Dated: December 15, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart P—Indiana

■ 2. Section 52.777 is amended by adding paragraph (ee) to read as follows:

§ 52.777 Control strategy: photochemical oxidants (hydrocarbons).

* * * * *

(ee) Approval—On June 2, 2005, Indiana submitted a request to redesignate Vanderburgh and Warrick Counties to attainment of the 8-hour ozone National Ambient Air Quality Standard. This request was supplemented with a submittal dated October 20, 2005. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. Also included were motor vehicle emission budgets for use to determine transportation conformity in Vanderburgh and Warrick Counties. The 2015 motor vehicle emission budgets are 4.20 tons per day for VOC and 5.40 tons per day for NO_X for both counties combined.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. Section 81.315 is amended by revising the entry for Evansville, IN: Vanderburgh and Warrick Counties in the table entitled ''Indiana Ozone (8-Hour Standard)'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Evansville, IN:				
Vanderburgh County	1/30/06	Attainment.		
Warrick County	1/30/06	Attainment.		
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

[FR Doc. 05–24542 Filed 12–28–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–8017–2]

RIN 2060–AK45

Protection of Stratospheric Ozone: Adjusting Allowances for Class I Substances for Export to Article 5 Countries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes adjustments to allocations of Article 5 allowances that permit production of Class I ozone-depleting substances (ODSs) solely for export to developing countries to meet those countries' basic domestic needs. This action adjusts the baseline Article 5 allowances for companies for specific Class I controlled substances and establishes a schedule for reductions in the Article 5 allowances for these Class I controlled substances in accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) and the Clean Air Act (CAA). This action also extends the allocation of Article 5 allowances for the manufacture of methyl bromide solely for export to developing countries beyond January 1, 2005, in accordance with the Montreal Protocol and the CAA.

EFFECTIVE DATE: This final rule is effective on December 29, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2004–0506. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available, only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Hodayah Finman, U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; telephone number: (202) 343–9246; fax number: (202) 343–2338; *finman.hodayah@epa.gov.* You may also visit the EPA's Ozone Depletion Web site at *www.epa.gov/ozone* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other related topics.

SUPPLEMENTARY INFORMATION: This action establishes a new Article 5 allowance baseline for specified Class I

substances, establishes a schedule for phased reductions in such production, and extends the time allowed for Article 5 production for methyl bromide. Article 5 allowances are solely for production to meet the basic domestic needs of developing countries referred to in the Protocol as ''Article V'' parties.

Section 533(d) of the Administrative Procedure Act (APA), 5 U.S.C., Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. This final rule is issued under section 307(d) of the CAA, which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies.'' CAA section 307(d)(1). Thus, section 553(d) of the APA does not apply to this rule. EPA nevertheless is acting consistently with the policies underlying APA section 553(d) in making this rule effective on December 29, 2005. APA section 553(d) provides an exception for any action that grants or recognizes an exemption or relieves a restriction. This final rule extends the grant of an exemption from the phaseout of methyl bromide to producers of this Class I ozone depleting substance (ODS) for the manufacture of methyl bromide to meet the basic domestic needs of developing countries. In addition, EPA finds that there is good cause to make the new Article 5 allowances baselines and phased reduction schedules effective without 30 days' prior notice. These new baselines and phased reduction schedules will make EPA regulations consistent with the adjustments to the Montreal Protocol agreed to at the Meeting of the Parties in Beijing in 1999. Those adjustments are already in effect. In addition, the new baselines and allowance allocations conform to current industry levels of production for export. Therefore, producers do not require advance notice to comply with today's regulatory amendment.

Table of Contents

I. What Is the Legislative and Regulatory Background of the Phaseout Regulations for Ozone-Depleting Substances?

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone-depleting substances can be found at 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 21, 1988. Congress then enacted, and President Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990), which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has made several amendments to the regulations since.

The requirements contained in the final rules published in the **Federal Register** on December 20, 1994 (59 FR 65478) and May 10, 1995 (60 FR 24970) establish an Allowance Program. The Allowance Program and its history are described in the notice of proposed rulemaking published in the **Federal Register** on November 10, 1994 (59 FR 56276). The control and the phaseout of the production and consumption of Class I ODSs as required under the Protocol and the CAA are accomplished through the Allowance Program.

In developing the Allowance Program, we collected information on the amounts of ODSs produced, imported, exported, transformed and destroyed within the U.S. for specific baseline years for specific chemicals. This information was used to establish the U.S. production and consumption ceilings for these chemicals. The data were also used to assign company-specific production and import rights to companies that were in most cases producing or importing during the specific year of data collection. These production or import rights are called ''allowances.'' During the complete phaseout of many ODSs, the quantities of allowances granted to companies for those chemicals were gradually reduced and eventually eliminated. Production allowances and consumption allowances no longer exist for any Class I ODSs. All production and consumption of Class I controlled substances is prohibited under the Protocol and the CAA, except for a few narrow exemptions.

In the context of the regulatory program, the use of the term ''consumption'' may be misleading. Consumption does not mean the ''use'' of a controlled substance, but rather is defined as the formula: production + imports − exports, of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date may continue to be used by industry and the public after that specific chemical's phaseout except where the regulations include explicit use restrictions. Use of such substances may be subject to other regulatory limitations.

The specific names and chemical formulas for the Class I ODSs are in Appendix A and Appendix F in Subpart A of 40 CFR part 82. The specific names and chemical formulas for the Class II ODSs are in Appendix B and Appendix F in Subpart A.

Although the regulations phased out the production and consumption of Class I controlled substances, a very limited number of exemptions exist, consistent with U.S. obligations under the Protocol. The regulations allow for the production of phased-out Class I controlled substances provided the substances are either transformed or destroyed. They also allow limited production if the substances are (1) exported to countries operating under Article 5 of the Protocol or (2) produced for essential or critical uses as authorized by the Protocol and the regulations. Limited exceptions to the ban on the import of phased-out Class I controlled substances exist if the substances are: (1) Previously used, (2) imported for essential or critical uses as authorized by the Protocol and the regulations, (3) imported for destruction or transformation only, or (4) a transhipment or a heel (a small amount of controlled substance remaining in a container after discharge) (40 CFR 82.4).

II. How Did the Beijing Adjustments to the Montreal Protocol Change the Levels and Schedules of ODS Production To Meet the Basic Domestic Needs of Developing Countries?

Under the Montreal Protocol, industrialized countries and developing countries have different schedules for phasing out the production and import of ODSs. Developing countries operating under Article 5, paragraph 1 of the Protocol in most cases have additional time in which to phase out ODSs. The Parties to the Protocol recognized that it would be inadvisable for developing countries to spend their scarce resources to build new ODS manufacturing facilities to meet their basic domestic needs as industrialized countries phase out. The Parties therefore decided to permit a small amount of production in industrialized countries, above and beyond the amounts permitted under those countries' phaseout schedules, to meet the basic domestic needs of developing countries.

The original Montreal Protocol schedule for industrialized country production of ODSs to meet the basic domestic needs of developing countries was based on a percentage of each producing country's baseline. The initial level was set at 10 percent of the baseline and this level changed to 15 percent upon phaseout of each specific ODS or group of chemicals. EPA regulations prior to today's action reflect this approach.

The adjustments to the Montreal Protocol adopted by the Parties at their 11th meeting in Beijing change the basis for calculating production by industrialized countries to meet the basic domestic needs of developing countries for specific ODSs or groups of ODSs. Instead of being calculated as a percentage of total production of the ODS in a given year, the new baselines for basic domestic need production are calculated based on the average quantity of the ODS exported to Article 5 countries over a specified range of years. The new baseline calculation agreed to in Beijing reflects the Parties' concern, which EPA shares, that global oversupply of certain Class I ODSs is interfering with the transition to alternatives. The oversupply of these ODSs results in low prices that make it difficult for non-ozone-depleting alternatives to compete in the marketplace. Businesses and individuals thus lack an economic incentive to transition to alternatives. The new baseline calculation is designed to overcome this problem with respect to Article 5 countries by reducing supply to those countries. The price of these ODSs should rise to reflect the decrease in supply.

The adjustments agreed to in Beijing also establish reduction schedules for the manufacture of ODSs by industrialized countries to meet the basic domestic needs of developing countries. Article 5 countries are subject to periodic step-downs in the amount of ODSs they may consume. If industrialized countries' production for export to Article 5 countries were not adjusted to take into account these step-downs, the problem of oversupply likely would recur. Therefore, the Parties agreed at Beijing to reduction schedules that would mirror each step-down in Article 5 consumption. The schedules also reflect the complete consumption phaseouts in Article 5 countries. Under these schedules, industrialized countries must cease production for export to developing countries of CFCs by January 1, 2010, and of methyl bromide by January 1, 2015.

To ensure consistency with the Montreal Protocol, EPA proposed to adopt new baselines and reduction schedules at 40 CFR part 82, subpart A (70 FR 55480). Under that proposed rule, the amount of ODSs that could be produced to meet the basic domestic needs of developing countries would be reduced by a certain percentage of the baseline in accordance with the step-down schedule for Article 5 developing countries for those chemicals until they are completely phased out. In today's action, EPA is finalizing the proposed provisions described in this paragraph.

III. Today's Action

EPA published a proposed rule on September 21, 2005 in the **Federal Register** (70 FR 55480) to amend regulations found at 40 CFR part 82 by establishing new baselines for companies that manufacture Class I ODS to meet the basic domestic needs of so-called ''Article 5'' developing countries, issuing Article 5 allowances in accordance with the revised baselines, and creating a phasedown schedule for these allowances to reflect the phasedown schedules of developing countries as specified in the Montreal Protocol and the Adjustment adopted at the 11th Meeting of the Parties in Beijing.

Specifically, EPA proposed new baselines for the CFCs subject to the earliest controls on production and import, other halogenated CFCs, and methyl bromide to reflect changes to the Montreal Protocol. As a result of the Beijing Adjustments to the Protocol, Article 2A, paragraphs 4–7 state that an industrialized Party's allowable production of CFCs 11, 12, 113, 114, and 115, referred to under the Clean Air Act as Class I, Group I substances, to meet the basic domestic needs of Article 5 Parties shall be measured against ''the annual average of its production of [these substances] for basic domestic needs for the period 1995 to 1997 inclusive.''

In regard to other halogenated CFCs, referred to in the Clean Air Act as Class I, Group III ODS, the Beijing Adjustments state that the new baseline for Article 5 production should be ''the annual average of its production of [these substances] for basic domestic needs for the period 1998–2000 inclusive.''

EPA proposed using more recent export data from the years 2000–2003 to establish the baselines for these two groups of chemicals. The Agency believes that the use of more recent export data represents a truer picture of the actual basic domestic needs for these chemicals in developing countries and addresses the concerns regarding oversupply of CFCs as discussed in section I of this preamble.

EPA would like to note that for Class I, Group III substances the new baseline years provide the U.S. with a baseline that is nearly zero. Since the baseline for Class I, Group III substances is negligible, EPA proposed a baseline of zero for these substances.

In addition to proposing new baselines, EPA also proposed phasedown schedules for Article 5 allowances consistent with the schedule set forth in the Beijing adjustments to the Montreal Protocol. While the baseline proposed by EPA was different, and more stringent, than the baselines agreed to in the Beijing adjustment for CFCs, the phasedown schedule proposed by the Agency followed the Beijing adjustment exactly. Hence, the proposed Article 5 allowance reduction schedule for production of the Class I, Group I controlled substances was as follows: 50% of the Article 5 allowance baseline for the 2006 control period; 15% of baseline for each of the control periods from January 1, 2007, to December 31, 2009; and 0% (complete phaseout) for the control periods beginning January 1, 2010, and thereafter.

The proposed Article 5 allowance reduction schedule for production of the Class I, Group III controlled substances was 80% of baseline for the 2006 control period; 15% of baseline for each of the control periods from January 1, 2007 to December 31, 2009; and 0% (complete phaseout) for the control periods beginning January 1, 2010 and thereafter. However, under EPA's preferred option of a zero baseline based

on 2000–2003 data, this reduction schedule would be unnecessary.

In regard to methyl bromide production for the basic domestic needs of developing countries, EPA proposed establishing the same baseline and the same phasedown schedule as that agreed to under the Beijing adjustments. The Beijing adjustments state that a country's baseline for Article 5 production of methyl bromide is ''the annual average of its production of [methyl bromide] for basic domestic needs for the period 1995 to 1998 inclusive.'' The reduction schedule for the production of methyl bromide (Class I, Group VI controlled substances) proposed by EPA is 80% of the Article 5 allowance baseline for each of the control periods from January 1, 2006 to December 31, 2014; 0% (complete phaseout) starting January 1, 2015 and thereafter.

As noted in the proposal, Article 5 production for Class I Group IV and Group V chemicals was not altered under the Beijing Amendments and EPA did not propose to take any action to change the baselines or reduction schedules for these substances.

EPA did not receive any comments on the proposed revisions to the baselines or reduction schedules for Article 5 allowances. Nor did EPA receive any comments on extending the availability of Article V allowances for methyl bromide. Therefore, with today's action, EPA is finalizing the amendments to the Agency's regulations as proposed. The revised baseline and the percentage of baseline allocated in each control period beginning with 2006 are located in section 82.11 of the regulations.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant'' regulatory action as one 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 final action is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review under the Executive Order.

B. Paperwork Reduction Act

This final action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The OMB has previously approved the information collection requirements contained in the existing regulations, 40 CFR part 82, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0170, EPA ICR number 1432. A copy of the OMB-approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (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.

Category	NAICS Code	SIC Code	SIC small business size standard (in number of employees)
1. Chemical and Allied Products, NEC	424690	5169	100

After considering the economic impacts of today's rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities, as it regulates large corporations that produce Class I ODSs. There are no small entities in this regulated industry.

D. 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 EPA may promulgate a 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, 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. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Further, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because it does not impose any requirements on any State, local, or tribal government.

E. Executive Order No. 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.''

This final 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. Today's rule is expected to primarily affect producers and exporters of CFCs and methyl bromide. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order No. 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order No. 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 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.'' This final rule does not have tribal implications, as specified in Executive Order No. 13175. Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. The final rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order No. 13175 does not apply to this final rule.

G. Executive Order No. 13045: Protection of Children From Environmental Health and Safety Risks

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'' under E.O. 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.

While this final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, we nonetheless have reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's surface. The following studies describe the effects on children of excessive exposure to UV radiation: (1) Westerdahl J, Olsson H, Ingvar C. ''At what age do sunburn episodes play a crucial role for the development of malignant melanoma,'' Eur J Cancer 1994; 30A: 1647–54; (2) Elwood JM, Jopson J. ''Melanoma and sun exposure: an overview of published studies,'' Int J Cancer 1997; 73:198–203; (3) Armstrong BK. ''Melanoma: childhood or lifelong sun exposure,'' In: Grobb JJ, Stern RS, Mackie RM, Weinstock WA, eds. ''Epidemiology, causes and prevention of skin diseases,'' 1st ed. London, England: Blackwell Science, 1997: 63–6; (4) Whiteman D., Green A. ''Melanoma and Sunburn,'' Cancer Causes Control, 1994: 5:564–72; (5) Kricker A, Armstrong, BK, English, DR, Heenan, PJ. ''Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia,'' Int J Cancer 1995; 60: 489–94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, et. al. ''Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma,'' Arch Dermatol 1995; 131: 157–63; (7) Armstrong, BK. ''How sun exposure causes skin cancer: an epidemiological perspective,'' Prevention of Skin Cancer. 2004. 89–116.

The methyl bromide phaseout date for Article 5 countries is 2015 and allowing continuing U.S. production to meet such countries' basic domestic needs avoids the need for those countries to install new ODS manufacturing facilities. The effect of extending the availability of Article 5 allowances for methyl bromide should be that methyl bromide that would otherwise be produced at new facilities in developing countries will instead be produced in the U.S. for export to those countries. The amount of methyl bromide that will be released to the atmosphere should remain the same regardless of the manufacturing location. In addition, avoiding the installation of new capacity is one means of ensuring that production levels continue to decline. Thus, this rule is not expected to increase the impacts on children's health from stratospheric ozone depletion.

H. Executive Order No. 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not a ''significant energy action'' as defined in Executive Order No. 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.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on December 29, 2005.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedures, Air pollution control, Chemicals, Exports, Imports, Ozone, Production, Reporting and recordkeeping requirements, Treaties.

Dated: December 22, 2005.

Stephen L. Johnson,

Administrator.

■ 40 CFR Part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

■ 2. Section 82.3 is amended by revising the entry for ''Article 5 allowance'' to read as follows:

§ 82.3 Definitions for class I and class controlled substances.

* * * * *

Article 5 allowances means the allowances apportioned under § 82.9(a), § 82.11(a)(2), and § 82.18(a).

* * * * *

■ 3. Section 82.4 is amended by revising paragraphs (b)(1) and (h) to read as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

(b)(1) Effective January 1, 1996, for any Class I, Group I, Group II, Group III, Group IV, Group V or Group VII controlled substances, and effective January 1, 2005 for any Class I, Group VI controlled substances, and effective August 18, 2003, for any Class I, Group VIII controlled substance, no person may produce, at any time in any control period (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of conferred unexpended essential use allowances or exemptions, or in excess of the amount of unexpended critical use allowances, or in excess of the amount of unexpended Article 5 allowances as allocated under § 82.9 and § 82.11, as may be modified under § 82.12 (transfer of allowances) for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production constitutes a separate violation of this subpart.

* * * * *

(h) No person may sell in the U.S. any Class I controlled substance produced explicitly for export to an Article 5 country.

* * * * *

■ 4. Section 82.9 is amended by revising paragraph (a)(4) to read as follows:

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

(a) * * *

(4) 15 percent of their baseline production allowances for Class I, Group IV and Group V controlled substances listed under § 82.5 of this subpart for each control period beginning January 1, 1996 until January 1, 2010;

* * * * *

■ 5. Section 82.11 is amended by revising paragraph (a) introductory text and adding a new paragraph (a)(2) and (a)(3) to read as follows:

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

(a) If apportioned Article 5 allowances under § 82.9(a) or § 82.11(a)(2), a person may produce Class I controlled substances, in accordance with the prohibitions in § 82.4 and the reduction schedule in § 82.11(a)(3), to be exported (not including exports resulting in transformation or destruction, or exports of used controlled substances) to foreign states listed in appendix E to this subpart (Article 5 countries).

* * * * *

(2) Persons who reported exports of Class I, Group I controlled substances to Article 5 countries in 2000–2003 are apportioned baseline Article 5 allowances as set forth in § 82.11(a)(2)(i). Persons who reported exports of Class I, Group VI controlled substances to Article 5 countries in 1995–1998 are apportioned baseline Article 5 allowances as set forth in § 82.11(a)(2)(ii)).

(i) For Group I Controlled Substances

Controlled Substance	Person	Allowances (kg)
CFC–11	Honeywell	7,150
	Sigma Aldrich	1
CFC–113	Fisher Scientific.	5
	Honeywell	313,686
	Sigma Aldrich	48
CFC–114	Honeywell	24,798
	Sigma Aldrich	1

(ii) For Group VI Controlled Substances

Controlled Substance	Person	Allowances (kg)
Methyl Bromide.	Albemarle	1,152,714
	Ameribrom	176,903
	Great Lakes Chemical Corporation.	3,825,846

(3) Phased Reduction Schedule for Article 5 Allowances allocated in § 82.11. For each control period specified in the following table, each person is granted the specified percentage of the baseline Article 5 allowances apportioned under § 82.11.

Control Period	Class I substances in group I (In percent)	Class I substances in group VI (In percent)
2006	50	80
2007	15	80
2008	15	80
2009	15	80

Control Period	Class I substances in group I (In percent)	Class I substances in group VI (In percent)
2010	0	80
2011	0	80
2012	0	80
2013	0	80
2014	0	80
2015	0	0

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–8016–7]

RIN 2060–AM56

Protection of Stratospheric Ozone: Extension of Global Laboratory and Analytical Use Exemption for Essential Class I Ozone Depleting Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to extend the global laboratory and analytical use exemption for production and import of class I ozone-depleting substances from December 31, 2005, to December 31, 2007, consistent with recent actions by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. The exemption allows persons in the United States to produce and import controlled substances for laboratory and analytical uses that have not been already identified by EPA as nonessential.

EFFECTIVE DATE: This final rule is effective on January 1, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2004–0064. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Hodayah Finman, U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9246; fax numbers: (202) 343–2338; *finman.hodayah@epa.gov*. You may also visit the EPA's Ozone Depletion Web site at *www.epa.gov/ozone* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other related topics.

SUPPLEMENTARY INFORMATION: This final rule concerns the exemption for laboratory and analytical uses from CAA restrictions on the consumption and production of class I controlled substances. In May 2005, EPA proposed extending this exemption program from December 31, 2005, to December 31, 2007, consistent with action taken by the Parties to the Montreal Protocol (70 FR 25726, May 13, 2005). Today's action finalizes the proposed extension. In addition, the Agency solicited comment on clarifying the status of methyl bromide, a class I controlled substance, under the laboratory and analytical use exemption program. EPA is deferring final action on that aspect of the proposed rule.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C., Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. Today's final rule is issued under section 307(d) of the CAA, which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies.'' CAA section 307(d)(1). Thus, section 553(d) of the APA does not apply to this rule. EPA nevertheless is acting consistently with the policies underlying APA section 553(d) in making this rule effective on January 1, 2006 APA section 553(d) provides an exception for any action that grants or recognizes an exemption or relieves a restriction. Today's final rule extends an exemption from the phaseout of class I ozone-depleting substances. Because the current exemption expires at the end of 2005, EPA is making this rule effective immediately to ensure that the exemption will not lapse.

Table of Contents

I. Background on the Montreal Protocol and the Global Laboratory and Analytical Use Exemption

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) is the international agreement to reduce and eventually eliminate the production and consumption [1] of all stratospheric ozone-depleting substances (ODSs). The elimination of production and consumption of ODSs is accomplished through adherence to phaseout schedules for specific class I ODSs,[2] including: chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform. The Clean Air Act, as amended in 1990 and 1998, requires EPA to promulgate regulations implementing the Protocol's phaseout schedules in the United States. Those regulations are codified at 40 CFR part 82. As of January 1, 1996, production and import of most class I ODSs were phased out in developed countries, including the United States.

However, the Protocol provides exemptions that allow for the continued import and/or production of ODSs for specific uses. Under the Protocol, for

[1] ''Consumption'' is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported to Parties to the Montreal Protocol (*see* Section 601(6) of the Clean Air Act). Stockpiles of class I ODSs produced or imported prior to the 1996 phaseout may be used for purposes not expressly banned at 40 CFR part 82.

[2] Class I ozone depleting substances are listed at 40 CFR part 82, subpart A, appendix A.