation is made, using a one-time, or permanent allocation would require no additional data compilation over a single-year system. Once a baseline is determined for each company, EPA is proposing that the baseline remain unchanged through the duration of the program, with allocation reductions made according to the phaseout schedule and necessary increases in reductions to ensure the U.S. meets the 65 percent and later Protocol step-wise reductions.

In reviewing the consumption figures for the years before 1994, EPA believes that only one year can reasonably be considered. With the Protocol signed and the CAA close to passage and enactment in 1989, EPA has accurate data for that year. Additionally, the year 1989 was designated as the baseline year used for the allocations of several of the class I substances (Groups III, IV, and V), thus providing a complete database of ODS production, import, and export (when combined, equaling consumption) activity during that year.

Reviewing the production and consumption data on HCFCs from the most reliable reporting years, EPA found a wide spectrum of years that benefitted different companies. Looking at the available information from 1989, 1994, 1995, 1996, and 1997, EPA calculated that if it allocated allowances to every company based on their individual highest ODP-weighted consumption year among those five years, the U.S. would be able to remain just under the Protocol consumption cap. Any producers or importers entering the HCFC market for the first time in 1998 or 1999 would not be eligible to receive an allocation, except for a situation outlined later in this section. However, under the proposed transfer provisions, such a company could purchase allowances from another company that held allowances.

As discussed earlier in today's action, EPA is proposing to allocate and track on a chemical-by-chemical basis. However, for purposes of arriving at the baseline, EPA examined total ODP-weighted consumption in determining the highest year for each company. That way, the highest number of ODP-weighted kilograms, rather than highest number of absolute kilograms, could determine the most beneficial allocation for each entity. Actual allocations will be distributed and tracked on an absolute kilogram, chemical-by-chemical basis for production and for consumption.

Using the individual baseline approach based on the highest ODP-weighted consumption year brings total U.S. consumption to a small percentage below the cap of 15,240 metric tons. Total ODP-weighted production, aggregated from production in each relevant individual baseline year as proposed, brings the U.S. to below the U.S. production cap of 15,537 metric tons. Because the consumption baseline years include the highest production for each producer, EPA believes that using the same baseline year for production for each company is still the most equitable. EPA's proposed production baseline and allocations would be in compliance with the new Protocol production cap.

In exploring baseline years after 1997, EPA believes it is possible that, as two other commenters have noted, recent years' consumption is inflated, due to stockpiling in anticipation of an impending rulemaking. EPA does not believe, as discussed above, that 1998, when we began publicly discussing an allocation system, can serve as a truly representative baseline year or as an equitable factor in a multi-year baseline. Instead, the escalating 1998 figures may reflect an effort by some to dramatically increase consumption not only to stockpile, but also to ensure a high HCFC allowance allocation for those companies in the hopes that 1998 or 1999 would be selected. Such an aggregate number would likely place the U.S. in violation of the Protocol cap.

EPA recognizes that, in assigning a year or years prior to 1998, those with their highest consumption falling in 1998 or 1999 would receive fewer allowances from EPA than their most recent consumption would reflect. However, with transfers of allowances and the ability to import used HCFCs, the transition could likely be made without significantly disrupting consumption trends. Additionally, data on increased 1998 and 1999 consumption, as compared to earlier years, seems to indicate significant stockpiling, which should allow customer demand to be met.

For these reasons and the fact that using the most recent years could skew the market and disadvantage those who did not significantly increase consumption in those years, EPA is not proposing to use 1998 production or consumption in the HCFC baseline

calculation. For similar reasons, and because complete data for the year 1999 will not be available during the drafting of this rule, EPA also does not propose to use 1999 as part of the calculation for baseline.

EPA is, however, proposing one exception to its policy to not use 1998 or later years as part of a person's baseline. EPA proposes to grant available HCFC consumption allowances to late entrants into the HCFC import market that meet the following qualifications: the HCFC import market is their primary source of business income; they began importing HCFCs after the end of 1997 but before the publication of the ANPRM on April 5, 1999; and they have accurately reported all relevant required quarterly import information to EPA prior to publication of today's proposal. Businesses meeting these qualifications would be eligible to receive consumption allowances based on a full year's data, if available. If a full year's data is not available because the entity has not been in business for a complete year by April 5, 1999, EPA proposes to extrapolate based on the available reports for one, two, or three quarters.

EPA believes that such new entrants into the market during that time would likely be small businesses whose owners and operators were unfamiliar with EPA's plans to begin work on an allowance allocation system for HCFCs until the ANPRM appeared in the **Federal Register** on April 5, 1999. These businesses that began importing HCFCs after 1997 and before the ANPRM publication date might have had less access to information from standard industry sources and might not have heard the announcements at the stakeholders' meetings; they might not have had reason to know of an imminent rulemaking allocating allowances based on historical production and importation. In a case where a person, acting in good faith and prior to the publication of the ANPRM, established a business whose primary income was derived from importing HCFCs, EPA believes that it is appropriate to make an exception. Once public notice was given via the published ANPRM, businesses that desired an allocation of HCFC allowances would have known the risks of jumping into the business at this juncture. Prior to April 5, 1999, imperfect information left the door open for small new companies to observe the potential market in HCFCs and begin importing HCFCs as a new business. Therefore, EPA is today proposing to grant available allowances to any business who can successfully demonstrate that it meets these criteria. However, EPA will not allocate allowances in excess of the consumption cap. Although EPA does not anticipate an outpouring of new entrants who fit this description, to forestall the possibility of exceeding the cap as a result of allocations to new entrants, we will consider submissions on a pro rata basis, if necessary.

Through today's proposal, EPA requests notification from any business that fits the outlined criteria and wishes to request allowances by submitting a demonstration of eligibility during the 45-day comment period following publication of this proposal. This will allow EPA to process the submissions and include allocations for eligible new entrants in the final rulemaking. No submissions for eligibility will be accepted after September 4, 2001. To adequately demonstrate the eligibility of such a business, EPA requests the following information: records showing the date the first HCFC imports took place; business records showing that imported HCFCs are the primary source of the business's income; quantities (in kilograms) of each chemical imported; exporting country of each shipment; and port of entry of imported HCFC shipments, accompanied by bills of lading, invoices and Customs entry forms.

The Administrator will review only the complete submissions that meet the criteria outlined above. Incomplete submissions will not be considered. EPA will conduct a thorough review of the details of those submissions. The final rule will contain allowance allocations for new entrants that EPA has determined to be eligible.

EPA also considered the possibility of new entrants that entered or wish to enter the market following publication of the ANPRM in April of 1999. EPA believes that once the ANPRM was published, the public possessed adequate notice that an allocation system for HCFC allowances was in the development phase and that EPA was seriously discussing a period of historical data that would be used in the baseline designations. It was evident at that time that new entrants were unlikely to receive an allocation of allowances. Simultaneously, EPA emphasized its intention to phase out HCFCs in order to meet U.S. obligations under the Protocol and the CAA. Encouraging new companies to join the business after the ANPRM would counter the efforts of moving people out of HCFCs into more environmentally sound substitutes.

EPA believes that any new entrants following the ANPRM publication would not be precluded from entering the market, because they could purchase allowances from existing allowance holders who may not intend to use their full amount of allowances. They also have the opportunity to import used HCFCs through EPA's petition system or deal in substitutes to HCFCs, which would benefit the ozone layer and provide longer-term business security. Accordingly, EPA believes that the market will sufficiently allow for any new entrants after April 5, 1999, as appropriate.

It is important to note that, under any scenario, when the phaseout date for HCFC–141b is reached in 2003, all HCFC–141b import and production for domestic purposes will cease. Those who were not allocated HCFC–141b consumption allowances will not be affected in 2003, unless they had gained baseline allowances for HCFC–141b through a permanent trade (Section II.I.6-II.I.7). However, those who were allocated consumption allowances to produce or import HCFC–141b would no longer have annual consumption allowances associated with their baseline HCFC–141b activity, and thus have no authorization to produce or import HCFC–141b for domestic purposes (where both production and consumption allowances are necessary). EPA is proposing to allow production for export following phaseout, however, up to 115 percent of producers' HCFC–141b production baseline, as discussed below in Section II.G.

Any company that, through a baseline (or permanent) trade, received HCFC–141b consumption allowances associated with historic HCFC–141b consumption, would no longer have the consumption allowances associated with the baseline trade in 2003. However, that company's total baseline, for purposes of determining the amount of export production allowances and Article 5 allowances for which it would be eligible following the phaseout, would reflect the baseline trade.

In 2004, when the Protocol requires that the HCFC consumption cap be reduced from its current level by 35 percent, it is possible that holders of allowances for HCFCs other than HCFC–141b would be affected if the 35 percent reduction cannot be met. EPA does not intend to subtract both baseline HCFC–141b consumption allowances in 2003 and an additional 35 percent of the remaining consumption allowances in 2004. Instead, it intends, as laid out in its accelerated phaseout rule published December 10, 1993, to subtract the baseline HCFC–141b consumption allowances to fulfill the required 35 percent reduction. If a 35 percent reduction could not be achieved

through subtraction of baseline HCFC–141b consumption allowances, then EPA would need to reduce the remaining HCFC consumption allowances by the requisite percentage to achieve the full 35 percent reduction.

EPA wishes to clarify that allowances can only be allocated for which we were supplied verifying documentation, such as invoices, bills of lading, Customs documents, and/or canceled checks. Many companies supplied such information along with each quarterly report, and thus EPA had the information on record. We requested that companies without the information on file with EPA supply this information to us by mid-January of 2000, so that EPA could determine accurate production and consumption figures for purposes of allocating allowances. Allowance allocations, then, are based on verified production and consumption in each company's respective baseline year.

Additionally, allocations are listed in the proposal only for those companies that gave EPA permission to publish production and consumption figures for each HCFC in their baseline year. Because EPA considers individual company's production and consumption data to be Confidential Business Information, permission to publish these numbers is necessary.

EPA expects to receive additional verification from a small number of companies, permission from companies that have not yet permitted EPA to publish their potential allocation data, and new entrants as described above, before the final rule is completed and published. Consequently, additional companies and their allocations not in this proposal may be added to the final rulemaking and that potential allocation information would be reflected in the rulemaking docket.

EPA requests comment on its proposal to assign individual baseline years by company, using one of the years 1989, 1994, 1995, 1996, or 1997, in which the highest ODP-weighted consumption was accurately reported. EPA also seeks comment on its proposal to use data from the same year for production. EPA requests comment on allowing certain new HCFC importers established after 1997 and before April 5, 1999 to be eligible for allowances as discussed above.

G. Would Production for Export Be Allowed After Each Phaseout?

Because the U.S. adopted a different approach from the Protocol in phasing out HCFCs, i.e., chemical-specific phaseouts rather than by percentage, the continued ability to export to other countries after each HCFC is phased out becomes of interest. One factor driving foreign demand for HCFC–141b is the number of HCFC–141b projects being funded by the Multilateral Fund (MLF) that are intended to move Article 5 countries out of class I substances. The MLF was established by the 1992 London Amendment to the Protocol to enable developing countries to meet the requirements of the Protocol. The MLF helps pay for the incremental cost of projects that replace use of ODSs with ozone-friendly substances. Because HCFC–141b (ODP of 0.11) is intended to replace CFC–11 (ODP of 1.0) in most of these projects, the environmental benefit of these substitutions comes to a reduction of 0.89 in ODP weight per kilogram.

Another factor is the approach by which other developed countries are choosing to meet their Protocol reductions, i.e., by percentage (as outlined by the Protocol) rather than chemical-by-chemical (as in the U.S.). Consequently, there will likely be a continuing demand for HCFC–141b by Article 2 countries after the U.S. 2003 phaseout date for that chemical.

The decision by the Parties in Beijing in late 1999 to freeze production provides a vehicle for a suitable resolution to the export concern. In 2003, while production and import for domestic use of HCFC–141b is eliminated, production for exports and narrow domestic exceptions can continue at baseline levels. Because consumption allowances, necessary for production and importation, would no longer be available, production after January 1, 2003 of HCFC–141b for domestic sale or use would no longer take place. However, because production for export continues to be allowed under the Protocol production cap, EPA is proposing to allow production for export only to Parties listed in Appendix C (those who also have ratified the Copenhagen Amendments) after the phaseout of HCFC–141b on January 1, 2003.

Under the Montreal Protocol, 15 percent of production baseline would be available for export to Article 5 countries (listed in Appendix E) only for their domestic needs, while 100 percent of baseline of the phased-out chemical would be allowed for export to Article 2 or Article 5 countries, or any combination of the two. After all the export production allowances have been allocated, some of the production remaining between the aggregate export production allowances and the HCFC production cap could be allocated for production or import of HCFC–141b for space vehicle or defense needs, as discussed in Section III.B. Allowing an additional 15 percent of HCFC–141b production baseline for Article 5 countries ensures that developing countries will have adequate access to supplies to transition to class II ODSs before turning to non-ODP substances. The 15 percent of HCFC–141b production baseline for Article 5 countries is discussed in detail below.

1. Exports to Parties

Prior to each phaseout, EPA's allowance system would require that both production and consumption allowances be used for any production, with consumption allowances being returned when a chemical is exported. As with the class I allowance system, one kilogram of production allowance and one kilogram of consumption allowance would be expended to produce one kilogram of an HCFC. Under today's proposal, post-phaseout production could occur beginning January 1, 2003 up to 100 percent of HCFC–141b production baseline for export only to Parties listed in the third column of Appendix C (those who have ratified the Copenhagen Amendments). To distinguish between these post-phaseout production allowances and pre-phaseout allowances, EPA proposes calling the former ''export production allowances.''

Reporting provisions associated with production for export only after the relevant HCFC phaseout would require similar information and documentation as export reporting prior to a relevant phaseout. This requirement is outlined in the Recordkeeping and Reporting Section of today's proposal.

EPA requests comment on the proposed allocation of export production allowances equal to 100 percent of HCFC–141b production baseline, allowing production of phased-out HCFCs with these allowances for export only to Parties who have ratified the Copenhagen Amendments (Appendix C to Subpart A). EPA also requests comment on allocating some of the production remaining between the aggregate of export production allowances and the HCFC production cap for production or import of space vehicle/defense uses of HCFC–141b, as discussed in Section III.B.

2. Exports to Article 5 Countries

In the class I phaseout and allowance system, EPA allowed 15 percent of baseline to be produced after phaseout for export to Article 5 countries to satisfy their basic domestic needs. With the recent decision of the Protocol to freeze the production of HCFCs, the

Parties also decided to provide an additional 15 percent of baseline production for export to Article 5 countries. The 15 percent that EPA is proposing today would only be available for those HCFCs that have been phased out, would be over and above the production cap, and would differ from export production allowances in that exports could go only to Article 5 countries for their domestic need.

As in the class I system, Article 5 allowances would be expended, without accompanying consumption allowances, for production specifically for Article 5 countries. Because they are to be used specifically for the importing countries' basic domestic needs, these exports are not expected to compete with U.S. markets using substitutes.

EPA believes it is appropriate, following chemical-specific phaseouts, to permit production specifically for export only to Article 5 countries that may require the chemical to facilitate their transition to less ozone-depleting chemicals. In deciding to propose this approach, we have considered the current volume of U.S. exports to other Parties, the projected increased demand by Article 5 countries, the Protocol requirement that exports to Article 5 countries be used only for their domestic needs, and the precedent of allowing 15 percent of baseline production for export only in the class I system. EPA is proposing that 15 percent of each company's production baseline of phased-out HCFCs can be used for production for export only to any Article 5 country for their domestic needs, following the phaseout of each chemical, until 2030. For example, in 2003, when production and consumption allowances associated with HCFC–141b are eliminated, fifteen percent of HCFC–141b production baseline would be available after phaseout to enable HCFC–141b production for export to Article 5 countries for their domestic needs. As in the class I system, these post-phaseout production allowances would be called ''Article 5 allowances.''

EPA seeks comment on its proposal to allocate Article 5 allowances equal to 15 percent of a phased-out HCFC's baseline production after phaseout for export to Article 5 countries.

H. Would There Be Any Critical Needs Allowances?

EPA is proposing a narrow exception in Section III of today's action regarding continued production of HCFC–141b where necessary, for critical space vehicle and defense uses. A variety of criteria would need to be met for this exemption to be granted, e.g., a lack of availability of viable alternatives or substitutes. See Section III.B below for a detailed discussion.

I. Would I Be Able To Transfer Allowances?

In establishing the allowance program for class I controlled substances, EPA included provisions that permit the transfer of allowances. The provisions for trades and transfers of class I allowances are 40 CFR 82.9, 82.10, 82.11 and 82.12 as promulgated in the final rule published on May 10, 1995 (60 FR 24970). Today's document describes the many different types of transfers permitted for class II allowances, as well as other variations discussed in the ANPRM.

Under the current class I regulatory program, EPA is required to process all transfers of allowances within three working days from when EPA receives the request for an inter-pollutant or inter-company trade. Companies fax or send the request for a trade to EPA and within three working days EPA faxes a reply showing the new balance of unexpended allowances (See 40 CFR 82.12(a)(1), (b)(4)). EPA proposes to retain the above process schedule for class II trades and requests comment on the proposed process for requesting EPA approval of trades of class II substances and the three-day turnaround time for such requests.

1. Transfers Within Groups of HCFCs

To facilitate transfers among class II substances, EPA is permitted, under Section 607(b)(3) of the Act, to establish groups of HCFCs. Under such a framework, inter-pollutant transfers of allowances would be limited to chemicals within an assigned group. Class I controlled substances are listed in the Act in groups, and inter-pollutant transfers of class I allowances are restricted to transfers within each group. While class I substances are listed in groups in the Act, no such grouping exists for class II substances. One option discussed in the ANPRM was to establish HCFC groups based on each chemical's ODP. Another option was establishment of HCFC groups based on the U.S. phaseout dates. A third option would be not to group HCFCs at all.

Two of the eleven who commented on transfers indicated a preference for no grouping of HCFCs at all or for including all HCFCs in one single group. They both felt that grouping would reduce the flexibility necessary in inter-pollutant transfers. The remaining nine commenters did not address the grouping issues. Since transfers were limited to CFCs of the same group in the class I allowance system, allowance holders experienced some restrictions in their trading. EPA agrees that imposing a grouping system for HCFCs would unnecessarily restrict flexibility in inter-pollutant transfers.

EPA is not proposing to group the HCFCs. This will provide the greatest flexibility for allowance holders to transfer among chemicals.

2. Inter-Pollutant Transfers

Section 607(b) of the Act states that inter-pollutant transfers of ozone-depleting substance allowances shall be permitted. An inter-pollutant transfer is the transfer of an allowance of one substance to an allowance of another substance on an ODP-weighted basis. As an example, under the class I system, a company would transfer allowances for CFC–12 to allowances for CFC–115, taking into account ODP differences between the two chemicals. If a company wanted to transfer 1000 kilograms of their CFC–12 production allowances to CFC–115 production allowances, paperwork would be submitted with the following calculation: the 1000 kilograms of CFC–12 allowances are multiplied by the ODP of CFC–12 (1.0) and then divided by the lower ODP of CFC–115 (0.6), yielding 1667 kilograms of new CFC–115 production allowances minus the required offset. Section 607 of the CAA requires that any trade of ozone-depleting substance allowances result in a benefit to the environment. The offset is intended to fulfill this mandate.

Inter-pollutant transfers are sometimes called intra-company transfers or trades because a company might shift allowances internally from one substance to another to react to shifts in demand. Inter-pollutant transfers of allowances were fairly common for class I substances. There were an average of 95 inter-pollutant transfers for class I substances each year from 1992 through 1995.

For class II substances in the chemical-by-chemical allocation system proposed in section II.C, an example of an inter-pollutant transfer would be a transfer of 10,000 kilograms of HCFC–142b allowances for HCFC–141b allowances, which would result in 5,909 kilograms of HCFC–141b allowances because of the adjustment for the ODPs of the two chemicals. This calculation does not take into account the required offset for transfers as proposed and discussed in section II.I.8 of this document.

All eleven commenters advocated maximum flexibility in transfers. Two commenters were in favor of transfers with as little regulatory oversight as

possible. One felt no need for EPA permission prior to the trade, provided the actual amounts of individual HCFCs are shown in the quarterly reports.

EPA proposes to allow inter-pollutant transfers (or intra-company trades) in tandem with the proposed chemical-by-chemical system in section II.C above, similar to the program for the class I substances. As in the class I system, companies would fax or send the request for a trade to EPA and within three working days of receipt, EPA would fax a reply showing the new balance of unexpended allowances. EPA's oversight should ensure that the company making the transfer has the requisite number of unexpended allowances. EPA requests comment on the proposed inter-pollutant transfers (also referred to as intra-company trades) in tandem with the proposed chemical-by-chemical system, and the three-day turnaround time associated with such trades.

A major difference in the class II proposed system should be noted. Because the allowances for production and consumption fall away as of the phaseout date of an individual HCFC, inter-pollutant and inter-company trades among production and consumption allowances for that HCFC can no longer be made. For example, after HCFC–141b is phased out in 2003, a person cannot trade ODP-weighted HCFC–22 production allowances for HCFC–141b production allowances. No production or consumption allowances for HCFC–141b should exist (except for narrowly stated exemptions).

However, two new and separate sets of allowances—export production allowances and Article 5 allowances—would be available to that allowance holder once HCFC–141b is phased out. Export production allowances could only be used for production for export to countries that are Party to the Copenhagen Amendments. Article 5 allowances could only be used for production to export to Article 5 countries. Because HCFC–141b will be the only chemical with export production allowances and Article 5 allowances between 2003 and 2010, inter-pollutant trading of HCFC–141b would not be possible. Inter-company trades of each type of allowance could take place, to be used in the manner specified under that allowance.

3. Inter-Company Transfers

Another example of trades of class II allowances that EPA permits are inter-company transfers under Section 607(c) of the Act. Inter-company transfers are trades of allowances, for the same substance under a chemical-by-chemical system, from one company to another company. Under such a system, Company A would simply transfer its allowances for production of a class II substance to Company B who wished to have more allowances for production of that particular class II substance. The requisite offset would be deducted by EPA when processing the trade. It would be necessary for both companies to record and report the chemical(s) associated with that trade. The proposed chemical-by-chemical system (Section II.C) would eliminate any need for conversion in reporting the trade.

Of the eleven commenters in favor of maximum flexibility in transfers, two specifically recommended free inter-company trades.

EPA proposes to allow inter-company trades, with an environmental offset as described in Section II.I.8. EPA also proposes to process all transfer requests within three working days from when EPA receives the request, similar to the process used for the class I system. Companies fax or send the request for a trade to EPA and within three working days EPA faxes a reply showing the new balance of unexpended allowances.

4. Inter-Pollutant Transfers Combined With Inter-Company Transfers

Both inter-company and inter-pollutant transfers could be combined in the same transaction for class I substances, and EPA is planning to allow the same possibility for class II substances. Section 607(c) of the CAA states that EPA's transfer regulations for class I and class II substances shall permit combined inter-company and inter-pollutant transfers, subject to certain requirements. As an example of how this worked under the class I system, Company A would trade 35,000 kilograms of CFC–11 allowances to Company B who needed allowances to produce CFC–115. In the information submitted to EPA, the two companies would agree that Company A would deduct 35,000 allowances for CFC–11 from its balance and Company B would receive 58,333 kilograms of CFC–115, due to the ODP difference between the two chemicals. An additional 0.1 percent offset would be required in this calculation as discussed in Section II.I.8.

Under this combined system for class II substances in a chemical-by-chemical allocation system, a company that wishes, for example, to increase its production of HCFC–141b before the 2003 phaseout could: (1) Re-distribute its own allowances that have been allocated for another class II substance to HCFC–141b (inter-pollutant transfer); (2) purchase more HCFC–141b allowances from another company (an inter-company transfer); or (3) purchase more allowances from another company of a substance other than HCFC–141b and conduct a simultaneous inter-pollutant transfer for HCFC–141b production, making the related ODP adjustments (an inter-company/inter-pollutant transfer). After the 2003 phaseout of HCFC–141b, a company receiving export production allowances and Article 5 allowances for HCFC–141b could engage in inter-company transfers of those allowances, but could not engage in inter-pollutant transfers until 2010, when export production allowances and Article 5 allowances for HCFC–22 and HCFC–142b become available and thus, tradeable with the ones for HCFC–141b (Section II.I.2).

Only one commenter out of the eleven commenters discussing transfers singled out inter-pollutant transfers with inter-company transfers for special favorable mention. The remaining ten commenters generally advocated maximum flexibility in transfers without emphasizing inter-pollutant transfers with inter-company transfers.

EPA proposes to allow inter-pollutant transfers combined with inter-company transfers for class II substances, similar to what it allows in the system used for class I substances. EPA requests comment on its proposal to allow inter-pollutant transfers combined with inter-company transfers.

5. International Trades of Current-Year Allowances

Under the Protocol, international trades are recognized as a part of a process called ''industrial rationalization.'' In Article 1 of the Protocol, industrial rationalization is defined as ''the transfer of all or a portion of the calculated level of production of one Party to another, for the purpose of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures.'' International trades of production and consumption are permitted under the Protocol so Parties can consolidate the manufacturing of a chemical in order to be able to achieve economies of scale as demand shrinks. International trades of production and consumption allowances are permitted under EPA's current regulations for class I controlled substances (40 CFR 82.9(c)). The procedures for international trades involve more review than the procedures for inter-pollutant and inter-company trades.

The Protocol includes the following language in Article 2, paragraph 5 bis: ''Any Party not operating under paragraph 1 of Article 5 [an

industrialized country] may, for one or more control periods, transfer to another such Party any portion of its calculated level of consumption set out in Article 2F [pertaining to HCFCs], provided that the calculated level of consumption of controlled substances in Group I of Annex A [CFCs] of the Party transferring the portion of its calculated level of consumption did not exceed 0.25 kilograms per capita in 1989 and that the total combined calculated levels of consumption of the Parties concerned do not exceed the consumption limits set out in Article 2F. Such transfer of consumption shall be notified to the Secretariat by each of the Parties concerned, stating the terms of such transfer and the period for which it is to apply.''

The Protocol language in paragraph 5 bis of Article 2 discussed above clearly restricts the U.S. from trading away HCFC consumption to another Party. The U.S. per capita consumption of CFCs in 1989 was 1.28 kilograms, well above the 0.25 kilogram per capita limit for transferring HCFC consumption. However, the Protocol language allows the U.S. to potentially receive a transfer of HCFC consumption from another Party. Only two Article 2 countries, Norway and Poland, had a per capita consumption of CFCs in 1989 less than 0.25 kilograms. Thus, these are the only Parties from which the U.S. could potentially receive a transfer of HCFC consumption. EPA considered the likelihood of such international trades, and whether or not the establishment of provisions for class II international consumption trades is warranted.

During the eleventh Meeting of the Parties in 1999, with the adoption of a production cap, came the potential for transfers of production between Parties. The restrictions that exist for international consumption trades do not exist for production. Thus international production allowance trades may be of greater interest to U.S. entities.

Of the eleven commenters on transfers, only two addressed the issue of international trades. One commenter acknowledged that industrial rationalization is important and is a mechanism that tends to reduce overall consumption but stated that the absence of production allowances (comment submitted prior to Protocol adoption of production cap in late 1999) would mean that international trades must take place on a different basis than that established for class I substances. This commenter suggested that the material for U.S. consumption be produced ''under license'' in another country but was unsure how this would fit with international and foreign country regulations. The commenter's concern regarding the lack of production allowances would be answered by today's proposal to establish production allowances in addition to consumption allowances (Section II.B). The second commenter stated that although the Protocol supports such international trades, the limitations are severe and clearly discriminatory to multinationals operating in developed countries. EPA believes that this comment gives an indication of the possibility of international trades of consumption allowances occurring in view of the limitations imposed by the Protocol.

In light of the constraints on international trade of HCFC consumption described above, EPA is not proposing any provisions for international trades of consumption allowances. If the U.S. cannot transfer its consumption allowances to any other Party, and the only nations from which it could receive consumption rights to import are Norway and Poland, EPA believes that it appears unlikely that any such consumption trade would be desired or beneficial. Consequently, EPA has not included any such provisions in this proposal. EPA requests comment on its decision not to include provisions for international trades of consumption allowances. EPA also requests comment on provisions for transfer of consumption rights from Norway or Poland should the situation arise.

The Parties have placed a cap on production, in addition to the current cap on consumption of class II substances. This would allow for the possibility of transfers of production allowances. Because of the minimal restrictions placed on the trade of HCFC production between certain Parties, EPA proposes to allow such production transfers, using a process very similar to the class I process for international trades (see 40 CFR 82.9(c)).

Such transfers are authorized under section 616 of the CAA. The proposed regulations in today's document that would implement this authority are arranged consistent with international trades under the class I allowance system. For trades from a Party, EPA proposes that the person must obtain from the principal diplomatic representative in that nation's embassy in the U.S. a signed document stating that the appropriate authority within that nation has revised production limits for that nation equal to the lesser of: The maximum production that the nation is allowed under the Protocol minus the amount transferred; the maximum production that is allowed under the nation's applicable domestic law minus the amount transferred; or the average of the nation's actual national production level for the three years prior to the transfer minus the production allowances allowed. The person would need to submit to EPA information on the contact person and Party authorizing the transfer; the chemical being transferred; the control period for that transfer; and a signed statement that the increased production is intended as an export to the relevant Party.

For trades to a Party, the person must submit to EPA the same information outlined, except for the signed statement. For these trades, the allowance revisions would be reflected at the individual trader level, as discussed below. In reviewing submissions for trades to a Party, the Administrator would have the discretion to take factors into account relating to possible economic hardships created by a trade, potential effects on trade, potential environmental implications, and the total amount of unexpended allowances held by entities in the U.S.

For both trades from and to Parties, the Administrator, following review, would issue a notice either granting or deducting the appropriate production allowances and specifying the affected control period(s), provided she determines it meets the proposed required conditions.

In approving an international trade, the Administrator would also need to ensure that the individual person or entity involved in the trade has made the appropriate revisions to his/her allowance balance. For trades from a Party, the Administrator would issue a notice revising the allowances of that entity to equal the unexpended production allowances held by the entity plus the level of allowable production transferred from the Party.

For a trade to a Party, section 616 of the CAA does not limit the quantity of production allowances that may be transferred but the Administrator is given the option to disapprove the proposed transfer if she/he believes the transfer is not consistent with domestic policy or if the transferor did not possess sufficient allowances to permit the reduction in aggregate domestic production to be reflected in the transferor's revised production limits. If EPA approves the proposed transfer, the Administrator is required to establish revised production limits for the transferor so that the aggregate domestic production permitted after the transfer reflects the effect of the transfer of production allowances because such trades cannot result in an increase in

production over what would have occurred in the absence of the trade. In certain circumstances, following a transfer of allowances to another Party, Section 616 requires that the aggregate national U.S. production of HCFCs be reduced by an additional amount beyond a simple deduction of the number of allowances transferred to another Party. Specifically, if the average U.S. production during the previous three years for the controlled substance transferred is less than the total allowable U.S. production under § 82.18(h) and (i), then following a transfer, U.S. production would need to be revised downward to equal the three-year average minus the amount transferred. This additional reduction would also need to be reflected in the revised production limits for U.S. production allowance holders. EPA believes that in these circumstances, it is appropriate for the required reduction in U.S. production to be allocated among all the transferors in the same control period in proportion to the number of allowances transferred by each entity. EPA would notify each transferor of the revised production limit after approving the transfer of production allowances to a Party rather than waiting to the end of the control period; the transferor would then be able to make timely market decisions with the remaining production allowances. Although there are perhaps other methods of revising production limits, EPA is proposing the following method to determine the transferor's balance of production allowances after a trade to a Party. Under today's proposal, the Administrator would issue a notice revising the transferor's balance of production allowances to equal the lesser of: (a) The unexpended production allowances held by the transferor minus the quantity of production allowances transferred; or (b) the quantity derived from (a) minus the quantity derived from the following calculation: the total U.S. allowable production for the HCFC being traded minus the U.S. average annual production of the HCFC for the three years prior to the transfer.

For those more comfortable with formulas, the proposed method could be expressed in this manner:

$$f = (a - d) - (c - b), \text{ if } c > b$$
$$a - d, \text{ if } c \leq b$$

Where a = the person's unexpended production allowances, b = the U.S. 3-year average production for that HCFC, c = the total allowable U.S. production for that HCFC, and d = the actual quantity being transferred, and f = the person's revised production allowance level.

EPA requests comment on the proposed method used to calculate revised production limits for those wishing to trade production allowances internationally; EPA requests comment on possible alternative methods to calculate revised production limits.

If more than one transfer of production allowances occurs in the same control period, the Administrator will need to issue revised production limits for all the transferors after each transfer. Each transferor's balance of production allowances previous to the current transfer would be adjusted upwards retroactively after each transfer and each transferor would be notified after the approved transfer rather than towards the end of the control period. Under EPA's proposal, if more than one company trades production of an HCFC to another Party or Parties in one control period, they would all equitably share the burden of absorbing any shortfall in national production. Although there are perhaps other methods of revising production limits, EPA is proposing the following method to determine the revised production limits for all transferors in the same control period since EPA believes that the potential allowance decrease, (c-b), would be allocated among all transferors. EPA is proposing that the formula for revising allocations after a transfer would be:

$$a - [(c - b) \times (d/D)] - d,$$

where D = the total amount of allowances transferred by all domestic producers in that control period.

EPA requests comment on the proposed method used to calculate revised production limits for all transferors transferring production allowances in the same control period; EPA requests comment on possible alternative methods to calculate these revised production limits.

6. Transfers of Current-Year Allowances

In the ANPRM, EPA considered approaches for permitting transfers of current-year allowances for class II controlled substances. A transfer of current-year allowances means the allowances being traded can only be expended for production or import in that specific control period, or calendar year. Transfers of current-year allowances do not change the quantity of baseline allowances assigned to a company. A trade of current-year allowances is a temporary trade, only reflected in a company's balance of allowances for that control period (calendar year) in which the trade occurs. Trades of current-year allowances were permitted in the class I regulatory program. From 1992 to 1995, many companies took advantage of the opportunity to trade current-year allowances for class I controlled substances.

Six of the eleven commenters on transfers were in favor of the free trade of current-year allowances. One commenter generally supported transfer of current-year allowances because it was consistent with the class I regulatory program. A commenter felt that it should be allowed while another commenter noted that the bureaucratic burden on companies and on EPA would not be too large and that such flexibility would be as complete as it could be within a system of controls. The remaining five commenters were silent on the issue. EPA agrees that trades of current-year allowances would allow companies the flexibility to respond to market forces and achieve economies of scale in production and import.

EPA proposes to allow trades of current year allowances similar to those permitted in the class I regulatory system and seeks comment on allowing current-year trades.

7. Permanent Transfers of Baseline Allowances

EPA also considered the merits of permitting permanent transfers of baseline allowances for class II substances in the ANPRM. A transfer of baseline allowances is a permanent shift of some quantity of a company's baseline allowances to another company. The permanent nature of the transfer of baseline allowances makes the trade different from the transfer of current-year allowances. For example, if Company A produced 1,000 kilograms of HCFC–22 in the baseline year, it would receive 1,000 baseline allowances of HCFC–22. Company A could in turn permanently trade away these baseline allowances to Company B. In all relevant subsequent years, Company A's quantity of baseline allowances would be permanently reduced, while Company B's quantity of baseline allowances would be permanently increased. At the 2010 phaseout of HCFC–22 and HCFC–142b, Company B would be responsible for deducting the HCFC–22 that it permanently received from Company A from its baseline allocation.

Under a chemical-by-chemical allocation approach, the historic consumption baseline amount for a given chemical would be deducted from the current holder of the permanent allowances in the relevant phaseout year for that chemical (e.g. 2003 for HCFC–141b). If a person purchases permanent baseline allowances, of

HCFC–141b, for example, then conducts an inter-pollutant trade within the company, that person would deduct the ODP-weighted equivalent consumption of the HCFC–141b that was traded to them on a permanent basis. In our example, in 2003, the purchaser of allowances associated with HCFC–141b would have that number of ODP-weighted allowances associated with HCFC–141b deducted, even if it had conducted an inter-pollutant trade within the company for another HCFC.

Six of the eleven commenters discussing transfers favored allowing permanent transfers of baseline allowances. Five of the eleven commenters did not discuss permanent transfers.

EPA proposes to allow permanent trades of allowances for class II substances. EPA requests comment on its proposal to allow these permanent trades.

8. Offset for a Transfer of Allowances

The final aspect of trades of class II allowances discussed in the ANPRM and considered in today's document is the manner of achieving greater total reductions than would occur in the absence of a trade, as required by section 607(a) of the Act. EPA believes that the offset required by section 607 of the Act is intended for inter-pollutant and inter-company transfers. Therefore, in the allowance program for class I substances, an offset was not included for international trades. International trades are governed by section 616 of the Act, rather than section 607.

Section 607(a) states that, ''transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions.'' For the class I allowance program, EPA adopted a one percent offset, deducted from the transferor's allowance balance, for all inter-pollutant trades and all inter-company trades (40 CFR 82.12(a)(1)(i)(H), 82.12(b)(4)(i)(F)). However, for inter-pollutant trades combined with inter-company trades, only one offset was applied to the transfer of allowances.

Nine commenters on possible offset options preferred a lower offset than the one for the class I system, because CFCs are more ozone-depleting than HCFCs. There were two suggestions for an offset of 0.1 percent and there were two for an offset of 0.05 percent. Because the class II substances are less ozone-depleting than class I substances, EPA considered a smaller offset for trades of HCFC allowances. Yet, EPA recognizes that the offset must provide an environmental benefit, as called for by Congress. For class II controlled substances, EPA is therefore proposing a 0.1 percent offset for inter-company transfers. This 0.1 percent offset would simplify calculations for the affected companies and reflect the lower ODP of HCFCs compared to CFCs. This offset would still provide the environmental benefit intended by Congress without hampering market forces. If allocations are made and implemented on a chemical-by-chemical basis, both inter-pollutant trades and inter-company domestic trades would be affected.

EPA requests comment on its proposal to impose a 0.1 percent offset to afford an environmental benefit associated with domestic trades, in compliance with section 607 of the CAA.

J. Would Other Regulatory Options Be Used To Control HCFCs?

In the ANPRM, EPA also discussed other authorities under Title VI that are available to ensure that the U.S. adheres to its phaseout schedule for class II substances. The discussion outlined relevant provisions of EPA's current labeling program for products made with ODSs, its SNAP program and the nonessential products ban. These provisions would affect the *sale and/or use* of HCFCs rather than their production, import and export, which an allowance system would control directly. The purpose of including these regulatory tools in the ANPRM discussion of controlling HCFC emissions was to make readers aware of the variety of paths EPA could take in sustaining compliance with the Protocol.

Because EPA is proposing an allowance allocation system in today's action that it believes would be effective in maintaining compliance with the Protocol, it is not proposing today to include any amendments to these provisions to further control HCFCs. The approaches discussed briefly below however, could provide further options for HCFC control, if needed to ensure U.S. compliance.

Thirteen commenters were generally opposed to the imposition of any of the following regulatory tools.

1. Labeling

Under section 611 of the Act, EPA could require labels on products containing or made with specified class II substances. These labels would read as follows:

Warning: Contains/manufactured with [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

As a prerequisite to imposing such a labeling requirement, the Administrator would have to determine, ''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. ''Beginning January 1, 2015, all products containing or manufactured with a class II substance must bear the specified label regardless of whether the Administrator has made a determination regarding the availability of substitutes (Section 611(c)(2) and 611(e)(5)). Therefore, the issue upon which EPA is requesting comment is whether EPA should, prior to January 1, 2015, require labels on certain products containing or manufactured with class II substances.

Eleven commenters felt that imposing labeling requirements before 2015 would be undesirable and unnecessary. A couple of commenters stated that such labeling requirements might precipitate what they characterized as confusing labeling that occurred with CFCs, requiring the intervention of the Federal Trade Commission. This statement represents the commenters' characterization only, and not that of EPA. The commenter has apparently confused the Title VI labeling regulations with a different labeling rule issued by another federal agency. EPA was consulted on several cases where potentially deceptive ''positive labeling'' appeared on a product. Typically, such a label would read, ''ozone-friendly'' or ''environmentally safe,'' while the product contained an ozone-depleting substance that may have had a lower ODP than found in other products in its category. These specific labels were not associated with the Section 611 labeling requirements of the CAA, and were subsequently referred to the Federal Trade Commission, because consumers were being sold products under potentially inaccurate labeling.

EPA does not currently see a need to use labeling to ensure compliance with the Protocol and is therefore not proposing in today's action to use this regulatory tool to control HCFC emissions.

2. SNAP Approval and Restrictions

Section 612 of the Act requires EPA to promulgate rules making it unlawful to replace any class I or class II substance with any substitute substance that may present adverse effects to

human health or the environment, where EPA has identified an alternative to such replacement that ''(1) reduces the overall risk to human health and the environment; and (2) is currently or potentially available.'' In accordance with Section 612 of the Act, and under the SNAP program, EPA publishes lists of acceptable and unacceptable substitutes for class I and class II substances. In some SNAP sector end-uses, class II substances have been listed as acceptable substitutes. Class II substances are viewed by the Agency as transition chemicals that facilitate the transition out of more harmful class I chemicals. Since 1994, availability of zero-ODP alternatives has increased in a number of end-uses. It is therefore possible that SNAP determinations regarding existing HCFC acceptable uses could be revised. This could happen through three mechanisms.

First, EPA could receive a petition from a company to add a substance to or delete a substance from the SNAP list of acceptable and unacceptable alternatives (See section 612(d)). Second, EPA could receive notification from a company before introduction of a substitute into interstate commerce for significant new use as an alternative to an ODS (See section 612(e)). Finally, EPA can initiate changes to the SNAP determinations independent of any petitions or notifications received. Such changes could be based on new data either on additional substitutes or on characteristics of substitutes previously reviewed.

Thirteen commenters opposed the use of SNAP to control the use of HCFCs to sustain compliance with the Protocol. Four commenters supported delisting only if the alternative significantly reduced risk to human health and the environment. Seven commenters were concerned about the possibility of creating an unfair competitive advantage for the new alternative and impacting small businesses adversely.

Under this rulemaking, EPA believes that the tracking of consumption of HCFCs will allow the U.S. to remain under the cap. Therefore, in this rule, we are not including any SNAP-related provisions. It is possible, that on their own, SNAP approvals and restrictions might affect HCFC production and consumption sometime in the future.

3. Non-Essential Products Ban

Section 610(d) of the Act prohibits the sale, distribution, or offer for sale or distribution in interstate commerce, of certain nonessential products that contain or are made with class II substances. EPA is authorized to grant exceptions to the ban under certain conditions. Since the issuance of the final rule providing exemptions from the statutory class II nonessential products ban (58 FR 69638, December 30, 1993), EPA has received information, including information on new substitutes for making certain products, indicating that it may be necessary to reconsider the continued appropriateness of those exemptions. The Agency also is aware that since the issuance of that initial final rulemaking, there has been further substitution away from ozone-depleting substances in aerosols and pressurized dispensers. EPA is currently reviewing information concerning the aerosol products and pressurized dispensers that were given exemptions in the December 30, 1993 rulemaking, independent of the goals of this rulemaking. In particular, the Agency is evaluating whether there are technologically available substitutes for the HCFCs used in these products.

Two of the four commenters were opposed to the use of the ban to control use of HCFCs and thus sustain compliance with the Protocol. One commenter supported use of the ban to ensure the U.S. does not exceed its consumption and production caps for class II substances.

EPA does not currently see a need to use the nonessential products ban to ensure compliance with the Protocol and is therefore not proposing to use this regulatory tool to control HCFC use. It is possible, that on its own, the nonessential products ban might affect HCFC production and consumption sometime in the future.

III. Additional Proposed Provisions

EPA is proposing several provisions that were not discussed in the ANPRM. Some are definitions, necessary to implement portions of the class II allowance system discussed in the ANPRM. Others are additional issues that have arisen since publication of the ANPRM. EPA seeks comment on each of the proposed provisions below.

A. Would There Be Changes in Definitions?

To effectively establish an allowance allocation system for HCFCs, EPA is proposing to change and add several definitions to § 82.3 of the existing phaseout regulation. We are proposing modifications that will clarify throughout this proposal where a provision would apply only to a class I substance or to both class I and class II substances.

1. Modifications

EPA is proposing to modify the definitions for ''baseline consumption allowances'' and ''baseline production allowances'' to include class II ODSs, in addition to currently covered class I ODSs. EPA is also proposing to modify the definitions of ''consumption allowances,'' ''production allowances,'' and ''Article 5 allowances'' to include class II ODSs.

The definitions for ''destruction credit'' and ''transformation credit'' would not apply to the class II allowance system. To date, no one under the class I system has requested destruction or transformation credits after production allowances have been expended for a chemical that was later found to be destroyed or transformed in the manufacture of another chemical or product. EPA believes that, with less HCFCs being used in manufacturing systems that ultimately transform or destroy them than the earlier class I ODSs, the likelihood that any company would need or want to use these credits is minuscule. Normally, destruction or transformation is anticipated prior to production. Companies need not expend production allowances when producing ODSs specifically for destruction or transformation. EPA requests comment on its decision to follow suit with the accelerated phaseout program for class I substances (60 FR 24970, May 10, 1995) and not include the definitions for ''destruction credit'' and ''transformation credit.''

At this time, the definitions for ''essential use allowances'' and ''unexpended essential use allowances'' would not apply to the class II allowance system and EPA is proposing to modify them to make them explicitly apply to class I substances only. If the Parties approve any essential use exemptions for class II substances, EPA would consider such exemptions in light of the domestic phaseout and revisit these definitions as necessary.

2. Additions

EPA is proposing to add a definition of ''export production allowances.'' Companies could use these allowances, calculated at 100 percent of their phased-out HCFC's production baseline, to produce certain HCFCs after the relevant phaseout date, for export only to any Party that has ratified the Copenhagen Amendments (such Parties would be listed in Appendix C). These export production allowances would become available to HCFC–141b producers on January 1, 2003 (the phaseout date for that chemical), and remain available at least until December 31, 2009. EPA expects to re-evaluate the possibility of export production allowances in 2009 in view of the 65 percent reduction in consumption in

2010. An export production allowance could be used for production for purposes of export only, where net consumption equals zero. A definition of ''unexpended export production allowances'' is also being proposed. It is not clear at this time the amount of export production allowances that would be available for HCFC–141b, as well as HCFC–22 and HCFC–142b, after January 1, 2010, when a 65 percent reduction in consumption of HCFCs is mandated by the Protocol. Following notice and comment, EPA plans to issue a rule prior to 2010, which would allocate relevant allowances, beginning in 2010, taking into account the declining consumption cap, the refrigerant servicing exemptions after 2010, and any relevant modifications to the Protocol or the CAA.

In proposing a class II petition system for used ODSs imports, EPA is proposing adding three definitions that will allow EPA to closely track used imports and make accurate determinations on the eligibility to import the used HCFCs. Three new definitions are proposed to help facilitate a rigorous petition system: ''individual shipment,'' to distinguish one separate shipment from another; ''non-objection notice,'' to indicate when a person is granted privileges to import an individual shipment of used HCFCs; and ''source facility,'' to explain exactly what information the petitioner must provide regarding the equipment and place from which the used HCFC was recovered.

Definitions of ''space vehicle/defense allowances'' and of ''unexpended space vehicle/defense allowances'' are added to permit U.S. Federal government entities and certain other entities to import or order the production of HCFC–141b for critical uses related to space vehicle or narrow defense needs, where no substitute for HCFC–141b is viable. These allowances would not be tradeable.

B. What Type of Allowances Would Be Available for Space Vehicles and Defense Needs?

EPA is proposing to provide space vehicle/defense allowances to a U.S. agency, department or instrumentality, or related entities involved in space vehicle endeavors, for extremely narrow needs after demonstrating by petition to EPA that no viable alternative exists for HCFC–141b and that space vehicle or national security viability is at issue if HCFC–141b cannot be used for the specified purpose. NASA first brought this need to EPA's attention because space launch vehicles currently use HCFC–141b-blown foam as the only workable thermal protection system for several different areas of the space vehicle system. EPA is also proposing to provide allowances to U.S. military departments for extremely narrow needs after demonstrating by petition to EPA that no viable alternative exists for HCFC–141b in narrow defense uses such as cleaning of oxygen equipment and aircraft parts.

EPA believes U.S. government space vehicle entities, other space vehicle service entities and military departments have vital needs for small quantities of HCFC–141b for very specific needs beyond the phaseout date contained in § 82.15(a)(4) of today's rulemaking. These uses would include unique thermal protection system needs of space vehicles designed to travel beyond the limit of the earth's atmosphere (e.g., satellites, space stations, space transportation systems such as the Space Shuttle system), and the cleaning of oxygen equipment and aircraft parts. EPA believes that the new §§ 82.15(a)(1) and 82.18(e) will not adversely affect compliance with the provisions of the CAA Amendments of 1990 or the U.S. obligations under the Protocol as amended.

EPA considered other approaches to an exemption for the production and import of HCFCs critically needed for space vehicles intended to travel outside the earth's atmosphere or for narrow defense needs. EPA considered whether the exemption should be specific for one, or two, or all of the HCFCs (e.g., specific exemptions only for HCFC–141b, HCFC–22, or HCFC–142b for national security purposes.) To date, EPA has received only specific requests for space vehicle and defense exemptions for HCFC–141b. Therefore, EPA believes there is no need for a broader exemption and accordingly is proposing to limit the exemption to HCFC–141b. EPA requests comment on its proposal to limit a space vehicle/defense exemption to HCFC–141b.

A person seeking an exemption for the production and import of HCFC–141b for space vehicle purposes and for narrow defense needs under § 82.15(a)(1)would need to apply for the exemption under § 82.18. Today's action proposes a streamlined application and review process under § 82.18(e) for space vehicle/defense allowances. The application process would require a U.S. government or other entity involved in space vehicle endeavors or narrow defense uses to submit the following information to EPA prior to July 1, 2002: (a) Name and address of the entity; name of contact person and phone and fax numbers and e-mail address; (b) quantity (in kilograms) of HCFC–141b needed for each relevant control period for the space vehicle or defense interest; (c) a detailed description of the space vehicle or defense need met by the use of HCFC–141b; (d) a technical description of the processes in which HCFC–141b is being used; (e) a technical description of the area where the product will be applied; (f) a technical description of why alternatives and substitutes are not sufficient to eliminate the space vehicle or defense use of HCFC–141b; (g) a detailed analysis showing why stockpiled, recovered or recycled quantities are deemed to be technically infeasible for use; (h) an estimate of the number of control periods over which such an exemption would be necessary; and (i) a detailed description of continuing investigations into and progress on possible alternatives and substitutes.

EPA would review the application in order to determine whether to grant space vehicle/defense allowances for the specific quantity of HCFC–141b for the specified control period. If more information is needed, EPA would contact the applicant and specify the necessary information. EPA would retain the right to disallow the space vehicle/defense allowances based on information received regarding, *inter alia,* fraud, misrepresentation, inconsistency with Articles and Decisions under the Montreal Protocol, inconsistency with the CAA Amendments of 1990, or other reasons related to human health and the environment.

EPA is proposing a specific application period ending July 1, 2002. By limiting the time frame for accepting applications, EPA is providing a strong incentive for U.S. government and other space vehicle entities to periodically review their HCFC–141b needs for long-term planning. By limiting the time frame for the review of applications, EPA would also be reducing the Agency's long-term burden to continually review claims of space vehicle or defense interest.

EPA considered conducting a one-time period of review of petitions for space vehicle/defense allowances to be finalized by publication of a notice with a list of acceptable and unacceptable space vehicle/defense exemptions to the class II phaseout dates. EPA is not proposing this approach because the Agency expects very few applications for space vehicle/defense allowances for HCFC–141b, and EPA believes it is important for petitioners to periodically reassess the critical nature of continued HCFC–141b need. EPA expects that no more than one percent of the total

HCFC–141b allocations would be needed for this exemption. EPA is also proposing that the allocation be updated every three years, via submission of an update report which indicates the following: whether the entity has found no viable substitute and will need to extend their exemption for the next three years; why the entity believes no alternatives are viable for their application; and the efforts undertaken by that entity to find alternatives. The first period would provide allocations for January 1, 2003 through December 31, 2005. Updates would be due to EPA by March 1, of 2005 for the three-year period of 2006 through 2008, and so on until 2010. EPA would make a determination on the update within 90 days of receipt and notify the submitting entity accordingly.

Another option in the implementation of an exemption for the production and import of HCFCs beyond the accelerated phaseout would be a limit on the total quantity of HCFC–141b that one U.S. government entity or other space vehicle entity could request and obtain in a control period. Finally, EPA could limit the number of control periods for which a U.S. government or other space vehicle entity with these interests may apply for an HCFC–141b exemption. EPA is not proposing these options to limit the quantity of material or the control periods because the Agency expects the numbers of requests and the quantities to be very small. However, EPA is proposing to limit the total quantity of HCFC–141b produced or imported for space vehicle or narrow defense needs to one (1) percent of the aggregate of HCFC–141b baselines per year. This would reflect the expected small number of requests for small quantities while still allowing for export to Parties and Article 5 countries.

EPA is today proposing to create an exemption process for the continued production or import of HCFC–141b up to January 1, 2010, for applications related to critical space vehicle needs or narrow defense needs in cases where alternatives and stockpiled, recovered or recycled quantities are deemed to be technically infeasible for use. Upon request by the appropriate Agency or entity, the Administrator may grant authorization for production or import of a specified quantity, for a three year period, beginning on January 1, 2003. If need for HCFC–141b remains critical past 2005, exempted entities may renew their submission for an additional three years by updating the information submitted in the original application to EPA. Approval for production or import does not imply or mandate production; each user must locate a willing supplier and negotiate supply. It should be noted that the Parties at the 1999 Meeting of the Parties in Beijing adopted a production freeze, which requires that all production, which would include space vehicle/defense exemptions, remain below the cap. The 65 percent reduction in consumption in 2010 may preclude continued availability of this exemption; the more current consumption figures in the years leading up to 2010 may provide EPA with a more realistic picture of the possibility of granting the exemption for the years after 2010. The availability of this exemption will be revisited in the rulemaking implementing the January 1, 2010 phaseout. Consequently, today's action proposes that the exemption be available until January 1, 2010. EPA requests comment on its proposal to make the space vehicle/defense exemption available until January 1, 2010.

The Agency believes technically feasible alternatives will likely be available for commercial and the vast majority of non-commercial uses of HCFCs prior to their phaseout dates. However, there may be specialized uses where stockpiled, recovered, or recycled quantities are technically inadequate. At this time, the only foreseeable use of this authorization is for the thermal protection system used for space exploration and satellite launches and for cleaning applications in certain defense equipment.

Section 605 of the CAA contains certain constraints on use, production, and consumption of HCFCs. This exemption is limited by these constraints. For example, under CAA Section 605(a), effective January 1, 2015, no person may introduce into interstate commerce or use any virgin class II substance unless the substance is either used and entirely consumed (except for trace quantities) in the production of other chemicals, or the substance is used as a refrigerant in appliances manufactured prior to January 1, 2020. In addition, CAA section 605(b)(2) prohibits production of class II substances on or after January 1, 2030. Finally, EPA will not authorize quantities of HCFCs under the space vehicle/defense exemption that would cause the U.S. to exceed the HCFC consumption cap as agreed under the Montreal Protocol.

To facilitate accurate tracking of exempted HCFC–141b production and use, EPA proposes requiring the manufacturer of the applicable foam (or the formulation for spray foam) or the cleaning product to submit information quarterly to EPA delineating the quantity of HCFC–141b received; the quantity of HCFC–141b used or contained in the product; the identity of the producer or importer supplying the HCFC–141b; the identity of the recipient of the product made with or containing HCFC–141b; and the quantity of HCFC–141b used or contained in the product sent to the recipient. Additionally, the entity requesting allowances of the exempted material in space vehicles or defense purposes would report quarterly to EPA on: the type of product made with or containing HCFC–141b; the specific application of the product; the quantity of HCFC–141b used or contained in the product; and the identity of the manufacturer of the product.

C. Would There Be a Petition System for Importing Used HCFCs?

With today's action, EPA is proposing a petition system for use in importing used HCFCs. The Protocol allows used ODSs to be imported outside of the process required under the cap. Because the potential for abusing this exception was high in imports of class I substances (for example, by claiming that a CFC was used when in fact it was virgin, thus requiring allowances), EPA instituted a petition process in 1995 that requires those wanting to import used class I ODSs into the U.S. to petition EPA for approval before making the import. To ensure that relevant class II imports are legitimately used previous to import, EPA proposes a petition system for the import of used HCFCs. EPA will make a definitive determination that a shipment contains used HCFCs before granting a non-objection notice allowing the import. A description of the petition system that EPA is proposing is discussed below.

The original reason the Parties to the Protocol agreed to permit international trade in previously used ozone-depleting substances was to ease the transition to alternatives. In addition, the Parties believed that allowing trade in quantities of already existing used material would offset the need for new global production.

Evidence has increasingly indicated that new production overseas of class I material has been clandestinely diverted to the U.S. and other non-Article 5 countries as imports of ''used'' material. EPA anticipates that a similar situation will evolve as HCFCs are phased out and supply diminishes in the face of continued demands.

EPA is proposing today's petition system in the hopes that the provisions of the process can guard against abuses and guarantee that imported material is truly previously used, thus setting the stage for an effective class II petition

system for used imports. EPA requests comment on all aspects of the proposed petition system for the import of used HCFCs.

1. Petition for Each Individual Shipment

EPA is proposing that a petition to import used HCFCs may only be submitted on a shipment-by-shipment basis. The information in a petition and the quantity a person wishes to import into the U.S. must be limited to a specific shipment and a single U.S. Customs entry. If an importer cannot arrange for the entire quantity to be shipped as one entry through U.S. Customs, the importer would be required to submit more than one petition for the quantity in each individual Customs entry.

2. Threshold Quantity Requiring a Petition

EPA is proposing a threshold quantity of used HCFCs for an individual shipment for which a person is required to submit a petition to import. EPA is proposing that individual shipments of five (5) pounds or more require submitting a petition to import. A threshold quantity of five pounds allows a company to take three samples from a large ISO-tank for laboratory analysis and send those samples to a testing facility in the U.S. without being subject to the petition requirements. In developing today's proposal, EPA also considered requiring that a person who wishes to import any quantity of used HCFCs, regardless of the size, be required to submit a petition, thereby eliminating the threshold level altogether. EPA is not proposing to eliminate the threshold level altogether in order to minimize burden on the regulated community and conserve Agency resources.

3. Information Requirements

EPA is proposing that petitions to import used HCFCs include a comprehensive and detailed list of information. This reflects the type of information that EPA needs to independently verify the previous use of the HCFC. Today's action proposes under § 82.24 (c)(3) that contact information for the entire chain of custody of the used HCFC be provided in the petition. For example, a petition must include complete contact information for: every source equipment from which the used controlled substance was originally recovered; every company that collected the material from the equipment; every previous owner of the material; and every company that will be exporting the used controlled substance. EPA seeks comment on the effectiveness and potential burden associated with requiring such contact information.

Today's proposal calls for providing a copy of a contract for the purchase of the used HCFC in addition to the intended use. In light of efforts by Parties to the Protocol to implement a licensing system for exports as well as imports, EPA is proposing that the petitioner provide an export license from the appropriate government agency in the country of export. EPA requests comment on its proposal for detailed information to accompany each petition to import used HCFCs.

EPA also considered proposing that the petition to import used HCFCs include the name, make and model number of the equipment from which the HCFC was as a means to verify that the shipment of HCFC had been truly used to operate equipment. EPA requests comment on the likely utility and burden of requiring this information about the equipment from which the material was removed.

4. Timing for Review of a Petition

EPA considered many time frames for the review of petitions to import used HCFCs, including a complete elimination of any time limit for EPA's review of a petition. EPA also considered whether to include an automatic approval provision with any of these time limits. Through experience and the unexpected volume of petitions in the class I petition system to import used CFCs, EPA learned that the 15 working-day time limit for petitions was too short for a thorough review. Given the large number of petitions used being submitted (192 in 1997, 160 in 1998, and 120 in 1999), combined with the fact that EPA will likely require more time to independently verify the information required with today's document, EPA is proposing a time limit for the review of a petition by EPA of forty (40) working days. EPA believes that 40 working days allows it the time to thoroughly verify the information in the petition and decide whether to allow or disallow the petition. EPA requests comment on whether the 40 working-day time limit is practicable and appropriate or whether another time limit would be more appropriate.

EPA is specifying that the time for review begins on the working day after EPA's Global Programs Division actually receives the petition. EPA is proposing that a 40-day time frame with no automatic approval would allow the Agency to balance the goals of responsiveness to legitimate requests and thoroughness in identifying abuses of the petition process. EPA additionally proposes, that while EPA will make every effort to respond to the petitioner within the 40 working-day period, a lack of response does not constitute a grant of authority to import. EPA requests comment on the need for a definitive response from EPA before a person may import the used HCFCs.

5. Reasons for Issuing an Objection Notice

Under the class I petition process, EPA attempts to independently verify the information contained in a petition to import used HCFCs, with special attention given to confirming the prior use of the material. EPA's effort to confirm the information in a petition is conducted with support from other government agencies that are members of the inter-agency task force combating illegal imports of ozone-depleting substances. Since 1994, EPA has worked with the inter-agency task force members who include the Department of Justice, the Internal Revenue Service, the Customs Service, the State Department, and the Department of Defense. In the six years of implementing the petition process to import used class I controlled substances, EPA has received a variety of petitions. Many of the petitions provided insufficient information or provided information that EPA had reason to doubt was sufficient to confirm that the material was, in fact, previously used.

To adequately process class II petitions, EPA is proposing a list of reasons for which the Agency might issue an objection notice to a petition to import used HCFCs.

The first reason for disallowing a petition is a lack of sufficient information. If the importer of used HCFCs fails to supply the required information in § 82.24(c)(3), this would be a basis for disallowing a petition.

The second reason for disallowing a petition is if the Agency determines that the petition contains, or is believed to contain, false or misleading information.

EPA may issue objection notices for petitions to import used HCFCs if the transaction appears to be contrary to provisions of the *Vienna Convention on Substances that Deplete the Ozone Layer,* the Montreal Protocol and Decisions by the Parties, or the non-compliance procedures outlined and instituted by the Implementation Committee of the Montreal Protocol. Section 614(b) of the CAA states that in the case of conflict between the CAA and the Montreal Protocol, the more stringent provision shall govern. Thus, EPA proposes that if a petition contains information about a transaction that

indicates the transaction is contrary to the provisions of the Convention or the Protocol, including Decisions by the Parties to the Protocol or the Protocol's non-compliance procedures, that shall be grounds for issuing an objection notice.

If a country states that it is no longer allowing exports or if it reports that it has not granted any export licenses, EPA will treat this as grounds for issuing an objection notice for a petition to import from that country. EPA proposes to disallow a petition if the appropriate government agency in the exporting country has not agreed to issue any required export license for the individual shipment of used HCFCs that is cited in the petition.

Today's action also proposes that EPA may issue an objection notice for a petition when the Agency receives information indicating that a person listed in the petition has produced false or misleading information regarding transactions in ozone-depleting substances. In the past, EPA has received information from other U.S. government agencies, from other petitioners, from non-governmental organizations and from foreign governments that have implicated companies or individuals in activities designed to mislead government authorities about activities related to ozone-depleting substances.

Another proposed reason for disallowing a petition is the receipt by the Administrator of information regarding activities contrary to EPA regulations by any individual or company listed in a petition. Activities contrary to EPA regulations that have been reported to EPA or discovered by EPA personnel and that are related to ozone-depleting substances include, but are not limited to, un-certified recovery; un-certified reclamation; reclamation that does not meet the required specifications; improper labeling; diverted transhipment; mis-identification during import; forgery of EPA documents; and fraudulent claims regarding these activities. This action proposes that EPA may disallow a petition if the Agency receives information that any person or company listed in the petition is involved in an activity that is a potential violation any 40 CFR part 82 regulation or any evidence of false statements.

EPA also believes that conditions established for disbursing monies to specific country projects by the Executive Committee of the Montreal Protocol's Multilateral Fund may provide a basis for objecting to petitions. EPA believes as a general rule that no used HCFCs should be imported from Article 5 countries where reclamation capacity, for that specific controlled substance, has been or is being installed through assistance of the Multilateral Fund. The U.S. contributes approximately one fourth of all funds going to the Multilateral Fund, the general purpose of which is to assist countries operating under Article 5(1) of the Protocol to make the transition away from ozone-depleting substances; and a transition policy includes the development of reclamation facilities in order to optimize the use of existing ozone-depleting substances so as to avoid unnecessary production of virgin materials. Thus, EPA views the importation of used HCFCs from countries where reclamation capacity has been supported by the Multilateral Fund to run counter to U.S. interest, and counter to the aims of a global phaseout strategy. EPA requests comment on its proposal that importation of used HCFCs from Article 5 countries where reclamation facilities have been funded by the Multilateral Fund for reclaiming ODSs to be used for that country's basic domestic needs may provide a basis for objection to a petition.

EPA is proposing an appeals process through re-petitioning within 10 working days after the date of an objection notice from the Administrator, if the basis for the objection notice is ''insufficient information.'' EPA proposes to allow only one re-petition for any original petition received by EPA. EPA requests comment on the appropriateness of the aspects proposed above for an appeals process.

6. Petition and Non-Objection Letter to Accompany the Shipment

EPA is proposing a requirement in § 82.24(c)(3) that the petition and the non-objection notice from EPA, approving the import of a used class II controlled substance, accompany each shipment through U.S. Customs. EPA believes that presenting the petition and EPA-approval letter with a shipment will facilitate the clearance through U.S. Customs.

D. Would There Be New Restrictions on Imports to and Exports From Specific Parties?

EPA is proposing a restriction on Parties to whom you (as defined in Section II.C) can export HCFCs and from whom you can import HCFCs, beginning in 2004, to comply with an amendment to the Protocol that the Parties agreed to at the eleventh meeting in late 1999. This amendment states that as of January 1, 2004, each Party shall ban imports from and exports to countries that have not ratified the 1992 Copenhagen Amendments, in addition to the original Montreal Protocol (1987) and London Amendments (1990). These bans on imports from and exports to non-Parties reflect an agreed strategy by Parties for encouraging ratification of the Protocol and each successive package of amendments.

Appendix C of this rulemaking will include all Parties to the Copenhagen Amendments as of the promulgation date of the final rule. The UNEP web site maintains a real-time list of current Parties to the Protocol and all its amendments, for those wishing to ensure they are viewing the most current list. The Internet address is: http://www.unep.org/ozone/ratif.htm.

E. Should There Be Consumption Allowance Credits for Reductions of HCFC Production By-products Regulated by Title VI?

In addressing emissions reductions with a view toward also avoiding increases in, and encouraging reductions of, other regulated emissions, EPA realizes that there is at least one case where the production of an HCFC creates a by-product that is also regulated under Title VI of the CAA. In an effort to encourage emissions reductions of other chemicals regulated under the CAA, EPA has in the past explored the ideas of reduction credits or offsets. Such an approach may be appropriately used in ensuring that a by-product (regulated under Title VI), created in the production process of an HCFC regulated under Title VI, is voluntarily controlled to the greatest extent possible. One option to consider is granting one available consumption allowance (one kilogram) and one available production allowance of the HCFC whose production creates the Title VI regulated by-product, for each kilogram of the by-product that is reduced as of a certain date from an established baseline. EPA believes that portions of the consumption allowances remaining below the U.S. cap, after allocations are made to eligible new entrants, could be available for such a program. Allowances could be granted only to the extent available under the cap.

EPA seeks comments on an incentive approach of providing allowance credits to producers of an HCFC who reduce emissions of that HCFC production's by-product that is also regulated under Title VI. EPA specifically requests comments on the advantages and disadvantages of this type of program and how such a program might work, if instituted.

EPA requests comments on any or all of the above additional provisions not discussed in the ANPRM.

IV. Summary of Today's Proposal

A. How Would Allowances Be Calculated and Allocated?

Both production and consumption allowances would be allocated to those with production and/or import activity in their individual baseline year (highest ODP-consumption year among 1989, 1994, 1995, 1996, and 1997). The recent decision by the Parties to freeze production of HCFCs requires two kinds of allowances: production and consumption. As in the class I system, a person would expend production allowances and consumption allowances to produce prior to the relevant HCFC phaseout. A person would need only to expend consumption allowances to import, and would receive consumption allowances in return following proof of export.

New entrants to the HCFC importing market, who began importing HCFCs after the end of 1997 and before April 5, 1999, when the ANPRM was published, may request allowances from EPA for historical HCFC importation during that time. These new entrants would be eligible for allowances if they submitted appropriate required quarterly reports to EPA prior to publication of this proposal; sent proper documentation of HCFC imports to EPA; and if the HCFC import market is their primary source of business income. EPA will issue available allowances to those companies determined eligible by EPA after review of the documentation.

EPA proposes to allocate and track allowances on a chemical-by-chemical basis, as done in the class I allowance system. Although EPA would analyze total baseline ODP-weighted consumption units to determine individual baseline years, the actual detailed allocations would be listed chemical-by-chemical. Consumption allowances would be allocated in the total amount of consumption in the baseline year. Production allowances would be allocated using total production for that same year. Tracking would work in the same way as under the class I system—any trades between chemicals would be ODP-weighted. Although many commenters prefer an ODP-weighted unit for allocation, trading and expenditure, EPA has studied its reporting obligations to the Protocol and its ability to ensure adequate compliance. To ensure company and U.S. compliance, EPA would need to know specific chemicals produced and consumed in order to maintain a chemical-by-chemical tracking system. EPA's required offset of 0.1 percent for inter-pollutant and inter-company trades would be significantly lower than the 1 percent used for class I substances. Therefore, the offset should not create an undue burden on trades.

EPA would annually allocate, based on the relevant baseline(s), for the entire period of time prior to each chemical's phaseout, unless the U.S. is unable to meet its 35 percent reduction by 2004. In that case, EPA would need to adjust allowances accordingly, on a pro rata basis. Before 2010, EPA would re-evaluate the percentage allocated from the baseline to determine whether modifications are necessary to meet the 65 percent consumption reduction required in 2010 by the Protocol. If reductions of HCFC–22 and HCFC–142b are not sufficient to reach the Protocol-required 65 percent reduction for 2010, EPA would allocate a lesser percentage of baseline. Any post-phaseout exceptions would be re-evaluated similarly.

At the beginning of each control period, EPA would officially notify each allowance holder of the amount available for that year, based on the relevant baseline. Between now and 2003, each allowance holder would receive 100 percent of their baseline consumption, and 100 percent of their historic production in the same baseline year as consumption, unless permanent trades occur that would transfer the traded portion of the allowance to the purchasing entity, or unless the U.S. would be unable to meet its 2004 35 percent reduction, as explained above. In 2003, HCFC–141b consumption allowances would be subtracted from the holders' allocations (other than any potential exceptions).

Because the Protocol freezes production at baseline but does not currently require further reductions, EPA is proposing to allow production after relevant phaseouts only for very narrow space vehicle or defense uses of HCFC–141b, and for export to any Party listed in Appendix C to Subpart A (Parties that have ratified the Copenhagen Amendments) after January 1, 2003. At that same time, an additional 15 percent of production baseline allocation of the phased out HCFC, over and above the Protocol production cap, would be allocated for production for export only to Article 5 countries for their basic domestic needs. This post-phaseout production (100 percent of production baseline to Parties that have ratified the Copenhagen Amendments plus 15 percent of baseline for Article 5 countries) would not require accompanying consumption allowances, only ''export production allowances'' or ''Article 5 allowances,'' respectively. When EPA re-evaluates baseline allocations before the HCFC–22 and HCFC–142b phaseout to determine 2010 compliance with Protocol reductions, it would also evaluate the continued possibility of offering export production allowances and Article 5 allowances for HCFC–22 and HCFC–142b.

EPA is proposing to allocate 100 percent of the consumption baseline, which is below the U.S. consumption cap of 15,240 ODP-weighted metric tons. The total baseline figure for consumption represents the aggregate of companies' baselines, as described below. The baseline EPA is proposing in today's action would be as follows: each company with baseline production and/or consumption in 1989, 1994, 1995, 1996, and/or 1997 would take their highest ODP-weighted consumption year as their baseline. Both production and consumption allowances would be derived from the relevant individual baselines in the applicable year. The allowances remaining between the aggregate baseline and the consumption cap could be used for allocations for those eligible entrants new to the HCFC market between January 1, 1998 and April 5, 1999.

EPA is proposing to use 100 percent of the baseline years' production, which would keep the U.S. in line with its production cap.

We propose to include 1989 as a potential baseline year because we have very good numbers from our earlier requests for baseline data, and class II substances began to increase their presence in the market during that time. In 1990–1993, our data on consumption was poor, because reporting was not yet required on a regular basis. To obtain accurate numbers from those years, we would need to request the data from each participating company, along with invoices, bills of lading, and other documents that could help verify the accuracy of the production and consumption numbers submitted. The time entailed and the uncertainty of receiving complete and accurate information rules out attempting to obtain figures from 1990 to 1993. Detailed reporting, for which we have supporting documentation and/or which we have verified with individual companies, began in 1994. Additionally, activity in class II ODSs grew significantly from 1994 to 1997. Therefore, including those years beginning with 1994 is reasonable. The years 1998 and later would not be included, except for certain eligible new entrants as discussed above, because

they would likely be artificially high, reflecting companies' anticipation of EPA's allocation system and the desire to stockpile.

B. Would There Be Additional Import or Export Restrictions?

We are proposing a restriction on importing and exporting HCFCs to comply with the Beijing Amendments to the Montreal Protocol. The proposed restriction would ban imports from and exports to countries that have not ratified the Copenhagen Amendments, in addition to the original Protocol and the London Amendments. These bans are further discussed in Section III.D. of today's proposal.

We are also proposing a petition system—similar to the one provided for used class I ODSs, with strengthening modifications—for the import of used HCFCs. A person wishing to import a used HCFC into the U.S. would need to petition EPA by providing detailed information on the import, including: specific name and amounts of the HCFC; source from which it was recovered; contact information for that source; intended shipper; intended port; date of import; intended reclamation and use in the U.S., and more. EPA would thoroughly verify information in the petition, and either issue a ''non-objection notice'' allowing the person to import the shipment, or an ''objection notice'' disallowing the import. See Section III.C. of this action for further discussion.

C. How Would Transfers Function?

The proposal would allow intra-company, inter-pollutant transfers, using ODP-weighting to account for differing ODPs between chemicals. The proposal would also allow inter-company trading (both same pollutant and inter-pollutant trading) with ODP-weighting required if two or more different chemicals are involved. International transfer of production allowances only would be permitted. An environmental offset, required by the CAA, is proposed at 0.1 percent for inter-pollutant and inter-company trades. At one-tenth of one percent, EPA believes the burden on inter-pollutant and inter-company trades would be minimal.

Transfers could be made on a temporary basis, to be applied within the control period (1/1 through 12/31) in which the trade is made. EPA also proposes to allow permanent baseline trades, which would transfer the allowances for the remaining period prior to phaseout. The recipient of the allowances would add those to its baseline, while the transferor would subtract them from his/her baseline. For example, if a company was allocated 150 allowances of HCFC–141b as part of its baseline, and that company then received 100 HCFC–141b permanent baseline allowances from a transferring company, the receiving company could expend 250 HCFC–141b allowances each year until 2003, at which time that company would subtract the entire 250 HCFC–141b (or commensurate ODP-weighted equivalent) allowances from its baseline allowances. The company that transferred the 100 allowances to the receiving company would not subtract those 100 HCFC–141b allowances from its baseline in 2003, because it already subtracted those allowances when it transferred them on a permanent basis to the receiving company.

EPA is not proposing to supplement an allocation system with further regulation under sections 610, 611, or 612 of the CAA at this time. EPA believes that compliance with the consumption and production caps can be assured through the proposed allocation system of class II allowances.

D. How Would the Reporting and Recordkeeping Requirements Change?

Recordkeeping and reporting would be similar to that used for class I. EPA would require quarterly reports, outlining each chemical and the amounts produced, imported, transformed, destroyed, and exported. These forms would be intended for use between the effective date of the final rule and the next reporting changes made to the phaseout regulations by EPA, or modifications made to address the incremental phaseouts past 2010, whichever is earlier.

EPA is proposing that failure by producers to keep records on their production or to submit reports regarding their production would lead the Administrator to assume that the producer has produced at full capacity during the period for which records were not kept, for purposes of determining possible violations. EPA requests comment on this proposal to account for missing records or reports in order to determine possible violations.

EPA is proposing that reporting for exports be conducted quarterly, as is reporting for all other activities. Under the class I system, reporting on exports was required annually. However, due to the recent adjustment to the Protocol banning trade with non-Parties to the Copenhagen Amendments, EPA needs data that is more current for review. Forms for recording exports made using export production allowances after a phaseout would require information on the chemical and the volume, with accompanying copies of the bills of lading and invoices. Trades of class II substances would be reported in the same manner as class I trades. ODP-weighting and calculation of the environmental offset would need to be accounted for in the transfer calculations, as they were for class I substances.

Entities granted space vehicle/defense allowances would report quarterly on the quantity of exempted HCFC–141b that was received and used, and how it was used. The foam formulator/supplier would also report quarterly on the producer from whom the exempted HCFC–141b was received, the amount received, the amount used in fulfilling space vehicle or defense needs, and the amount sold to whom in which products. The same entities granted the allowances would certify to EPA before the beginning of each year that a viable alternative to HCFC–141b, or stockpiled, recovered, or recycled HCFC–141b was not adequate or not commercially available.

EPA is currently exploring the possibility of having reports filled out and submitted to the Agency over a secure Web site. If and when electronic reporting would occur, EPA would change its guidance document and its Information Collection Request to indicate a change in burden hours.

EPA requests comment on any and all portions of today's proposal.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as any regulatory action (including an advance notice of proposed rulemaking) that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this action is a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore subject to OMB review under the Executive Order even though the annual effect on the economy is expected to be less than $100 million. This document was reviewed by OMB and changes recommended by OMB have been made and documented for the public record.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that employs 1000 employees or less; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

We have determined that 13 small businesses, or 50 percent of the total businesses addressed, would receive allowances, for which recordkeeping and reporting to EPA is required. The administrative recordkeeping and reporting these small businesses will experience will amount to an impact of between 0.01 and 0.02 percent of their HCFC revenues alone. When considering that the vast majority deal in numerous chemicals and/or also obtain revenues from services provided, this percentage for the majority would be significantly lower.

Although this proposed rule would not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Although small entities receiving allowance allocations would be subject to the same recordkeeping and reporting requirements as the larger entities, for purposes of tracking allowance trades and expenditures, the small entities would be on the same footing as the larger entities; they would be receiving their best year of activity in the range of years discussed above as a baseline year for determining allowance allocations, and would be able to conduct their business with a degree of certainty in a competitive market. Like the large entities, the small entities would receive allowances for the entire phaseout period, with the necessary adjustments each calendar year to accommodate the required reductions in consumption agreed to by the Parties to the Protocol and the phaseouts of HCFC–141b, HCFC–22, and HCFC–142b.

EPA believes that the ability to transfer allowances among HCFCs provides the greatest flexibility for small entities to manage their allocation. Unlike the class I system for transfers, there is no restriction to limit inter-pollutant transfers to groups of substances. Inter-pollutant transfers, also known as intra-company transfers or trades, would allow a company to shift allowances internally from one HCFC to another to respond to market forces, e.g. HCFC–142b allowances for HCFC–22 allowances. Inter-company transfers of allowances would also be possible, either on a current-year basis or on a permanent basis. Current-year trades are temporary trades and are reflected in a company's balance of allowances in the control period in which the trade occurs.

By using the phaseout schedules and the option for current-year or permanent trades, a small entity could opt for short-term decisions or long-term decisions concerning the allowances it holds after evaluating its place in the market. In addition, the offset required by the CAA is proposed at 0.1 percent, 0.9 percent less than that required under the class I allowance trading system; such an offset would still provide the environmental benefit required by Congress without penalizing small entities should they wish to avail themselves of transfers. EPA estimates that the burden would be negligible on small businesses, while those same small businesses would gain a marketable asset in their allocated allowances. The actual burden would consist of quarterly reports on production, imports, exports, and allowance trades, as well as paperwork describing any trades in which the business decides to engage. The estimated recordkeeping and quarterly reporting burden on the affected small businesses would be about 40 hours per year per business, at an estimated cost of $3,070. Each trade made at the discretion of the small business would add a burden of 4 hours at a cost of $307, basing the calculation on a cost of $76.88 per hour.

EPA has also carefully reviewed the quarterly reports submitted by small entities for the baseline years under consideration to ensure that the correct quantities have been ascribed to each entity for each year. EPA consulted with the small entities in order to reconcile any disparities encountered during the record review.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

C. Executive Order 13045: Children's Health Protection

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it implements specific phaseout schedules established under the CAA and the Montreal Protocol.

D. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d), Public Law 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or

activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This proposed rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposals discussed in this document are directed to economic entities that either produce, import, export, transform, or destroy class II controlled substances, and not to State or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The options discussed are directed to entities that either produce, import, export, transform, or destroy HCFCs, and not to Indian tribal governments or their communities. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Unfunded Mandates Reform Act

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

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Entities in the private sector that either produce, import, export, transform, or destroy HCFCs will be operating under an allowance allocation system very similar to the system selected for CFCs (53 FR 30566, August 12, 1988), which was determined to be the most economically efficient, market-based, and simple to administer in meeting the requirements of the Protocol. Recordkeeping would be somewhat simplified due to the absence of essential use allowances and destruction credits. The experience gained by those entities familiar with the class I allowance allocation system would carry over in the class II allowance allocation system. Thus, today's rule is not subject to the requirements of Section s 202 and 205 of the UMRA.

H. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2014) and a copy may be

obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www/epa.gov/icr.

The recordkeeping and reporting requirements proposed in this rule are similar to those used in the class I allowance system that has been in place for several years. The information collected will be utilized to monitor business compliance with the proposed class II allowance system. The information will also be used to comply with the reporting requirements agreed to by the Parties to the *Montreal Protocol on Substances that Deplete the Ozone Layer.* The information is intended to ensure that the U.S. meets its obligations to control and administer the phaseouts of class II substances under the Protocol and the CAA Amendments of 1990.

Reporting requirements mandated in Section 603 of the CAA relative to class II substances are currently in place in 40 CFR 82.13(n) and (o). New recordkeeping requirements and expanded reporting requirements to ensure accurate expenditures of allowances and trades of allowances are proposed. Responses to the collection of information are mandatory pursuant to Section 114 of the CAA.

Information collected from businesses may be claimed as confidential by clearly identifying the material as confidential. Such information will be treated in accordance with EPA's procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B and will only be disclosed by the means set forth in that subpart.

It is estimated that the annual reporting burden for producers is 1,132 hours and for importers it is 1,800 hours. This includes maintaining records, preparing and submitting quarterly reports on production, import, exports, and claims for transfers of allowances and offsets. The average burden hours per response is estimated to be between 283 and 450 hours. The proposed frequency of response is four times per year and the likely number of respondents will be 7 producers and 14 importers, although some of the producers and some of the importers also function as exporters. The only industry requirements for the start-up phase are an evaluation of the impact of the allowance system and the development of a plan of action. The start-up burden is estimated to be 910 hours for producers and 1,820 hours for importers.

Start-up costs are estimated to amount to $209,882, after which annual industry cost is estimated to be $225,412 to maintain records of production, import, and export; submit quarterly reports to EPA on production, import and export; provide additional information requested by EPA; prepare transfer claims; and submit petitions to import used HCFCs. The latter two functions are not periodical tasks but are initiated by the person based on business decisions.

U.S. agencies, departments or instrumentalities, or related entities involved in space vehicle endeavors, are being asked in the initial application for an exemption to produce or import HCFC–141b for space vehicle or narrow defense needs to identify the quantity of HCFC–141b needed for each control period, an estimate of the number of control periods over which such an exemption would be necessary, and a detailed description of the need met by HCFC–141b in this proposal. EPA is proposing that the entities supply technical descriptions of the processes in which HCFC–141b is being used, the areas where the product will be applied, and why alternatives and substitutes are not sufficient to eliminate the use of HCFC–141b. EPA is also proposing that entities supply a detailed analysis showing why stockpiled, recovered, or recycled quantities are not technically feasible for use and a detailed description of continuing investigations into and progress on possible alternatives and substitutes by the applicants.

Entities granted space vehicle/defense allowances for the production of HCFC–141b products would be required to report quarterly to EPA on the type and application of the products received from the manufacturer and the quantity of HCFC–141b contained in the products. The manufacturer would report quarterly to EPA the quantity and supplier of HCFC–141b received because of space vehicle/defense allowances; the identity of the recipient of the products; and the quantity of HCFC–141b used or contained in the products. It is estimated that the annual reporting burden for the recipient of the allowances is about 20 hours at a cost of about $864 and the burden for the manufacturer is about 20 hours at a cost of about $1,538.

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

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

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director; Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs; Office of Management and Budget; 725 17th St., NW; Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 20, 2001, a comment to OMB is best assured of having its full effect if OMB receives it by August 20, 2001. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Reporting and recordkeeping requirements.

Dated: July 2, 2001.

Christine Todd Whitman,

Administrator.

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

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

Subpart A—Production and Consumption Controls

2. Amend § 82.3 as follows:

a. Revise the section heading;

b. Revise the following definitions: ''Article 5 allowances'', ''Baseline consumption allowances'', ''Baseline production allowances'', ''Consumption allowances'', ''Destruction credits'', ''Party'', ''Production allowances'', and ''Transformation credits';

c. Add new definitions in alphabetical order for the terms ''Export production allowances'', ''Individual shipment'', ''Non-objection notice'', ''Source facility'', ''Space vehicle/defense allowances'', ''Unexpended space vehicle/defense allowances'', and ''Unexpended export production allowances''.

The revisions and additions read as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Article 5 allowances means the allowances apportioned under § 82.9(a) and § 82.18(a).

Baseline consumption allowances means the consumption allowances apportioned under § 82.6 and § 82.19.

Baseline production allowances means the production allowances apportioned under § 82.5 and § 82.17.

* * * * *

Consumption allowances means the privileges granted by this subpart to produce and import controlled substances; however, consumption allowances may be used to produce controlled substances only in conjunction with production allowances. A person's consumption allowances for class I substances are the total of the allowances obtained under §§ 82.6 and 82.7 and 82.10, as may be modified under § 82.12 (transfer of allowances). A person's consumption allowances for class II substances are the total of the allowances obtained under §§ 82.19 and 82.20, as may be modified under § 82.23.

* * * * *

Destruction credits means those privileges that may be obtained under § 82.9 to produce class I controlled substances.

* * * * *

Export production allowances means the privileges granted by § 82.18 to produce HCFC–141b for export following the phaseout of HCFC–141b on January 1, 2003.

* * * * *

Individual Shipment means the kilograms of a used controlled substance for which a person may make one (1) U.S. Customs entry, not to be disaggregated, as identified in the non-objection letter from the Administrator under § 82.13(g) and § 82.24(c)(4).

* * * * *

Non-Objection Notice means the privilege granted by the Administrator to import a specific individual shipment of used controlled substance in accordance with § 82.13(g) and § 82.24(c) (3) and (4).

* * * * *

Party means any foreign state that is listed in Appendix C to this subpart (pursuant to instruments of ratification, acceptance, or approval deposited with the Depositary of the United Nations Secretariat), as having ratified the specified control measure in effect under the Montreal Protocol. Thus, for purposes of the trade bans specified in § 82.4(l)(2) pursuant to the London Amendments, only those foreign states that are listed in Appendix C to this subpart as having ratified both the 1987 Montreal Protocol and the London Amendments shall be deemed to be Parties. For purposes of the trade bans specified in §§ 82.15(e)(1) pursuant to the 1999 Beijing Amendment, only those foreign states that are listed in the third column of Appendix C to this subpart as having ratified the Copenhagen Amendments shall be deemed to be Parties.

* * * * *

Production allowances means the privileges granted by this subpart to produce controlled substances; however, production allowances may be used to produce controlled substances only in conjunction with consumption allowances. A person's production allowances for class I substances are the total of the allowances obtained under §§ 82.7, 82.5 and 82.9, and as may be modified under § 82.12 (transfer of allowances). A person's production allowances for class II substances are the total of the allowances obtained under § 82.17 and as may be modified under §§ 82.18 and 82.23.

* * * * *

Source Facility means the exact location at which a used controlled substance was recovered from a piece of equipment, including the name of the company responsible for, or owning the location, a contact person at the location, the mailing address for that specific location, and a phone number and a fax number for the contact person at the location.

Space vehicle/defense allowances means the privileges granted to space vehicle program or a defense entity by this subpart to order production of or to import HCFC–141b, deemed critical by the Administrator for use on space vehicles intended for travel beyond the earth's atmosphere or for narrow defense needs, as determined by the Administrator in accordance with § 82.18(j).

* * * * *

Transformation Credits means those privileges that may be obtained under § 82.9 to produce class I controlled substances.

* * * * *

Unexpended export production allowances means export production allowances that have not been used. A person's unexpended export production allowances are the total of the quantity of the export production allowances the person has authorization under § 82.18(b) to hold for that control period, minus the quantity of class II substances that the person has produced at that time during the same control period.

* * * * *

Unexpended space vehicle/defense allowances means space vehicle/defense allowances that have not been used. A person's unexpended space vehicle/defense allowances are the total of the quantity of the space vehicle/defense allowances the person has authorization under § 82.18(j) to hold for that control period, minus the quantity of HCFC–141b that the person has had produced or has had imported at that time during the same control period.

* * * * *

3. Amend § 82.4 as follows:

a. Revise the section heading;

b. Remove paragraphs (n) through (s) and paragraph (u).

c. Redesignate paragraph (t) as (n).

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

4. Amend § 82.5 as follows:

a. Revise the section heading;

b. Remove paragraph (h).

§ 82.5 Apportionment of baseline production allowances for class I controlled substances.

* * * * *

5. Amend § 82.6 as follows:

a. Revise the section heading;

b. Remove paragraph (h).

§ 82.6 Apportionment of baseline consumption allowances for class I controlled substances.

§ 82.8 [Removed]

6. Section 82.8 is removed.

7. Section 82.9 is amended by revising the section heading as follows:

§ 82.9 Availability of production allowances in addition to baseline production allowances for class I controlled substances.

8. Section 82.10 is amended by revising the section heading as follows:

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances for class I controlled substances.

9. Section 82.11 is amended by revising the section heading as follows:

§ 82.11 Exports of class I controlled substances to Article 5 Parties.

10. Section 82.12 is amended by revising the section heading as follows:

§ 82.12 Transfers of allowances for class I controlled substances.

11. Amend § 82.13 as follows:

a. Revise the section heading;

b. Remove paragraphs (n) and (o).

c. Redesignate paragraphs (p) through (z) as (n) through (x)

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

12. Add §§ 82.15 through 82.24 to subpart A to read as follows:

§ 82.15 Prohibitions for class II controlled substances.

(a) *Production.* (1) Effective January 1, 2002, no person may produce class II substances in excess of the quantity of unexpended production allowances, unexpended Article 5 allowances, unexpended export production allowances, or unexpended space vehicle/defense allowances held by that person for that substance under the authority of this subpart at any time in any control period, unless the substances are transformed or destroyed domestically or by a person of another Party. Every kilogram of excess production constitutes a separate violation of this subpart.

(2) Effective January 1, 2002, no person may produce class II substances in excess of the quantity of unexpended consumption allowances, unexpended Article 5 allowances, unexpended export production allowances, or unexpended space vehicle/defense allowances held by that person under the authority of this subpart at any time in any control period, unless the substances are transformed or destroyed domestically or by a person of another Party, or unless they are produced using an exception granted in paragraph (f) of this section. Every kilogram of excess production constitutes a separate violation of this subpart.

(3) Effective January 1, 2002, no person may use production allowances to produce a quantity of class II substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class II substances. No person may use consumption allowances to produce a quantity of class II substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class II substances.

(4) Effective January 1, 2003, no person may produce HCFC–141b except for use in a process resulting in its transformation or its destruction, for export under § 82.18(a) using unexpended Article 5 allowances, for export under § 82.18(b) using unexpended export production allowances, for space vehicle/defense needs using unexpended space vehicle/defense allowances, or for exceptions permitted in paragraph (f) of this section.

(5) Effective January 1, 2010, no person may produce HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation or their destruction, for use in equipment manufactured before January 1, 2010, for export under § 82.18(a) using unexpended Article 5 allowances, or for exceptions permitted in paragraph (f) of this section.

(6) Effective January 1, 2015, no person may produce class II substances not previously controlled, for any purpose other than for use in a process resulting in their transformation or their destruction, for use as a refrigerant in equipment manufactured before January 1, 2020, for export under § 82.18(a) using unexpended Article 5 allowances, or for exceptions permitted in paragraph (f) of this section.

(7) Effective January 1, 2020, no person may produce HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation or their destruction, for export under § 82.18(a) using unexpended Article 5 allowances, or for exceptions permitted in paragraph (f) of this section.

(8) Effective January 1, 2030, no person may produce class II substances, for any purpose other than for use in a process resulting in their transformation or their destruction, for export under § 82.18(a) using unexpended Article 5 allowances, or for exceptions permitted in paragraph (f) of this section.

(9) Effective January 1, 2040, no person may produce class II substances for any purpose other than for use in a process resulting in their transformation or their destruction, or for exceptions permitted in paragraph (f) of this section.

(b) *Import.* (1) Effective January 1, 2002, no person may import class II substances (other than transhipments, heels or used class II substances), except for use in a process resulting in their transformation or their destruction, in excess of the quantity of unexpended consumption allowances held by that person under the authority of this subpart, at any time in any control period. Every kilogram of excess importation constitutes a separate violation of this subpart.

(2) Effective January 1, 2002, no person may import, at any time in any control period, a used class II substance, without having submitted a petition to the Administrator and received a non-objection notice from the Administrator in accordance with § 82.24(c)(3) and (4). A person issued a non-objection notice for the import of an individual shipment of used class II substances may not transfer or confer the right to import, and may not import any more than the exact quantity (in kilograms) of the used class II substance stated in the non-objection notice. Every kilogram of importation of used class II substance in excess of the quantity stated in the non-objection notice issued by the Administrator in accordance with § 82.24(c)(3) and (4) constitutes a separate violation.

(3) Effective January 1, 2003, no person may import HCFC–141b (other than transhipments, heels or used class II substances) in excess of the quantity of unexpended space vehicle/defense allowances held by that person except for use in a process resulting in its transformation or its destruction, or for exceptions permitted in paragraph (f) of this section.

(4) Effective January 1, 2010, no person may import HCFC–22 or HCFC–142b (other than transhipments, heels or used class II substances) for any purpose other than for use in a process resulting in their transformation or their destruction, for exceptions permitted in paragraph (f) of this section, or for use

in equipment manufactured prior to January 1, 2010.

(5) Effective January 1, 2015, no person may import class II substances not subject to the requirements of paragraph (b)(3) or (4) of this section (other than transhipments, heels or used class II substances) for any purpose other than for use in a process resulting in their transformation or their destruction, for exceptions permitted in paragraph (f) of this section, or for use as a refrigerant in equipment manufactured prior to January 1, 2020.

(6) Effective January 1, 2020, no person may import HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation or their destruction, or for exceptions permitted in paragraph (f) of this section.

(7) Effective January 1, 2030, no person may import class II substances not subject to the requirements of paragraph (b)(3) or (4) of this section for any purpose other than for use in a process resulting in their transformation or their destruction, or for exceptions permitted in paragraph (f) of this section.

(c) *Post-phaseout limits to Article 5 countries.* Effective January 1, 2003 for HCFC–141b; January 1, 2010 for HCFC–22 and HCFC–142b; and January 1, 2015 for all other HCFCs, no person may produce class II substances for export to Article 5 countries in excess of unexpended Article 5 allowances, as allocated under § 82.18(a), and unexpended export allowances, as allocated under § 82.18(b). No person may introduce into interstate commerce in the U.S. any class II substance produced explicitly for export to an Article 5 country.

(d) *Post-phaseout limits to non-Article 5 countries.* Effective January 1, 2003, no person may produce HCFC–141b for export to non-Article 5 countries in excess of unexpended export production allowances, as allocated under § 82.18(b). No person may introduce into interstate commerce in the U.S. any HCFC–141b produced using export production allowances.

(e) *Violations.* Every kilogram of a class II substance, and every class II product, imported or exported in contravention of this subpart constitutes a separate violation of this subpart. No person may:

(1) Import or export any quantity of a controlled substance listed as class II, in Appendix A to this subpart, from or to any foreign state not Party to the Copenhagen Amendments (as noted in Appendix C, Annex l, to this subpart), unless that foreign state is complying with the Copenhagen Amendments.

(2) [Reserved]

(f) Exemptions.

(1) Medical devices.

(2) [Reserved]

§ 82.16 Phaseout schedule of class II controlled substances.

(a) Effective January 1, 2002, each person is granted the specified percentage of the baseline production and consumption allowances allocated under §§ 82.17 and 82.19 in each control period as indicated in the table at the end of this section.

(b) On January 1 of the phaseout year designated for each class II substance, EPA will deduct from each company all baseline consumption and production allowances granted in 2002 for that substance. EPA will also deduct baseline consumption and production allowances received in a permanent trade after January 1, 2002 for that substance. Deductions do not include:

(1) Article 5 allowances granted under § 82.18(a).

(2) Export production allowances granted under § 82.18(b).

(3) Space vehicle/defense allowances granted under § 82.18(j).

(4) Baseline consumption and production allowances traded away permanently after January 1, 2002.

(5) Any other allowances associated with exceptions to production and import bans for class II substances.

(c) The following table lists the phase out schedule of class II controlled substances:

Control period	Percent of HCFCs (except for 141b, 22, and 142b)	Percent of HCFC–141b	Percent of HCFC–22 & HCFC–142b
2002	100	100	100
2003	100	[d] 0	100
2004	100a	[d] 0	100
2005	[a] 100	[d] 0	100
2006	[a] 100	[d] 0	100
2007	[a] 100	[d] 0	100
2008	[a] 100	[d] 0	100
2009	[a] 100	[d] 0	100
2010	[a] 100	[d] 0	[b d] 0
2011	[a] 100	[d] 0	[d] 0
2012	[a] 100	[d] 0	[d] 0
2013	[a] 100	[d] 0	[d] 0
2014	[a] 100	[d] 0	[d] 0
2015	[c] 0	[d] 0	[d] 0

[a] Allocations may be reduced pro rata for these years if EPA determines that Montreal Protocol consumption reduction requirements cannot be met through this schedule.

[b] On and after January 1, 2010, HCFC–22 and HCFC–142b may still be produced for use in equipment manufactured before January 1, 2010, providing the producer has adequate production and consumption allowances.

[c] On and after January 1, 2015, all other HCFCs, not previously phased out, may still be produced as a refrigerant for use in refrigeration equipment manufactured before January 1, 2020, providing the producer has adequate production and consumption allowances.

[d] Export production allowances may be available after the phaseout under § 82.18.

§ 82.17 Apportionment of baseline production allowances for class II controlled substances.

Effective January 1, 2002, a person who produced class II substances in any of the years 1989, 1994, 1995, 1996, and 1997, and who accurately reported such activity as required by EPA, is apportioned baseline production allowances based on the person's year of highest total ODP-weighted consumption as set forth in the following table. Companies whose names have been changed are listed under their official name in effect during the baseline year. Additional companies for whom EPA does not have complete information as of this

proposal, or who EPA determines are eligible for a late entrant exemption, may be listed with allocations in the final rule, pending receipt of such information or EPA determination:

Person	Controlled substance	Allowances (kg.)
Allied (Honeywell)	HCFC–22	36,094,556
	HCFC–124	3,227,086
	HCFC–141b	27,719,366
	HCFC–142b	2,334,508
Ausimont	HCFC–142b	4,418,767
DuPont	HCFC–22	52,072,484
	HCFC–123	10,410
	HCFC–124	6,390
	HCFC–141b	10,464
	HCFC–142b	53,978
Elf Atochem (ATOFINA Chemicals)	HCFC–22	22,230,306
	HCFC–141b	23,801,431
	HCFC–142b	15,577,099
MDA	HCFC–22	2,301,966

§ 82.18 Availability of production allowances in addition to baseline production allowances for class II controlled substances.

(a) Effective January 1, 2003 for HCFC–141b; January 1, 2010 for HCFC–22 and HCFC–142b; and 2015 for all other HCFCs, a person apportioned baseline production allowances under § 82.17 is also apportioned Article 5 allowances, equal to 15 percent of their baseline production allowances for the specified HCFC or HCFCs for each control period up until January 1, 2030, to be used for the production of the specified HCFC or HCFCs for export only to foreign states listed in Appendix E to this subpart. The quantity produced for export under this paragraph must not exceed the quantity of Article 5 allowances held by that person. Inter-pollutant trades of Article 5 allowances may only be made for other Article 5 allowances.

(1) Each person who exports a class II substance that was produced with an Article 5 allowance to an Article 5 country must submit a notice to the Administrator of such exports (except exports of used class II substances) at the end of the quarter, as set forth in § 82.24(d)(1) and (d)(3).

(2) [Reserved]

(b) Effective January 1, 2003, a person apportioned baseline production allowances for HCFC–141b under § 82.17 is also apportioned export production allowances equal to 100 percent of their baseline production allowances for HCFC–141b for each control period up until December 31, 2009, to be used for the production of HCFC–141b for export only, to foreign states listed in the third column of Appendix C to this subpart (Parties to the Copenhagen Amendments). The quantity produced for export under this paragraph must not exceed the quantity of unexpended export production allowances held by that person at that time for that control period. Inter-pollutant trades of export production allowances may only be made for other export production allowances.

(1) Each person who exports HCFC–141b that was produced with export production allowances must submit a notice to the Administrator of such exports at the end of the quarter, as set forth in § 82.24(d)(2).

(2) [Reserved]

(c) Effective January 1, 2002, a person may increase or decrease production allowances through trading allowed under § 82.23(a), (b), (c) and (d). Trades cannot be made for production of any substance after that class II substance's phaseout date, except as provided under paragraphs (a) and (b) of this section.

(d) Effective January 1, 2002, a person may increase its production allowances, its export production allowances, or its Article 5 allowances, through trades with another Party to the Protocol as set forth in this paragraph (d), and as allowed under § 82.23(d). Trades cannot be made for production of any substance after that class II substance's phaseout date, except as provided under paragraph (a) of this section (regarding Article 5 allowances) and paragraph (b) of this section (regarding export production allowances). A nation listed in the third column of Appendix C to this subpart (Parties to the Copenhagen Amendments) must agree either to transfer to the person for the current control period some quantity of production that the nation is permitted under the Montreal Protocol or to receive from the person for the current control period some quantity of production that the person is permitted under this subpart. If the class II substance is to be sold to the Party from whom the allowances are received, the person need not expend its consumption allowances allocated under § 82.19 in order to produce with the additional production allowances. If the class II substance is to be sold in the U.S. or to another Party (not the Party transferring the allowances), the person need not expend its consumption allowances allocated under § 82.19 in order to produce with the additional production allowances.

(e) *Trade from a Party—Information Requirements.* A person must submit the following information to the Administrator:

(1) A signed document from the principal diplomatic representative in that nation's embassy in the U.S. stating that the appropriate authority within that nation has established or revised production limits for the nation. The production limit must be equal to the lowest of the following three production quantities:

(i) The maximum production that the nation is allowed under the Protocol minus the quantity (in kilograms) transferred;

(ii) The maximum production that is allowed under the nation's applicable domestic law minus the quantity (in kilograms) transferred; or

(iii) The average of the nation's actual national production level for the three years prior to the transfer minus the production transferred.

(2) A transfer request that includes a true copy of this document and that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and quantity (in kilograms) of production being transferred;

(v) Documentation that the Party possesses the necessary quantity of unexpended production rights;

(vi) The control period(s) to which the transfer applies; and

(vii) For increased production intended for export to the Party from whom the allowances would be received, a signed statement of intent to export to the Party.

(f) *Trade to a Party—Information Requirements.* A person must submit the following information to the Administrator:

(1) A transfer request that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and quantity (in kilograms) of allowable production being transferred; and

(v) The control period(s) to which the transfer applies.

(g) *Review of transfer request to a Party.* After receiving a transfer request that meets the requirements of paragraph (f) of this section, the Administrator may, at his/her discretion, consider the following factors in deciding whether to approve such a transfer:

(1) Possible creation of domestic economic hardship;

(2) Possible effects on trade;

(3) Potential environmental implications; and

(4) The total quantity of unexpended production allowances held by U.S. entities.

(h) *Notice of trade.* If the request meets the requirement of paragraph (e) of this section for trades from Parties and paragraphs (f) and (g) of this section for trades to Parties, the Administrator will issue the person a notice. The notice will either grant or deduct production allowances or export production allowances or Article 5 allowances and specify the control period to which the transfer applies. The Administrator may disapprove the transfer request contingent on the consideration of factors listed in paragraph (d)(3) of this section for trades to Parties.

(1) Trade from a Party. The Administrator will issue a notice revising the allowances held by the transferee to equal the unexpended production allowances or unexpended Article 5 allowances held by the transferee under this subpart plus the quantity of allowable production transferred from the Party.

(2) Trade to a Party. The Administrator will issue a notice revising the production limit for the transferor to equal the lesser of:

(i) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the transferor minus the quantity transferred; or

(ii) The quantity derived in paragraph (i) of this section, minus the amount derived from the following calculation:

(A) The total U.S. allowable production of the class II substance being traded minus the three-year average of the actual annual U.S. production of the class II substance prior to the control period of the transfer.

(B) [Reserved]

(i) Revised notices of production limits. If after one person obtains approval of a trade of allowable production of a class II substance to a Party and other persons obtain approval for trades of the same class II substance during the same control period, the Administrator will issue revised notices.

(1) Production limit for subsequent transferors. The notices will revise the production limits for each of the other persons trading to equal the lesser of:

(i) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the transferor under this subpart minus the quantity transferred; or

(ii) The result of the following set of calculations:

(A) The total U.S. allowable production of the class II substance minus the three-year average of the actual annual U.S. production of the class II substance prior to the control period of the transfer;

(B) The quantity transferred divided by the total quantity transferred by all the other persons trading the same class II substance in the same control period;

(C) The result of paragraph (i)(1)(ii)(A) of this section multiplied by the result of paragraph (i)(1)(ii)(B) of this section;

(D) The quantity derived in paragraph (i) of this section, minus the result of paragraph (i)(1)(ii)(C) of this section;

(2) Production limit for previous transferors. The Administrator will also issue a notice revising the production limit for each transferor who previously obtained approval of a trade of the class II substance in the same control period to equal the result of the following set of calculations:

(i) The total U.S. allowable production of the class II substance minus the three-year average of the actual annual U.S. production of the class II substance prior to the control period of the transfer;

(ii) The quantity transferred by the person divided by the quantity transferred by all the persons who have traded that class II substance in that control period;

(iii) The result of paragraph (i)(2)(i) of this section multiplied by the result of paragraph (i)(2)(ii) of this section.

(iv) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the person plus the result of paragraph (i)(2)(iii) of this section;

(3) Effective date of revised production limits. The change in production allowances, export production allowances or Article 5 allowances will be effective on the date that the notice is issued.

(j) Petition for space vehicle/defense allowances. Effective January 1, 2002, an agency, department, or instrumentality of the U.S., or a non-governmental space vehicle entity, may petition the Director of the Office of Atmospheric Programs for space vehicle/defense allowances for HCFC–141b in accordance with this paragraph (j) and with § 82.15(a)(4).

(1) The agency, department, or instrumentality of the U.S., or a non-governmental space vehicle entity must submit the following information to the EPA HCFC Manager prior to July 1, 2002:

(i) Name and address of U.S. government entity or non-governmental space vehicle entity; name of contact person, phone number, fax number and e-mail address;

(ii) Quantity (in kilograms) of HCFC–141b needed for the control period beginning January 1, 2003 until December 31, 2005;

(iii) A description of the space vehicle/defense need met by the use of HCFC–141b;

(iv) A technical description of the processes in which HCFC–141b is being used;

(v) A technical description of the area where the product will be applied;

(vi) A technical description of why alternatives and substitutes are not sufficient to eliminate the space vehicle/defense use of HCFC–141b;

(vii) A detailed analysis showing why stockpiled, recovered or recycled quantities are deemed to be technically infeasible for use;

(viii) An estimate of the number of control periods over which such an exemption would be necessary; and

(ix) A detailed description of continuing investigations into possible alternatives and substitutes.

(2) Within 90 days of receipt of the petition, the Director of the Office of Atmospheric Programs will issue to an agency, department, or instrumentality of the U.S., or non-governmental space vehicle entity that has petitioned for space vehicle/defense allowances for HCFC–141b, based on information received in accordance with paragraph (j)(1) of this section, a notice indicating one of the following:

(i) The Director of the Office of Atmospheric Programs may decide to grant space vehicle/defense allowances if he/she determines that the space vehicle/defense allowances are necessary to maintain either safety or operational viability:

(A) The notice will indicate the quantity (in kilograms) that he/she will grant for the specified 3-year control period; and

(B) The grant of space vehicle/defense allowances will be effective on the date that the notice specified in paragraph (j)(2) of this section is issued, and shall not be applicable after December 31, 2009, unless otherwise authorized by EPA.

(ii) The Director of the Office of Atmospheric Programs may request additional information if he/she determines:

(A) The information received in accordance with paragraph (j)(1) of this section is not sufficient to make a determination.

(B) [Reserved]

(iii) The Director of the Office of Atmospheric Programs may decide not to grant space vehicle/defense allowances if he/she determines:

(A) The space vehicle/defense interest can be met by the use of a substance other than HCFC–141b;

(B) The space vehicle/defense interest can be met by the use of existing supplies of HCFC–141b;

(C) There is evidence of fraud or misrepresentation;

(D) Approval of the allowances would be inconsistent with the Montreal Protocol or Decisions of the Parties;

(E) Approval of the allowances would be inconsistent with the Clean Air Act Amendments of 1990; or

(F) Approval of the allowances may reasonably be expected to endanger human health or the environment.

(3) If the Director of the Office of Atmospheric Programs decides not to grant the request for space vehicle/defense allowances for any of the reasons stated in paragraph (j)(2)(iii) of this section, the Director of the Office of Atmospheric Programs will issue an objection letter disallowing the request for space vehicle/defense allowances. Within ten working days after receipt of the objection letter, the requestor may file a one-time appeal, with supporting reasons, with the Director of the Office of Atmospheric Programs. The Director of the Office of Atmospheric Programs may affirm the disallowance or grant an allowance, as she/he finds appropriate in light of the available evidence. If no appeal is taken by the tenth day after receipt of the objection letter, the disallowance will be final on that day.

(4) The total quantity of HCFC–141b produced or imported for space vehicle or narrow defense needs during each year is not to exceed 1 percent of the aggregate of HCFC–141b baselines for one year.

(5) The space vehicle/defense allowance allocation may be renewed every three years after the original petition and the petition for renewal must contain the following information:

(i) Name and address of U.S. government entity or non-governmental space vehicle/defense entity; name of contact person and phone and fax numbers and e-mail address;

(ii) Quantity (in kilograms) of HCFC–141b needed for the control period;

(iii) A description of the space vehicle/defense need met by the use of HCFC–141b;

(iv) A technical description of the process in which HCFC–141b is still being used;

(v) A technical description of the area where the product is still being applied;

(vi) A technical description of why alternatives and substitutes are still not sufficient to eliminate the space vehicle/defense use of HCFC–141b;

(vii) A detailed analysis showing why stockpiled, recovered or recycled quantities are still deemed to be technically and economically infeasible for use; and

(viii) A detailed description of continuing investigations into possible alternatives and substitutes.

(6) For the control period from January 1, 2006 through December 31, 2008, the agency, department, or instrumentality of the U.S., or a non-governmental space vehicle entity must submit the petition for renewal by March 1, 2005.

§ 82.19 Apportionment of baseline consumption allowances for class II controlled substances.

(a) Effective January 1, 2002, a person who produced, imported, or produced and imported class II substances, and accurately reported such activity to EPA as required, in any of the years 1989, 1994, 1995, 1996, and 1997, is apportioned baseline consumption allowances based on the year of the person's highest total ODP-weighted consumption as set forth in paragraphs (1) through (28) of this section. Companies whose names have been changed are listed under their official name in effect during the baseline year. Additional companies for whom EPA does not have complete information as of July 20, 2001, or who EPA determines are eligible for a late entrant exemption, may be listed with allocations in the final rule, pending receipt of such information or EPA determination:

Person	Controlled substance	Allowances (kg)
ABCO	HCFC–22	253,032
AGA	HCFC–225ca	109,653
	HCFC–225cb	134,024
Air Systems	HCFC–22	12,240
Allied (Honeywell)	HCFC–22	32,056,219
	HCFC–124	2,958,382
	HCFC–141b	18,793,538
	HCFC–142b	1,191,783
Altair	HCFC–22	241,367
Ausimont	HCFC–142b	4,418,767
Automatic Equipment	HCFC–22	48,989
Condor	HCFC–22	603,374
Continental	HCFC–141b	18,400
DuPont	HCFC–22	46,599,488

Person	Controlled substance	Allowances (kg)
	HCFC–123	71,063
	HCFC–124	6,302
	HCFC–141b	8,196
	HCFC–142b	47,820
Elf Atochem	HCFC–22	26,741,356
(ATOFINA Chemicals)	HCFC–141b	23,010,714
	HCFC–142b	15,101,025
HG Refrigeration	HCFC–22	36,291
ICC	HCFC–141b	73,568
ICI	HCFC–22	2,306,278
Kivlan (Dynatemp)	HCFC–22	1,837,718
Klomar	HCFC–22	7,776
MDA	HCFC–22	2,301,966
Mondy-Global	HCFC–22	255,258
National Refrigerants	HCFC–22	4,963,713
	HCFC–123	76,520
	HCFC–124	204,980
Refricenter	HCFC–22	345,350
Refricentro	HCFC–22	41,645
Rhone-Poulenc	HCFC–22	47,180
R-Lines	HCFC–22	57,217
Saez	HCFC–22	34,360
Solvay	HCFC–22	284,370
	HCFC–124	274,990
	HCFC–141b	3,568,700
Tesco	HCFC–22	43,520
Tulstar	HCFC–141b	78,720

(b) [Reserved]

§ 82.20 Availability of consumption allowances in addition to baseline consumption allowances for class II controlled substances.

(a) Effective January 1, 2002, a person may obtain at any time during the control period, in accordance with the provisions of this subsection, consumption allowances equivalent to the quantity of class II substances (other than used class II substances or transhipments) that the person has exported from the U.S. and its territories to a foreign state listed in the third column of Appendix C to this subpart (Parties to the Copenhagen Amendments).

(1) The exporter must submit to the Administrator a request for consumption allowances setting forth the following:

(i) The identities and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The names and telephone numbers of contact persons for the exporter and the recipient;

(iv) The quantity (in kilograms) and type of class II substances reported;

(v) The source of the class II substances and the date purchased;

(vi) The date on which, and the port from which, the class II substances were exported from the U.S. or its territories;

(vii) The country to which the class II substances were exported;

(viii) A copy of the bill of lading and the invoice indicating the net quantity (in kilograms) of class II substances shipped and documenting the sale of the class II substances to the purchaser;

(ix) The commodity code of the class II substances reported; and

(x) A written statement from the producer that the class II substances were produced with expended allowances.

(2) The Administrator will review the information and documentation submitted under paragraph (a)(1) of this section and will issue a notice.

(i) The Administrator will determine the quantity of class II substances that the documentation verifies was exported and issue consumption allowances equivalent to the quantity of class II substances that were exported.

(A) The grant of the consumption allowances will be effective on the date the notice is issued.

(B) The consumption allowances will be granted to the person the exporter indicates, whether it is the producer or the exporter.

(ii) The Administrator will issue a notice that the consumption allowances are not granted if the Administrator determines that the information and documentation do not satisfactorily substantiate the exporter's claims.

(b) Effective January 1, 2002, a person may increase consumption allowances through trading allowed under § 82.23(a), (b), and (c).

§ 82.21 [Reserved]

§ 82.22 [Reserved]

§ 82.23 Transfers of allowances of class II controlled substances.

(a) *Inter-company transfers.* (1) Effective January 1, 2002, a person (''transferor'') may transfer to any other person (''transferee'') any quantity of the transferor's class II consumption allowances, production allowances, export production allowances, or Article 5 allowances, as follows:

(i) The transferor must submit to the Administrator a transfer claim setting forth the following:

(A) The identities and addresses of the transferor and the transferee;

(B) The name and telephone numbers of contact persons for the transferor and the transferee;

(C) The type of allowances being transferred, including the names of the class II substances for which allowances are to be transferred;

(D) The quantity (in kilograms) of allowances being transferred;

(E) The control period(s) for which the allowances are being transferred;

(F) The quantity of unexpended allowances of the type and for the control period being transferred that the transferor holds under authority of this subpart on the date the claim is submitted to EPA; and

(G) For trades of consumption allowances, production allowances, export production allowances, or Article 5 allowances, the quantity of the 0.1

percent offset applied to the unweighted quantity traded that will be deducted from the transferor's allowance balance.

(ii) The Administrator will determine whether the records maintained by EPA indicate that the transferor possesses unexpended allowances sufficient to cover the transfer claim on the date the transfer claim is processed. The transfer claim is the quantity (in kilograms) to be transferred plus, in the case of transfers of production or consumption allowances, 0.1 percent of that quantity. The Administrator will take into account any previous transfers, any production, and allowable imports and exports of class II substances reported by the transferor. Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(A) The Administrator will issue a notice indicating that EPA does not object to the transfer if EPA's records show that the transferor has sufficient unexpended allowances to cover the transfer claim. In the case of transfers of production or consumption allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. In the case of transfers of export production or Article 5 allowances, EPA will reduce the transferor's balance of unexpended allowances, respectively, by the quantity to be transferred. The transferor and the transferee may proceed with the transfer when EPA issues a no objection notice. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee, where applicable, will be held liable for any knowing violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(B) The Administrator will issue a notice disallowing the transfer if EPA's records show that the transferor has insufficient unexpended allowances to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination. Either party may file a notice of appeal, with supporting reasons, with the Administrator within 10 working days after receipt of notification. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) The transferor and transferee may proceed with the transfer if the Administrator does not respond to a transfer claim within the three working days specified in paragraph (a)(1)(ii) of this section. In the case of transfers of production or consumption allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. In the case of transfers of export production allowances or Article 5 allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. If EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and/or the transferee, where applicable, will be held liable for any knowing violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(b) *Inter-pollutant transfers.* (1) Effective January 1, 2002, a person (transferor) may convert consumption allowances or production allowances for one class II substance to the same type of allowance for another class II substance listed in Appendix B of this subpart, following the procedures described in paragraph (b)(3) of this section.

(2) Inter-pollutant transfers will be permitted at any time during the control period and during the 45 days after the end of a control period.

(3) The transferor must submit to the Administrator a transfer claim that includes the following:

(i) The identity and address of the transferor;

(ii) The name and telephone number of a contact person for the transferor;

(iii) The type of allowances being converted, including the names of the class II substances for which allowances are to be converted;

(iv) The quantity (in kilograms) and type of allowances to be converted;

(v) The quantity (in kilograms) of allowances to be subtracted from the transferor's unexpended allowances for the first class II substance, to be equal to 100.1 percent of the quantity of allowances converted;

(vi) The quantity (in kilograms) of allowances to be added to the transferor's unexpended allowances for the second class II substance, to be equal to the quantity (in kilograms) of allowances for the first class II substance being converted multiplied by the quotient of the ozone depletion potential of the first class II substance divided by the ozone depletion potential of the second class II substance, as listed in Appendix B to this subpart;

(vii) The control period(s) for which the allowances are being converted; and

(viii) The quantity (in kilograms) of unexpended allowances of the type and for the control period being converted that the transferor holds under authority of this subpart as of the date the claim is submitted to EPA.

(4) The Administrator will determine whether the records maintained by EPA indicate that the convertor possesses unexpended allowances sufficient to cover the transfer claim on the date the transfer claim is processed (i.e., the quantity (in kilograms) to be converted plus 0.1 percent of that quantity (in kilograms)). EPA will take into account any previous transfers, any transfers, and any production, imports (not including transshipments or used class II substances), or exports (not including transhipments or used class II substances) of class II substances reported by the convertor. Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the convertor as follows:

(i) The Administrator will issue a notice indicating that EPA does not object to the transfer if EPA's records show that the convertor has sufficient unexpended allowances to cover the transfer claim. EPA will reduce the transferor's balance of unexpended allowances by the quantity to be converted plus 0.1 percent of that quantity (in kilograms). When EPA issues a no objection notice, the transferor may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(ii) The Administrator will issue a notice disallowing the transfer if EPA's records show that the transferor has insufficient unexpended allowances to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination. The transferor may file a notice of appeal, with supporting reasons, with the Administrator within 10 working days after receipt of notification. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) The transferor may proceed with the transfer if the Administrator does not respond to a transfer claim within the three working days specified in

paragraph (b)(4) of this section. EPA will reduce the transferor's balance of unexpended allowances by the quantity (in kilograms) to be converted plus 0.1 percent of that quantity (in kilograms). The transferor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer if EPA ultimately finds that the transferor did not have sufficient unexpended allowances or credits to cover the claim.

(c) *Inter-company transfers and Inter-pollutant transfers.* (1) If a person requests an inter-company transfer and an inter-pollutant transfer simultaneously, the quantity (in kilograms) subtracted from the transferor's unexpended production or consumption allowances for the first class II substance will be equal to 100.1 percent of the quantity (in kilograms) of allowances that are being converted and transferred.

(2) [Reserved]

(d) *Transfers of class II production between Parties.* (1) A person may increase or decrease its production allowances, export production allowances, or Article 5 allowances by trading such allowances with another Party to the Protocol, in accordance with the provisions in § 82.18(d).

(2) [Reserved]

§ 82.24 Recordkeeping and reporting requirements for class II controlled substances.

(a) *Recordkeeping and reporting.* Any person who produces, imports, exports, transforms, or destroys class II substances must comply with the following recordkeeping and reporting requirements:

(1) Reports required by this section must be mailed to the Administrator within 15 days of the end of the applicable reporting period, unless otherwise specified.

(2) Records and copies of reports required by this section must be retained for three years.

(3) Quantities of class II substances must be stated in terms of kilograms in reports required by this section.

(4) Reports and records required by this section may be used for purposes of compliance determinations. These requirements are not intended as a limitation on the use of other evidence admissible under the Federal Rules of Evidence. Failure to provide the reports, petitions and records required by this section and to certify the accuracy of the information in the reports, petitions and records required by this section, will be considered a violation of this subpart. False statements made in reports, petitions and records will be considered violations of Section 113 of the Clean Air Act and under 18 U.S. Code Section 1001.

(b) *Producers.* Persons (''producers'') who produce class II substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) Reporting—Producers. For each quarter, each producer of a class II substance must provide the Administrator with a report containing the following information:

(i) The quantity (in kilograms) of production of each class II substance used in processes resulting in their transformation by the producer and the quantity (in kilograms) intended for transformation by a second party;

(ii) The quantity (in kilograms) of production of each class II substance used in processes resulting in their destruction by the producer and the quantity (in kilograms) intended for destruction by a second party;

(iii) The expended allowances for each class II substance;

(iv) The producer's total of expended and unexpended production allowances, consumption allowances, export production allowances, and Article 5 allowances at the end of that quarter;

(v) The quantity (in kilograms) of class II substances sold or transferred during the quarter to a person other than the producer for use in processes resulting in their transformation or eventual destruction;

(vi) A list of the quantities and names of class II substances exported, by the producer or by other U.S. persons, to a Party to the Protocol that will be transformed or destroyed and therefore were not produced expending production or consumption allowances;

(vii) For transformation in the U.S. or by a person of another Party, one copy of a transformation verification from the transformer for a specific class II substance and a list of additional quantities shipped to that same transformer for the quarter;

(viii) For destruction in the U.S. or by a person of another Party, one copy of a destruction verification paragraph (e) of this section for a particular destroyer, destroying the same class II substance, and a list of additional quantities shipped to that same destroyer for the quarter;

(ix) In cases where the producer produced class II substances using export production allowances, a list of U.S. entities that purchased those class II substances and exported them to a Party to the Protocol;

(x) In cases where the producer produced class II substances using Article 5 allowances, a list of U.S. entities that purchased those class II substances and exported them to Article 5 countries; and

(xi) A list of the space vehicle/defense allowance holders from whom orders were placed and the quantity (in kilograms) of HCFC–141b requested and produced.

(2) Recordkeeping—Producers. Every producer of a class II substance during a control period must maintain the following records:

(i) Dated records of the quantity (in kilograms) of each class II substance produced at each facility;

(ii) Dated records of the quantity (in kilograms) of class II substances produced for use in processes that result in their transformation or for use in processes that result in their destruction;

(iii) Dated records of the quantity (in kilograms) of class II substances sold for use in processes that result in their transformation or for use in processes that result in their destruction;

(iv) Dated records of the quantity (in kilograms) of class II substances produced with export production allowances or Article 5 allowances;

(v) Copies of invoices or receipts documenting sale of class II substances for use in processes that result in their transformation or for use in processes that result in their destruction;

(vi) Dated records of the quantity (in kilograms) of each class II substance used at each facility as feedstocks or destroyed in the manufacture of a class II substance or in the manufacture of any other substance, and any class II substance introduced into the production process of the same class II substance at each facility;

(vii) Dated records of the quantity (in kilograms) of raw materials and feedstock chemicals used at each facility for the production of class II substances;

(ix) Dated records of the shipments of each class II substance produced at each plant;

(x) The quantity (in kilograms) of class II substances, the date received, and names and addresses of the source of used materials containing class II substances which are recycled or reclaimed at each plant;

(xi) Records of the date, the class II substance, and the estimated quantity of any spill or release of a class II substance that equals or exceeds 100 pounds;

(xii) Transformation verification in the case of transformation, or the destruction verification in the case of destruction paragraph (e) of this section

showing that the purchaser or recipient of a class II substance, in the U.S. or in another country that is a Party, certifies the intent to either transform or destroy the class II substance, or sell the class II substance for transformation or destruction in cases when allowances were not expended;

(xiii) Written verifications from a U.S. purchaser that the class II substance was exported to a Party to the Copenhagen Amendments, in cases where export production allowances were expended to produce the class II substance;

(xiv) Written verifications from a U.S. purchaser that the class II substance was exported to an Article 5 country in cases where Article 5 allowances were expended to produce the class II substance;

(xv) Written verifications from a U.S. purchaser that HCFC–141b was manufactured for the express purpose of meeting critical space vehicle/defense needs in accordance with information submitted under § 82.18(j), in cases where space vehicle/defense allowances were expended to produce the HCFC–141b.

(3) For any person who fails to maintain the records required by this paragraph, or to submit the report required by this paragraph, the Administrator may assume that the person has produced at full capacity during the period for which records were not kept, for purposes of determining whether the person has violated the prohibitions at § 82.15.

(c) *Importers.* Persons (''importers'') who import class II substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) Reporting—Importers. For each quarter, an importer of a class II substance (including importers of used class II substances) must submit to the Administrator a report containing the following information:

(i) Summaries of the record required in paragraphs (c)(2)(i) through (xiv) of this section for the previous quarter;

(ii) The total quantity (in kilograms) imported of each class II substance for that quarter;

(iii) The commodity code for the class II substances imported, which must be one of those listed in Appendix K to this subpart;

(iv) The quantity (in kilograms) of those class II substances imported that are used class II substances.

(v) The quantity (in kilograms) of class II substances imported for that quarter and totaled by chemical for the control period to date;

(vi) The importer's total sum of expended and unexpended consumption allowances by chemical as of the end of that quarter;

(vii) The quantity (in kilograms) of class II substances imported for use in processes resulting in their transformation or destruction;

(viii) The quantity (in kilograms) of class II substances sold or transferred during that quarter to each person for use in processes resulting in their transformation or eventual destruction; and

(ix) Transformation verifications showing that the purchaser or recipient of imported class II substances intends to transform those substances or destruction verifications showing that the purchaser or recipient intends to destroy the class II substances (as provided in paragraph (e) of this section).

(2) Recordkeeping—Importers. An importer of a class II substance (including used class II substances) must maintain the following records:

(i) The quantity (in kilograms) of each class II substance imported, either alone or in mixtures, including the percentage of each mixture which consists of a class II substance;

(ii) The quantity (in kilograms) of those class II substances imported that are used and the information provided with the petition as required under paragraph (c)(3) of this section;

(iii) The quantity (in kilograms) of class II substances other than transhipments or used substances imported for use in processes resulting in their transformation or destruction;

(iv) The quantity (in kilograms) of class II substances other than transhipments or used substances imported and sold for use in processes that result in their destruction or transformation;

(v) The date on which the class II substances were imported;

(vi) The port of entry through which the class II substances passed;

(vii) The country from which the imported class II substances were imported;

(viii) The commodity code for the class II substances shipped, which must be one of those listed in Appendix K to this subpart;

(ix) The importer number for the shipment;

(x) A copy of the bill of lading for the import;

(xi) The invoice for the import;

(xii) The quantity (in kilograms) of imports of used class II substances;

(xiii) The U.S. Customs entry form;

(iv) Dated records documenting the sale or transfer of class II substances for use in processes resulting in their transformation or destruction;

(xiv) Copies of transformation verifications or destruction verifications indicating that the class II substances will be transformed or destroyed (as provided in paragraph (e) of this section.

(3) Petition to Import Used Class II Controlled Substances and Transhipments—Importers. For each individual shipment (not to be aggregated) over 5 pounds of a used class II substance as defined in § 82.3, an importer must submit directly to the Administrator, at least 40 working days before the shipment is to leave the foreign port of export, the following information in a petition:

(i) The name and quantity (in kilograms) of the used class II substance to be imported;

(ii) The name and address of the importer, the importer ID number, the contact person, and the phone and fax numbers;

(iii) Name, address, contact person, phone number and fax number of all previous source equipment from which the used class II substance was recovered;

(iv) A detailed description of the previous use of the class II substance at each source facility and dated documents indicating the date the material was put into the equipment at each source facility (material must have remained in the equipment at least 24 months prior to recovery to be considered previously used);

(v) Name, address, contact person, phone number and fax number of the exporter and of all persons to whom the material was transferred or sold after it was recovered from the source facility;

(vi) The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the chemical. If at the time of submitting a petition the importer does not know the U.S. port of entry, the expected date of shipment and the vessel transporting the chemical, and the importer receives a non-objection notice for the individual shipment in the petition, the importer is required to notify the Administrator of this information prior to the actual U.S. Customs entry of the individual shipment;

(vii) A description of the intended use of the used class II substance, and a copy of the contract for the purchase of the class II substance that includes the name, address, contact person, phone number and fax number of the purchaser;

(viii) The name, address, contact person, phone number and fax number of the U.S. reclamation facility, where applicable;

(ix) If someone at the source facility recovered the class II substance from the equipment, the name and phone and fax numbers of that person;

(x) If the imported class II substance was reclaimed in a foreign Party, the name, address, contact person, phone number and fax number of any or all foreign reclamation facility(ies) responsible for reclaiming the cited shipment;

(xi) An export license from the appropriate government agency in the country of export and, if recovered in another country, the export license from the appropriate government agency in that country;

(xii) If the imported used class II substance is intended to be sold as a refrigerant in the U.S., the name and address of the U.S. reclaimer who will bring the material to the standard required under Subpart F of this Part, if not already reclaimed to those specifications; and

(xiii) A certification of accuracy of the information submitted in the petition.

(4) Review of Petition to Import Used Class II Controlled Substances and Transhipments—Importers. Starting on the first working day following receipt by the Administrator of a petition to import a used class II substance, the Administrator will initiate a review of the information submitted under paragraph (c)(3) of this section and take action within 40 working days to issue either an objection-notice or a non-objection notice for the individual shipment to the person who submitted the petition to import the used class II substance.

(i) For the reasons listed below, the Administrator may issue an objection notice to a petition:

(A) If the Administrator determines that the information is insufficient, that is, if the petition lacks or appears to lack any of the information required under paragraph (c)(3) of this section;

(B) If the Administrator determines that any portion of the petition contains false or misleading information or has reason to believe that the petition contains false or misleading information;

(C) If the transaction appears to be contrary to provisions of the Vienna Convention on Substances that Deplete the Ozone Layer, the Montreal Protocol and Decisions by the Parties, or the non-compliance procedures outlined and instituted by the Implementation Committee of the Montreal Protocol;

(D) If the appropriate government agency in the exporting country has not agreed to issue an export license for the cited individual shipment of used class II substance;

(E) If the exporting country states that it is no longer allowing exports or if it reports that it has not granted any export licenses;

(F) If the Administrator has received information indicating that a person listed in the petition has produced at any time false information regarding trade in class II substances as defined in this subpart, including information required by EPA or required by the appropriate government agency in the exporting country;

(G) If the Administrator has received information indicating that a person listed in the petition is in violation of a requirement in any regulation under Title VI of the Clean Air Act;

(H) If reclamation capacity is installed or is being installed for that specific class II substance in the country of recovery or country of export and the capacity is funded in full or in part through the Multilateral Fund.

(ii) Within ten (10) working days after receipt of the objection notice, the importer may re-petition the Administrator, only if the Administrator indicated ''insufficient information'' as the basis for the objection notice. If no appeal is taken by the tenth working day after the date on the objection notice, the objection shall become final. Only one re-petition will be accepted for any original petition received by EPA.

(iii) Any information contained in the re-petition which is inconsistent with the original petition must be identified and a description of the reason for the inconsistency must accompany the re-petition.

(iv) In cases where the Administrator has no reason to object to the petition based on the criteria listed in paragraph (c)(4)(i) of this section, the Administrator will issue a non-objection notice.

(v) To pass the approved used class II substances through U.S. Customs, the petition and the non-objection notice issued by EPA must accompany the shipment through U.S. Customs.

(vi) If for some reason, following EPA's issuance of a non-objection notice, new information is brought to EPA's attention which shows that the non-objection notice was issued based on false information, then EPA has the right to:

(A) Revoke the non-objection notice;

(B) Pursue all means to ensure that the class II substance is not imported into the U.S.; and

(C) Take appropriate enforcement actions.

(vii) Once the Administrator issues a non-objection notice, the person receiving the non-objection notice is permitted to import the individual shipment of used class II substance only within the same control period as the date stamped on the non-objection notice.

(viii) A person receiving a non-objection notice from the Administrator for a petition to import used class II substances must maintain the following records:

(A) A copy of the petition;

(B) The EPA non-objection notice;

(C) The bill of lading for the import; and

(D) U.S. Customs entry documents for the import that must include one of the commodity codes from Appendix K to this subpart.

(5) Recordkeeping for Transhipments—Importers. Any person who transhipps a class II substance must maintain records that indicate:

(i) That the class II substance shipment originated in a foreign country;

(ii) That the class II substance shipment is destined for another foreign country; and

(iii) That the class II substance shipment will not enter interstate commerce within the U.S.

(d) *Exporters.* Persons (''exporters'') who export class II substances during a control period must comply with the following reporting requirements:

(1) Reporting—Exporters. For any exports of class II substances not reported under § 82.20 (additional consumption allowances), or under paragraph (b)(2) of this section (reporting for producers of class II substances), each exporter who exported a class II substance must submit to the Administrator the following information within 15 days after the end of each quarter in which the unreported exports left the U.S.:

(i) The names and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The type and quantity (in kilograms) of each class II substance exported and what percentage, if any of the class II substance is used;

(iv) The date on which, and the port from which, the class II substances were exported from the U.S. or its territories;

(v) The country to which the class II substances were exported;

(vi) The quantity (in kilograms) exported to each Article 5 country;

(vii) The commodity code for the class II substances shipped, which must be one of those listed in Appendix K to this subpart;

(viii) For persons reporting transformation or destruction, the invoice or sales agreement containing

language similar to the transformation verifications that the purchaser or recipient of imported class II substances intends to transform those substances, or destruction verifications showing that the purchaser or recipient intends to destroy the class II substances (as provided in paragraph (e) of this section).

(2) Reporting Export Production Allowances—Exporters. In addition to the information required in paragraph (d)(1) of this section, any exporter using export production allowances must also provide the following to the Administrator:

(i) The Employer Identification Number on the Shipper's Export Declaration Form or Employer Identification Number of the shipping agent shown on the U.S. Customs Form 7525;

(ii) The exporting vessel on which the class II substances were shipped; and

(iii) The quantity (in kilograms) exported to each Party.

(3) Reporting Article 5 Allowances—Exporters. In addition to the information required in paragraph (d)(1) of this section, any exporter using Article 5 allowances must also provide the following to the Administrator:

(i) The Employer Identification Number on the Shipper's Export Declaration Form or Employer Identification Number of the shipping agent shown on the U.S. Customs Form 7525; and

(ii) The exporting vessel on which the class II substances were shipped.

(4) Reporting Used Class II Controlled Substances—Exporters. Any exporter of used class II substances must indicate on the bill of lading or invoice that the class II substance is used, as defined in § 82.3.

(e) *Transformation and Destruction.* Any person who transforms or destroys class II substances must comply with the following recordkeeping and reporting requirements:

(1) Recordkeeping—Transformation and Destruction. Any person who transforms or destroys class II substances produced or imported by another person must maintain the following:

(i) Copies of the invoices or receipts documenting the sale or transfer of the class II substances to the person;

(ii) Records identifying the producer or importer of the class II substances received by the person;

(iii) Dated records of inventories of class II substances at each plant on the first day of each quarter;

(iv) Dated records of the quantity (in kilograms) of each class II substance transformed or destroyed;

(v) In the case where class II substances were purchased or transferred for transformation purposes, a copy of the person's transformation verification as provided under paragraph (e)(3)of this section.

(vi) Dated records of the names, commercial use, and quantities (in kilograms) of the resulting chemical(s) when the class II substances are transformed; and

(vii) Dated records of shipments to purchasers of the resulting chemical(s) when the class II substances are transformed.

(viii) In the case where class II substances were purchased or transferred for destruction purposes, a copy of the person's destruction verification, as provided under paragraph (e)(5) of this section.

(2) Reporting—Transformation and Destruction. Any person who transforms or destroys class II substances and who has submitted a transformation verification in paragraph (e)(3) of this section or a destruction verification in paragraph (e)(5) of this section to the producer or importer of the class II substances, must report the following:

(i) the names and quantities (in kilograms) of the class II substances transformed for each control period within 45 days of the end of such control period; and

(ii) the names and quantities (in kilograms) of the class II substances destroyed for each control period within 45 days of the end of such control period.

(3) Reporting—Transformation. Any person who purchases class II substances for purposes of transformation must provide the producer or importer with a verification that the class II substances are to be used in processes that result in their transformation.

(i) The transformation verification shall include the following:

(A) Identity and address of the person intending to transform the class II substances;

(B) The quantity (in kilograms) of class II substances intended for transformation;

(C) Identity of shipments by purchase order number(s), purchaser account number(s), by location(s), or other means of identification;

(D) Period of time over which the person intends to transform the class II substances; and

(E) Signature of the verifying person.

(ii) If any aspects of this verification change at any time, the person must submit a revised verification reflecting such changes to the producer from whom that person purchased class II substances intended for transformation.

(4) Reporting—Destruction. Any person who destroys class II substances shall provide EPA with a one-time report containing the following information:

(i) The destruction unit's destruction efficiency;

(ii) The methods used to record the volume destroyed;

(iii) The methods used to determine destruction efficiency;

(iv) The name of other relevant federal or state regulations that may apply to the destruction process;

(v) Any changes to the information in paragraphs (e)(4)(i), (ii), and (iii) of this section must be reflected in a revision to be submitted to EPA within 60 days of the change(s).

(5) Reporting—Destruction. Any person who purchases or receives and subsequently destroys class II substances that were originally produced without expending allowances shall provide the producer or importer from whom it purchased or received the class II substances with a verification that the class II substances will be used in processes that result in their destruction.

(i) The destruction verification shall include the following:

(A) Identity and address of the person intending to destroy class II substances;

(B) Indication of whether those class II substances will be completely destroyed, as defined in § 82.3, or less than completely destroyed, in which case the destruction efficiency at which such substances will be destroyed must be included;

(C) Period of time over which the person intends to destroy class II substances; and

(D) Signature of the verifying person.

(ii) If any aspects of this verification change at any time, the person must submit a revised verification reflecting such changes to the producer from whom that person purchased class II substances intended for destruction.

(f) *Heels—Recordkeeping and Reporting.* Any person who brings into the U.S. a container with a heel, as defined in § 82.3, of class II substances, must comply with the following requirements:

(1) Any person who brings a container with a heel must indicate on its bill of lading or invoice that the class II substance in the container is a heel.

(2) Any person who brings a container with a heel must report quarterly the quantity (in kilograms) brought into the U.S. and certify:

(i) That the residual quantity (in kilograms) in each shipment is no more

than 10 percent of the volume of the container;

(ii) That the residual quantity (in kilograms) in each shipment will either:

(A) Remain in the container and be included in a future shipment;

(B) Be recovered and transformed;

(C) Be recovered and destroyed; or

(D) Be recovered for a non-emissive use.

(3) Any person who brings a container with a heel into the U.S. must report on the final disposition of each shipment within 45 days of the end of the control period.

(g) Space vehicle/defense allowances—Reporting.

(1) Any person allocated space vehicle/defense allowances who submits an order to a producer or importer for a product made with or containing HCFC–141b must also submit quarterly reports to the Administrator containing the following information:

(i) The type of product made with or containing HCFC–141b;

(ii) The specific application of the product made with or containing HCFC–141b; and

(iii) The quantity (in kilograms) of HCFC–141b used or contained in the product received from the manufacturer; and

(iv) The identity of the manufacturer of the product made with or containing HCFC–141b.

(2) Any manufacturer of a product made with or containing HCFC–141b produced or imported as a result of space vehicle/defense allowances must submit quarterly reports to the Administrator containing the following information:

(i) The quantity (in kilograms) of HCFC–141b received;

(ii) The identity of the producer or importer supplying the HCFC–141b used or contained in the product;

(iii) The identity of the recipient of the product made with or containing HCFC–141b; and

(iv) The quantity (in kilograms) of HCFC–141b used or contained in the product sent to the recipient.

13. Revise Appendix B to Subpart A to read as follows:

APPENDIX B TO PART 82 SUBPART A—CLASS II CONTROLLED SUBSTANCES [a]

Dichlorofluoromethane (HCFC–21)	0.04
Monochlorodifluoromethane (HCFC–22)	0.055
Monochlorofluoromethane (HCFC–31)	0.02
Tetrachlorofluoroethane (HCFC–121)	0.01–0.04
Trichlorodifluoroethane (HCFC–122)	0.02–0.08
Dichlorotrifluoroethane (HCFC–123)	0.02
Monochlorotetrafluoroethane (HCFC–124)	0.022
Trichlorofluoroethane (HCFC–131)	0.007–0.05
Dichlorodifluoroethane (HCFC–132)	0.008–0.05
Monochlorotrifluoroethane (HCFC–133)	0.02–0.06
Dichlorofluoroethane (HCFC–141b)	0.11
Monochlorodifluoroethane (HCFC–142b)	0.065
Hexachlorofluoropropane (HCFC–221)	0.015–0.07
Pentachlorodifluoropropane (HCFC–222)	0.01–0.09
Tetrachlorotrifluoropropane (HCFC–223)	0.01–0.08
Trichlorotetrafluoropropane (HCFC–224)	0.01–0.09
Dichloropentafluoropropane (HCFC–225ca)	0.025
Dichloropentafluoropropane (HCFC–225cb)	0.033
Monochlorohexafluoropropane (HCFC–226)	0.02–0.10
Pentachlorofluoropropane (HCFC–231)	0.05–0.09
Tetrachlorodifluoropropane (HCFC–232)	0.008–0.10
Trichlorotrifluoropropane (HCFC–233)	0.007–0.23
Dichlorotetrafluoropropane (HCFC–234)	0.01–0.28
Monochloropentafluoropropane (HCFC–235)	0.03–0.52
Tetrachlorofluoropropane (HCFC–241)	0.004–0.09
Trichlorodifluoropropane (HCFC–242)	0.005–0.13
Dichlorotrifluoropropane (HCFC–243)	0.007–0.12
Monochlorotetrafluoropropane (HCFC–244)	0.009–0.14
Trichlorofluoropropane (HCFC–251)	0.001–0.01
Dichlorodifluoropropane (HCFC–252)	0.005–0.04
Monochlorotrifluoropropane (HCFC–253)	0.003–0.03
Dichlorofluoropropane (HCFC–261)	0.002–0.02
Monochlorodifluoropropane (HCFC–262)	0.002–0.02
Monochlorofluoropropane (HCFC–271)	0.001–0.03

[a] According to Annex C of the Protocol, ''Where a range of ODPs is indicated, the highest value in that range shall be used for the purposes of the Protocol. The ODPs listed as a single value have been determined from calculations based on laboratory measurements. Those listed as a range are based on estimates and are less certain. The range pertains to an isomeric group. The upper value is the estimate of the ODP of the isomer with the highest ODP, and the lower value is the estimate of the ODP of the isomer with the lowest ODP.''

14. Appendix C to Subpart A is revised to read as follows:

Appendix C to Part 82 Subpart A—Parties to the Montreal Protocol (as of May 1, 2001)

Updated lists of Parties to the Protocol and the Amendments can be located at: *www.unep.org/ozone/ratif.htm.* A check mark indicates ratification/accession/acceptance/approval of the agreement.

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Albania	✔				
Algeria	✔	✔	✔		
Angola	✔				
Antigua and Barbuda	✔	✔	✔	✔	
Argentina	✔	✔	✔	✔	
Armenia	✔				
Australia	✔	✔	✔	✔	
Austria	✔	✔	✔	✔	
Azerbaijan	✔	✔	✔		
Bahamas	✔	✔	✔		
Bahrain	✔	✔	✔	✔	
Bangladesh	✔	✔	✔		
Barbados	✔	✔	✔		
Belarus	✔	✔			
Belgium	✔	✔	✔		
Belize	✔	✔	✔		
Benin	✔	✔	✔		
Bolivia	✔	✔	✔	✔	
Bosnia & Herzegovina	✔				
Botswana	✔	✔	✔		
Brazil	✔	✔	✔		
Brunei Darussalam	✔				
Bulgaria	✔	✔	✔	✔	
Burkina Faso	✔	✔	✔		
Burundi	✔				
Cameroon	✔	✔	✔		
Canada	✔	✔	✔	✔	✔
Central African Republic	✔				
Chad	✔				
Chile	✔	✔	✔	✔	✔
China	✔	✔			
Colombia	✔	✔	✔		
Comoros	✔	✔			
Congo	✔	✔			
Congo, Democratic Republic of.	✔	✔	✔		
Costa Rica	✔	✔	✔		
Cote d'Ivoire	✔	✔			
Croatia	✔	✔	✔	✔	
Cuba	✔	✔	✔		
Cyprus	✔	✔			
Czech Republic	✔	✔	✔	✔	
Denmark	✔	✔	✔		
Djibouti	✔	✔	✔	✔	
Dominica	✔	✔			
Dominican Republic.	✔				
Ecuador	✔	✔	✔		
Egypt	✔	✔	✔	✔	
El Salvador	✔	✔	✔	✔	
Estonia	✔	✔	✔		
Ethiopia	✔				
European Community.	✔	✔	✔	✔	
Federated States of Micronesia	✔				
Fiji	✔	✔	✔		
Finland	✔	✔	✔		
France	✔	✔	✔		
Gabon	✔	✔	✔	✔	✔
Gambia	✔	✔			
Georgia	✔	✔	✔	✔	
Germany	✔	✔	✔	✔	
Ghana	✔	✔	✔		
Greece	✔	✔	✔		
Grenada	✔	✔	✔	✔	
Guatemala	✔				
Guinea	✔	✔			
Guyana	✔	✔	✔	✔	
Haiti	✔	✔	✔	✔	
Honduras	✔				

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Hungary	✔	✔	✔	✔	
Iceland	✔	✔	✔	✔	
India	✔	✔			
Indonesia	✔	✔	✔		
Iran, Islamic Republic of	✔	✔	✔		
Ireland	✔	✔	✔		
Israel	✔	✔	✔		
Italy	✔	✔	✔	✔	
Jamaica	✔	✔	✔		
Japan	✔	✔	✔		
Jordan	✔	✔	✔	✔	✔
Kazakhstan	✔				
Kenya	✔	✔	✔	✔	
Kiribati	✔				
Korea, Democratic People's Republic of	✔	✔	✔		
Korea, Republic of	✔	✔	✔	✔	
Kuwait	✔	✔	✔		
Kyrgyzstan	✔				
Lao, People's Democratic Republic	✔				
Latvia	✔	✔	✔		
Lebanon	✔	✔	✔	✔	
Lesotho	✔				
Liberia	✔	✔	✔		
Libyan Arab Jamahiriya	✔				
Liechtenstein	✔	✔	✔		
Lithuania	✔	✔	✔		
Luxembourg	✔	✔	✔	✔	✔
Madagascar	✔				
Malawi	✔	✔	✔		
Malaysia	✔	✔	✔		
Maldives	✔	✔			
Mali	✔	✔			
Malta	✔	✔			
Marshall Islands	✔	✔	✔		
Mauritania	✔				
Mauritius	✔	✔	✔		
Mexico	✔	✔	✔		
Moldova	✔				
Monaco	✔	✔	✔		
Mongolia	✔	✔	✔		
Morocco	✔	✔	✔		
Mozambique	✔	✔	✔		
Myanmar	✔	✔			
Namibia	✔	✔			
Nepal	✔	✔			
Netherlands	✔	✔	✔	✔	
New Zealand	✔	✔	✔	✔	
Nicaragua	✔	✔	✔		
Niger	✔	✔	✔	✔	
Nigeria	✔				
Norway	✔	✔	✔	✔	
Oman	✔	✔	✔		
Pakistan	✔	✔	✔		
Panama	✔	✔	✔	✔	
Papua New Guinea	✔	✔			
Paraguay	✔	✔	✔	✔	
Peru	✔	✔	✔		
Philippines	✔	✔			
Poland	✔	✔	✔	✔	
Portugal	✔	✔	✔		
Qatar	✔	✔	✔		
Romania	✔	✔	✔		
Russian Federation	✔	✔			
Saint Kitts & Nevis	✔	✔	✔	✔	
Saint Lucia	✔	✔	✔	✔	
Saint Vincent and the Grenadines	✔	✔	✔		
Samoa	✔				
Saudi Arabia	✔	✔	✔		
Senegal	✔	✔	✔	✔	
Seychelles	✔	✔	✔		
Singapore	✔	✔	✔	✔	
Slovakia	✔	✔	✔	✔	
Slovenia	✔	✔	✔	✔	

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Solomon Islands	✔	✔	✔	✔	
South Africa	✔	✔	✔		
Spain	✔	✔	✔	✔	
Sri Lanka	✔	✔	✔	✔	
Sudan	✔				
Suriname	✔				
Swaziland	✔				
Sweden	✔	✔	✔	✔	
Switzerland	✔	✔	✔		
Syrian Arab Republic	✔	✔	✔	✔	
Tajikistan	✔	✔			
Tanzania, United Republic of	✔	✔			
Thailand	✔	✔	✔		
The Former Yugoslav Republic of Macedonia	✔	✔	✔	✔	
Togo	✔	✔	✔		
Tonga	✔				
Trinidad and Tobago	✔	✔	✔	✔	
Tunisia	✔	✔	✔	✔	
Turkey	✔	✔	✔		
Turkmenistan	✔	✔			
Tuvalu	✔	✔	✔	✔	
Uganda	✔	✔	✔	✔	
Ukraine	✔	✔			
United Arab Emirates	✔				
United Kingdom	✔	✔	✔		
United States of America	✔	✔	✔		
Uruguay	✔	✔	✔	✔	
Uzbekistan	✔	✔	✔		
Vanuatu	✔	✔	✔		
Venezuela	✔	✔	✔		
Viet Nam	✔	✔	✔		
Yemen	✔	✔	✔	✔	
Yugoslavia	✔				
Zambia	✔	✔			
Zimbabwe	✔	✔	✔		

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