6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2016-0271; FRL-9997-57-OAR]

RIN 2060-AU26

Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production and Import, 2020-2029; and Other Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to allocate production and consumption allowances for specific hydrochlorofluorocarbons, a type of ozone-depleting substance, for the years 2020 through 2029. These hydrochlorofluorocarbons may be used to service certain equipment manufactured before 2020. The EPA is also proposing to update other requirements under the program for controlling production and consumption of ozone-depleting substances, as well as proposing edits to the regulatory text for improved readability and clarity. These updates include revising the labeling requirements for containers of specific hydrochlorofluorocarbons; prohibiting the conversion of hydrochlorofluorocarbon allowances allocated through this rulemaking into allowances for hydrochlorofluorocarbons that have already been phased out; requiring the use of an electronic reporting system for producers, importers, exporters, transformers, and destroyers of class I and class II ozone-depleting substances; revising and removing recordkeeping and reporting requirements; improving the process for petitioning to import used substances for reuse; creating a certification process for importing used and virgin substances for destruction; and restricting the sale of known illegally imported substances. This notice further includes proposed clarifications to the certification requirements for methyl

bromide quarantine and preshipment uses. The EPA is also proposing to add polyurethane foam systems containing ozone-depleting chlorofluorocarbons to the list of nonessential products. Lastly, the agency is proposing to update the definition of "destruction" as used in the context of the production and consumption phaseout and remove obsolete provisions.

DATES: Comments on this notice of proposed rulemaking must be received on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].** Any party requesting a public hearing must notify the contact listed below under FOR FURTHER INFORMATION CONTACT by 5 p.m. Eastern Daylight Time on **[INSERT DATE 5 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].** If a public hearing is requested, the hearing will be held on **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].** The hearing will be held in Washington, D.C. More details concerning the hearing, including whether a hearing has been requested, will be available at https://www.epa.gov/ods-phaseout/phaseout-class-ii-ozone-depleting-substances.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2016-0271, to the Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (e.g., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public

comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit https://www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Katherine Sleasman, Stratospheric Protection Division, Office of Atmospheric Programs, Mail Code 6205T, 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460; telephone number (202) 564-7716; email address *sleasman.katherine@epa.gov*. You may also visit the Ozone Protection Web site of the EPA's Stratospheric Protection Division at https://www.epa.gov/ods-phaseout for further information about reporting and recordkeeping, other Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

ACE/ITDS – Automated Commercial Environment/International Trade Data System

ARFF – Aircraft Rescue and Fire Fighting

CAA – Clean Air Act

CBP – Customs and Border Protection

CDC – Centers for Disease Control and Prevention

CDX – Central Data Exchange

CFC – Chlorofluorocarbon

CFR – Code of Federal Regulations

CROMERR – Cross-Media Electronic Reporting Regulation

DOT – Department of Transportation

EPA – Environmental Protection Agency

FAA – Federal Aviation Administration

FR – Federal Register

GPEA – Government Paperwork Elimination Act

HCFC – Hydrochlorofluorocarbon

HTSA - Harmonized Tariff Schedule of the United States Annotated

MMWR – Morbidity and Mortality Weekly Report

Montreal Protocol – Montreal Protocol on Substances that Deplete the Ozone Layer

MOP – Meeting of the Parties

MT – Metric Ton

NFPA – National Fire Protection Association

ODP – Ozone Depletion Potential

ODS – Ozone-Depleting Substance

Parties to the Montreal Protocol or Party – Nations and regional economic integration organizations that have consented to be bound by the Montreal Protocol on Substances that Deplete the Ozone Layer

RACA – Request for Additional Consumption Allowances

SNAP – Significant New Alternatives Policy

TEAP – Technology and Economic Assessment Panel

UNEP – United Nations Environment Programme

Table of Contents

I. General Information

A. Does this Proposed Action Apply to Me?

You may be potentially affected by any final action on this proposal if you manufacture, process, import, or distribute into commerce certain ozone-depleting substances (ODS) and mixtures. Potentially affected entities may include but are not limited to:

- Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing entities (NAICS 333415)

- Air-Conditioning Equipment and Supplies Merchant Wholesalers (NAICS 423620)
- Basic Chemical Manufacturing (NAICS 3251)
- Chlorofluorocarbon Gas Manufacturing and Import (NAICS 325120)
- Farm Product Warehousing and Storage (NAICS 493130)
- Farm Supplies and Merchant Wholesalers (NAICS 424910)
- Flour Milling (NAICS 311211)
- Fire Extinguisher Chemical Preparations Manufacturing (NAICS 325998)
- Fruit and Nut Tree Farming (NAICS 1113)
- General Warehousing and Storage (NAICS 493130)
- Greenhouse, Nursery, and Floriculture Production (NAICS 1114)
- Hazardous Waste Treatment and Disposal, Cement Manufacturing, Clinker (NAICS 327310)
- Hazardous Waste Treatment and Disposal, Incinerator, Hazardous Waste (NAICS 562211)
- Industrial Gas Manufacturing (NAICS 325120)
- Materials Recovery Facilities (NAICS 562920)
- Other Aircraft Parts and Auxiliary Equipment Manufacturing (NAICS 336413)
- Other Chemical and Allied Production Merchant Wholesalers (NAICS 424690)
- Other Crop Farming (NAICS 1119)
- Pesticide and Other Agricultural Chemical Manufacturing (NAICS 325320)
- Plumbing, Heating, and Air-Conditioning Contractors (NAICS 238220)
- Portable Fire Extinguishers Manufacturing (NAICS 339999)
- Postharvest Crop Activities (except Cotton Ginning) (NAICS 115114)
- Research and Development in Physical, Engineering, and Life Sciences (NAICS 541710)
- Rice Milling (NAICS 311212)
- Soil Preparation, Planting, and Cultivating (NAICS 115112)
- Vegetable and Melon Farming (NAICS 1112)

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this section could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Action Is the Agency Proposing?

The EPA is proposing a number of revisions to the production and consumption control program for ODS[1] in 40 CFR part 82, subpart A, which are divided into "class I" and "class II" substances. Section 602 of the Clean Air Act (CAA) contains initial lists of class I and class II substances and addresses additions to those lists. The current lists appear in appendices A and B in subpart A. The list of class I substances includes chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, and methyl bromide. The list of class II substances consists entirely of hydrochlorofluorocarbons (HCFCs). This action proposes specific revisions to the production and consumption control program including:

- The allocation of production and consumption allowances for HCFC-123 and HCFC-124 to service certain equipment manufactured before January 1, 2020;
- Requiring the use of an electronic reporting system for producers, importers, exporters, transformers, and destroyers of ODS;
- Revisions and removal of certain recordkeeping and reporting requirements;
- Clarifications to the certification requirements for methyl bromide quarantine and preshipment uses;
- Improvements to the process for petitioning to import used substances for reuse;
- Creation of a certification process for importing used and virgin substances for destruction; and
- Restrictions on the sale of known illegally imported ODS.

In addition, this action proposes changes to other subparts supporting the ODS phaseout, specifically:

[1] Generally speaking, when the EPA refers to ODS in this preamble, it is referring to class I and/or class II controlled substances. The terms "controlled substance" and "ODS" are used interchangeably, as are the terms "HCFC" and "class II substance."

- Changes to the subpart E requirements for labeling of products containing HCFC-123 to clarify permitted uses;
- Adding to the subpart C ban on sale and distribution or offer for sale and distribution in interstate commerce of certain products that contain class I ODS; and
- Changes to subpart H for reducing halon emissions.

As summarized below, the proposed changes outlined are grouped by relevance and thus may not be grouped by subparts as described above. The EPA is proposing to allocate annual production and consumption allowances for HCFC-123 and HCFC-124 for the years 2020 through 2029 to be used for servicing certain equipment manufactured before January 1, 2020. Section 605 of the CAA addresses the production, consumption, use, and introduction into interstate commerce of class II substances (listed HCFCs) within the United States. Sections 605 and 606 taken together constitute the primary source of authority for the domestic implementation of United States' obligations to phase out HCFCs under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol). The EPA regulations issued under sections 605 and 606 appear at 40 CFR part 82, subpart A. Those regulations reflect the agreed Montreal Protocol HCFC phaseout schedule. An element of that schedule is to phase out HCFC production and consumption by January 1, 2020, other than production and consumption for certain narrowly defined uses in an amount up to 0.5% of baseline annually. Under a previous adjustment to the Montreal Protocol in 1995, production and consumption during the years 2020 through 2029 was restricted to the servicing of refrigeration and air-conditioning equipment existing on January 1, 2020.[2] In November 2018, the Parties to the Montreal Protocol adopted

[2] Section 605(a)(3) of the CAA refers to equipment "manufactured" prior to January 1, 2020. The EPA interprets this to mean that an appliance "existing on" January 1, 2020 is one that is "manufactured" by that date. The definition of "manufactured" can be found at 40 CFR 82.3. See also 74 FR 66439.

another adjustment that, among other things, added "the servicing of fire suppression and fire protection equipment" existing on January 1, 2020 as a permissible use.[3] Consistent with this adjustment and a continuing servicing demand in fire suppression equipment using HCFCs in the United States, the EPA is proposing to revise subpart A to add servicing of existing "fire suppression equipment" to the authorized uses of newly produced or imported quantities of HCFC-123 and HCFC-124 during the years 2020 through 2029. To facilitate compliance, the EPA is proposing to revise labeling requirements for containers of fire suppression agent containing HCFC-123 that is imported during the years 2020 through 2029 in subpart E. To align with existing regulations that prohibit the production and import of phased out HCFCs, in particular HCFC-22, the agency is proposing to modify the inter-pollutant allowance transfer provisions authorized by CAA section 607 to prohibit transfers into ODS that are already phased out.

In addition, the EPA is proposing to update the requirements under other provisions of 40 CFR part 82, subpart A. To increase the accuracy of reported data and to reduce burden associated with reporting ODS data, the EPA is proposing to require that certain reports, import petitions, and certifications of intent to import for destruction be submitted electronically through the agency's Central Data Exchange (CDX). Each entity must establish an account in CDX in order to prepare, transmit, certify, and submit reports and submissions. The EPA is also proposing to amend the recordkeeping and reporting requirements by harmonizing requirements for class I and class II substances and removing reporting elements that would be made unnecessary by moving to electronic reporting. Required electronic reporting and reducing the number of reporting elements reduce the reporting burden.

[3] Decision XXX/2 and Annex I of the "Compilation of decisions adopted by the parties," adjust Article 2F of the Montreal Protocol.

The EPA is proposing two changes to provisions related to the sale of quarantine and preshipment (QPS) methyl bromide, a fumigant used to control pests in agriculture and shipping, in response to the misapplication of this ODS in Puerto Rico and the U.S. Virgin Islands. First, the EPA is proposing to extend to all distributors of QPS methyl bromide a certification requirement that currently applies only to certain distributors and end users. This proposed change would help ensure that all distributors and applicators are aware of the restrictions on the use and sale of QPS methyl bromide. Second, the EPA is proposing to explicitly prohibit the use of methyl bromide produced under the QPS exemption for any use other than a quarantine use or a preshipment use. Additionally, the EPA is proposing revisions in §§82.4, 82.8, and 82.13 for readability, including changes to the naming convention for methyl bromide.

The EPA is also proposing to revise provisions related to the import of ODS. The agency is proposing to modify the import petition process by clarifying that failure to provide additional information requested by the EPA during the process is grounds for objection, and by allowing for information from the government of the exporting country to be submitted in lieu of certain currently required information for petitions to import recovered class I ODS held in ODS banks. The agency would modify the petition process to import used class I substances for reuse and provide a new certification process for the import of ODS (used and virgin) for destruction in the United States. Additionally, the EPA is proposing to exempt halon 1211, a potent ODS used as a fire suppression streaming agent, in extinguishers used onboard aircraft from the import petition process to make it easier for companies to service fire suppression equipment, promoting proper maintenance of these bottles and preventing the emission of halon 1211.

The EPA is also proposing two changes to reduce the likelihood that phased out ODS will be sold and distributed in the United States, and thus reduce the potential for emissions of

those substances in this country. First, the agency is proposing to prohibit the sale or offer for sale or distribution of any ODS that the seller knows, or has reason to know, has been imported into the United States without consumption allowances or is otherwise not subject to an exemption. Second, the EPA is proposing to add polyurethane foam systems containing CFCs to the list of class I nonessential products under 40 CFR part 82, subpart C to prohibit them from being sold or distributed in the United States.

The agency is proposing to revise the definition of "destruction" to include additional technologies such as chemical conversion processes, all of which have been approved in decisions of the Parties to the Montreal Protocol which is found or otherwise discussed in subparts A, E, and H. Lastly, the EPA proposes to remove outdated provisions related to the allocation and transfer of class I ODS credits and allowances that are no longer in use in subpart A.

C. What Is the Agency's Authority for this Proposed Action?

Several sections of the CAA[4] provide authority for the actions proposed by the EPA in this notice of proposed rulemaking. Section 603 provides authority to establish monitoring and reporting requirements for ODS. Sections 604 and 605 provide authority to phase out production and consumption of class I and class II substances, respectively, and to restrict the use of class II ODS. Section 606 provides the EPA authority to establish a more stringent phaseout schedule[5] than that set out in sections 604 and 605 based on: (1) current scientific information that a more stringent schedule may be necessary to protect human health and the environment, (2) the availability of substitutes, or (3) to conform to any acceleration under the Montreal Protocol.

[4] The Clean Air Act provisions addressing stratospheric ozone protection are codified at 42 U.S.C. 7671-7671q.
[5] The following documents are available in the docket: "EPA. 1999. The Benefits and Costs of the Clean Air Act: 1990 to 2010," and "EPA. 2018. Overview of CFC and HCFC Phaseout."

Section 607 provides the EPA with authority to issue production and consumption allowances and to authorize allowance transfers, including inter-pollutant and inter-company transfers. Section 610, in relevant part, directs the EPA to issue regulations that identify nonessential products that release class I substances into the environment (including any release during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such product, or offering any such products for sale or distribution, in interstate commerce. Section 611 requires the EPA to establish and implement labeling requirements for containers of, and products containing or manufactured with, class I or class II ODS.

The EPA's authority for this rulemaking is supplemented by section 114, which authorizes the EPA Administrator to require recordkeeping and reporting in carrying out any provision of the CAA (with certain exceptions that do not apply here). Section 301 further provides authority for the EPA to "prescribe such regulations as are necessary to carry out [the EPA Administrator's] functions" under the CAA. Additional authority for electronic reporting comes from the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504), which provides "(1) for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) for the use and acceptance of electronic signatures, when practicable."

Additional information on the EPA's authority to establish and manage an allocation system for the phaseout of class I and class II substances can be found at 58 FR 65018 (December 10, 1993) and 68 FR 2820 (January 21, 2003) respectively.

D. What Are the Incremental Costs and Benefits of this Proposed Action?

The EPA considered the incremental costs and benefits associated with this rulemaking which stem from proposed changes to reporting and recordkeeping requirements. The revisions

proposed here would require electronic submissions through CDX, create a streamlined Certification of Intent to Import ODS for Destruction, exempt halon 1211 in aircraft bottles from the import petitions process, and add recordkeeping certification requirement for methyl bromide QPS. The agency has analyzed the impact on the regulated community associated with the proposed regulatory changes, and the EPA estimates changes to reporting and recordkeeping would result in a cost of approximately $5,000 per year. However, the EPA estimates the annual costs savings to reporters as a result of reductions in reporting elements, streamlining forms, and added efficiencies to be approximately $13,000 per year. The one-time redesign labeling costs for containers of fire suppression agents are estimated to cost between $1,000 to $3,000. In addition, the EPA analyzed the impact on small businesses and found there would be no additional costs imposed on small business, see the docket for the screening analysis on small businesses. A description of the results of the analysis and the methods used can be found in Section VIII of this notice.

II. Background

The United States was one of the original signatories to the 1987 Montreal Protocol and ratified it on April 12, 1988. After ratification, Congress enacted, and President George H.W. Bush signed into law, the CAA Amendments 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 Montreal Protocol, in addition to establishing complementary measures such as the national recycling and emission reduction programs under section 608 and the labeling requirements under section 611.

The 1992 Copenhagen Amendment[6] to the Montreal Protocol created the stepwise reduction schedule, subsequently revised, and the eventual phaseout of HCFC consumption.[7] The next milestone is a commitment to reduce HCFC consumption by 99.5% below the baseline by January 1, 2020, with consumption for the years 2020 through 2029 restricted to the servicing of refrigeration, air-conditioning, and fire suppression equipment existing on January 1, 2020.[8] This is referred to as the "servicing tail." In November 2018, the Parties to the Montreal Protocol agreed to add fire suppression equipment existing on January 1, 2020 to the list of permissible servicing tail uses.

The United States has chosen to implement the Montreal Protocol phaseout schedule of HCFCs on a chemical-by-chemical basis that employs a "worst-first" approach focusing on the phaseout of certain chemicals with higher ozone depletion potential (ODP) earlier than others. In 1993, the EPA established a phaseout schedule to eliminate HCFC-141b first, to greatly restrict HCFC-142b and HCFC-22 next, and to subsequently place restrictions on all other HCFCs ultimately leading to a complete phaseout of all HCFCs by 2030 (58 FR 15014, March 18, 1993; 58 FR 65018, December 10, 1993).

The EPA designed the allowance program to implement the production and consumption controls of the CAA and to facilitate an orderly phaseout. To control production, the EPA allocated baseline production allowances to producers of specific ODS. To control

[6] Further information on the Copenhagen Amendment is available at https://ozone.unep.org/en/handbook-montreal-protocol-substances-deplete-ozone-layer/2199.

[7] Consumption is defined in §82.3 as production plus imports minus exports of a controlled substance (other than transshipments or used controlled substances). Production is defined in §82.3 as the manufacture of a controlled substance from any raw material or feedstock chemical, but does not include: (1) the manufacture of a controlled substance that is subsequently transformed; (2) the reuse or recycling of a controlled substance; (3) amounts that are destroyed by the approved technologies; or (4) amounts that are spilled or vented unintentionally.

[8] *See* Montreal Protocol Article 2F, paragraph 6.

consumption[9], the EPA allocated baseline consumption allowances to producers and importers of specific ODS. In the allowance program, the EPA allocates "calendar-year" or "annual" allowances to companies who expend them when they produce or import ODS. The allowances can be traded among companies both domestically and internationally (between countries that are Parties to the Protocol), with certain restrictions. Allocation of production and consumption allowances for most class I substances (CFCs, methyl chloroform, carbon tetrachloride, and halons) ended in 1996, and in 2005 for methyl bromide. Production and consumption allowances for class II substances (HCFCs) will be reduced to zero in 2030[10].

Since the EPA is implementing the HCFC phaseout on a chemical-by-chemical basis, it allocates and tracks production and consumption allowances on an absolute kilogram basis for each chemical. An allowance is the unit of measure that controls production and consumption of ODS. The EPA allocates allowances for specific years; they are valid between January 1 and December 31 of a given control period (i.e., calendar year). In previous rulemakings, the EPA has allocated calendar-year allowances equal to a percentage of the baseline for specified control periods. A calendar-year allowance represents the privilege granted to a company to produce or import one kilogram (not ODP-weighted) of the specific substance. The EPA allocates two types of calendar-year allowances—production allowances and consumption allowances. To produce an HCFC, an allowance holder must expend both production and consumption allowances. To import an HCFC, an allowance holder must expend only consumption allowances. An allowance holder exporting HCFCs for which it has expended consumption allowances may obtain a refund of those consumption allowances upon submittal of proper documentation to the EPA.

[9] *See* CAA section 601(6), 42 U.S.C. 7671(6); 40 CFR 82.3.
[10] *See* CAA section 605 (b)(2), 42 U.S.C. 7671(d) and Montreal Protocol Article 2F, paragraph 6.

Production and import of virgin HCFCs without allowances are prohibited except for transformation, destruction, transshipments, or heels (§82.15(a) and (b)).

Under the chemical-by-chemical phaseout schedule for HCFCs, the EPA stopped allocating production and consumption allowances for HCFC-141b as of 2003; there will be no more production and consumption allowances for HCFC-22 and HCFC-142b as of 2020; and beginning in 2020 the use of newly produced or imported quantities of the remaining HCFCs will be limited to servicing refrigeration, air-conditioning, and fire suppression equipment existing at that date.

The EPA notes that absent specific use restrictions, HCFCs can continue to be used after their production and import has ceased, for example, to service existing equipment such as refrigeration and air-conditioning systems. The EPA's intent has always been to facilitate a smooth transition to alternatives, which means avoiding stranding equipment that has not yet reached the end of its useful life. For example, used HCFC-22 that is recovered and reclaimed, or virgin material produced before the 2020 phaseout may continue to be used for as long as it is available to service existing HCFC-22 systems.

The allowance system for production and import that reduces the number of allowances over time is a central component of the ODS phaseout in the United States. The EPA limits how much ODS enters the market to meet the CAA and Montreal Protocol phaseout milestones. To smooth the phaseout steps, the EPA also takes complementary actions that reduce the demand for ODS, encourage recovery and recycling or reclamation of used ODS, allow for continued servicing to avoid stranding existing equipment, and encourage transition to alternatives that "reduce overall risks to human health and the environment."[11]

[11] CAA section 612, 42 U.S.C. 7671(k).

The EPA's most recent action related to the phaseout of HCFCs was a 2014 rule that allocated production and consumption allowances for HCFC-22, HCFC-142b, HCFC-123, and HCFC-124 for 2015-2019 (79 FR 64254, October 28, 2014). In that action, the EPA also implemented the provisions in CAA section 605(a) that limit production and consumption to servicing refrigeration and air-conditioning appliances and for use in fire suppression applications. That notice provides additional discussion of the history of the phaseout of HCFCs.

III. Allocation of HCFC Allowances for the Years 2020 Through 2029

This section presents the EPA's proposed approach for issuing HCFC allowances for the next regulatory period that extends from 2020 through 2029, as well as complementary changes to implement a recent adjustment to the Montreal Protocol. The EPA is proposing to issue consumption allowances for HCFC-123 and consumption and production allowances for HCFC-124 consistent with the CAA, EPA regulations, and obligations of the United States under the Montreal Protocol. These are the two HCFCs not already slated for phaseout in the United States by 2020 under existing regulations. These HCFCs are currently used in the refrigeration, air-conditioning, and fire suppression sectors. The EPA is also proposing to add servicing of fire suppression equipment to the authorized uses of newly produced or imported quantities of these HCFCs during the years 2020 through 2029. In addition, the EPA is proposing changes to the current labeling requirements for containers of fire suppression agent using HCFC-123.

In this proposed action, the EPA is relying on its authority under CAA section 605(c) to promulgate regulations phasing out the production and restricting the use of class II substances in accordance with section 605, subject to previous accelerations under section 606 (See 58 FR 65018, December 19, 1993 and 74 FR 66411, December 15, 2009). The EPA is proposing

limited changes to the existing regulations on production, consumption, and use of class II ODS to provide flexibility for the years 2020 through 2029 consistent with the requirements of section 605 and obligations of the United States under the Montreal Protocol.

In developing the proposed allocations for HCFC-123 and HCFC-124 for the years 2020 through 2029, the EPA considered a number of factors, including existing company-specific consumption baselines listed in §82.19; the uses of HCFCs that are permissible for the years 2020 through 2029 under CAA section 605(a) and the availability of alternatives for those uses; the types of HCFCs that may be produced and consumed consistent with existing obligations and regulations; the quantity needed to meet the estimated demand for each permissible use; the estimated quantity of HCFCs that will be available from recycling and reclamation, as well as from the potential stockpiling of virgin HCFCs in advance of the 2020 phaseout step;[12] and the transition that must occur by 2030 when HCFC production and consumption will be phased out completely. For each HCFC that will be allocated, the EPA identifies a total number of allowances to be allocated and then sets calendar-year allowances equal to a percentage of each company's baseline.[13] The following discussion describes how the EPA considered each of these factors broadly in developing the proposed allocations.

The first factor the EPA considered when developing this proposal was the existing limitation on permissible uses of HCFCs and the availability of alternatives for those uses. Section 605(a) of the CAA limited the use of newly-produced (i.e., virgin) HCFCs beginning January 1, 2015. The statute provides that starting on that date, it shall be unlawful for any

[12] EPA. 2019. The U.S. Phaseout of HCFCs: Projected Servicing Demands in the U.S. Air Conditioning, Refrigeration, and Fire Suppression Sector (2020-2030).

[13] The percentage of baseline allowances to be allocated for each HCFC is determined as follows: First, all the company-specific consumption baselines (listed in the table at §82.19) are added to determine the aggregate amount of consumption baseline. The total number of allowances to be allocated in a given year are then divided by the aggregate amount of baseline allowances.

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; (3) is used as a refrigerant in appliances manufactured before January 1, 2020; or (4) is listed as acceptable under the Significant New Alternatives Policy (SNAP) program for use as a fire suppression agent for nonresidential applications. As detailed in the draft report in the docket titled *The U.S. Phaseout of HCFCs: Projected Servicing Demands in the U.S. Air Conditioning, Refrigeration, and Fire Suppression Sector (2020-2030),* hereafter referred to as the *Draft Servicing Tail Report*, the EPA considered the availability of alternatives for the latter two uses, with the understanding that it is typically best to service equipment with the same refrigerant or fire suppression agent it was designed to use. The SNAP program continues to review and list alternatives for applications that use HCFCs, including refrigeration and air conditioning and fire suppression applications that use HCFC-123. Substitutes are listed under that regulatory program as acceptable, unacceptable, or acceptable subject to use restrictions for specific uses. Any future use of substitutes listed as acceptable subject to use restrictions must comport with any conditions of the SNAP program, if applicable. Currently, the SNAP program lists a number of acceptable substitutes for HCFCs for use as a fire suppression agent for nonresidential applications, making a variety of allocation options practicable for the years 2020 through 2029.

In addition to the statutory provisions in CAA section 605, the EPA established a "worst-first approach" in 1993 which addressed which HCFCs may be produced and consumed and prioritized the phaseout of HCFCs based on their ODPs (58 FR 15014 and 58 FR 65018). These regulations can be found in §82.16. HCFC-141b was phased out in 2003, except for certain exempted uses. HCFC-22 and HCFC-142b will be fully phased out of production and

consumption starting in 2020, with exceptions for destruction and transformation. Consistent with that approach, the EPA is proposing to issue allowances for production and consumption of only HCFC-123 and HCFC-124, as these are the remaining HCFCs that have not been phased out domestically.

Under the Montreal Protocol, the United States has committed to phase out HCFC production and consumption by January 1, 2020, other than production and consumption for certain narrowly defined uses in an amount up to 0.5% of baseline annually. Under a previous Montreal Protocol adjustment in 1995, production and consumption during the years 2020 through 2029 were restricted to the servicing of refrigeration and air-conditioning equipment existing on January 1, 2020. In the spring of 2018, the United States proposed adjusting the Montreal Protocol to allow for new production and import of HCFCs within the 0.5% cap for servicing fire suppression equipment existing on January 1, 2020. This proposal was based on extensive stakeholder consultation on HCFC needs during the years 2020 through 2029 and the EPA's analysis of available information, including the *2018 Draft Servicing Tail Report*. In November 2018, the Parties to the Montreal Protocol decided to adopt an adjustment that, among other things, [14] added to Article 2F "the servicing of fire suppression and fire protection equipment" existing on January 1, 2020 as a permissible use for newly produced or imported HCFCs.[15] While the term "fire protection" can be understood in some contexts to refer broadly to all measures taken to protect persons or property from harm, the terms "fire protection" and "fire suppression" have been used interchangeably in the Montreal Protocol context to refer to

[14] The adjustment adopted at the Meeting of the Parties in November 2018 included an essential use provision as well as the addition of two niche applications under the 0.5% cap. In this proposed rule, the EPA is only proposing to address the addition of fire suppression. We are not proposing to take any action with regard to other elements of the adjustment at this time.

[15] Decision XXX/2 and Annex I of the "Compilation of decisions adopted by the parties," adjust Article 2F of the Montreal Protocol.

suppressing or putting out fires through the use of chemical substances. Section 605(a) of the Clean Air Act uses the term "fire suppression." In addition, the EPA views this term as the more precise term in the context of regulating ozone-depleting substances. Therefore, the EPA is proposing to add servicing of "fire suppression equipment" to the authorized uses of newly produced or imported quantities of these HCFCs during the years 2020 through 2029. The adjustment adopted in November 2018 will enter into force on June 21, 2019. The final meeting report from the 30th Meeting of the Parties and Decision XXX/2 adopting the adjustment are included in the docket for this rulemaking.

In developing the proposed allocations, the EPA considered the quantities needed to satisfy estimated demand for HCFC-123 and HCFC-124 to service certain equipment manufactured before 2020. These estimates are discussed in more detail in an updated *2019 Draft Servicing Tail Report*, which is available in the docket. This report and the proposed allocation are based on demand projections contained in the EPA's Vintaging Model,[16] recent market research, discussions with industry on current HCFC uses and trends, and the expected availability of recovered, recycled/reclaimed, and reused material. The agency made the April 2018 draft report available on its website and in the docket along with a Notice of Data Availability published in the Federal Register on May 4, 2018 (83 FR 19757) and requested comment on the data and assumptions in the report. The EPA did not receive any substantive comments on the report but continues to welcome further input on all aspects of the revised report, including but not limited to the underlying assumptions and sensitivity analyses. As a

[16] The EPA's Vintaging Model estimates the annual chemical emissions from industry sectors that historically used ODS, including Ref/AC and fire suppression. The model uses information on the market size and growth for each end-use, as well as a history and projections of the market transition from ODS to alternatives. The model tracks emissions of annual "vintages" of new equipment that enter into operation by incorporating information on estimates of the quantity of equipment or products sold, serviced, and retired or converted each year, and the quantity of the compound required to manufacture, charge, and/or maintain the equipment.

result of the adjustment to Article 2F of the Montreal Protocol, the EPA has since revised the *2018 Draft Servicing Tail Report* to reflect the demand for servicing fire suppression equipment manufactured before January 1, 2020. The EPA seeks comment on the *2019 Draft Servicing Tail Report* specifically related to the fire suppression sector. Since the EPA will use the report to support the final rule, the agency requests any relevant data and market information that would improve the accuracy of the agency's projections. These data may be used in determining the final allocation.

The last overarching factor the EPA considered is the 2030 phaseout date for HCFC production and import, with limited exceptions, under CAA section 605(b)(2) and (c). As for prior HCFC phaseout steps, the agency's intent is to accomplish the 2030 phaseout step in a manner that achieves a smooth transition to alternatives without stranding equipment. The goal is to allow equipment owners to continue servicing their HCFC-123 and HCFC-124 equipment that is still within its expected lifetime. Experience with prior HCFC-22 phaseout steps indicates that gradually decreasing allocation levels is better than an abrupt increase or decrease to foster recovery, recycling, and reclamation of HCFCs and an orderly transition to approved alternatives.

A. Allocation of HCFC-123 Production and Consumption Allowances

This section presents the EPA's proposed approach for determining the amount of HCFC-123 production and consumption allowances to be issued and takes comment on two alternatives.

The agency is proposing to not provide any HCFC-123 production allowances for the years 2020 through 2029. In 2009, the EPA issued zero production baseline allowances for HCFC-123 because no companies produced HCFC-123 production in the baseline years of 2005

through 2007. As such, the EPA has not issued production allowances for HCFC-123 in subsequent years (74 FR 66431). Under section 605(b)(1) of the CAA, it is 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. The EPA does not propose to issue any production allowances for HCFC-123 for the years 2020 through 2029.

In 2020, the consumption baseline of the United States for all HCFCs will be 0.5% which equates to 76.2 ODP-weighted metric tons that could be available for servicing[17]. Under section 605(c) of the CAA, the consumption of HCFCs by any person is also to be limited to the quantity consumed by that person during the baseline year. The EPA has implemented this requirement by limiting the number of annual allowances allocated for each chemical in §82.16. Consumption of HCFC-123 during the baseline year equates to 2,014 MT (40 ODP-weighted MT).

Table 1 shows the number of HCFC-123 consumption allowances that would be allocated each year from 2020 to 2030 under the EPA's proposed approach and under the two alternatives on which the EPA is also taking comment. The proposed and alternative approaches are discussed in greater detail below.

Table 1: Comparison of HCFC-123 Consumption Allowance Allocation Approaches between 2020-2030 (MT)

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Total
Proposal	650	650	650	570	490	410	330	250	170	90	0	4,260
Alternative 1	520	480	450	420	380	350	310	280	250	210	0	3,650
Alternative 2	2,014	2,014	2,014	2,014	2,014	2,014	2,014	2,014	2,014	2,014	0	20,140

(1) Proposal

[17] 76.2 ODP-weighted metric tons is the equivalent of 3,810 MT of HCFC-123.

The agency proposes to issue consumption allowances equal to the 2020 estimated HCFC-123 demand for servicing existing refrigeration and air-conditioning and fire suppression equipment for years 2020 through 2022 and to then decrease the number of allowances issued in each subsequent year by an equal amount each year such that there are zero allowances issued in 2030. In effect, this proposal would meet the estimated, full servicing demand in 2020 with newly imported HCFC-123 and the estimated, full servicing demand in 2030 with reclaimed HCFC-123. Under this proposal, the EPA would allocate 650 MT[18] for the years 2020 through 2022 to ensure adequate supply for servicing both existing air-conditioning and fire suppression equipment. Currently the reclamation market primarily services the refrigeration and air conditioning sector. The EPA believes that initially providing three years of flat allocations would allow time for the reclamation market to enter the fire suppression sector. This is the maximum estimated HCFC-123 demand for servicing refrigeration, air-conditioning, and fire suppression equipment in 2020 as discussed in the *2019 Draft Servicing Tail Report*.

The EPA could use an equal yearly decrease approach beginning in 2023 but start at a higher or lower allocation. Specifically, the EPA could use a starting allocation in the years 2020 through 2022 of up to 1,200 MT (24 ODP-weighted MT), which is the current average annual consumption of HCFC-123 in 2012 through 2017 (83 FR 19757). The agency could also use a lower starting allocation for years 2020 through 2022 of between 650 MT (the proposed starting allocation) and 520 MT (the starting allocation in the first alternative discussed below). The agency requests comment on the full range of possible starting allocations for this option.

The EPA proposes to reduce the allocation annually beginning in 2023 by an equal amount each year to bring allocations down to zero by 2030. This approach balances the various

[18] 13 ODP-weighted MT

near and longer term needs by fostering a stable supply of HCFCs to be used for servicing throughout the allocation period and past the phaseout date. Gradually reducing HCFC allowances fosters transition and recycling/reclamation and is consistent with the EPA's approach in previous HCFC allocation rules (see 74 FR 66412, December 15, 2009; 76 FR 47451, August 5, 2011; 78 FR 20004, April 3, 2013; and 79 FR 64254, October 28, 2014). During previous ODS phaseouts, decreasing the allocation has provided equipment owners with the proper market signal to foster transition to alternatives and to increase the incentive for recovery and reclamation.

Consistent with our obligations as a party to the Montreal Protocol, and the use limitation in CAA section 605(a) regarding refrigeration and air-conditioning equipment, the EPA is not proposing to issue HCFC-123 allowances for use in fire suppression or refrigeration and air-conditioning equipment manufactured on or after January 1, 2020. The EPA notes that new fire suppression and refrigeration and air-conditioning equipment may be manufactured with recovered and recycled/reclaimed HCFCs in 2020 and beyond. Section 605(a) of the CAA does not restrict the use of recycled/reclaimed HCFC-123. For instance, as explained in the *2019 Draft Servicing Tail Report* available in the docket, the fire suppression sector has a long history of using recovered and recycled/reclaimed ODS for both servicing and new equipment. For example, there has been continuing demand for halons in newly-manufactured fire suppression equipment since the 1994 halon phaseout in the United States. This demand for halons has been satisfied with recycled/reclaimed halons. Any demand for HCFC-123 for charging and servicing fire suppression equipment manufactured on or after January 1, 2020 must also be met by recycled/reclaimed HCFC-123 or HCFC-123 that was stockpiled prior to 2020.

Following the November 2018 Montreal Protocol adjustment, the EPA revised the *2018 Draft Servicing Tail Report* to disaggregate estimated demand for fire suppression to show estimated demand for servicing compared to demand for new equipment. The EPA consulted with industry on the estimate of future market demand for HCFC- 123 fire suppression applications. Over the past several years, total demand (the manufacture of new equipment and the servicing of existing equipment) has varied, but the average has been approximately 260 MT per year. The EPA expects the servicing demand for fire suppression servicing to be between 35 to 90 MT based on projections[19] from the Vintaging Model and feedback from industry.

Starting the allocation levels below the estimated demand for servicing both fire suppression and refrigeration and air-conditioning equipment, even though the amount reclaimed is expected to be significant, could lead to insufficient quantities of recycled/reclaimed HCFC-123 to meet fire suppression demand, as indicated in the *2019 Draft Servicing Tail Report*. As such, the EPA does not think it would be prudent to reduce the allocation further to account for the complete amount of expected reclamation in the early years. Conversely, if the EPA allocated a higher amount than demand, more virgin HCFC-123 may be imported, reducing the need for recovered and reclaimed HCFC-123. As a point of comparison, the EPA allocated 100% of the HCFC-123 baseline (2,014 MT, Alternative 2 in Table 1) for the years 2015 through 2019. In those years HCFC-123 could be used to manufacture new equipment as well as service existing equipment. Allowance holders did not use their full allocation for HCFC-123 during those years and often used the inter-pollutant transfer mechanism to convert their HCFC-123 allowances into HCFC-22 allowances. After January 1, 2020, there is no other market for transfers.

[19] EPA. 2019. The U.S. Phaseout of HCFCs: Projected Servicing Demands in the U.S. Air Conditioning, Refrigeration, and Fire Suppression Sector (2020-2030), Table 5.

The EPA seeks comment on all aspects of this proposed allocation including the proposed number of allowances to be issued for 2020. The agency requests comment on the rationale explained above for its proposal to allocate 650 MT HCFC-123 consumption allowances for 2020 through 2022; whether the starting allocation in 2020 should be higher or lower; the proposal to decrease this allocation by a constant amount each year after 2022; and whether this proposal would meet demand for HCFC-123 during the years 2020 through 2029. The EPA also requests comment on the expected servicing demand for fire suppression equipment, which is based on projections from the Vintaging Model and feedback from industry. The EPA is taking comment on whether the proposed allocation would strand any equipment in 2020 through 2029, and what the potential cost impacts may be for any stranded equipment. The agency also requests comment on whether there is a significant cost difference to users between reclaimed and virgin HCFC-123. Commenters should provide as much detail, with as much quantitative reasoning (e.g., benefits, market effects, etc.), as possible. When developing a final rule, the EPA will consider any comments received on the starting allocation number and the proposal to decrease the allocation by a constant amount each year.

(2) Alternatives

The EPA is also seeking comment on two alternative approaches the EPA considered for determining how many HCFC-123 consumption allowances to issue. The first alternative approach would be to issue allowances equal to the total modeled demand each year from 2020 through 2029 (which includes servicing of existing equipment and the manufacture of new equipment using reclaimed HCFC-123) minus the low end of the projection for reclamation each year from 2020 through 2029. This contrasts with the proposed approach which, as explained above, would neither consider demand for the manufacture of new equipment using reclaimed

HCFC-123 nor directly decrease allocations based on projections for reclamation. The EPA's low-end estimate for reclamation is 300 MT in 2020, rising by 10 MT per year to 390 MT in 2029. See Table 8 of the *2019 Draft Servicing Tail Report* for more discussion of estimated reclaim. In Table 1, above, the first alternative presents the allocations that would result from applying this approach.

Setting the initial allocation at total estimated demand in 2020 minus the low-end projections for reclamation would reflect current total HCFC-123 market conditions and allow companies to continue consuming HCFC-123 at a rate consistent with demand to ensure adequate supply. Decreasing the allocations gradually over time would potentially guard against consumption levels that are significantly higher than demand. This approach would also account for continued manufacture of fire suppression equipment using HCFC-based fire suppression agent to the extent recycled/reclaimed HCFC-123 is available. While this approach would start at a lower allocation in 2020 than the proposed approach and would allocate less HCFC-123 overall in 2020 through 2029, it would give more time for industry to transition given the slower decrease in the allocation level over time, it would also result in a larger drop between 2029 and 2030 compared to the proposed approach. This could result in a situation where HCFC-123 equipment owners wait until the end of the regulatory period to transition or are unprepared for the 2030 phaseout.

While the EPA estimates that the level of reclaimed HCFC-123, at 300 MT per year, will be higher than the estimated demand for new fire suppression equipment, the agency expects that much of this reclaimed material will be sold into the refrigeration and air-conditioning market given current business relationships. Based on industry feedback, the EPA has tentatively concluded that reclaimed HCFC-123 is currently sold exclusively into the refrigeration and air-

conditioning market. Thus, it might not be immediately available for fire suppression. More availability of virgin HCFC-123 would allow time for the market for recycled/reclaimed HCFC-123 to shift towards new fire suppression equipment, as consumption of HCFC-123 under the Montreal Protocol is only for servicing equipment.

The EPA seeks comment on this first alternate approach. The EPA requests comment on accounting for the anticipated continued manufacture of fire suppression equipment using reclaimed HCFC-123. The EPA also requests comment on using the low end or the high end of the estimate for reclamation, or a point in between. Using the current high end of the expected reclamation estimate would equate to an allocation of approximately 470 MT in 2020, 220 MT in 2025, and 20 MT in 2029. The EPA also seeks comment on whether it should start at a higher amount in 2020 (up to 1,200 MT) consistent with current average consumption of HCFC-123, or a lower amount consistent with the high end of the expected reclamation estimate provided in Table 9 of the *2019 Draft Servicing Tail Report*. Commenters should provide as much detail, with as much quantitative reasoning (e.g., benefits, market effects, etc.), as possible.

Lastly, the EPA is seeking comment on a second alternative approach under which, as shown in Table 1 above, the EPA would issue 2,014 MT of HCFC-123 consumption allowances for each year for the years 2020 through 2029. This is equal to 100 percent of the aggregate consumption baseline allowances for HCFC-123 and is the maximum allocation allowed under section 605(c) of the CAA. This approach would allocate approximately half of the annual consumption cap allowed under the Montreal Protocol. Specifically, this allocation would equal 40.3 ODP-weighted MT compared to 76.2 ODP-weighted MT allowed during each year between 2020 through 2029. This approach could be warranted given the relatively low ODP of HCFC-123 (0.02) and the long lifetime of equipment using HCFC-123.

The agency believes this approach would provide significantly more allowances than are needed to meet demand for HCFC-123. The existing regulatory prohibition on producing or importing HCFC-123 for most uses, including in the manufacture of refrigeration and air-conditioning and fire suppression equipment as of January 1, 2020 will significantly reduce the demand for HCFC-123. However, this approach would be consistent with the EPA's past approach of issuing the maximum allocation for HCFC-123 during the 2015-2019 control periods. This option does not account for recycling or reclamation and might lead to higher consumption than demand for HCFC-123. This situation risks decreased incentive to reclaim refrigerant at the end of life and during servicing, potentially resulting in higher emissions. It also would not incorporate specific reductions to foster reclamation and recycling or the transition to alternatives. The EPA anticipates it may also significantly curtail the existing market in the refrigeration and air-conditioning sector, since the only remaining market for reclaimed HCFC-123 would be for the manufacture of new fire suppression equipment. This approach would also result in an abrupt decrease in allowances in 2030 when the allocation would decrease from 2,014 MT to zero, which is inconsistent with past practice of fostering a smooth transition to alternatives. The EPA welcomes comment on this alternative approach of issuing 2,014 MT in each year. Commenters should provide as much detail, with as much quantitative reasoning (e.g., benefits, market effects, etc.), as possible.

B. De Minimis Exemption

The EPA is proposing to create a *de minimis* exemption from the use prohibition in CAA section 605(a) to allow virgin HCFC-123 to be used for the manufacture of chillers that meet specific criteria through December 31, 2020. This proposal aims to address a unique situation that has arisen because certain construction projects that ordered HCFC-123 chillers for

installation in 2019 are behind schedule and the chillers may not be installed by the end of 2019. The EPA understands that many of the chillers and the virgin HCFC-123 to charge them are already on site at these construction projects and that companies purchased virgin HCFC-123 for charging these chillers given the expectation that they would be installed in 2019. However, due to construction delays, the final steps in the manufacture of these chillers (including charging with refrigerant) may not occur until after January 1, 2020. CAA section 605(a) prohibits the introduction into interstate commerce or use of any class II substance as a refrigerant unless such substance is used as a refrigerant in appliances manufactured before January 1, 2020. To address this unique circumstance, the EPA is proposing to create a *de minimis* exemption to allow virgin HCFC-123 to be used for the manufacture of chillers that meet specific criteria through December 31, 2020. This exemption would only apply if the HCFC-123 chiller unit and other components were ready for shipment to a construction location and the components were specified for installation under a building permit or contract dated on or before the date of signature of the proposed rule, the HCFC-123 was imported prior to 2020 and is in the possession of the entity that will complete the manufacture of the appliance, and all refrigerant added to that appliance after December 31, 2020 is used, recovered, or recycled/reclaimed. This proposal is based on the information currently available to the agency. We will consider all comments on the merits of this proposal and its potential impacts before deciding whether to take final action to create such a *de minimis* exemption.

(1) Background

As described in Section III of this notice, the CAA restricts introduction into interstate commerce and use of HCFCs over time with limited exceptions. The CAA prohibits the use of HCFCs to manufacture new appliances effective January 1, 2020, unless the HCFCs are used,

recovered, and recycled. The CAA also phases out production and consumption of HCFCs, with an interim milestone in 2015 and the full phaseout in 2030. Additionally, the Montreal Protocol phases out the production and consumption of HCFCs as of January 1, 2020, while allowing a limited amount of new production and consumption for servicing existing refrigeration and air-conditioning appliances, as well as other uses described in Section III. The EPA codified the CAA use and interstate commerce restrictions related to refrigeration and air-conditioning appliances at 40 CFR part 82, subpart A in prior rulemakings.

As defined in the regulations, the term manufactured[20] "for an appliance, means the date upon which the appliance's refrigerant circuit is complete, the appliance can function, the appliance holds a full refrigerant charge, and the appliance is ready for use for its intended purposes;..." Appliances used in commercial refrigeration, such as large chillers, and industrial process refrigeration typically involve more complex installation processes, which may require custom-built parts, and typically are manufactured on-site. Appliances, such as these, that are field charged or have the refrigerant circuit completed on-site, regardless of whether additional refrigerant is added or not, are manufactured at the point when installation of all the components and other parts are completed, and the appliance is fully charged with refrigerant and able to operate.

Recently, the EPA learned that a limited number of HCFC-123 chillers specified for installation in 2019 may not be fully manufactured prior to January 1, 2020. The key uncharged components, in particular the chiller units themselves, were ready for shipment to the construction location in the first half of 2019. The agency understands that chiller manufacturers ceased factory operations for making new HCFC-123 chiller units at the end of April 2019.

[20] The definition of "manufactured" can be found at §82.3. See also 74 FR 66439.

However, for some delayed projects, even though the units and refrigerant may already be on-site, the final steps to manufacture the appliance, in particular charging the chiller with refrigerant, may not occur until 2020. Thus, if no regulatory relief is provided, the virgin HCFC-123 could not be used to charge these chillers even if it has already been purchased and is on site.

(2) Proposed *De Minimis* Exemption

To provide flexibility to complete the manufacture of HCFC-123 chillers from components that are ready for shipment to a construction location, the EPA is proposing to create a *de minimis* exemption to the use prohibition in 605(a). This exemption would allow HCFC-123 to be used for the initial charging of certain chillers manufactured between January 1, 2020 and December 31, 2020 provided they meet specific conditions. The proposed exemption would only apply if the HCFC-123 chiller unit and components are ready for shipment to a construction location and the components were specified for installation under a building permit or contract dated on or before the date of signature of the proposed rule, the HCFC-123 was imported prior to 2020 and is in the possession of an entity involved in the manufacture of the appliance, and all refrigerant added to that appliance after December 31, 2020 is used, recovered, or recycled/reclaimed.

The EPA has implied authority to propose a *de minimis* exemption from the section 605(a) use restriction. The United States Court of Appeals for the District of Columbia Circuit has recognized that "[u]nless Congress has been extraordinarily rigid, there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value." *Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360–61 (D.C. Cir. 1980).

In *Alabama Power*, the Court held that "[c]ategorical exemptions from statutory commands may . . . be permissible as an exercise of agency power, inherent in most statutory schemes, to overlook circumstances that in context may fairly be considered *de minimis*. It is commonplace, of course, that the law does not concern itself with trifling matters, and this principle has often found application in the administrative context. Courts should be reluctant to apply the literal terms of a statute to mandate pointless expenditures of effort." *Id.* (internal citations omitted). In an earlier case cited by the court in *Alabama Power*, the court described the doctrine as follows: "The 'de minimis' doctrine that was developed to prevent trivial items from draining the time of the courts has room for sound application to administration by the Government of its regulatory programs… The ability, which we describe here, to exempt *de minimis* situations from a statutory command is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design." *District of Columbia* v. *Orleans, 406 F.2d 957, 959 (1968).*

In this respect, the *Alabama Power* opinion observed in a footnote that the *de minimis* principle "is a cousin of the doctrine that, notwithstanding the 'plain meaning' of a statute, a court must look beyond the words to the purpose of the act where its literal terms lead to 'absurd or futile' results." *Alabama Power* at 360 n. 89 (citations omitted). To apply an exclusion based on the *de minimis* doctrine, "the agency will bear the burden of making the required showing" that a matter is truly *de minimis* which naturally will turn on the assessment of particular circumstances. *Id.* The *Alabama Power* opinion concluded that "most regulatory statutes, including the CAA, permit such agency showings in appropriate cases." *Id.*

A notable limitation on the *de minimis* doctrine is that it does not authorize the agency to exclude something based on a cost-benefit analysis. As the court explained, this "implied

authority is not available for a situation where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs." *Id.* The court held that any "implied authority to make cost-benefit decisions must be based not on a general doctrine but on a fair reading of the specific statute, its aims and legislative history." *Id.*

Courts have continued to recognize that authority to create *de minimis* exemptions may be implied where "the burdens of regulation yield a gain of trivial or no value." *Envtl. Def. Fund Inc. v. EPA*, 82 F.3d 451, 455 (D.C. Cir. 1996) (internal quotation marks omitted) *see also e.g. Ass'n of Admin Law Judges v. FLRA*, 397 F.3d 957, 961-62 (D.C. Cir. 2005).

The EPA believes it has authority to provide flexibility by creating a *de minimis* exemption to the 605(a) use prohibition. Section 605(a) is not extraordinarily rigid and is ambiguous as it does not speak directly to the circumstance presented here. In addition, providing flexibility is consistent with the statutory intent.

The EPA does not view section 605(a) as "extraordinarily rigid." Title VI of the CAA can generally be summarized into three principal areas: the phaseout of the production and import of ODS (section 602–607); the reduction of emissions of ODS via various means such as required servicing practices, restrictions on sale and distribution of products, and consumer education (section 608–611); and the transition to alternatives that reduce overall risk to human health and the environment (section 612). Section 605 specifically addresses the phase-out of production and consumption of class II substances. For class II substances, section 605 established specific restrictions beginning in 2015 on use, introduction into interstate commerce and production, while establishing a complete phaseout of HCFCs in 2030. Congress' overall approach to the class II phaseout was generally less rigid than its approach to the class I phaseout, given the

longer timeframes and the presence of only one intermediate reduction step (see section 605(b)). Given this context, the EPA does not view section 605(a) as "extraordinarily rigid."

The EPA finds that section 605(a) is ambiguous as it does not speak directly to the circumstance presented here. Section 605(a) does not explicitly address whether virgin HCFC-123 may be used in a chiller where all the chiller components were ready for shipment to a construction site before January 1, 2020 but where the initial charge is not completed until after January 1, 2020. Because the statute does not specify when manufacture is complete, it does not unambiguously prohibit the use of virgin HCFC-123 for the initial charge of chillers where all the chiller components were ready for shipment before January 1. 2020. Thus, the EPA has authority to resolve the ambiguity through regulation and determine whether the use prohibition should apply in this circumstance.

The EPA views the proposed *de minimis* exemption as consistent with statutory intent. The proposed flexibility would ensure the orderly phaseout of ODS and be consistent with the past practice of preventing the stranding of existing appliances without being counter to the three principle areas of Title VI described previously. First, it would not contribute to additional production and consumption of HCFCs and thus would not inhibit the United States from reaching the CAA phaseout date of 2030 or complying with the Montreal Protocol. Second, these chillers would continue to be subject to the servicing practices and labeling requirements applicable to all ODS appliances. Third, it would not slow the transition to alternatives. As discussed below, the components to assemble these chillers have already been made ready for shipment and they have been purchased for installation. While these chillers may one day be retrofitted to an alternative, such as R-514A, Title VI does not require the retrofitting of existing equipment.

In addition, rigid application of CAA section 605(a) in the unique circumstances presented here would "yield a gain of trivial or no value." *Envtl. Def. Fund Inc. v. EPA*, 82 F.3d 451, 455 (D.C. Cir. 1996) (internal quotation marks omitted). The EPA believes that there would be no environmental benefit associated with rigidly applying 605(a). First, because the HCFC-123 used to initially charge these chillers must have been imported prior to 2020, existing allowances would have to have been expended. There would therefore not be any increase in U.S. consumption compared to the current allowed level of consumption for 2019. Second, this exemption would not encourage the manufacture of additional HCFC-123 chiller units because factory operations for making them have already ceased and the exemption would not permit such operations for additional units.

The number of chillers is also anticipated to be small. Based on consultations with industry, the EPA understands that the manufacture of up to five percent of the chillers expected to be installed in 2019 could be delayed beyond January 1, 2020. The EPA expects the number of HCFC-123 chillers to be affected is 33. As detailed in the *2019 Draft Servicing Tail Report*, the EPA assumes an average charge size for an HCFC-123 commercial chiller is approximately 445 kg. Thus, the EPA estimates about 15 MT of HCFC-123 could be needed to complete the manufacture of chillers in 2020 if the proposed exemption is finalized. This would equate to about 0.4 percent of all HCFCs allocated in 2019.

Because the EPA has implemented the HCFC phaseout under the CAA using a "worst first" approach, this final step in the phaseout means that the HCFCs that remain, like HCFC-123, have the lowest ozone-depleting potential of all HCFCs. Specifically, the ODP of HCFC-123 is 0.02. Thus, the 15 MT of HCFC-123 anticipated to be used to initially charge these chillers equates to only 0.3 ODP-weighted metric tons. Comparing again to the consumption

allowances allocated for 2019, this time on an ODP-weighted basis, this use would be only 0.02 percent of what was allocated in 2019.

Beyond the HCFC-123 needed for the initial charge, the EPA has also analyzed whether this proposed exemption could increase the servicing demand for HCFC-123 in the years 2020 through 2029 compared to not providing this proposed flexibility. As an initial matter, the modeled servicing demand described in the *2019 Draft Servicing Tail Report* includes the demand from the appliances affected by this exemption. The report assumes that chillers expected to be manufactured in 2019 are manufactured in that year. Because the chillers that would be affected by this proposed exemption were anticipated to be manufactured in 2019, they would not increase expected demand. This exemption would not alter the requirement that used, recovered, or recycled/reclaimed HCFC-123 be used for all subsequent servicing events on these chillers. Further, HCFC-123 chillers have very low leak rates, and thus the amount of replacement refrigerant would be low. Therefore, the EPA does not anticipate that future servicing demand will affect the market for reclaimed HCFC-123 in a manner that the EPA has not already considered when proposing allowance allocation amounts for 2020-2029.

The proposed exemption also contains numerous constraints that limit its potential impact. The proposed exemption from the 605(a) prohibition on use in appliances manufactured before January 1, 2020 would apply only for one year and only in a limited set of circumstances. It would apply only if the refrigerant used to manufacture the appliance was in the possession of an entity involved in the manufacture of the appliance and imported prior to January 1, 2020. In addition, any servicing of the equipment after December 31, 2020 would need to be done with HCFC-123 that is used, recovered, or recycled/reclaimed. Further, the exemption would not allow for the manufacture of additional chillers beyond those for which the components had

already been made ready for shipment to a construction location and the components were specified for installation under a building permit or contract dated on or before the date of signature of the proposed rule.

The proposed *de minimis* exemption is also consistent with past EPA practice in this program. The EPA, on past occasions, has provided limited flexibility around use restrictions and phaseout dates. Existing regulations have typically prevented the stranding of appliances and past investments while phasing out controlled substances. For example, a concern similar to the one at issue here came to the EPA's attention in 2009 when commenters requested a limited waiver from a regulatory prohibition on manufacturing HCFC-22 appliances that was to begin in 2010 (74 FR 66412, 66440-41, December 15, 2009). Commenters identified scenarios in which HCFC-22 appliances had been scheduled for use in projects, such as construction projects, prior to January 1, 2010 but for a variety of reasons their manufacture could not be completed prior to January 1, 2010. The EPA agreed to grant flexibility by providing an exemption from the regulatory deadline to allow HCFC-22 to be used as refrigerant in appliances manufactured between January 1, 2010 and December 31, 2011 if their components were manufactured prior to January 1, 2010 and were specified in a building permit or contract dated before January 1, 2010 for use on a project. The EPA explained that providing flexibility would not result in additional consumption of HCFCs, because companies had previously produced or imported the HCFCs for use in the manufacture of appliances, and it did not affect long-term projections on servicing needs because this equipment was already planned to be installed in the previous year (74 FR 66441).

The EPA also previously created a *de minimis* exemption from the statutory prohibition on the use of previously-imported virgin HCFCs. In a 2014 rule, the EPA created an exemption

from the 605(a) use prohibition to provide limited flexibility regarding the use of HCFCs for sectors other than refrigeration and air-conditioning and fire suppression. For example, the EPA allowed continued use of a small amount of material that was previously produced and/or imported using the appropriate allowances and in inventory prior to the CAA's 2015 use restriction for solvents. The EPA determined that the continued use of previously produced/imported material was consistent with past practices, that production and consumption would not be higher than that already allowed for and that the environmental effect would be limited. (79 FR 64254, October 28, 2014).

The EPA also recognizes that in the circumstances presented here, there could be negative impacts if the agency did not provide flexibility. Without the proposed flexibility, chiller manufacturers would not be able to use virgin HCFC-123 to initially charge and install new equipment even though that virgin HCFC-123 may already be on-site. Granting flexibility would allow the installation to continue using the HCFC-123 available and prevent further delay of the installation.

For the reasons described above, the EPA is proposing to create a *de minimis* exemption to the 605(a) use restriction and to revise 40 CFR 82.15(g)(5)(iii) to allow virgin HCFC-123 to be used for the initial charging of certain chillers manufactured between January 1, 2020 and December 31, 2020 provided they meet specific conditions. The proposed exemption would only apply if the HCFC-123 chiller unit was ready for shipment to a construction location and the components were specified for installation under a building permit or contract dated on or before the date of signature of the proposed rule, the HCFC-123 was imported prior to 2020 and is in the possession of an entity that will complete the manufacture of the appliance, and any service on the appliance after December 31, 2020 is done using refrigerant that is used, recovered, or

recycled/reclaimed. In sum, the proposed exemption would apply only in limited instances where projects have begun but due to delays have not yet been completed prior to January 1, 2020. The EPA believes this would address concerns that were expressed by stakeholders, would not result in an environmental effect, and is consistent with statutory intent.

The EPA is taking comment on this proposal to establish an exemption to allow limited flexibility for the manufacture of chillers with HCFCs past January 1, 2020. Specifically, the EPA is requesting comment on several aspects of the proposal, including:

- Whether there is enough availability of reclaimed material for the initial charge of chillers whose manufacture is delayed until 2020 and whether rushed installations would result in unintended emissions of HCFCs;
- Whether the EPA has appropriately assessed the environmental effects of providing or not providing flexibility, such as whether up to five percent of chiller installations may be delayed;
- Whether factory operations for making uncharged HCFC-123 chiller equipment have ceased in the United States as of May 1, 2019;
- Whether HCFC-123 chillers will in fact be stranded in the absence of this proposed exemption;
- Whether any additional conditions would be appropriate to further narrow the scope of the exemption; and
- Whether the agency has authority to establish a *de minimis* exemption in this situation.

C. Addition of Fire Suppression Servicing Uses to the HCFC Phaseout Schedule

The EPA is proposing to modify the regulations in 40 CFR part 82 consistent with CAA section 605 and the November 2018 adjustment to Article 2F of the Montreal Protocol that

allows for the continued production and consumption of HCFCs for servicing fire suppression equipment manufactured before January 1, 2020. Specifically, the EPA is proposing to modify §§82.16(e) and 82.15(g) to allow for HCFC-123 to be produced and imported, as well as introduced into interstate commerce and used, during the years 2020 through 2029, to service fire suppression equipment existing on January 1, 2020[21], so long as it is being used as a streaming agent listed as acceptable for use or acceptable subject to narrowed use limits for nonresidential applications in accordance with the SNAP regulations.

The EPA is proposing to modify §82.16(e)(2) to permit the production and import of HCFC-123 for servicing fire suppression equipment manufactured before January 1, 2020. While the agency is proposing to include the term "production" in this regulatory change, as stated above, this action does not propose to allocate production allowances for HCFC-123 given the lack of production in the United States. Section 82.16(e) establishes limits on the production and import of HCFC-123 starting on January 1, 2020. It provides that HCFC-123 may not be produced or imported for any purposes other than the listed permissible uses. The proposed revision would add to the list of permissible uses the following: use as a fire suppression streaming agent listed under the SNAP program as acceptable for use or acceptable subject to narrowed use limits for nonresidential applications. This revision would allow for this additional use in the years 2020 through 2029.

The EPA is also proposing to add a new paragraph after §82.15(g)(4) to ensure consistency with the proposed change to §82.16(e)(2). Section 82.15(g) establishes limits on the introduction into interstate commerce and use of certain HCFCs at certain dates in accordance

[21] This proposal would expand the permitted uses under §§82.15 and 82.16 which also allow for use and introduction into interstate commerce, as well as production and consumption, of HCFCs for use as a refrigerant in equipment manufactured before January 1, 2020.

with the worst-first approach discussed previously. Section 82.15(g)(4)(i) establishes limits that apply to many HCFCs including HCFC-123 and HCFC-124, effective January 1, 2015.[22] The EPA is proposing a new paragraph after §82.15(g)(4) that repeats the limits in §82.15(g)(4)(i) but may be helpful in clarifying the permissible uses of HCFC-123 and HCFC-124 produced or imported after January 1, 2020. Consistent with the restrictions on production and import in the Montreal Protocol (as modified through the adjustment adopted in 2018) and §82.16, with regard to fire suppression, HCFC-123 produced or imported after January 1, 2020, may only be used for servicing fire suppression equipment manufactured before January 1, 2020. Existing inventories of HCFC-123 produced or imported prior to January 1, 2020, may continue to be used to manufacture and service new fire suppression equipment after January 1, 2020. This change would ensure that the regulations are clear and consistent between §§82.15 and 82.16, and, as a practical matter, would add no additional limitations to those in §82.16.

These proposed revisions, if finalized, would provide flexibility consistent with the November 2018 adjustment to the phaseout schedule for HCFCs in the Montreal Protocol. The United States was a proponent of adjusting the phaseout schedule to allow for the continued production and consumption of HCFCs to service existing fire suppression equipment for years 2020 through 2029. The EPA's analysis indicates that in theory, the United States could meet its own domestic fire suppression needs with alternatives and recycled/reclaimed HCFC-123, absent competing demands from other sectors. Past phase-outs, such as the halon phaseout, demonstrated that the availability of recycled/reclaimed and stockpiled material provides flexibility for users of ODS long after the phaseout date. However, recycled/reclaimed HCFC-123, which is currently being sold predominately into the refrigeration and air-conditioning

[22] Section 82.15(g)(4)(i) applies to all HCFCs not governed by paragraphs §82.15(g)(1) through (g)(3).

market,[23] may not be immediately available to the fire suppression sector. The EPA is concerned that reclaimers and distributors would need to adjust current distribution and sales practices to ensure that reclaimed material is available for fire suppression. At least in the near term this could affect the availability and price of HCFC-123. Given that a lack of HCFC-123 based fire suppression agents could present a safety issue, especially for applications where there is not an approved alternative clean agent, such as for Aircraft Rescue and Fire Fighting (ARFF) vehicles, allowing continued consumption of HCFC-123 for the years 2020 through 2029 for servicing existing fire suppression equipment is prudent. This is also consistent with the EPA's long-standing policy of working to avoid the premature retirement of existing ODS-based equipment while fostering the transition to alternatives.

The EPA notes that the November 2018 adjustment adopted by the Parties to the Montreal Protocol also contains an essential use provision and adds other uses under the Article 2F cap, namely solvent applications in rocket engine manufacturing and topical medical aerosol applications for the specialized treatment of burns. The EPA is only proposing regulatory changes that would allow production and consumption for the servicing of fire suppression equipment manufactured before 2020. The EPA does not currently have any information indicating a need in the United States for the additional flexibilities added to Article 2F; for that reason, the EPA has not assessed their practicality or its authority to implement them under the CAA, and we are not proposing any action on them at this time.

D. Revisions to Labeling Requirements

This section presents the EPA's proposal to adjust the current labeling requirements to reflect the proposed change to 40 CFR part 82, subpart A, which would allow the use of newly-

[23] Based on conversation with industry.

imported HCFC-123 for servicing fire suppression equipment manufactured before January 1, 2020. The proposed changes to §§82.15 and 82.16 in subpart A are discussed in Section III.B of this notice. Revising the existing labeling requirements in 40 CFR part 82, subpart E to reflect the limited ability to use HCFC-123 for fire suppression servicing would increase awareness of individuals servicing fire suppression equipment about the restriction on HCFC-123 use and support compliance with the proposed revisions to subpart A. In proposing to revise the current labeling requirements, the EPA is relying on authority under section 605(c) to issue regulations phasing out the production and consumption and restricting the use of class II substances that may be needed for compliance. To further support awareness of these new requirements, the EPA intends to conduct outreach initiatives for technicians, distributors, and service providers.

If the proposed change to subpart A is finalized, HCFC-123 imported on or after January 1, 2020 could be used to make Halotron® I, a fire suppression agent produced with HCFC-123, and could be used to service fire suppression equipment manufactured before January 1, 2020. It could not, however, be used in the manufacture of new equipment on or after January 1, 2020 or to service equipment manufactured after January 1, 2020. Only Halotron® I produced with HCFC-123 that is reclaimed or was imported prior to 2020 may be used for those purposes. Labeling of products manufactured with or containing HCFCs has been required under CAA Section 611 since 2015, and the EPA has not seen a movement away from these fire suppression agents due to current labeling requirements. Similarly, the EPA does not expect a proposed addition to the existing labeling requirement would cause a movement away from Halotron® I. The EPA identified this addition as the lowest cost option to ensure the United States meets its international obligation that newly-produced HCFC-123 only be used to service existing equipment, since this would only modify the text of the existing label to provide more

information to technicians. Thus, in addition to adding a labeling requirement, users will need to be able to know the date of manufacture of fire suppression equipment. They will also need to be able to distinguish fire suppression agents that may be used only for servicing equipment manufactured before January 1, 2020 from fire suppression agents that may be used for manufacturing new equipment or servicing equipment regardless of the date of manufacture.

The EPA believes that users will be able to identify the date of equipment manufacture using existing methods as is the case with refrigeration and air-conditioning equipment. However, without additional labeling of containers of fire suppression agents that contain HCFC-123, namely Halotron® I, it may not be possible for users to distinguish containers that may only be used to service fire suppression equipment manufactured before January 1, 2020 from other containers. Therefore, the EPA is proposing to modify the current labeling requirements codified at 40 CFR part 82 subpart E for such containers. The EPA is proposing to conclude that such modified labeling is necessary to ensure that users will have enough information to determine which containers of fire suppression agent may be used in which equipment, in order to comply with the proposed revisions to the HCFC phaseout regulations. The existing CAA section 611 label is on reclaimed and virgin product. This proposal would modify only labels of product containing virgin HCFC. The EPA is also taking comment on whether to modify the current labeling requirements for containers of fire suppression agents that contain HCFC-123 that is either reclaimed or was imported before 2020, and if there are any other low-cost ways to distinguish containers for servicing fire suppression equipment.

To the EPA's knowledge, the only HCFC used in a fire suppression agent is HCFC-123, and it is only used in an agent sold under the name Halotron® I. Clean agents like Halotron® I do not leave a residue, and are commonly used in applications such as data centers, clean rooms,

and aircraft where high-value or life-saving equipment will not be damaged by its use, thereby minimizing economic damages from a fire (e.g., shorter equipment downtime or lower costs to repair). There are three main fire suppression streaming end uses where clean agents are used in the United States: (1) hand-held portables; (2) 150-pound wheeled units; and (3) ARFF vehicles.

As per the National Fire Protection Association (NFPA) and DOT regulations at 49 CFR 180.250, all portable fire extinguishers must be maintained in a fully charged operable condition and undergo hydrostatic testing. NFPA is a codes and standards organization accredited by the American National Standards Institute established to minimize the risk and effects of fire by establishing criteria for building, processing, design, service, and installation around the world. Fire extinguishers, which include portable hand-held devices and wheeled units, are recommended to undergo maintenance to ensure that an extinguisher will operate effectively and safely in the event of fire.[24] Equipment should be recharged after being used to extinguish a fire for it to be usable again. Technicians who conduct hydrostatic testing, perform inspections, or recharge fire suppression equipment after a discharge may need additional information to aid in distinguishing between the permissible uses of specific containers of Halotron® I.

The EPA is proposing to modify the existing label required by section 611 of the CAA for certain containers of fire suppression agent. Section 611 requires containers of ODS to have a label and demonstrates that Congress recognized that labeling requirements may be needed to effectively implement the phaseout. In 1993, the EPA established the labeling requirements for both class I and class II substances in 40 CFR part 82, subpart E (58 FR 8136, February 1, 1993). Containers in which ODS are stored or transported must bear a clearly legible and conspicuous warning label that can be read by consumers before they can be introduced into interstate

[24] National Fire Protection Association. (2018) "Standards for Portable Fire Extinguishers" available at: https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=10

commerce. Section 611 provides specific language for the label: "Warning: Contains [insert name of substance], a substance that harms public health and environment by destroying ozone in the upper atmosphere." This is reflected in the implementing regulations at §82.106. According to CAA section 611, the label must be "clearly legible and conspicuous." Labels generally should be within the principal display panel, the warning statement should be in sharp contrast to any background upon which it appears, and if there is any outer package for the container (e.g., cylinder, isotank, or other container), labels should be on the outside packaging. Specific requirements on the size, text, and location of the label are provided in §§82.106-82.110.

The EPA is proposing to modify the required labeling of all containers of fire suppression agent made with HCFCs imported on or after January 1, 2020. The EPA believes that Halotron® I is the only fire suppression agent that uses HCFCs that would be manufactured after 2020. Containers of Halotron® I must currently be labeled per §82.102(a) because they contain a class II substance. The EPA is proposing to modify the current required label for all containers of Halotron® I made with HCFC-123, imported on or after January 1, 2020, by adding the following sentence: "Do not use to service equipment manufactured on or after January 1, 2020." The EPA believes that this information may be necessary for technicians to determine which containers of Halotron® I may or may not be used to service new fire suppression equipment after 2020, thereby aiding compliance with applicable regulations. Technicians would still need to locate the manufacture date on all fire extinguishers or ARFF vehicles to determine which container of Halotron® I may be used to service the equipment. The EPA is requesting comment on this proposal.

The EPA is also requesting comment on whether it should also require a modified label for containers of Halotron® I made with recycled/reclaimed HCFC-123 or HCFC-123 imported before 2020. While there would be limited additional cost, this could help technicians distinguish between specific containers of Halotron® I. A second sentence could therefore be added to the existing label for containers of Halotron® I made with recycled/reclaimed HCFC-123 or HCFC-123 imported before 2020 that reads "Not restricted to use in servicing pre-2020 equipment." Additionally, the EPA is requesting comment on whether there is another low-cost way to distinguish containers for servicing fire suppression equipment, such as having all containers labeled "Virgin material may not be used to service equipment manufactured on or after January 1, 2020," and then include additional labeling on containers that distinguish "virgin" vs. "reclaimed" material. This may result in a cost of about $3,000 to the industry.

The agency intends to develop outreach materials in concert with the final rule and distribute them to appropriate stakeholders to ensure industry awareness of the servicing requirements. The EPA believes that there are existing methods to determine the date of manufacture of fire suppression equipment, as follows.

DOT fire extinguisher regulations at 49 CFR 173.309 require that each fire extinguisher be tested before initial shipment and marked to indicate the year of the test. Technicians could use this date as a guide for determining servicing with Halotron® I. The agency recommends that technicians inspect the date on hand-held and wheeled fire extinguishers to determine if they were manufactured before or after January 1, 2020.

For servicing ARFF vehicles, the EPA recommends that technicians inspect the manufactured date on the vehicle. For class I-III all-wheel drive commercial vehicles, vehicle identification numbers (VINs) are required by DOT per 49 CFR 565. VINs are located on the

lower right-hand corner of the windshield. For smaller class IV and V vehicles, a Vehicle Information Data Plate must be in the cab of the vehicle and contain all the information in the "Aircraft Rescue and Fire-Fighting Vehicle Tilt Table Certification" per NFPA 414, including the make and model year.[25] Locating the year the vehicle was manufactured would aid the technician in determining whether a container of Halotron® I can be used for servicing.

The EPA requests comment on whether individuals servicing fire suppression equipment can readily identify the date the equipment was manufactured and whether the EPA's understanding of the location of this information is accurate. The EPA also takes comment on ways technicians can identify the manufacture date of fire suppression equipment and whether manufacturers and service technicians typically reuse Halotron® I cylinders to hold recovered fire suppression agent or imported HCFC-123. The EPA is taking comment on whether the manufacture of Halotron® I can designate cylinders for use in servicing existing equipment.

E. Allocation of HCFC-124 Production and Consumption Allowances

This section presents the EPA's proposed approach for determining the amount of HCFC-124 production and consumption allowances to be issued for the years 2020 through 2029. HCFC-124 is minimally used as a refrigerant. It is a component in refrigerant blends such as R-401A, which is used in industrial process and transport refrigeration equipment. It is also used as a stand-alone refrigerant in some niche applications that reach high condensing temperatures. It is not currently used for fire suppression.

As previously noted, under section 605(b)(1) and (c) of the CAA, it is unlawful for any person to produce or consume any class II substance in an annual quantity greater than the

[25] National Fire Protection Association. (2018) "Standards for Aircraft Rescue and Fire-fighting Services at Airports' available at: http://arco-hvac.ir/wp-content/uploads/2018/04/NFPA-403-Std-Aircrft-Rscu-Fire-Ftg-Srvs-at-Airprts-2018.pdf

quantity of such substance produced or consumed by such person during the baseline year. This would equate to a maximum production amount of 4,029 MT (89 ODP-weighted MT) and a maximum consumption amount of 2,396 MT (53 ODP-weighted MT). Over the past five years, consumption has been approximately 250 MT per year and reclamation has been minimal. Based on recent sales data from the California Air Resources Board, the EPA estimates that annual demand for HCFC-124 is between 100 to 200 MT for servicing refrigeration and air-conditioning equipment nationally. More information on anticipated demand for HCFC-124 is in the *2018 Draft Servicing Tail Report*.

Given the small projected need for HCFC-124 beyond 2019 and the continued use of certain refrigerant blends containing HCFC-124, the agency is proposing to issue HCFC-124 production and consumption allowances in the years 2020 through 2029 consistent with the level of demand in the *2018 Draft Servicing Tail Report*. Based on Vintaging Model estimates, along with industry feedback on anticipated demand, uses of HCFC-124, and the use of HCFC-124 allowances in recent years, the EPA is proposing to allocate 200 MT for the first three years and then gradually decrease over the next seven years by an equal amount each year, as shown in Table 2. The EPA's goal is to ensure that servicing needs can be met, while also encouraging recovery and reuse and transition to alternatives. The EPA believes providing consistent allocations for the first three years would assist in establishing an inventory of HCFC-124 to be used for servicing throughout the allocation period and past the phaseout date for the expected lifetimes of all existing equipment. The EPA does not want to strand existing equipment because of an inadequate supply of HCFC-124. This proposed allocation supports this goal because it accounts for allowed end uses of HCFC-124 that may not be captured by the Vintaging Model

(e.g. use of niche refrigerant blends containing HCFC-124 to service equipment manufactured before 2020). The EPA is taking comment on this approach.

The EPA is also taking comment on whether, to ensure adequate supply, the agency should issue 200 MT annually beginning in 2020 without any decrease (Alternative in Table 2). Without significant reclamation of HCFC-124, it may be preferable to err toward a higher allocation. This is a small quantity in the broader context and would not have significant environmental effects given the low ODP (0.022) of HCFC-124.

Table 2: Comparison of HCFC-124 Production and Consumption Allowance Allocation Options between 2020-2030 (MT)

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Cumulative
Proposal	200	200	200	175	150	125	100	75	50	25	0	1,300
Alternative: No Annual Decrease	200	200	200	200	200	200	200	200	200	200	0	2,000

The EPA is requesting comment on all aspects of this proposal, as well as whether to issue 200 MT or some other number of allowances per year without any decline or waiting until 2023 before starting to decrease allowances. Commenters should provide as much detail, with as much quantitative reasoning (e.g., benefits, market effects, etc.), as possible.

F. Changes to Transfer of Allowance Provisions in Section 82.23

This section presents the EPA's proposal to prohibit the transfer of allowances for phased out HCFCs to allowances for HCFC-123 and HCFC-124. The proposal would prohibit calendar-year inter-pollutant transfers into ODS that are already phased out of production and consumption. This proposal responds to stakeholder inquiries about inter-pollutant transfers to phased out HCFCs. HCFC-123 and HCFC-124 are the only remaining HCFCs that can be produced or imported in the years 2020 through 2029, with limited exceptions. As such, the EPA is proposing to issue allowances for only these two substances. Production and import of HCFC-141b, HCFC-225ca, and HCFC-225cb have already been phased out and production and import

of HCFC-22 and HCFC-142b are phased out starting in 2020. Demand for some of these HCFCs, particularly HCFC-22, will continue beyond 2020. This could create an incentive for HCFC-123 and HCFC-124 allowance holders to attempt to convert their allowances into allowances for phased out HCFCs, such as HCFC-22.

Under CAA section 607, the EPA has issued regulations at §82.23 which provide for both inter-pollutant and inter-company transfers of allowances for class II ODS under certain conditions. In an inter-pollutant transfer, an allowance holder converts allowances for one class II ODS into allowances for another class II ODS (§82.23(b)). The EPA is concerned about the potential for allowance holders to attempt inter-pollutant transfers that would be inconsistent with the established chemical-by-chemical phaseout.

The EPA views §82.16 as effectively prohibiting this practice by prohibiting production and import of HCFCs that have already been phased out. Section 82.16(b)-(e) prohibits individuals from producing or importing certain HCFCs that have been phased out, with limited exceptions. For example, production and import of HCFC-22 and HCFC-142b are prohibited in 2020, with limited exceptions that are not considered to be United States consumption under the CAA or Montreal Protocol. These provisions do not explicitly prohibit the transfer of HCFC-123 or HCFC-124 allowances into allowances for a phased out ODS even though the entity would be violating §82.16(e)(1) if it produced or imported that phased out ODS for any purpose other than the few listed exceptions, such as for use in a process resulting in its transformation.

Given the EPA has already received several inquiries about whether inter-pollutant transfers from HCFC-123 or HCFC-124 to HCFC-22 will be allowed after the phaseout of HCFC-22, the EPA is proposing to explicitly prohibit calendar-year inter-pollutant transfers of HCFC-123 and HCFC-124 to phased out HCFCs in §82.23(b) to ensure clarity for the regulated

community. Section 82.23(d) already prohibits permanent inter-pollutant transfers of baseline allowances, so there is no additional change needed in that paragraph. The proposed change to §82.23(b) would not have a practical effect on the ability of allowance holders to legally produce or import phased out ODS given the prohibition in §82.16. However, the proposed change would minimize confusion and reduce the likelihood that an allowance holder attempts to request an inter-pollutant transfer of HCFC-123 or HCFC-124 allowances to phased out HCFCs. Inter-pollutant transfers between HCFC-123 and HCFC-124 may continue so long as the newly produced or imported HCFC-123 and HCFC-124 are for an allowed use, such as for servicing refrigeration and air-conditioning appliances manufactured before January 1, 2020.

The EPA is soliciting comments on the proposed prohibition on calendar-year inter-pollutant transfers into ODS that are already phased out of production and consumption to improve the clarity of the regulations at §82.23.

IV. Updates to Other Provisions of the Production and Consumption Control Program

This section presents the EPA's proposal to update several other provisions in 40 CFR part 82, subpart A – Production and Consumption Controls. To decrease the burden of ODS reporting and increase the accuracy of reports, the EPA is proposing to require that certain reports, import petitions, and certifications of intent to import ODS for destruction be submitted electronically through CDX. To reduce the reporting burden, the EPA is proposing to update the reporting regulations, consolidate reporting elements, and harmonize reporting requirements for class I and class II substances. The EPA is also proposing changes to the recordkeeping provisions for QPS uses of methyl bromide to increase awareness of the existing use restrictions and to amend the regulatory text for readability. In addition, to better monitor imports into the

United States and to facilitate imports of ODS for destruction, the EPA is proposing changes to provisions related to imports of ODS.

A. Electronic Reporting

The EPA began allowing electronic reporting as an option for most types of reported information under this program in 2008 (73 FR 15520). The EPA provided electronic reporting forms and instructions to assist entities in fulfilling reporting requirements in §§82.13, 82.20, and 82.24 but did not require their use and allowed the submission of hard-copy forms. Upon receipt of the reports, the EPA either enters the data manually or imports it electronically via CDX into the ODS Tracking System. Manual entry of data provided in hard copy is time consuming for the agency as well as a potential source of error. On July 1, 2018 the EPA launched a new electronic platform for the ODS Tracking System along with revised and streamlined electronic forms. The EPA is proposing to require the use of the agency's CDX to submit reports electronically and is proposing a compliance date for this requirement that is 30 days after the effective date of the final rule, to ensure that stakeholders have adequate time to register in CDX. To achieve this, the EPA would update the definition of "Administrator" in §82.3, define "Central Data Exchange" in §82.3, add a new section at §82.14 with instructions on the process for electronic reporting, and revise provisions at §§82.13(c) and 82.24(a)(1) to indicate that reporters must comply with the requirement to report electronically through CDX 30 days after the effective date of the final rule.

Currently, the definition of "Administrator" instructs submitters to mail all reports and petitions to import ODS. The EPA is proposing to amend the definition of "Administrator" to require electronic reporting for the reports and petitions that are available in CDX, which includes the majority of reports under subpart A, as well as the import petitions and the

Certification of Intent to Import ODS for Destruction, a new process which the EPA is proposing to create, as discussed further in Section IV.D of this notice. The EPA is also proposing to revise §§82.13, 82.23, and 82.24 to clarify that where a form is electronically available in CDX it must be submitted electronically through that tool. The EPA is also proposing to add the definition of "Central Data Exchange" and provide instructions on how to register in CDX and submit information electronically in a new section at §82.14. Each entity must establish an account in CDX in order to prepare, transmit, certify, and submit reports and submissions.

CDX is the EPA's electronic system for environmental data exchange and serves as the EPA's main mechanism for receiving and exchanging electronic information reported via the Internet. CDX provides the capability for submitters to access their data using web services. CDX enables the EPA to work with stakeholders to enable streamlined electronic submission of data via the Internet. All information sent via CDX is transmitted securely to protect CBI. A reporting entity may register for a CDX account or gain access to an existing CDX account at https://cdx.epa.gov, as discussed further below.

The ODS Tracking System is a secure database that serves as the primary vehicle for tracking the production and consumption of ODS in the United States. The ODS Tracking System allows producers, importers, and exporters of class I (excluding methyl bromide) and class II substances to submit quarterly and annual reports electronically. The ODS Tracking System maintains the data submitted to the EPA and helps the agency to: (1) maintain oversight over total production and consumption of ODS in the United States; (2) monitor compliance of individual companies with domestic limits and restrictions on production, imports, and transfers and with specific exemptions from the phaseout; (3) enforce against entities illegally importing without allowances; and (4) assess and report on compliance with the United States production

and consumption caps established under the Montreal Protocol, as implemented through the CAA.

Providing a system to facilitate electronic reporting is consistent with the EPA's E-Enterprise initiative to reduce transaction costs and burdens for the regulated community by leveraging technologies. Eliminating paper-based submissions in favor of electronic reporting, including use of the revised Microsoft Excel reporting forms, and CDX, is part of broader government efforts to move to modern electronic methods of information gathering. One of the objectives of E-Enterprise is to reduce paperwork burden for the regulated community by offering electronic reporting, optimized operations, and advanced real-time monitoring tools. For more information on the EPA's E-Enterprise efforts please visit: https://www.epa.gov/e-enterprise.

Section 603 of the CAA grants the EPA the authority to issue certain regulations on the monitoring and reporting of ODS. The EPA may also use the information gathering authority under CAA section 114(a) to carry out the provisions of Title VI, including the production and consumption controls, and may require anyone who is subject to Title VI, or who may have information necessary to carry out Title VI, to make such reports as may reasonably be required. It is reasonable to require electronic reporting for the reasons set forth in this notice. Using electronic reporting enables more efficient data transmittal and reduces errors through built-in validation procedures. It reduces the reporting burden for submitters by reducing the cost and time required to review, edit, and transmit data to the agency. It also promotes efficiency in communications and cost savings in submissions and correspondence. Additional support for electronic reporting comes from the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504), which states that Executive agencies are to provide "(1) for the option of the electronic

maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) for the use and acceptance of electronic signatures, when practicable." The EPA's Cross-Media Electronic Reporting Regulation (CROMERR) (40 CFR part 3), published in the Federal Register on October 13, 2005 (70 FR 59848), provides that any requirement in title 40 of the CFR to submit a report directly to the EPA can be satisfied with an electronic submission that meets certain conditions once the agency has published a notice in the Federal Register announcing that the EPA is prepared to receive certain documents in electronic form. See 40 CFR 3.2(a). For more information about CROMERR, go to https://www.epa.gov/cromerr.

The EPA designed the electronic reporting forms with input from stakeholders to reduce effort and allow submitters to paste transaction-level data into the form from other spreadsheets. They contain built-in validations, drop-down lists, and auto-populated cells to reduce errors from data entry. Once the form is complete, users generate a comma separated value (CSV) file and submit the Microsoft Excel report, CSV file, and any required supporting attachments via CDX. Refer to the EPA's website for additional information on electronic form submission: https://www.epa.gov/ods-phaseout/ods-recordkeeping-and-reporting. The web-based tool, as appropriate, also allows the user to choose "Print," "Save," or "Transmit through CDX." The reporting tool encrypts the file and electronically submits it through CDX. The user can also check the status of their submissions at any time via CDX. Upon successful receipt of the submission by the EPA, the status of the submissions will be flagged as completed. The CDX inbox is currently used to notify the users of any correspondence related to user registration.

Under this proposal, entities generally would be required to submit the first quarter reports for the 2020 reporting year, due April 1, 2020, through CDX. Other reports that are available for submission through CDX, including import petitions and certifications of intent to

import ODS for destruction, also would be required to be submitted electronically through CDX starting April 1, 2020. The EPA believes this would give the regulated community enough time to register in CDX and familiarize themselves with the revised electronic reporting forms and format. If this rule is finalized as proposed, reporting entities would be required to register and electronically submit most reports and petitions through CDX. Specifically, for production, import, export, destruction, transformation, transfers, and trades of ODS entities must use specified forms to allow for submission through CDX. Some reports are not required to be submitted through CDX and would continue to be submitted to the EPA in hardcopy. These are low-volume reports for which the EPA has not released an electronic form, and include the laboratory use certifications and applications for critical use exemptions for methyl bromide. The OMB control number for this information collection request (ICR) and these forms is 2060-0170. The following electronic forms were released on July 1, 2018 and are available at https://www.epa.gov/ods-phaseout/ods-recordkeeping-and-reporting and through CDX:

- Class I Producer Quarterly Report (EPA Form 5900-151);
- Class I Importer Quarterly Report (EPA Form 5900-150);
- Class I Exporter Annual Report (EPA Form 5900-149);
- Class I Laboratory Supplier Quarterly Report (EPA Form 5900-153);
- Second-Party Transformation Annual Report (EPA Form 5900-147);
- Second-Party Destruction Annual Report (EPA Form 5900-148);
- Class II Producer Quarterly Report (EPA Form 5900-202);
- Class II Importer Quarterly Report (EPA Form 5900-200);
- Class II Exporter Quarterly Report (EPA Form 5900-199);
- Class II Trades (EPA Form 5900-205);
- Class II Request for Additional Consumption Allowances (EPA Form 5900-201).
- Methyl Bromide Producer Quarterly Report (EPA Form 5900-141);
- Methyl Bromide Importer Quarterly Report (EPA Form 5900-144);
- Methyl Bromide Exporter Quarterly Report (EPA 5900-140);
- Distributor of QPS Methyl Bromide Quarterly Report (EPA Form 5900-155); and
- Methyl Bromide Pre-2005 Stocks Annual Report (EPA Form 5900-142).

Petitioners currently have the option of using CDX to submit petitions. The current CDX process guides users through a series of drop downs, fillable fields, and uploads of PDF

attachments using an electronic webform. The EPA is proposing to require reporting entities importing ODS for reuse or destruction to submit their reports through CDX because it would enable more efficient data transmittal and would reduce errors, as it has built-in validation procedures. For instance, missing information in a required field would prevent the petitioner from submitting the petition until all fields are completed. Thus, the EPA and entities would expect to benefit from electronic reporting by receiving complete submissions in a system that allows for secure electronic communication.

The EPA estimates that entities submitting ODS reports who have not yet registered in CDX would incur a one-time burden associated with registration. Most entities have already registered with CDX to voluntarily submit electronic ODS Tracking System forms or for other agency regulatory programs. The EPA estimates 20 respondents would need to incur the one-time CDX registration burden. Based on the EPA's CROMERR (ICR number 2002.07; OMB Control No. 2025-0003), the EPA assumes that entities would spend fifteen minutes per employee to register with CDX and complete LexisNexis identity proofing. Furthermore, the EPA assumes that an average of two technical staff members would need to register for each company, resulting in 20 minutes of burden per entity.

The EPA estimates that only those entities who have not yet registered in CDX would incur a one-time burden for this change. Based on the number of entities that are already reporting through CDX, the EPA expects more than 90% of reporting entities were reporting electronically at the start of 2019. Thus, the EPA estimates initial CDX registration and electronic signature costs incurred in the first year would be $2,000 because most entities have previously registered in CDX and are reporting electronically. The EPA estimates the annual costs savings to reporters to be $4,000 per year for electronic reporting.

As discussed in the supporting statement for the accompanying ICR available in the docket to this rule, the EPA also expects to reduce its own burden as the result of receiving electronic submissions and communicating electronically with entities. The agency resources and time requirements to review and process data would decrease, and document storage and retrieval would require fewer resources. The electronic submission of data through CDX would allow for the direct import of data into the ODS Tracking System. This would reduce the time the agency spends manually entering data into the ODS Tracking System from paper forms as well as reduce the potential for human error that exists when data are entered by hand. Agency personnel would also be able to communicate more efficiently with entities electronically. The conversion to an electronic reporting system as well as the adoption of CDX to facilitate form submission and processing are expected to create long-term burden reductions and increased efficiencies for the EPA. Annual costs to the EPA would be associated with the operation and maintenance of CDX for the data flow.

The EPA seeks comment on its proposal to require electronic reporting for ODS data under 40 CFR part 82, subpart A, with exceptions for a few low-volume forms. In addition, the EPA seeks input on experience to date with electronic reporting of ODS data and whether entities that have already transitioned to electronic reporting have been able to lower their reporting costs, and if so, by how much. The EPA also requests comment on the proposal that the requirement for electronic reporting would begin 30 days after the effective date of any final rule and on whether additional time would be needed to comply with the electronic reporting requirements.

B. Changes to Reporting Requirements in §§ 82.13, 82.23, and 82.24

This section presents the EPA's proposal to consolidate and harmonize ODS reporting elements. The agency has provided the option of electronic reporting for most submissions since 2008 to assist stakeholders in the reporting process. The proposed regulatory changes would reflect current practices by entities that can be designed into electronic forms. The EPA monitors company compliance, in part, through the recordkeeping and reporting regulations at §§82.13 and 82.24. The EPA is proposing these updates under CAA sections 603 and 114. Many of these proposed regulatory changes would ease the reporting burden. For example, the EPA is proposing to remove reporting elements in §§82.23(a), 82.24(b), and 82.24(c) that require the reporter to calculate values from data already provided. Requiring this of the entity is unnecessary because if finalized as proposed, the requirement to report electronically through CDX means these values can automatically be calculated and populated. This would save reporting entities time in reporting and reduce errors in submissions. The EPA is also proposing to change §§82.13(h) and 82.24(d) so that the quantity (rather than the percentage) of used, recycled, or reclaimed class I and class II substances, respectively, would be a required reporting element. This change would improve consistency with the importer reporting requirements and correspond with the way companies report their annual data. It would also streamline the exporter reporting forms by eliminating the need for an entity to calculate a percentage. The EPA is also proposing to remove references to expended and unexpended production and consumption allowances at §82.13(f)(3)(iv) and (g)(4)(viii), which likewise can be calculated automatically with the use of electronic reporting forms.

Other proposed regulatory changes would harmonize the requirements for class I and class II substances. For example, the EPA is proposing that the timeframe submitters have to make revisions to forms for class I and class II substances be the same. Currently under §82.24

class II reporters have 180 days from the end of the applicable reporting period to make revisions while the class I provisions in §82.13 are silent on the issue. The EPA is proposing to address this omission in the class I regulations by adding a provision that revisions to reports for class I substances under §82.13 be made within 180 days of the end of the applicable reporting period. This would conform to the current practices followed by entities that make revisions to class I reports and is consistent with the EPA's current practice of allowing such revisions to the reports for class I substances. These changes would also be consistent with the current regulations in §82.24 for revisions to reports for class II substances.

The EPA is further proposing to amend §82.24(d)(1) to clarify that exporters who submit a Request for Additional Consumption Allowances (RACA) must still include that export on their quarterly exporter report. Under §82.20, companies may submit a request for additional consumption allowances if they export class II substances that were previously produced in or imported into the United States using consumption allowances. Currently, the regulatory text at §82.24(d)(1) excludes from quarterly reporting those RACAs even though exporters do typically include those exports in their quarterly reporting. For ease of review by the EPA and for consistency of reporting by exporters, the agency is proposing that all exports be included in the quarterly export report, even if the EPA had issued additional consumption allowances to the exporter for that export. This proposed change matches current practice, so the agency does not anticipate an increase in burden for the exporter.

The EPA is also proposing to amend the reporting requirements at §82.13(v) to add the contact information for the source company from which the material was purchased and the laboratories to whom the material is sold. This proposal would allow the EPA to better track the sale of ODS for laboratory purposes through the Class I Laboratory Supplier Report.

Lastly, the EPA is proposing to correct class I reporting requirements for exporters by replacing the term "Employee Identification Number" with the correct term "Employer Identification Number" in §82.13(h).

The EPA seeks comment on its proposed regulatory changes to the reporting requirements under 40 CFR part 82, subpart A. The EPA welcomes comment on any other changes that would ease burden on reporters.

C. Changes to Methyl Bromide Provisions in §§ 82.4 and 82.13

The EPA is proposing to amend the existing regulatory provisions related to the QPS exemption for methyl bromide under CAA section 604(d)(5) and ensure that QPS methyl bromide is not used in a manner inconsistent with the exemption. The EPA's regulations implementing CAA section 604(h) set January 1, 2005 as the production and import phaseout date (§82.4(b), (d)). Certain exceptions apply, including an exemption for methyl bromide produced or imported for quarantine and preshipment applications. Quarantine applications and preshipment applications are both defined at §82.3. Briefly, quarantine applications are treatments to prevent the introduction, establishment, and/or spread of quarantine pests (including diseases), or to ensure their official control. These can include commodities entering or leaving the United States or any State (or political subdivision thereof). Preshipment applications are those non-quarantine applications applied within 21 days before export to meet the official requirements of the importing country or existing official requirements of the exporting country. The current recordkeeping and reporting regulations relating to QPS methyl bromide appear at §82.13 and establish specific requirements for producers, importers, distributors, and applicators, including in some instances requirements for written certifications

that the methyl bromide will be used only for QPS applications in accordance with the definitions in §82.3.

This section discusses three types of proposed changes to the QPS regulations. As a brief overview, first, the EPA is proposing to clarify that it is a violation to sell or use methyl bromide produced under the QPS exemption for any uses other than QPS applications. Second, the EPA is proposing to extend the existing certification requirements to all purchasers of QPS methyl bromide. Third, the EPA is proposing to make non-substantive changes to §§82.4 and 82.13 to improve readability, including changes to the naming convention for methyl bromide where appropriate and removal of unnecessary references to "used" material.

These proposed changes are, in part, in response to the misuse of QPS methyl bromide by applicators and distributors in the U.S. Virgin Islands and Puerto Rico. As described in the Centers for Disease Control's (CDC) Morbidity and Mortality Weekly Report (MMWR), on March 18, 2015[26], a U.S. Virgin Islands pest control company, Terminix International USVI LLC, fumigated a condominium complex in St. John with a product containing methyl bromide for the purpose of exterminating household pests. As a result, a family of four suffered acute methyl bromide poisoning resulting in three family members having life-altering illnesses. On March 25, 2015, the U.S. Virgin Islands Department of Planning and Natural Resources issued a stop-use order for methyl bromide to the company that performed the fumigation. A subsequent investigation by the Department of Planning and Natural Resources and the EPA revealed that a previous fumigation with methyl bromide had occurred on October 20, 2014, at the same condominium resort. In total, 37 persons may have been exposed to methyl bromide as a result of

[26] 1. Kulkarni, P.A., Duncan, M.A, Watters, M.T., Graziano, L.T., Vaouli, E., Cseh, L.F., Risher, J.F., Orr, M.F., Hunte-Ceasar, T.C., Ellis, E.M. (2015) Severe Illness from Methyl Bromide Exposure at a Condominium Resort-U.S. Virgin Islands, March 2015 *Morbidity Monthly and Weekly Report (MMWR)* Center for Disease Control, 64(28); pg. 763-766. Available at: https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6428a4.htm

the October 2014 and March 2015 fumigations (Kulkarni et al., 2015). Terminix, LP and Terminix, USVI were sentenced to pay a total of $10 million in criminal fines and restitution for violating the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).[27] The companies were also ordered to perform community service following an investigation and guilty pleas to their use and application of illegal fumigants in multiple residential locations in the U.S. Virgin Islands.

As a result of the exposures in the U.S. Virgin Islands, as well as documented misuse of QPS methyl bromide in Puerto Rico, and the high health risk potential from mishandling or misuse of QPS methyl bromide, the EPA is proposing to add a regulatory provision at §82.4(r) to expressly prohibit the sale or use of QPS methyl bromide for any uses other than QPS applications. The proposed provision would also explicitly state that it is a violation of subpart A to sell or use methyl bromide produced or imported under the QPS exemption for any uses other than QPS applications.

The existing regulations at §82.13(y)(1) and (z)(2) require certification statements from distributors, applicators, commodity owners, shippers or their agent that methyl bromide "will be used only for quarantine and preshipment applications." Similarly, §82.13(f)(2)(xviii) and (xix) describe the exempted quantities of methyl bromide as "produced solely for quarantine and preshipment applications." The EPA interprets this existing text as already prohibiting the use of methyl bromide produced or imported under the QPS exemption for any uses other than QPS applications. Although the EPA is proposing to add an express statement of the prohibition at §82.4(r) to add clarity and enforceability to this prohibition, the EPA does not view this as

[27] EPA. (2017). "Press Release: Terminix Companies Sentenced for Applying Restricted-Use Pesticide to Residences in the U.S. Virgin Islands." Available at: https://www.epa.gov/newsreleases/terminix-companies-sentenced-applying-restricted-use-pesticide-residences-us-virgin

changing the existing requirements. The proposed prohibition that would appear at §82.4(r) for the QPS exemption is modelled on the language at §82.4(n), which contains an express prohibition on using controlled substances produced under the essential use exemption.

Second, to help avoid future exposures stemming from misuse of QPS methyl bromide, the EPA is proposing to extend the existing certification requirements to all purchasers of QPS methyl bromide, including purchasers who purchase for further distribution. Under the existing recordkeeping and reporting requirements at §82.13(f)(2)(xviii), producers of methyl bromide must maintain certifications that methyl bromide produced for QPS applications has been purchased by distributors or applicators to be used only for QPS applications. Under §82.13(y), distributors of QPS methyl bromide must certify when they purchase or receive QPS material *from producers and importers* that the controlled substances will be used only for QPS applications. Applicators of QPS methyl bromide must also certify to distributors that the controlled substance will only be used only for QPS applications under the existing regulation at §82.13(z).

The EPA has identified a gap in this certification chain when the material is sold through multiple distributors before reaching the applicator. When one distributor sells to a second distributor, neither distributor is required to certify or maintain a certification that the material will be used only for a QPS application. The EPA is proposing to revise §82.13(y) to extend the certification requirement to purchasers who purchase or receive material for further distribution to address this gap.

The proposed extension of the certification requirement would help to ensure that distributors are knowledgeable of the requirements for the sale of QPS methyl bromide. The sales and misapplications of QPS methyl bromide in Puerto Rico and the U.S. Virgin Islands

demonstrate that distributors may not have been aware of, or may have ignored, the limitations on the use of this material. The purpose of the requirement when established was to ensure that anyone selling or purchasing QPS methyl bromide signed a certification verifying that they would comply with requirements under Title VI of the CAA (66 FR 37760). Distributors are more likely to make themselves aware of those requirements and be mindful of the fact that QPS methyl bromide can only be used for QPS applications if they are required to sign a certification addressing these requirements and provide it before each purchase. This proposal would fill the gap in the distribution chain and ensure the original intent of the regulation is implemented.

The EPA is therefore proposing to extend the existing requirement that every distributor of QPS methyl bromide certify to the producer or importer from whom they purchased or received the material that quantities purchased or received would be sold only for quarantine applications or preshipment applications to also require such a certification when the material is purchased or received from a *distributor*. Likewise, the existing requirement that such distributors receive from any applicator, to whom they sold or delivered the methyl bromide a certification, prior to delivery of the quantity, stating that the quantity would be used or sold solely for QPS applications in accordance with definitions in subpart A would be extended to sales and deliveries to any *exporter or distributor* under the proposed changes. For exporters, the invoice or sales agreement currently required in §82.13(h)(2)(viii) is enough for this purpose. The EPA is proposing to make these changes to §82.13(y).

The EPA is also proposing that the distributor certify that they are *selling* the material for a QPS application rather than certify that it will be *used* for a QPS application, as is required in the existing regulations. This would better align the rule text with the distributor's role. The proper sale of the material is within the distributor's control whereas the use may not be, given

that the material may be resold by another distributor and applied by an end user or third-party applicator.

The EPA seeks comment on its proposed addition of §82.4(r) relating to the prohibition against using QPS methyl bromide for anything other than QPS uses and its proposed changes to the certification requirements for QPS methyl bromide.

The EPA is also proposing edits to §82.13(h)(2), which contains the recordkeeping requirements for exporters of certain "types" of methyl bromide by companies that did not produce the material. The EPA is proposing edits to clarify what is meant by "type" of methyl bromide. Specifically, the EPA is proposing to more clearly state that the provision requires reporting of the quantity of methyl bromide exported for transformation, destruction, critical use, and QPS uses. These are the only exempted uses of methyl bromide, and this would match the information requested in the existing reporting forms. The EPA is also proposing to remove the requirement in the existing provision that exporters state how much of the exports are of "used, recycled or reclaimed material." Unlike other ODS, methyl bromide is a product that is registered and controlled under FIFRA and thus is not sold "used" or "recycled" or "reclaimed." Therefore, these adjectives are not applicable to methyl bromide and this phrase is not needed.

Lastly, the EPA is proposing to replace references to "class I, Group VI controlled substances" with "methyl bromide" where appropriate for readability throughout §§82.4 and 82.13. "Class I, Group VI controlled substances" is how methyl bromide is classified under the EPA's regulations in appendix A to subpart A, but methyl bromide is the only compound within this category. Using the common name would improve the readability of the QPS regulations.

The EPA seeks comment on these proposed changes to §§82.4 and 82.13 for readability and clarity of the regulations, as well as on the proposed changes to the recordkeeping requirements at §82.13(h)(2) for exports of certain types of methyl bromide.

D. Changes to Provisions for the Import of Ozone-Depleting Substances in §§ 82.3, 82.4, 82.13, 82.15, and 82.24

Under CAA sections 604, 605, and 606, the EPA restricts the import of ODS consistent with both the CAA and the Montreal Protocol. As discussed previously in Section II of this notice, importing virgin ODS requires the importer to expend consumption allowances. Controlling the number of allowances and knowing who holds those allowances allows the EPA to ensure that the phaseout obligations under the Montreal Protocol as implemented through the CAA are met. Used ODS[28] can be imported without consumption allowances, and generally without use restrictions, if certain conditions are satisfied. Imports of used ODS are currently regulated under §82.13(g)(2)-(3) (for imports of used class I substances) and §82.24(c)(3)-(4) (for imports of used class II substances). The EPA has reviewed the import petition process and is proposing amendments to improve data collection. Such changes would require collection of additional information when additional verification is needed to determine whether the material has been previously used and remove data elements that are currently collected but that are no longer needed. The EPA is also proposing to create a procedure for imports of both used and virgin ODS when they are imported for destruction. This proposal may lead to more used ODS being imported for reuse or destruction because of the less burdensome reporting requirements, which is beneficial for fostering a smooth transition to alternatives and reducing emissions of ODS to the atmosphere. In a recent example, the EPA granted a petition for the import of virgin

[28] Used ODS have been recovered from their intended use systems (e.g., refrigeration and AC equipment) and may include controlled substances that have been, or may be subsequently, recycled or reclaimed. *See* 40 CFR 82.3

ODS for destruction. The agency anticipates additional petitions for imports of virgin material may be received by the agency as the global phaseout of HCFCs continues and because the United States has a greater capacity for destruction. Additionally, these proposals would reduce the chance that virgin ODS are imported under the false pretense that it is "used."

Anyone wanting to import used ODS must currently submit a petition to the agency and receive a "non-objection notice" approving the import. The petition to import a used ODS must contain certain information, which the EPA considers in determining whether the ODS is in fact used. Required information includes: a description of the previous use of the substance; the identity of source facilities from which the material was recovered; a contact person at each source facility; the name, make, and model number of the equipment from which the material was recovered at each source facility; a best estimate of when the material was removed; and an export license from the appropriate government agency from the country of export. See §§82.13(g)(2) and 82.24(c)(3). After review, the EPA responds to the petition by issuing either a "non-objection notice," which allows the import to proceed, or an "objection notice," which has the effect of prohibiting the import because a non-objection notice is required for the lawful import of such material.

The EPA established the petition process to import used class I ODS (under CAA sections 603 and 604) in 1998 (63 FR 41626) and in 2003 (68 FR 2819) for class II ODS (under CAA sections 603 and 605) out of concern that some importers were circumventing the production and import controls by importing virgin class I and class II substances that had been intentionally mislabeled as used. The petition process has been effective in addressing this potential problem because the information requirements and the review undertaken by the EPA make it difficult for importers to falsify documents. Sections 604, 605, and 606 of the CAA

provide statutory authority for controlling the import of ODS, including the petition process and the proposed changes to that process. Section 603 of the CAA requires reporting of the amount of ODS imported on a quarterly basis or on a basis determined by the Administrator. To the extent that these proposed changes involve recordkeeping and reporting of information, the EPA also relies upon its authority under CAA section 114, which authorizes the EPA to require recordkeeping and reporting in carrying out any provision of the CAA (with certain exceptions that do not apply here). Specifically, the EPA is proposing changes to the recordkeeping and reporting requirements to carry out the import provisions of sections 604, 605, and 606.

Despite the effectiveness of the petition process at providing information that allows the EPA to verify that ODS are used before they are imported, the EPA has identified potential improvements to the process. For example, the current requirements are difficult to satisfy if the imported material comes from a halon bank or other ODS banks. The current regulations exempt only halon 1301 aircraft bottles from the petition process for hydrostatic testing, yet aircraft bottles containing halon 1211 are also imported for such testing. The current petition process also does not distinguish imports of used ODS that are intended to be destroyed from imports of all other used material that are intended to be reclaimed for continued use, though the agency recognizes that the verification requirements do not need to be as rigorous when the ODS are to be destroyed. The existing regulations also do not provide a mechanism to pre-approve the import of virgin material for destruction, resulting in delays at the port of entry while the shipment is verified by the EPA.

i. Changes to the Petition Process to Import Used ODS for Reuse in §§ 82.13 and 82.24

The EPA is proposing changes to the petition process that would generally ease the burden on importers, while still allowing the agency to verify that the material being imported is

used. Specifically, the agency is proposing to: allow, under certain circumstances, submission of an official letter from the appropriate government agency in that country where the material is stored attesting that a class I substance is "used" in lieu of detailed equipment-level source information[29]; allow submission of an application for an export license in lieu of the license itself; require that petitions include email addresses in contact information (while removing the requirement to provide fax numbers) and commodity codes for the material; and specifically authorize the agency to request additional information when additional verification is needed before issuing a non-objection notice. In general, the EPA anticipates these changes would increase the availability of used class I substances in the United States and thus help to provide a greater supply of used material for servicing existing equipment, which might otherwise have to be retired before the end of its useful life.

First, the EPA is proposing to amend §82.13(g)(2) in recognition that banks[30] of halon and other class I ODS overseas are a potential source of used ODS. Since halons were phased out in the United States and other non-Article 5 countries in 1994, many countries and organizations established halon banks where they aggregate and store previously used and recovered halon for reuse in fire suppression applications.[31] In most cases the managers of such banks do not have the complete information required by the EPA's petition process especially since the material may have been recovered more than two decades ago. As detailed above, the import petition must currently contain information about the used ODS including the source facility and name, make, and model number of the equipment and from which the material was recovered.

[29] The EPA is not proposing similar changes for class II ODS given the production phaseout for these substances is still underway.
[30] The EPA uses the term "bank" here to refer to a company-run or nationally government-run facility that collects and stores previously-recovered ODS (e.g., a halon bank) for reuse at a later date, not the "bank" of ODS installed in existing equipment and products.
[31] Halons were phased out in Article 5 countries in 2010.

Petitioners sourcing class I substances from banks, therefore, rarely have enough records to provide all the information required in the petition process, and as a result the petitions are subject to denial.

The EPA is proposing to waive the requirement for specific source information for halon and other class I substances stored in either a national government ODS bank or a privately-operated bank authorized by a national government to collect and manage ODS if the petitioners include an official letter from the appropriate national government agency of the exporting country attesting that the class I substance(s) proposed for export to the United States is used. The EPA would consider this official letter along with all the other evidence provided in determine whether the material is used. However, providing an official letter does not mean that the EPA would automatically approve the petition. The EPA is proposing to define "bank" for clarity in the regulatory text.

Stakeholders have indicated to the agency that this type of change to the petition process would allow U.S. companies to potentially access large reserves of halon held overseas for which source information cannot be obtained. Halons are used for fire protection applications, such as in civil aviation, military, and oil and gas drilling and the continued availability of used halons remains important to many U.S. operations. Industry in the United States has successfully managed the recovery and use of halons since the domestic phaseout of production in 1994 and the EPA anticipates that they will continue to do so. However, as we get further from the phaseout, the available supply of halons decreases.

The Montreal Protocol's Technology and Economic Assessment Panel (TEAP) has provided information on the availability and expected need for halons in the future. The TEAP issued a report in September 2018, noting continued demand for halons, in particular for

servicing fire suppression equipment for civilian aviation.[32] Civil aircraft will continue to need halon to meet fire protection requirements for lavatory bottles, handheld extinguishers, engine nacelles, auxiliary power units, and cargo compartments[33] until there is a transition to alternatives for all applications on new aircraft as well as to service the civil aircraft fleet. This proposal would allow halon to be more easily sourced from overseas banks and thus should make more halon available to service aircraft in the United States. In addition, the military and oil and gas drillers continue to need halons for fire suppression applications.

Second, the EPA is proposing to amend the criteria for when the EPA may issue an objection notice to a petition to import a used ODS. When enough information is not provided with the initial petition for a determination, the EPA requests additional information from the petitioner in order to verify that the material was used. The EPA is therefore proposing to clarify that not providing this requested information could be grounds for issuing an objection notice to the petition. As one example of information that may be requested, the EPA may request results of purity sampling of class I or class II substances. The EPA understands that if a halon is used, the purity will typically be much lower (on the order of 90 to 95 percent pure) than if the material is virgin. The EPA may request the results of purity tests in situations where having those results would give the EPA and the company receiving the used ODS information that could confirm, before the material is imported, that the ODS is in fact used. Under this proposal, if petitioners fail to respond to requests from the agency for addition information, the EPA could issue an objection notice.

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[32] UNEP. (2018) Montreal Protocol on Substances on Substances that Deplete the Ozone Layer. Report of the Technology and Economic Assessment Panel. September 2018 Volume 2 Decision XXIX/8 on the Future Availability of Halons and their Alternatives; pg. 1-32. Available at: https://ozone.unep.org/index.php

[33] FAA (2004). "FAA Halon ARC Final Report Findings & Recommendations" Halon Replacement Aviation Rulemaking Committee; pg. 1-49. Available at: https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/committee/browse/committeeID/397

Other examples of information that the EPA has requested in reviewing petitions to verify the substances is used before issuing a non-objection notice include: a photo of each unit that contained the used ODS, with serial numbers visible; photos of a representative sample of the cylinders, with serial numbers visible; a description of the facility from which the used ODS originates, which includes what is produced at the facility, the location of the facility, and how long the facility has been in the location; a description of each unit from which the used ODS originates; links to websites showing brochures, photographs, and/or descriptions of each different unit from which the used ODS originates; copies of the original, signed work orders authorizing collecting of the used ODS; copies of the paperwork showing that the company completed the work; copies of payment to the company that collected the used ODS for their services, with redactions for confidential or sensitive information such as bank account numbers; copies of business licenses from the government authorizing collection companies to do this type of work; and information on how transport will occur within the exporting country and to the United States. For used ODS from Europe, the EPA has requested a screenshot of the European Commission export license; the name and contact information for the European Commission official who signed the Export License; and copies of all paperwork required for movement within the European Union, such as the "Notification document for transboundary movement/shipments of waste." The EPA is not proposing to collect all such information for each petition and thus is not proposing to revise the regulatory text to require that it be provided in every petition. However, the agency does wish to provide notice to petitioners that it may request additional information to confirm that the ODS is in fact used and is proposing to amend the regulations to make clear that failure to provide such information when requested would be a ground to issue an objection notice. The EPA specifically requests comment on this proposal for

an additional ground for denying a petition to import used ODS and on whether the EPA should specifically list the types of information in the regulations that the agency may, on a case by case basis, request from the petitioner after reviewing the initial submission to confirm that the material is used. If the agency were to add a list of specific types of information that it might request on a case-by-case basis, that list could include some or all the information described in the prior paragraphs of this notice that the EPA has requested in reviewing petitions in the past.

Third, the EPA is proposing multiple minor amendments to the petition process to ensure accuracy, faster review, and facilitate the import of used ODS. In particular, the EPA is proposing to update the requested contact information by requiring email addresses and removing fax numbers. The EPA is also proposing to require that the petition for import include the amount of material authorized under the export license or export license application to ensure the petitioned amount is equal to or less than the amount that arrives at the United States port of entry. The EPA is also proposing to require that petitioners provide the commodity code associated with the ODS to be imported. The commodity codes are classifications for goods and services traded among countries. This proposal would match the agency's other import and export requirements in §§82.13(g) and (h) and 82.24(c) and (d) and help to ensure that the data are correctly entered in Customs and Border Protection's Automated Commercial Environment and International Trade Data System (ACE/ITDS).

The EPA is also proposing to update the commodity codes for HCFC-123 and HCFC-124 in Appendix K. The U.S. International Trade Commission is responsible for publishing the Harmonized Tariff Schedule of the United States Annotated (HTSA). The HTSA provides the applicable tariff rates and statistical categories for all merchandise imported into the United States. It is based on the international Harmonized System, the global system of nomenclature

that is used to describe most world trade in goods. This action updates the commodity codes for HCFC-123 and HCFC-124 in the appendix so that they coincide with those currently in effect and in use by the U.S. International Trade Commission.

In addition, the EPA is proposing to amend §§82.13(g)(2) and 82.24(c)(3) to allow importers of class I and class II substances, respectively, to provide an application for an export license in lieu of an actual export license, as is currently required. For example, Canada, the largest exporter of used ODS to the United States, requires the EPA to approve the export before they issue an export license. As such, petitioners are only able to provide the submitted application for an export license with their petition. Considering this, the agency has worked with Canada to accept the submitted application in lieu of the export license. However, there may be other countries that also require approval prior to export, and the EPA wants to ensure all countries receive equal treatment and that all petitioners are aware of this option. As such, the agency desires to formalize the option in the regulations. The EPA is also proposing to require an English translation of the export license application or export license to facilitate the agency's review.

The existing regulations for petitions for imports of used material also require that if the imported substance is intended to be sold as a refrigerant, the petition must include contact information for the U.S. reclaimer who will bring the material to the standard required under CAA section 608 and §82.152(g), if it is not already reclaimed to those specifications. The EPA is proposing to add "EPA-certified" to the description of reclamation facilities in the provisions containing this requirement, §§82.13(g)(2)(xiii) and 82.24(c)(3)(xiii). This proposal would highlight the existing expectation for petitions to import used material to be sold as a refrigerant that the reclamation facility that will receive the material in the United States must be EPA-

certified. The EPA's reclamation program is described at https://www.epa.gov/section608/stationary-refrigeration-refrigerant-reclamation-requirements.

Finally, the agency is proposing to allow flexibility for the timing of the import when the non-objection notices was issued towards the end of the year. The EPA currently requires the import to occur in the same control period (i.e., calendar year) that the non-objection notice was issued. However, this can result in petitioners postponing their requests until the start of the next year. To avoid that unnecessary delay, the EPA is proposing that importers have one year from the date stamped on the non-objection notice to import that shipment.

The EPA is soliciting comments on these proposed changes to the petition process for importing used ODS. The agency is particularly interested in whether streamlining the petition process, including to facilitate imports of material from banks for class I ODS, would affect compliance with the prohibition on import of virgin ODS. The EPA welcomes suggestions from the regulated community on how the petition process may be further streamlined while ensuring compliance.

b. Exemption for Imports of Halon 1211 Aircraft Bottles in § 82.3

To facilitate the import and testing of more types of aircraft halon bottles for hydrostatic testing, the EPA is proposing to extend the definition of "aircraft halon bottles" in §82.3 to also include vessels containing halon 1211. The current regulations in §82.13(g)(2) exempt aircraft halon bottles that are imported for hydrostatic testing from the import petition process. The EPA has defined "aircraft halon bottle" in §82.3 as a vessel used as a component of an aircraft fire suppression system containing halon 1301.

FAA regulations at 14 CFR 25.851(a)(6) require the presence of halon bottles, or the equivalent, aboard transport category aircraft, and they must be tested under United States

Department of Transportation (DOT) regulations in 49 CFR 180.205 and per National Fire Protection Association standards if damaged or discharged (NFPA, 2018a). In particular, such bottles undergo hydrostatic testing, which detects leakage and determines whether the bottles are functioning properly. This testing is important both for safety as well as for detecting and averting emissions of halon, a highly potent ODS.

In 2009, the EPA exempted aircraft fire extinguishing spherical pressure vessels containing halon 1301 ("aircraft halon bottles") being imported for hydrostatic testing from the import petition requirements (74 FR 10182). The EPA sought comment in that rule on whether to include halon 1211 in the exemption for aircraft halon bottles, and the agency did not receive comment indicating these imports occur. Therefore, the EPA limited the exemption only to aircraft halon bottles containing halon 1301. The 2009 rule reduced the administrative burden on entities when they import aircraft halon bottles for the purpose of maintaining these bottles to commercial safety specifications and standards. More information on the history and the goals of the import petition process and an explanation of why an exemption was warranted for aircraft halon bottles containing halon 1301 can be found in the 2009 rule.

Since that time, the EPA has determined based on import petitions received for halon 1211 and discussions with stakeholders that aircraft halon bottles containing halon 1211 are imported for hydrostatic testing. Thus, the EPA is proposing to extend the exemption created for aircraft bottles containing halon 1301 to those containing halon 1211. This proposed change would be accomplished by adding aircraft bottles containing halon 1211 to the definition of "aircraft halon bottles" in §82.3. The reasons for exempting bottles containing halon 1211 are the same as for bottles containing halon 1301, discussed at 74 FR 10182. For example, this proposed exemption would facilitate proper maintenance of bottles containing halon 1211 and allow transit

and testing to occur more quickly for such bottles. Promoting proper maintenance of these additional fire suppression devices would help ensure the bottles operate correctly to extinguish fires on aircraft. Proper maintenance of the storage vessels also prevents the accidental emission of this high-ODP compound. Lastly, reducing the import petition requirements could also allow hydrostatically tested bottles to be available more readily for aircraft.

The proposed exemption of imports of aircraft bottles containing halon 1211 for hydrostatic testing would only exempt them from the petition process. Recordkeeping and reporting are currently required, and would still be required, for the import and export of aircraft halon bottles. In particular, if the proposed exemption were finalized, importers of such bottles would still need to maintain import records, as set forth in §82.13(g)(1), submit quarterly reports within 30 days of the end of the applicable quarter in accordance with §82.13(g)(4), and submit an annual export report 30 days after the end of the calendar year, in accordance with §82.13(h).

The EPA seeks comment on this proposal and is particularly interested in whether this would affect the ability of technicians, aircraft owners, and fire suppression equipment manufacturers to continue maintaining existing equipment.

c. Changes to Requirements for Imports of ODS for Destruction in §§82.3, 82.4, 82.13, 82.15, and 82.24

This portion of the notice discusses two sets of proposed changes to the import process for ODS specifically imported for destruction.[34] First, the EPA is proposing to establish a streamlined approach for importing used ODS for destruction. Second, the EPA is proposing to extend that approach to virgin ODS, as there is currently no mechanism for the EPA to pre-approve import of virgin ODS for destruction.

[34] The EPA refers to the import of ODS intended to be destroyed in the United States throughout this notice as "imports for destruction."

ODS from decommissioned equipment, unwanted stockpiles, and mixtures that are contaminated and cannot be reclaimed are often imported to the United States for destruction. Facilitating the destruction of ODS is beneficial to the environment since it averts ODS emissions into the atmosphere and thus is consistent with the overarching goal of Title VI to protect stratospheric ozone. The Montreal Protocol's Scientific Assessment Panel estimated that capture and destruction of CFC, halon, and HCFC banks in 2015 could avoid 1.8 million ODP-weighted metric tons of future emission through 2050.[35] It also estimated that if all 2015 halon, CFC, and HCFC banks[36] were destroyed in 2015, the stratospheric chlorine levels at mid-latitude would return to 1980 levels more than six years sooner than in the baseline scenario. The EPA recognizes that there is ongoing commercial demand for certain substances, as discussed earlier in this notice with respect to halons and other ODS. Some ODS may, however, be unwanted and thus susceptible to release; this risk may be higher when they are stored in countries that do not have adequate capability to properly reclaim or destroy them. Creating a process for the import of ODS for destruction would help facilitate the destruction of such ODS and thus reduce the risk of such releases. More information on the destruction facilities that destroy ODS and their technologies is available in the report entitled "U.S. Destruction in the United States and Abroad." Destruction of unwanted ODS in the United States may also generate revenue for domestic destruction facilities.[37]

[35] UNEP. (2014) Scientific Assessment of Ozone Depletion: 2014 World Meteorological Organization Global Ozone Research and Monitoring Project – Report No. 55 pg. 1-416. Available at: https://www.esrl.noaa.gov/csd/assessments/ozone/2014/report.html

[36] As used here, "banks" refers to the total ODS that have already been manufactured but not yet released to the atmosphere. This can include ODS contained within closed cell foams, installed in appliances, held in original containers, etc.

[37] EPA. (2018) "U.S. Destruction in the United States and Abroad" pg. 1-63. Available at: https://www.epa.gov/sites/production/files/2018-03/documents/ods-destruction-in-the-us-and-abroad_feb2018.pdf

As discussed earlier in this notice, the EPA's petition processes for the import of used ODS is designed to allow the agency to verify prior use of the material so that virgin ODS are not entering the United States marketplace under the pretense of being "used." Under the current regulations at §§82.13(g)(2) and 82.24(c)(4), anyone wishing to import used class I or class II ODS, respectively, for destruction must submit a petition providing the same information as for any other petition to import used ODS. It is then the obligation of the second-party destruction facility to provide a verification report to the importer or producer that the material was destroyed (§§82.13(k) and 82.24(e)). Importers are required to keep records on imports for destruction of ODS under §§82.13(g)(1) and 82.24(c)(2) and to submit quarterly reports, in accordance with §§82.13(g)(4) and 82.24(c)(1). The current regulations contain an exception to the prohibition on import of virgin ODS without consumption allowances in the case of imports for destruction but do not provide a specific process for such imports.

The EPA is proposing to create a new petition process for the import of used and virgin ODS for destruction, called a Certification of Intent to Import ODS for Destruction ("certification"), in §§82.13(g)(6) and 82.24(c)(7). Under this process, the importer would submit the certification at least 30 working days before the shipment's departure from the foreign port. After review, the EPA would send either a non-objection notice or an objection notice. The proposed period is shorter than the corresponding period for the import petition process, which is 40 working days from departure, because the certification would contain less information for the EPA to review and verify than in the current process for a petition for import of used ODS. The EPA believes 30 working days would be enough for the EPA to review the certification and that this timeframe would not impede the import. The agency would be authorized to issue an objection notice for any reason it could currently issue an objection notice to a petition to import,

such as if the petition provides insufficient information or if it contains false or misleading information. The EPA is also proposing to require that the petitioner submit a destruction verification 30 days after destruction under §§82.13(g)(6) and 82.24(c)(7). The EPA is also proposing to require the certification and any supporting documents, including the destruction verification, to be submitted electronically through CDX, for the reasons discussed in Section IV.A of this notice. In particular, the EPA is proposing to add the requirement for electronic submission of these documents via CDX in §82.14.

The information that would be required in the certification is modeled in large part on the petition to import used ODS. Specifically, the certification would include the following elements, which are similar those required in an import petition: name, commodity code, and quantity in kilograms of each controlled substance to be imported; source country; intended date of import; shipment importer number; an English translation of the export license (or application for an export license) from the appropriate government agency in the country of export and, if recovered in a country other than the country of export; the quantity in kilograms authorized on the license(s); United States port of entry for the import; name, address, contact person, phone, and email address of the person responsible for destruction at the facility.

The EPA is proposing to omit the detailed source information that is required in import petitions, as that information is not necessary if the ODS is to be destroyed. The EPA is proposing to collect information from the petitioner about the destruction for the certification process. In particular, the certification would not include the following: information about all previous source facilities from which the ODS was recovered; a detailed description of the previous use at each source facility and a best estimate or documents indicating when the specific controlled substance was put into the equipment at each source facility; a list of the

name, make and model number of the equipment from which the material was recovered at each source facility; contact information of all persons to whom the material was transferred or sold after it was recovered from the source facility; or a description of the intended use of the ODS.

The EPA is proposing to omit these information elements because they are collected for import petitions to verify that the material is used, and the agency believes it is not necessary to verify that ODS is used if it is being imported for destruction. Simplifying the information requirements would decrease the regulatory burden on existing importers who follow the current import petition process to import used ODS for destruction by providing a streamlined regulatory mechanism for such imports. In addition, the current information requirements for petitions to import used ODS has the potential to hinder imports for destruction because petitioners may be unable to provide all the necessary information. Certain elements, such as information about each piece of equipment or each source facility from which the controlled substance was removed, may be particularly difficult for petitioners to provide because used controlled substances intended for disposal are often part of a mixture of chemical waste recovered from a variety of systems and detailed information pertaining to each system may not be available. Although the certification process would in effect relax the information requirements for importing used ODS for destruction compared to the existing import petition process, the EPA believes that this relaxation would benefit the environment because companies wishing to import used ODS into the United States for destruction would be able to do so more easily, and therefore more used ODS would be destroyed. This would be consistent with the overarching goal of Title VI to protect stratospheric ozone.

The EPA is proposing to add provisions §§82.13(g)(9) and 82.24(c)(10) to require importers to keep certain records, including records about the destruction of the ODS. In

particular, the EPA is proposing that importers of ODS for destruction maintain: a copy of the certificate of intent to import for destruction; a copy of the non-objection notice; a copy of the export license or export license application; Customs and Border Protection (CBP) entry documents for the import that must include the commodity codes; records of that date, amount, and type of controlled substance sent for destruction per shipment; an invoice from the destruction facility verifying shipment was received; and a copy of the destruction verification.

In addition to proposing to create the Certification of Intent to Import ODS for Destruction, the EPA is also proposing to extend the certification to imports of virgin ODS for destruction. While the certification is modeled in large part on the petition to import used ODS, the EPA believes there are also benefits to facilitating the import of virgin ODS for destruction. Currently, virgin ODS that are to be destroyed may be imported without consumption allowances (see §§82.4(d) and 82.15(b)). However, there is no regulatory mechanism for the EPA to review and pre-approve those imports. As such, shipments may be held at the border while the EPA determines whether the import is in fact bound for destruction. In some instances, proactive importers have petitioned the agency to import virgin ODS for destruction and the EPA has allowed these imports on a case-by-case basis. However, the absence of a regulatory mechanism for such approvals has created some uncertainty for these imports when they reach the border. Moreover, the EPA believes that establishing regulatory requirements for such imports would help ensure that imports of virgin ODS for destruction are destroyed.

The EPA believes that providing a mechanism to import virgin ODS for destruction would be beneficial to importers and the EPA. Having a transparent process that allows approval occur before the shipment reaches the border would facilitate such imports and reduce potential delays and costs associated with the current approach to imports of virgin ODS for destruction,

as well as providing more certainty as to which imports could proceed. In turn, this would encourage imports of unwanted virgin ODS for destruction, potentially avoiding the emission of such ODS. This would be consistent with the overarching goal of Title VI to protect stratospheric ozone. The proposed extension would also close a gap in regulatory provisions for the import of virgin material for destruction. As discussed previously in this notice, the EPA originally established the import petition process for used ODS to verify that virgin ODS was not being imported under the pretext of being used to circumvent the regulatory requirements for expending consumption allowances. In the same way, the EPA believes that a mechanism is needed to verify that virgin ODS imported for destruction will be destroyed and that claims of importing for destruction are not used to circumvent the requirement to expend consumption allowances. In addition, the EPA has historically used the petition process as a mechanism to approve imports for destruction of used material and has applied an analogous but simpler process to imports of virgin material on a case-by-case basis. Based on this experience and these common goals for imports of used and virgin ODS for destruction, the EPA believes that having the same process for imports for destruction of both used and virgin ODS is both feasible and appropriate. Furthermore, establishing a consistent process for used and virgin ODS would simplify the administration of this proposed approach because the same requirements would generally apply regardless of the type of ODS to be imported for destruction. Thus, the EPA is proposing to have the same requirements for both used and virgin ODS in this new proposed process.

As part of this proposal, the EPA would also revise the definitions of "individual shipment" and "non-objection notice" at §82.3, both of which currently refer only to the import of used material. The EPA is proposing to amend these definitions by removing references to

"used" controlled substances, so that "individual shipment" and a "non-objection notice" may apply to shipments of virgin ODS imported for destruction under a Certification of Intent to Import for Destruction, as well as to shipments of used ODS.

Like the proposal in the import petitions process, the agency is also proposing to allow flexibility for the timing of imports for destruction. In the current petitions process, the EPA requires the import to occur in the same control period (i.e., calendar year) that the non-objection notice was issued. The EPA is proposing that non-objection notices issued for the Certification of Intent to Import for Destruction for both used and virgin material have a year to import the material. Therefore, once a non-objection notice is issued, the person receiving the non-objection notice would be required to import the individual shipment within a year of the date stamped on the non-objection notice. For instance, a non-objection letter issued on October 1, would not need to be destroyed until September 30 of the following year. This would provide flexibility to imports for destruction that may be operate on a calendar year basis.

The EPA is soliciting comments on its proposal to create the Certification of Intent to Import ODS for Destruction for both used and virgin ODS. The EPA is particularly interested in whether the reduced information elements encourage additional imports of ODS for destruction or reduce burden for importers. The EPA is also interested in the burden of applying the proposed certification process to the import of virgin ODS and providing a year to destroy used or virgin material. The EPA welcomes comment from entities that currently import ODS for destruction or that have considered importing ODS for destruction.

E. Prohibiting the Sale of Illegally Imported Controlled Substances

Based on the EPA's experience with the CFC phaseout, the incentive to illegally import class II substances will increase as the allocation for HCFC-22 reaches zero in 2020. HCFC-22 is

the most widely used HCFC in the United States and the EPA anticipates continued demand for HCFC-22 beyond the phaseout in 2020. In addition, there continues to be risk of illegal imports of class I substances. The EPA works closely with CBP to ensure compliance with the phaseout of ODS under CAA sections 604-606. However, recent illegal imports have demonstrated to the agency that additional tools are needed to address the potential for domestic distribution of illegally imported material, as such material would generally be considered consumption. Thus, the EPA is proposing to add to §§82.4(s) and 82.15(g)(8) an express prohibition against the sale or distribution, or offer for sale or distribution, of any class I or class II substance, respectively, that the seller knows, or has reason to know, was illegally imported into the United States.[38]

For this proposal, the EPA is relying primarily on its authority under CAA sections 604(c) and 605(c). Section 604(c) directs the Administrator to promulgate regulations to "insure that the consumption of class I substances in the United States is phased out and terminated" in accordance with the applicable schedules for the phaseout and termination of production of class I substances under the CAA. Similarly, section 605(c) directs the Administrator to promulgate regulations to "insure that the consumption of class II substances in the United States is phased out and terminated" in accordance with the applicable schedules for the phaseout and termination of production of class II substances under the CAA. "Consumption" is defined in CAA section 601 as the amount of a substance produced in the United States, plus the amount of that substance imported, minus the amount exported.

As noted above, the EPA remains concerned about the illegal import of ODS. This

[38] The EPA has previously issued restrictions on sale as a means for implementing restrictions on consumption. *See, e.g.*, §82.3(h) ("No person may sell in the U.S. any Class I controlled substance produced explicitly for export to an Article 5 country"); §82.3(n)(2) ("Any person selling unused class I controlled substances produced or imported under authority of essential-use allowances or the essential-use exemption for uses other than an essential-use is in violation of this subpart.")

concern is based largely on the risk that such illegal imports would interfere with the already-completed phaseout of consumption of class I substances and the ongoing phaseout of consumption of class II substances. For example, HCFC-22 that is imported without allowances would generally count toward the United States' consumption cap unless additional action is taken to remove the ODS from the U.S. market (e.g., the illegally imported ODS is destroyed or re-exported in the same year). While there is sufficient space under the HCFC cap currently such that the illegal import would not result in an exceedance of the cap set forth under the Montreal Protocol and CAA, there is be a greater risk that illegal imports not destroyed or re-exported could cause an exceedance following the 2020 stepdown, and more importantly the 2030 phaseout of HCFCs. This is of even greater concern for illegally imported CFCs and other class I ODS, given that the consumption cap for class I ODS is zero.

To address this concern, the EPA is proposing to strengthen its ability to enforce the phaseout of ODS by adding at §§82.4(s) and 82.15(g)(8) an express prohibition against the sale or distribution, or offer for sale or distribution, of any class I or class II substance, respectively, that the seller knows, or had reason to know, had been imported into the United States in violation of the import regulations. It would therefore be illegal to sell or distribute any material that the seller knows or had reason to know was imported into the United States without expending the appropriate consumption allowances or otherwise qualifying for an exemption provided for in the regulations (e.g., for transformation or destruction, or for used ODS). The proposed revisions would also explicitly state that every kilogram of illegally imported material sold or distributed, or offered for sale or distribution, constitutes a separate violation.

This proposal would strengthen the EPA's ability to enforce against illegal trade, which in turn helps ensure that consumption remains under the Montreal Protocol and CAA caps. It

would increase the EPA's compliance and enforcement options where the agency is not able to identify the importer. For example, this proposal could allow the EPA to pursue investigations where distributors or other sellers of CFCs attempt to sell virgin CFCs in the domestic market knowing that they were imported into the United States after the phaseout of CFCs, which occurred in 1996, without qualifying for any exemption from the consumption phaseout. Actions taken against such distributors would not only address their violations but could also allow the agency to gather the necessary information to identify the smuggler who illegally imported the material in the first place and to pursue compliance and enforcement action against them under existing authorities in §§82.4 and 82.15, which could help deter illegal imports. Avoiding illegal imports helps to maintain the complete phaseout of class I ODS and achieve the phaseout of class II ODS, which is consistent with CAA sections 604(c) and 605(c), as well as with the overarching goals of Title VI of the CAA.

Finally, this proposed change would encourage distributors to be more cautious when purchasing ODS that seems suspiciously priced or packaged. Since the phaseout of class I ODS, the EPA has warned distributors of the risk of purchasing black market ODS and provided information on ways to identify illegally-imported material. Distributors and other resellers have numerous ways to identify illegally-imported material. They can look at where the ODS was produced, the brand name the material is being sold under, and the name of the manufacturer. They can also make sure the material meets industry purity standards, ask the seller for documents of prior ownership of the product and a laboratory analysis of the quality, and inspect the packaging for the material since illegally imported refrigerant is sometimes packaged in wrong-size containers or fixed with improper valves. While the incentive to circumvent the import controls will always exist, the EPA hopes that this proposal would help to reduce the

market for smuggled ODS, which should also reduce illegal imports.

The agency welcomes comments on these proposed prohibitions against the sale or distribution or offer for sale or distribution of illegally imported controlled substances.

V. Addition of Polyurethane Foam Systems Containing CFCs to the Nonessential Product Ban

The EPA is proposing to add polyurethane foam systems containing CFCs to the existing list of nonessential products under 40 CFR part 82, subpart C. This proposal would prohibit the sale or distribution, or offer for sale or distribution, of any polyurethane foam system containing CFCs in interstate commerce. Historically, CFC-11, CFC-12, and CFC-114 were used as foam blowing agents, but CFC production has been globally phased out since 2010. Nevertheless, recent reports show that the rate of decline in CFC-11 concentrations in the atmosphere, which had been steady, slowed dramatically starting in 2013, and this proposal is in response to those reports. After reviewing the EPA's import restrictions and the nonessential product ban, the agency has identified the potential for sale or distribution, or offer for sale or distribution, of imported polyurethane foam systems[39] containing illegally-produced CFCs. The EPA is not aware that this is currently occurring in the United States but believes that this is a potential gap that can be addressed by amending the list of nonessential products in §82.66.

Researchers recently discovered that starting in 2013 the concentration of CFC-11 in the atmosphere was not declining as rapidly as it had been in the prior decade.[40] This slowdown is contrary to the modeled decline based on reported global production. In Montzka et. al., the

[39] These systems are also referred to as polyols, which are defined in Montreal Protocol reports as pre-blended foam chemicals.

[40] Montzka, S.A., Geoff S. Dutton, G.S., Yu, P., Ray, E., Portmann, R.W., Daniel, J.S., Kuijpers, L., Hall1, B.D., Mondeel, D., Siso, C., Nance, J.D., Rigby, M., Manning, A.J., Hu, L., Moore, F., Miller, B.R., and Elkins, J.W. "An unexpected and persistent increase in global emissions of ozone-depleting CFC-11" Nature 557; (2018): 413-429.

modeled concentration was expected to decrease rapidly beginning in 2002, without continued CFC-11 production. However, CFC-11 concentrations did not decline more rapidly each year. Global CFC-11 atmospheric concentrations declined at a constant rate in the decade after 2002. CFC-11 concentrations declined about half as quickly over the past three years compared with the rate measured from 2002–2012. The scale of observations suggests that there may have been unreported production of CFC-11 despite the global phaseout of CFC production in 2010 under the Montreal Protocol. The researchers determined that emissions of CFC-11 began increasing in 2012 and that in the period between 2014 to 2016 emissions were higher than average annual emissions from previous decades. Monitoring data indicate that areas in eastern Asia may be the sources of these elevated emissions. The researchers concluded that damage to the ozone layer could be minor if the source of these emissions can be identified and mitigated, but if not, there would be delays in stratospheric ozone recovery. A subsequent investigation by the Environmental Investigation Agency, a non-governmental environmental organization, indicates that CFC-11 may, in part, be used in foam systems.[41] Additional monitoring data identifies China as the source for much of the CFC-11 emissions.[42]

In response to this finding, the EPA evaluated potential uses of CFCs and whether domestic controls were enough. The EPA wants to ensure that the United States is not inadvertently contributing to demand for CFC production. Except for feedstock applications, production and import of CFCs has been prohibited[43] in the United States since 1996. The nonessential products ban already prohibits sale or distribution, and the offer for sale or

[41] Environmental Investigation Agency (EIA). (2018) Blowing It: Illegal Production and Use of Banned CFC-11 in China's Foam Blowing Industry. Available at: https://eia-global.org/reports/20180709-blowing-it-illegal-production-and-use-of-banned-cfc-11-in-chinas-foam-blowing-industry

[42] Rigby, M. et al. "Increase in CFC-11 emissions from eastern China based on atmospheric observations." Nature 569.7757 (2019): 546-550.

[43] Historically, limited amounts of CFC production and consumption were authorized domestically for essential uses.

distribution, of certain products manufactured with or containing CFCs, including most plastic foam products. The EPA is not aware of any U.S. manufacturer currently using CFC-11 or any other class I substance for polyurethane foam systems. Nonetheless, to ensure that the United States is not inadvertently contributing to demand for CFCs and to avoid potential CFC emissions in the United States, the EPA is proposing to add polyurethane foam systems containing CFCs to the list of nonessential products at §82.66.

The EPA is also proposing to define "polyurethane foam systems" in §82.62, which is used for thermal insulation. A polyurethane foam system typically consists of two transfer pumps that deliver ingredients (polyisocyanate or isocyanate from one side and a mixture including the blowing agent, catalysts, flame retardants, and stabilizers from the other side) to a metering/mixing device which allows the components to be delivered in the appropriate proportions. The components are then sent to a mixing gun and dispensed as foam directly to a surface such as a roof or tank. These polyurethane foam systems are packaged and sold as complete systems, containing all the ingredients including the polyisocyanate and the blowing agent.

A polyurethane foam system is different from bulk ODS because it is contained in a system and packaged as a product. Under the existing regulations in subpart A, bulk CFCs are included in the definition of a "controlled substance" and thus are subject to import controls such as the consumption allowance regime under §82.4. However, the definition of "controlled substance" in §82.3 excludes "any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture." Because the CFCs in polyurethane foam system are contained in a system that is sold as a product, they are not subject to the same import controls as bulk CFCs. If polyurethane foam

systems are imported and sold through distribution chains in the United States, they could result in emissions of CFCs during their use. These foam systems are also distinct from a plastic foam product in that the foam product has already been blown. Plastic foam products manufactured with or containing a CFC are currently listed at §82.66(c) and thus are banned from sale or distribution, or the offer for sale or distribution, in interstate commerce.

The EPA is concerned about the potential sale or distribution, or offer for sale or distribution, of polyurethane foam systems even with the current nonessential product ban on plastic foam products. The proposed addition of polyurethane foam systems to the list of nonessential products would result in the prohibitions of the sale or distribution of such products in interstate commerce, and thus would prevent emissions of CFCs in the United States from domestic use of these foam systems.

Section 610 of the CAA, titled "Nonessential products containing chlorofluorocarbons," directs the EPA to issue regulations identifying nonessential products that "release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal)" and "prohibit[ing] any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce." Section 610(b)(1) and (2) specify that "[a]t a minimum" this prohibition shall apply to "chlorofluorocarbon-propelled plastic party streamers and noise horns" and "chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment." Section 610(b)(3) provides that the prohibition shall apply to other consumer products determined by the EPA to release class I substances into the environment (including releases during manufacture, use, storage, and disposal) and to be nonessential.

Section 610 further states that in determining whether a product is nonessential, the EPA

shall consider the following criteria: "the purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substance, safety, health, and other relevant factors." The CAA requires the EPA to consider each criterion listed in section 610 but does not establish either a ranking or a methodology for comparing their relative importance, nor does it require that any minimum standard within each criterion be met. Thus, section 610 provides the EPA discretion in determining how to consider the listed criteria and the relative weight to give to each. In addition, section 610 gives the EPA latitude to consider "other relevant factors" beyond the specific criteria set forth in the statute.

As indicated above, polyurethane foam systems are products that release blowing agent to the environment during use. If CFCs are used as the blowing agent, they would be emitted during the use of such systems. In proposing to list polyurethane foam systems containing CFCs as a nonessential product, the EPA has considered the purpose or intended use of these systems, the technological availability of substitutes, and safety and health considerations. The first criterion, the purpose or intended use, relates to the importance of the product, in terms of benefits to society, specifically whether the product is sufficiently important that the benefits of its continued production outweigh the associated danger from the continued use of a class I ozone-depleting substance in it, or alternatively, whether the product has little benefit, such that even a lack of available substitutes might not prevent the product from being considered nonessential. While foam products, particularly closed-cell rigid polyurethane foams, provide benefits to society, for more than two decades U.S. manufacturers have replaced the use of CFCs in foam production without compromising these benefits.

The intended use of polyurethane foam systems is often for insulation in buildings and residences. While insulation has benefits, such as reducing energy use and costs associated with

heating and cooling, in previous rulemakings the EPA's consideration of this criterion has also been informed by consideration of whether use of the class I substance in the product is nonessential (see 58 FR 4474, 66 FR 57514). For example, use of a class I substance in a product may be considered nonessential where substitutes are readily available, even if the product itself is important (see 58 FR 4474, 66 FR 57514). This is reasonable because if the social benefits from a product can be provided by a similar product without use of the class I substance, that tends to support the conclusion that the product using the class I substance is nonessential. U.S. manufacturers successfully transitioned from using class I substances for foam products more than two decades ago meaning that they were able to also replace the use of class I substances in foam blowing systems. Moreover, the same U.S. industry also replaced the use of class II substances in these plastic foam products. There are alternative foam blowing agents that can be used in foam systems as well as alternative methods and products for insulating buildings and residences that do not use class I substances. For instance, there are a variety of insulation types that can be applied throughout the building envelope to save energy and reduce leaks in buildings and homes with a similar R-value as a polyurethane foam system intended for use in insulation. The R-value refers to an insulating material's resistance to conductive heat flow and is measured or rated in terms of its thermal resistance. Alternative non-polyurethane foam insulation products with similar R-values include: fiberglass, cellulose, and rigid foam boards.

For the criterion of technological availability of substitutes, the EPA considers the existence and accessibility of alternative products or alternative chemicals for use in, or in place of, products releasing class I substances. The EPA has interpreted this criterion to include both currently available substitutes and potentially available substitutes (see 58 FR 4474). There are numerous substitutes for CFCs in polyurethane foam systems that are listed as acceptable under

the SNAP program and have been widely used by the foam industry since the mid-1990s. The current list of SNAP approved substitutes is available here: https://www.epa.gov/snap/substitutes-foam-blowing-agents. In the initial class I nonessential products rule, the EPA stated that in sectors where the great majority of manufacturers have already shifted to substitutes, the use of a class I substance in that product may very well be nonessential (58 FR 4774). As in previous considerations of this criterion, in this proposal the EPA is examining sectors where the market has previously switched to substitutes. Given the class I nonessential products ban that included plastic foam products was promulgated more than two decades ago and there were also subsequent restrictions on the use of class II substances promulgated under 40 CFR part 82, for polyurethane foam systems, the EPA believes that all U.S. manufacturers have switched from CFCs to non-ODS alternatives such as hydrofluorocarbons, hydrofluoroolefins, hydrocarbons, carbon dioxide, water, and other compounds listed as acceptable substitutes under SNAP in foam blowing.

For the criteria of safety and health, as in prior rules related to the nonessential product ban (see e.g., 66 FR 57514), the EPA interprets these criteria to mean the effects on human health and the environment of products releasing CFCs or their substitutes. As in past rules, in evaluating these criteria, the EPA considers the direct and indirect effects of product use, and the direct and indirect effects of alternatives, such as ozone depletion potential, flammability, toxicity, corrosiveness, energy efficiency, ground-level air hazards, and other environmental factors (see, e.g., 66 FR 57514). The ODPs of CFC-11, CFC-12, and CFC-114 are 1. For the purposes of evaluating other direct and indirect effects for foam systems, the agency does not believe there is a substantive difference between foam systems and plastic foam products given the former is a precursor for the latter. In developing the class I nonessential products ban, the

agency provided information in the docket concerning the known alternatives at that time. Subsequently, alternatives that were already in use as well as additional alternatives for foam-blowing have been evaluated and listed as acceptable under the SNAP program, such as hydrofluorocarbons, hydrofluoroolefins, hydrocarbons, carbon dioxide, and water. The current SNAP list of acceptable substitutes is more expansive than what was in considered in the initial class I nonessential products ban. The range of alternatives includes those that have ODPs ranging from zero to between 0.00024 and 0.00034, significantly lower than the ODP of CFC-11 which is 1, and considers many of the factors identified in the initial class I nonessential products ban. The Montreal Protocol's TEAP also provides a quadrennial global assessment of alternatives for foam blowing including information concerning many of the direct and indirect factors identified above (UNEP, 2014). The EPA considered all these sources of information when deciding whether to propose to add to the list of banned products foam systems that contain phased out CFCs and considered that U.S. industry has already successfully transitioned away from using CFCs.

Considering all three factors together, the EPA proposes to conclude that polyurethane foam systems containing CFCs meet the criteria in section 610 for listing as a nonessential product.

The EPA is requesting comment on its proposal to amend §82.66(f) to add polyurethane foam systems containing CFCs to the nonessential class I product ban and to add a definition of a "polyurethane foam system" to §82.62. Additionally, the EPA is interested in comments on whether anyone in the United States is using CFCs for foam blowing or is importing foam systems containing CFCs as a blowing agent. While the EPA is not aware of any other CFC-containing products that warrant addition to the list of nonessential products, the EPA seeks

comment on whether there are other products using CFCs that could also create demand for imports of illegally-produced CFCs.

VI. Updates to §§ 82.3, 82.104, and 82.270 Related to Destruction

The EPA is proposing to amend certain provisions in 40 CFR part 82, subparts A, E, and H related to the concept of destruction of ODS. Title VI does not state how to treat destruction of ODS in calculating production or consumption; however, the EPA's longstanding regulations address this issue. The regulatory definition of "production" at §82.3 excludes amounts that are destroyed by technologies approved by the Parties to the Montreal Protocol. In addition, amounts imported for destruction are excluded from the import prohibitions at §§82.4 and 82.15.

The EPA added a definition of the term "destruction" to §82.3 in 1993. (58 FR 65047-65048). The existing regulatory definition of "destruction" includes a limited list of technologies that may be used for destruction. When the EPA established the initial list of destruction technologies the agency also noted that it intended to propose authorizing use of additional destruction technologies through future rulemakings, as such technologies are approved by the Parties (58 FR 65049).

The agency is proposing to update the definition of "destruction" in §82.3 to add destruction technologies that have been approved by the Parties to the Montreal Protocol since the issuance of the 1993 rule. The agency is proposing to add these destruction technologies so that industry in the United States has a greater variety of technological options for the destruction of ODS. All of these technologies are capable of destroying ODS or converting them into byproducts and can be grouped into three broad categories: incineration, plasma, and other non-incineration technologies. The EPA is proposing to add nitrogen plasma arc, portable plasma arc, argon plasma arc, microwave plasma, and inductively coupled radio frequency plasma to allow

for additional plasma technologies to allow for greater industry flexibility for using plasma destruction technologies. Plasma arc technologies are generally designed to be relatively small, compact, and transportable. They consume a large amount of energy in order to generate the plasma but tend to have very high destruction efficiencies and low emissions. The EPA is also proposing to add an additional incineration technology - porous thermal reactor. Porous reactors are high-temperature systems with a porous layer that facilitates the decomposition of ODS and other industrial waste gases. Destruction takes place in an oxidizing atmosphere with a continuous supply of an auxiliary gas. The EPA is also proposing to add four non-incineration technologies, including chemical reaction with hydrogen (H_2) and carbon dioxide (CO_2). Revising the definition of destruction to include these technologies would not affect the applicability of other regulatory requirements relating to use of these technologies. Because one of the non-incineration technologies that the EPA is proposing to add, chemical reaction with H_2 and CO_2, is a conversion technology that converts the ODS into non-ozone depleting constituents that are capable of being reused, the EPA is also proposing to amend the definition of "destruction" to modify the statement that that the process must not result in a commercially useful end product. The EPA is also proposing edits to provisions in §82.104 (Subpart E "The Labeling of Products Using Ozone-Depleting Substances") and §82.270 (Subpart H "Halon Emissions Reduction") to conform with the proposed changes in this definition.

The existing regulations define the term "destruction" at §82.3 and §82.104. The two existing definitions are intended to convey the same meaning but are slightly different. For instance, the definition in §82.104 refers to a code of good housekeeping contained in a United Nations Environment Programme report while the definition in §82.3 does not. In addition, both

provide a list of destruction technologies approved under decisions of the Parties to the Montreal Protocol. The list at §82.3 contains seven technologies while the list at §82.104 contains five.[44] Both lists are out of date in that they fail to include certain technologies that can destroy ODS or converting them into byproducts and have been approved under more recent decisions of the Parties. Similarly, the existing prohibition on disposing of halons in §82.270 includes an exception for destruction that also provides an outdated list of destruction technologies. The EPA is therefore proposing to harmonize these three definitions of destruction and update the list of destruction technologies to allow the use of more destruction technologies in the United States.

The Parties to the Montreal Protocol have at times requested that the TEAP report to the Parties information on technologies for destroying surplus stocks of ODS based on an assessment of their technical capability to permanently decompose all or a significant portion of the ODS.[45] The Parties to the Montreal Protocol have approved the use of destruction technologies through various decisions, including Decisions V/26, VII/35, XIV/6, XXII/10, XXIII/12, and at the recent 30th MOP Decision XXX/6. With the proposed revisions to the list of technologies in the definition of "destruction" at §82.3, the EPA's regulations would reflect all technologies approved for ODS destruction under decisions of the Parties. Specifically, the EPA is proposing to add the following destruction technologies to the existing list: nitrogen plasma arc, portable plasma arc, argon plasma arc, chemical reaction with H_2 and CO_2, inductively coupled radio frequency plasma, microwave plasma, porous thermal reactor, gas phase catalytic

[44] Similarly, the definition of "completely destroy" at §82.104 refers to using "one of the five" destruction processes approved by the Parties. The EPA is also proposing to remove that outdated language.

[45] UNEP. (2018) Montreal Protocol on Substances on Substances that Deplete the Ozone Layer. Report of the Technology and Economic Assessment Panel. April 2018 Volume 2 Decisions XXIX/4 TEAP Task Force Report on Destruction Technologies for Controlled Substances; pg. 1-67. Available at: http://conf.montreal-protocol.org/meeting/oewg/oewg-40/presession/Background-Documents/TEAP-DecXXIX4-TF-Report-April2018.pdf

de-halogenation, superheated steam reactor, and thermal reaction with methane. An explanation of these technologies appears in the EPA's report on destruction "ODS Destruction in the United States and Abroad," which is available in the docket.

The EPA is also proposing to revise the definition of "destruction" in §82.104 and the prohibition in §82.270 by removing the outdated lists found in those provisions and adding a cross reference to the list of destruction technologies in §82.3. This would conform the list of destruction technologies that can be used across subparts A, E, and H. The destruction technologies that would be included the list in §82.3 under the proposal discussed above in this section are also applicable to these other subparts, although the EPA notes that the listing of municipal waste incinerators in the existing regulations at §82.3 is limited to the destruction of foams, and thus the added cross reference to §82.3 in §82.270 would not make that technology available for the exception for the destruction of halons at §82.270. The addition of the cross reference to §82.3 would also simplify updating §82.104 and §82.270 in the future. If additional destruction technologies are demonstrated in future to be capable of destroying ODS or converting them into byproducts, the EPA may consider proposing to add those technologies to the definition of "destruction" in §82.3 to further increase the options for ODS destruction in the United States, to the extent consistent with approvals by the Parties and as appropriate. The added cross references would mean that the EPA would only need to revise the list in §82.3 for the technologies to be approved for destruction under all three provisions.

The EPA is also proposing to amend the definitions of "destruction" at §§82.3 and 82.104 to modify language regarding commercially useful end products. The current definition contains a restriction that a destruction technology cannot result in a commercially useful product. The EPA is proposing to revise that restriction in part because one of the destruction technologies

proposed to be added to the definition of destruction breaks down ODS into substances that have commercial viability. The process "Chemical Reaction with H_2 and CO_2" converts fluorinated compounds to hydrofluoric acid, hydrochloric acid, carbon dioxide, chlorine, and water. The reaction technology separates and collects the byproducts at a high purity allowing for them to be sold, potentially improving the economics of using this technology. The EPA does not believe that a process that would otherwise qualify as "destruction" should fail to qualify simply because one of the outputs is a commercially useful end product. The EPA is therefore proposing to revise the definition of "destruction" so that the mere existence of such an end product does not bar the technology from being included in the definition. The proposed revisions further clarify that the commercial usefulness of the end product is secondary to the act of the ODS destruction. Thus, the EPA's proposed changes to the definition of destruction recognize that while production of a commercially useful end product is not the primary purpose of a destruction process, the destruction process may nevertheless result in a commercially useful product.

The proposed clarification that the usefulness of an end product should be secondary to ODS destruction is intended to maintain a distinction between the terms "destruction" and "transformation." The EPA established the definitions of "destruction," "production," and "transformation" in the 1993 rule (58 FR 65048-65049). Among other things, the agency excluded from the definition of "production": (1) amounts of controlled substances that are destroyed using approved destruction technologies and (2) the manufacture of a controlled substance that is subsequently transformed. Similarly, the regulatory import prohibitions excluded both amounts destroyed, and amounts transformed. The definition of "destruction" noted that it does not result in a commercially useful end product whereas the definition of "transformation" noted that it occurs in a process specifically for the manufacture of other

chemicals for commercial purposes. Thus, the original distinction in the definitions of these two terms related to whether the process was undertaken to intentionally result in a commercially useful end product or not. The distinction mattered (and is still relevant) because as explained in the 1993 rule, if a portion of the ODS remained after destruction, the destroyed portion could be excluded from production, but the material had to be entirely consumed in the process (except for trace quantities) to qualify for the transformation exclusion (58 FR 65048). The EPA is proposing to remove one aspect of the distinction between these two processes in the original definitions (whether the processes result in a commercially useful end product). The proposed changes to the text would clarify that the usefulness of the product is secondary to the act of destruction. Conversely, transformation is the use of ODS as a feedstock with the goal of manufacturing other chemicals.

Intent has been an important aspect of the distinction between "destruction" and "transformation" since these definitions were first promulgated. For example, in the 1993 rule establishing the definition of "destruction," in a discussion of whether heat or energy are commercially useful end products, the agency said "[t]he intent of the destruction process is to destroy the substance, for which a byproduct in the way of heat or energy may be produced, rather than production of an end product being the goal of the destruction activity." (58 FR 65049). This discussion recognizes that something useful may incidentally result from destruction. Similarly, the 1993 rule recognized the possibility of a destruction technology converting ODS into other useful substances. In explaining the inclusion of reactor cracking as a destruction technology, the EPA stated "[s]ince 1983, this process has treated waste gases resulting from the production of CFCs. The gases are converted to hydrofluoric acid, hydrochloric acid, carbon dioxide, chlorine, and water. The two acids *are usable in-house and/or*

marketable, and the chlorine is scrubbed, leaving only water vapor, oxygen, and carbon dioxide as waste gases." (58 FR 65047, emphasis added).

Consistent with that recognition and with the proposed inclusion of a new destruction technology with commercially useful end products, the EPA believes that the creation of a commercially useful end product should not in itself preclude a technology from being listed in the definition of "destruction." The creation of such an end product does not change whether chemical decomposition occurs. Many destruction processes incinerate the chemicals, but other technologies break down the controlled substance. In breaking down the chemical, it is possible that the result includes a commercially valuable end product that is not a controlled substance. "Transformation," on the other hand, means to use and entirely consume a controlled substance in the manufacture of other chemicals for commercial purposes. The purpose is to create new compounds using the ODS as a feedstock rather than the decomposition of ODS as a waste.

The EPA welcomes comment on the proposal to update and harmonize definitions related to ODS destruction in §§82.3, 82.104, and 82.270, including the proposal to add to the list of destruction technologies and amend the definition of "destruction" to allow inclusion of destruction technologies that incidentally result in commercially useful end products. The EPA specifically invites comments from entities that destroy ODS or send ODS to facilities for destruction.

VII. Removing Obsolete Provisions in §§ 82.3, 82.4, 82.9, 82.10, 82.12, 82.13, 82.15, 82.16, and 82.24

The EPA is proposing to remove certain provisions that have been made obsolete due to the phaseout of class I ODS or certain class II ODS. Specifically, this notice proposes to remove outdated provisions for class I ODS related to Article 5 allowances, transformation and

destruction credits, and transfers of allowances issued prior to the phaseout. The EPA is also proposing to remove definitions and reporting provisions for HCFC-141b exemption allowances and export production allowances.

These changes increase readability and reduce confusion. Removing obsolete provisions would assist the regulated community by making it easier to locate the currently applicable requirements and reduce potential confusion from presentation of requirements that no longer apply. The EPA is not proposing to remove outdated provisions that provide historical context which could assist the reader or that would affect the level of environmental protection provided under subpart A.

The EPA welcomes comments on the proposed removal of these provisions. The agency is particularly interested in any comments indicating these proposed changes may affect current obligations or may be important to the existing requirements.

A. Class I Article 5 Allowances

Before the worldwide phaseout of CFCs and other class I ODS, the EPA historically had provided additional production allowances, known as "Article 5 allowances," for production of certain class I ODS for export to and use by Article 5 countries consistent with the Montreal Protocol.[46] These are countries that were subject to a later production and consumption phaseout schedule than non-Article 5 countries such as the United States. Section 82.9(a) of the existing regulations granted Article 5 allowances until 2010, when the phaseout of these substances was completed in Article 5 countries. Because these provisions no longer have any purpose or effect, the EPA is proposing to remove the schedule for issuing Article 5 allowances found at §82.9(a) and the corresponding recordkeeping and reporting requirements in

[46] For the purposes of the Montreal Protocol, this is called production for basic domestic need.

§82.13(f)(2)(v) and (f)(3)(ix). Section 82.9(b) of the existing regulations provides that holders of Article 5 allowances may produce class I controlled substances for export to Article 5 countries and transfer Article 5 allowances. Because there are no more holders of Article 5 allowances, the EPA is proposing to remove these provisions as well.

B. Class I Allowances and Credits Related to Transformation and Destruction

Before the domestic phaseout of class I ODS, the EPA historically had provided additional production allowances in cases where class I ODS were destroyed or transformed. Because these provisions no longer have any purpose or effect, the EPA is proposing to remove these provisions and to remove references to these obsolete allowances in certain other provisions.

Section 82.9(e) of the existing rules contains the provisions related to such allowances, including detailing the information needed in a request for allowances based on having destroyed or transformed a specified quantity of class I ODS. The EPA stopped issuing such allowances in 1996 for all class I controlled substances (except methyl bromide) and in 2005 for methyl bromide. The EPA is proposing to remove §82.9(e) and related obsolete reporting and recordkeeping requirements in §82.13(f)(2)(iv), (g)(1)(xv), (g)(4)(xi), and (h)(4)(xi).

Section 82.9(f) authorized persons who were nominated for an essential use exemption to obtain destruction and transformation credits between 1996 and 2000. The EPA established these provisions because of the difference between the phaseout date for class I substances under the CAA and the phaseout date for the same substances under the Montreal Protocol. These provisions include a description of the information needed and the grounds for which the EPA can disallow the request. Section §82.4(f) addresses production and import with destruction and information credits. The EPA stopped issuing such credits in 2000. Because

these provisions no longer have any purpose or effect, the EPA is proposing to remove §§82.4(f) and 82.9(f).

C. Class I Consumption Allowances

Before the phaseout of class I ODS, the EPA historically had provided additional consumption allowances where class I ODS were exported, transformed or destroyed, or where an amount of production was transferred from another Party to the Montreal Protocol. Section 82.10 contains provisions related to these additional consumption allowances, including detailing the information needed in a request for them. The EPA stopped issuing those allowances in 1996 for all class I controlled substances (except methyl bromide) and in 2005 for methyl bromide. Because these provisions no longer have any purpose or effect, the EPA is proposing to remove them and reserve §82.10 in its entirety. The EPA is also proposing to remove references to §82.10 from the definition of "consumption allowance" in §82.3; §82.9(c), (e) and (f); §82.13(h)(1) and (2); and §82.13(i) as those references are no longer applicable.

D. Transfers of Class I Allowances

The EPA historically had allowed for the transfer of production and consumption allowances for class I substances in various ways. Under section 607 of the CAA, the EPA was required to issue regulations providing for inter-pollutant allowance transfers and allowance transfers between companies. For class I substances, those regulations appear at §82.12. Due to the class I phaseout, the EPA no longer allocates production or consumption allowances for class I substances. Because these provisions no longer have any purpose or effect, the EPA is proposing to remove provisions related to pre-1996 allowance transfers for class I ODS (and pre-2005 for methyl bromide) found at §82.12(a)(1) and (b)(1), as any such transfers occurred years ago and these provisions no longer have any purpose or effect.

As discussed in earlier in this section, the EPA is proposing to remove certain provisions governing Article 5 allowances and destruction and transformation credits. The EPA is therefore also proposing to remove provisions allowing for the transfer of Article 5 allowances and destruction and transformation credits found at §82.12(a)(2), (b)(2)-(5), and (c) as those provisions are longer needed.

E. HCFC-141b Allowances

In 2003, the EPA issued regulations (68 FR 2820, January 21, 2003) to ensure compliance with the first reduction milestone in the HCFC phaseout. In that rule, the EPA established chemical-specific consumption and production baselines for HCFC-141b, HCFC-22, and HCFC-142b for the initial regulatory period ending December 31, 2009. The rule phased out the production and import of HCFC-141b effective January 1, 2003 (see §82.16(b)). The EPA created a petition process at §82.16(h) to allow applicants to request "HCFC-141b exemption allowances" to produce or import small amounts of HCFC-141b beyond the phaseout. The agency removed §82.16(h) from the regulations and terminated the HCFC-141b exemption allowance program, effective January 1, 2015 (79 FR 64267, October 28, 2014). At that time, the EPA did not remove definitions and reporting and recordkeeping requirements that pertain only to HCFC-141b exemption allowances.

The EPA is now proposing to remove the definitions in §82.3 specific to HCFC-141b production or import after the 2003 phaseout, including the definitions of "Formulator," "HCFC-141b exemption allowances," and "Unexpended HCFC-141b exemption allowances." The definitions for HCFC-141b exemption allowances are no longer relevant since the EPA has removed the substantive regulations that these definitions support. For the same reasons, the EPA is proposing to remove references to HCFC-141b in the definition of "Confer," but would

retain the remainder of that definition. The EPA is also proposing to remove references and recordkeeping and reporting requirements specifically relating to HCFC-141b exemption allowances. These edits would be made in §82.24(b)(1)(ix) and (xi); §82.24(b)(2)(xiv); §82.24(c)(1)(xi); §82.24(c)(2)(xvi); and §82.24(g).

The EPA also created provisions at §82.18(b) to allow producers to use "export production allowances" to produce HCFC-141b for export beyond the phaseout. These allowances ended in 2010 and therefore these provisions have no further purpose or effect. The EPA is proposing to retain the definition of export production allowances and certain references where appropriate to provide context to the reader but remove the recordkeeping and reporting provisions. These edits would be made in §82.16(e)(1) and (2); §82.24(b)(1)(iv) and (ix); §82.24(b)(2)(iv), and (xii); and §82.24(d)(2).

VIII. Economic Analysis

In total, the EPA estimates that the quantified costs and benefits of this proposal would result in a net savings of $13,000 per year. The agency analyzed the quantitative benefits associated with the overall burden reduction from transitioning to electronic reporting, the streamlined petition process for used ODS, the certification to import ODS for destruction, and costs associated with proposed labeling requirements. For this action, the EPA has provided in the docket technical support documents that consider the costs and the benefits commensurate with changes to ODS phaseout regulations, such as the requirement to use electronic reporting. Further, many of the proposed changes to the ODS phaseout regulations, such as the removal of obsolete requirements, would not result in any new costs or benefits. The quantifiable costs and benefits of this rule primarily result from the proposed revisions to the reporting and recordkeeping requirements and the requirement to use electronic reporting. For the phaseout of

ODS, the EPA previously considered the domestic costs and benefits of the United States' phaseout.[47]

The EPA anticipates that electronic reporting would allow for faster review and transmission of submissions to the EPA. Additionally, all information submitted electronically would be linked in an improved tracking system, which would facilitate document management efforts. The intent is that this would allow companies to manage past and future submissions easier. The EPA expects that the estimated burden hours and labor costs would decrease as a result of the complete transition from paper to electronic reporting. Even accounting for the one-time burden for entities that have not yet registered in CDX of $2,000, the electronic reporting would result in an overall burden reduction for respondents of approximately $4,000. Similarly, the estimated agency burden hours and labor costs would also decrease. For example, by requiring electronic reporting the agency would no longer have to manually enter data into the ODS Tracking System.

The streamlined petitions process and new certification to import ODS for destruction would decrease the total estimated respondent burden. There would be a reduction in reporting requirements for imports for destruction relative to the current petition process. Specifically, the number of reporting elements for importers for destruction would be reduced from 13 to 8 and reduce burden hours per response by four hours. The EPA also estimates that exempting halon 1211 used in aircraft bottles from the petition process would reduce the number of responses per respondent by one, as detailed in descriptions of the recordkeeping and reporting burden,

[47] The following documents are available in the docket: "EPA. 1999. The Benefits and Costs of the Clean Air Act: 1990 to 2010;" "EPA. 1992. Regulatory Impact Analysis: Compliance with Section 604 of the Clean Air Act for the Phaseout of Ozone Depleting Chemicals;" and "EPA. 1993. Addendum to the 1992 Phaseout Regulatory Impact Analysis: Accelerating the Phaseout of CFCs, Halons, Methyl Chloroform, Carbon Tetrachloride, and HCFCs."

including cost savings to the agency, which can be found in the supporting statement for the Information Collection Request available in the docket to this rule.

The EPA estimates that the proposed requirements to redesign the existing labels on containers of Halotron® I would result in a one-time cost between $1,000 to $3,000. Administrative and graphic design labor costs are estimated based on the total amount of hours required to redesign existing labels as well as hourly labor costs. These hourly costs include wages, overhead rates, and fringe rates. Additional information on this analysis is available in the docket.

There are also effects of this rule that the agency has not or cannot quantify. The EPA did not conduct a specific analysis of the benefits and costs associated with prohibiting the sales of QPS methyl bromide for non-QPS purposes, prohibiting sales of polyurethane foam systems, other elements of the proposal, and allocating allowances of HCFC-123 and HCFC-124. Prohibiting both the sales of QPS methyl bromide for non-QPS purposes and the sales of illegally imported ODS is designed to improve compliance with the existing provisions. Costs are unquantifiable as the scale of these sales are unknown but anticipated to be small. The proposed prohibition on sales and distribution of polyurethane foam systems containing CFCs should have no cost. Updating the definition of destruction would allow for the use of new destruction technologies that are currently not in use, but the agency is unable to estimate the market for the use of those new technologies if they are adopted. The proposed removal of obsolete provisions is not anticipated to have any material cost or benefit.

For the allocation of HCFC-123 and 124, previous analyses provide information on the costs and benefits of the United States' ODS phaseout, and specifically the phaseout of all HCFCs through 2030, but do not quantify the costs and benefits of each individual phaseout step

for each individual chemical. A memorandum summarizing these analyses, including the original regulatory impact analysis for the full phaseout of ODS, is available in the docket.[48] Finalizing this proposed rule would allow for the production and consumption of HCFC-123 and HCFC-124 that would otherwise not be allowed in the absence of this rulemaking under existing regulations. The benefit of issuing allowances consistent with this proposal outweighs the disbenefit associated with no action.

Since the allocation for HCFC-123 is the largest component of this rule, the following discusses the potential costs and benefits of the proposed and alternative allocation levels for HCFC-123. As discussed in the allocation section of this notice, the consumption baseline of the United States under the Montreal Protocol in 2020 for all HCFCs, on an ODP-weighted basis, will be 0.5% of the historic HCFC baseline. This equates to 3,810 MT of HCFC-123. Under section 605(c) of the CAA, the consumption of HCFCs by any person is limited to the quantity consumed by that person during the baseline year. The baseline[49] for HCFC-123 is the aggregated quantity consumed in the baseline years and equates to 2,014 MT. In developing the proposed allocations, the EPA considered the quantities needed to satisfy estimated demand for HCFC-123 to service equipment manufactured before 2020. Lastly, the EPA estimated a range for the amount HCFC-123 that will likely be reclaimed annually, and thus be available to meet part of the servicing demand for HCFC-123. These are summarized in Table 3.

Table 3: HCFC-123 Servicing Demand and Estimated Reclamation (MT)

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Total Estimated Demand	820	790	770	750	720	700	670	650	630	600	7,100
Estimated Reclamation Low	300	310	320	330	340	350	360	370	380	390	3,450
Estimated Reclamation High	350	378	407	436	465	494	523	552	581	610	4,796
Total Need for New	520	480	450	420	380	350	310	280	250	210	3,650

[48] EPA. 2008. "HCFC Cost Analysis." and EPA. 2018. "Overview of CFC and HCFC Phaseout."
[49] Baseline from 40 CFR 82.19

Production with Low Reclaim											
Total Need for New Production with High Reclaim	470	412	363	314	255	206	147	98	49	0	2,314

The agency's intent is to accomplish the complete phaseout in 2030 in a manner that achieves a smooth transition to alternatives without stranding equipment. This is important because the EPA estimates that 36,000 appliances using HCFC-123 will still be in operation in 2030.[50] At that time, no more HCFC-123 may be produced or imported into the United States.

Table 4: Projected Number of HCFC-123 AC and Refrigeration Units in Operation (1000s of Units)

Equipment Type	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Chillers (AC)	47	45	43	41	39	37	35	33	31	29	27
IPR	14	13	13	12	12	11	11	10	10	9	9

The EPA does not want to strand existing equipment because of an inadequate supply of HCFCs, but also must achieve a complete phaseout of production and consumption by 2030. A viable reclamation market is important to support the continued availability of HCFCs after the 2030 phaseout, and during 2020 through 2029 can support the fire suppression market and decrease the need for new production and import. As noted previously, the EPA is requesting comment on the HCFC demand estimates included in the *2019 Draft Servicing Tail Report*, which is included in the docket for this rulemaking.

Table 5 presents the three allocation amounts for HCFC-123 raised for comment in this proposed rule. The agency proposes to issue consumption allowances equal to the 2020 estimated HCFC-123 demand for servicing existing refrigeration and air-conditioning and fire suppression equipment for years 2020 through 2022 and to then decrease the number of

[50] EPA. 2019. *The U.S. Phaseout of HCFCs: Projected Servicing Demands in the U.S. Air Conditioning, Refrigeration, and Fire Suppression Sector (2020-2030)*. See Table 3.

allowances issued in each subsequent year by an equal amount each year such that there are zero allowances issued in 2030. Alternative 1 is equal to the estimated demand minus the low end of estimated reclaim. Alternative 2 is 100% of the domestic HCFC-123 consumption baseline, which as discussed previously is the full amount that can be allocated under the CAA.

Table 5: Comparison of HCFC-123 Consumption Allowance Allocations (MT)

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Proposal	650	650	650	570	490	410	330	250	170	90	4,260
Alternative 1	520	480	450	420	380	350	310	280	250	210	3,650
Alternative 2	2,014	2,014	2,014	2,014	2,014	2,014	2,014	2,014	2,014	2,014	20,140
0.5% of HCFC Consumption Baseline	3,810	3,810	3,810	3,810	3,810	3,810	3,810	3,810	3,810	3,810	38,100

The EPA expects more disbenefits in allocating significantly above projected demand. Because of the limited numbers of allowance holders, the EPA does not expect the price of HCFC-123 to appreciably decrease if the agency allocates 100% of the HCFC-123 baseline (Alternative 2 in Table 5). The disbenefits the EPA is concerned about include near and longer term available supply of reclaimed and recycled HCFC-123, as well as emissions of ODS, given the agency's assumption that all refrigerant produced is eventually emitted into the atmosphere. More allocated allowances would likely suppress the recovery and reclamation market and cause more HCFC material to be vented at the end of the equipments' lifetime. In the near term, this would also have an adverse effect on the availability of reclaimed HCFC-123 for the fire suppression sector because reclamation is the only source of HCFC-123 for the manufacture of new fire suppression equipment; it is projected that the fire suppression sector would need between 170 to 225 MT for the manufacture of new equipment. Thus, if the reclaim market is suppressed from 2020 through 2029, there will be less supply and higher costs for HCFC-123, especially from 2030 onwards when the only supply of HCFC-123 will be from the reclaim market. Based on the *2019 Draft Servicing Tail Report*, HCFC-124 consumption has been approximately 250 MT per year and reclamation has been minimal. Recent sales data from the

California Air Resources Board as well as other information indicate that demand for HCFC-124 should be between 100 and 200 MT in 2020. Like HCFC-123, providing HCFC-124 allowances significantly in excess of demand may not foster transition. Thus, the EPA is proposing to allocate 200 MT for the first three years and then gradually decrease over the next seven years by an equal amount each year. The EPA is taking comment on the assumptions and projections in this section.

Regardless of allocation level, for the purposes of analyzing the impact of this proposal on small business, the EPA finds there is no significant impact on a substantial number of small entities (SISNOSE). The EPA performed a sales test to assess the economic impact of a regulatory option on small businesses and compared the results of the sales test. Based on the screening analysis of allowance holders of HCFC-123 and HCFC-124, this proposed rulemaking could be presumed to have no SISNOSE because it is expected to result in a net benefit to small business through the ability to continue producing, importing and/or selling HCFC-123 and HCFC-124. The EPA notes that there are only eight companies total that hold consumption allowances for HCFC-123 and HCFC-124, only two of which are small businesses.

Table 6 summarizes the environmental effect, in ODP-weighted metric tons, of the various HCFC-123 allocation levels over the length of the 2020-2029 regulatory period. For comparison, the EPA estimates total demand for HCFC-123 over the next decade to equal 7,100 MT, or 142 ODP-weighted metric tons. About 70% to 75% of this amount is for servicing existing equipment and can be met with newly-imported HCFCs, and the remainder must be met with reclaimed or recycled HCFCs. Not all allowances may be expended so this does not reflect the actual impact to the stratospheric ozone layer of these three options. However, the EPA does assume that all refrigerant produced is eventually emitted into the atmosphere. Alternative 1

followed by the proposed allocation amounts would have the least impact on the stratospheric ozone layer. For HCFC-124, the EPA estimates total demand over the next decade equal to 1,000 to 2,000 MT, or 22 to 44 ODP-weighted metric tons.

Table 6 Environmental Effects of the HCFC-123 and HCFC-124 Allocation Amounts (Total of 2020-2029)

	MT	ODP-weighted metric tons
Proposed HCFC-123 Allocation Amount	4,260	85
HCFC-123 Alternative 1	3,650	73
HCFC-123 Alternative 2	20,140	403
Proposed HCFC-124 Allocation Amount	1,300	28.6
HCFC-124 Alternative	2,000	44

IX. Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the EPA's ICR associated with this rulemaking.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1432.34. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

This ICR covers provisions under the Montreal Protocol and Title VI of the CAA that establish limits on total U.S. production, import, and export of ODS. The EPA monitors compliance with the CAA and commitments under the Montreal Protocol through the recordkeeping and reporting requirements established in the regulations at 40 CFR part 82, Subpart A. The EPA informs the respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed as confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, Subpart B, and will be disclosed to the extent, and by means of procedures, set forth in Subpart B. If no claim of confidentiality is asserted when the information is received by the EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

Respondents/affected entities: Producers, importers, exporters, and certain users of ozone depleting substances; methyl bromide applicators, distributors, and end users including commodity storage and quarantine users.

Respondent's obligation to respond: Mandatory – sections 603(b) and 114 of the CAA.

Estimated number of respondents: 93

Frequency of response: Quarterly, annually, and as needed.

Total estimated burden: 2,940 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $354,068, includes $346,693 annualized capital and operation & maintenance costs of $7,375.

The ICR addresses the incremental changes to the existing reporting and recordkeeping programs that are approved under OMB control number 2060-0170.

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 the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to oria_submissions@omb.eop.gov, Attention: Desk Officer for the EPA. Since OMB is required to decide concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than **[insert date 30 days after publication in the Federal Register]**. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities potentially subject to increased costs from this action include allowance holders, distributors, applicators, and end users of methyl bromide and importers of ODS. The EPA estimates that the total incremental savings associated with this proposed rule is $13,000 per year in 2018 dollars. Details of this analysis are presented in Section VIII of this notice.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. 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. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. The agency nonetheless has 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 of excessive exposure to UV radiation on children: (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 Japson 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) 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, DK. "How sun exposure causes skin cancer: an epidemiological perspective," Prevention of Skin Cancer. 2004. 89-116.

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

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 82

Environmental protection, Air pollution control, Chemicals, Reporting and recordkeeping requirements.

Dated: July 24, 2019.

Andrew R. Wheeler,
Administrator.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR Part 82 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, 7671-767q.

2. Amend §82.3 by:

a. Adding. In alphabetical order, definitions for "bank" and "Central Data Exchange;"

b. Revising the definitions for "Administrator," "Aircraft halon bottle," "Confer," "Consumption allowances," "Destruction," "Individual shipment," "Non-Objection notice," and "Production"; and

c. Removing definitions for "Formulator," "HCFC-141b exemption allowances," and "Unexpended HCFC-141b exemption allowances."

The revisions and additions read as follows:

§82.3 Definitions.

* * * * *

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative. Reports and petitions that are available to be submitted through the Central Data Exchange must be submitted through that tool. Any other reports and communications shall be submitted to Stratospheric Protection Manager, 1200 Pennsylvania Ave., NW., Mail Code: 6205T, Washington, DC 20460.

Aircraft halon bottle means a vessel used as a component of an aircraft fire suppression system containing halon-1301 or halon-1211 approved under FAA rules for installation in a certificated aircraft.

* * * * *

Bank means a facility run by a national government or privately run and authorized by a national government that collects and stores previously-recovered ozone-depleting substances for reuse at a later date.

* * * * *

Central Data Exchange means EPA's centralized electronic document receiving system, or its successors.

* * * * *

Confer means to shift the essential-use allowances obtained under §82.8 from the holder of the unexpended essential-use allowances to a person for the production of a specified controlled substance.

* * * * *

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 as may be modified under §82.12 (transfer of allowances). A person's consumption allowances for class II controlled substances are the total of the allowances obtained under §§82.19 and 82.20, as may be modified under §82.23.

* * * * *

Destruction means the expiration of a controlled substance to the destruction and removal efficiency actually achieved, unless considered completely destroyed as defined in this section. Such destruction might result in a commercially useful end product, but such usefulness would

be secondary to the act of destruction. Destruction must be achieved using one of the following controlled processes approved by the Parties to the Protocol:

(1) Liquid injection incineration;

(2) Reactor cracking;

(3) Gaseous/fume oxidation;

(4) Rotary kiln incineration;

(5) Cement kiln;

(6) Radio frequency plasma;

(7) Municipal waste incinerators (only for the destruction of foams);

(8) Nitrogen plasma arc;

(9) Portable plasma arc;

(10) Argon plasma arc;

(11) Chemical reaction with H2 and CO2;

(12) Inductively coupled radio frequency plasma;

(13) Microwave plasma;

(14) Porous thermal reactor;

(15) Gas phase catalytic de-halogenation;

(16) Superheated steam reactor; or

(17) Thermal reaction with methane.

* * * * *

Individual shipment means the kilograms of a controlled substance for which a person may make one (1) U.S. Customs entry, as identified in the non-objection letter from the Administrator under §§82.13(g)(2), (3), and (5) and 82.24(c)(4) and (6).

* * * * *

Non-Objection notice means the privilege granted by the Administrator to import a specific individual shipment of a controlled substance in accordance with §§82.13(g)(2), (3), and (5) and 82.24(c)(3), (4), and (6).

* * * * *

Production means the manufacture of a controlled substance from any raw material or feedstock chemical, but does not include:

(1) The manufacture of a controlled substance that is subsequently transformed;

(2) The reuse or recycling of a controlled substance;

(3) Amounts that are destroyed by the approved technologies in §82.3; or

(4) Amounts that are spilled or vented unintentionally.

3. Amend §82.4 by:

a. Removing and reserving paragraph (f);

b. Revising paragraph (j); and

c. Adding paragraphs (r) and (s).

Revisions read as follows:

§82.4 Prohibitions for class I controlled substances.

* * * * *

(j) (1) Effective January 1, 1995, no person may import, at any time in any control period, a used class I controlled substance, except for Group II used controlled substances shipped in aircraft halon bottles for hydrostatic testing, without having received a non-objection notice from the Administrator in accordance with §82.13(g)(2) and (3). A person who receives a non-objection notice for the import of an individual shipment of used controlled 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 controlled substance cited in the non-objection notice. Every kilogram of importation of used controlled substance in excess of the quantity cited in the non-objection notice issued by the Administrator in accordance with §82.13(g)(2) and (3) constitutes a separate violation.

(2) Effective **[DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, no person may import for purposes of destruction, at any time in any control period, a class I controlled substance for which EPA has apportioned baseline production and consumption allowances, without having submitted a certification of intent to import for destruction to the Administrator and received a non-objection notice in accordance with §82.13(g)(5). A person issued a non-objection notice for the import of an individual shipment of class I controlled substances for destruction may not transfer or confer the right to import, and may not import any more than the exact quantity (in kilograms) of the class I controlled substance stated in the non-objection notice. For imports intended to be destroyed in the U.S., a person issued a non-objection notice must destroy the controlled substance in the year cited in the non-objection letter, may not transfer or confer the right to import, and may not import any more than the exact quantity (in kilograms) of the class I controlled substance stated in the non-objection notice. Every kilogram of import of class I controlled substance in excess of the quantity stated in the non-objection notice issued by the Administrator in accordance with §82.13(g)(5) constitutes a separate violation of this subpart.

* * * * *

(r) *Quarantine and preshipment exemption.* No person may sell or use methyl bromide produced or imported under the quarantine and preshipment exemption for any purpose other

than for quarantine applications or preshipment applications as defined in §82.3. Each kilogram of methyl bromide produced or imported under the authority of the quarantine and preshipment exemption and sold or used for a use other than quarantine or preshipment is a separate violation of this subpart.

(s) Effective **[DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, no person may sell or distribute, or offer for sale or distribution, any class I substance that they know, or have reason to know, was imported in violation of this section, except for such actions needed to re-export the controlled substance. Every kilogram of a controlled substance imported in contravention of this paragraph that is sold or distributed, or offered for sale or distribution, constitutes a separate violation of this subpart.

4. Amend §82.9 by:

a. Removing and reserving paragraphs (a), (b), (e), and (f); and

b. Revising paragraph (c) introductory text.

The revision reads as follows:

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

* * * * *

(c) A company may increase or decrease its production allowances, including its Article 5 allowances, by trading with another Party to the Protocol according to the provision under this paragraph (c). A company may increase or decrease its essential-use allowances for CFCs for use in essential MDIs according to the provisions under this paragraph (c). A nation listed in appendix C to this subpart (Parties to the Montreal Protocol) must agree either to transfer to the person for the current control period some amount of production or import that the nation is

permitted under the Montreal Protocol or to receive from the person for the current control period some amount of production or import that the person is permitted under this subpart. If the controlled substance is produced under the authority of production allowances and is to be sold in the United States or to another Party (not the Party from whom the allowances are received), the U.S. company must expend its consumption allowances allocated under §82.6 and §82.7 in order to produce with the additional production allowances.

* * * * *

§82.10 [Removed and reserved]

5. Remove and reserve §82.10.

6. Amend §82.12 by:

a. Revising paragraph (a)(1) introductory text; and

b. Removing and reserving paragraphs (a)(2), (b) and (c).

The revision reads as follows:

§82.12 Transfers of allowances for class I controlled substances.

(a) ***

(1) After January 1, 2002, any essential-use allowance holder (including those persons that hold essential-use allowances issued by a Party other than the United States) ("transferor") may transfer essential-use allowances for CFCs to a metered dose inhaler company solely for the manufacture of essential MDIs. After January 1, 2005, any critical use allowance holder ("transferor") may transfer critical use allowances to any other person ("transferee").

*****

7. Amend §82.13 by:

a. Revising paragraphs (a), (c), (f)(2)(xvii)-(xxii), (f)(3)(xiii)-(xvii), (g)(1)(xi), (xv), (xvii)-(xxi), (g)(2)(i)-(iv), (vi), (viii)-(xiii), (g)(3)(i)(A), (g)(3)(vii), (g)(4)(xv)-(xviii), (h)(1) introductory text, (h)(1)(ii)-(iii), (h)(2) introductory text, (h)(2)(ii)-(v), (viii), (v), (w)(2), (y), (z), (aa);

b. Removing and reserving paragraphs (f)(2)(iv), (v), and (xvi), (f)(3)(iv), (ix), (g)(2)(xiv), (g)(4)(vii), (xi), (i); and

c. Adding paragraphs (g)(2)(xv) and (g)(5)-(9).

The revisions and additions read as follows:

§82.13 Recordkeeping and reporting requirements for class I controlled substances

(a) Unless otherwise specified, the recordkeeping and reporting requirements set forth in this section take effect on January 1, 1995. For class I, Group VIII controlled substances, the recordkeeping and reporting requirements set forth in this section take effect on August 18, 2003. For critical use methyl bromide, the recordkeeping and reporting requirements set forth in this section take effect January 1, 2005.

* * * * *

(c) Unless otherwise specified, reports required by this section must be submitted to the Administrator within 45 days of the end of the applicable reporting period. Starting **[DATE 30 DAYS AFTER EFFECTIVE DATE OF FINAL RULE]**, reports that are available for submission through the Central Data Exchange must be submitted electronically through that tool. Revisions of reports that are required by this section must be submitted to the Administrator within 180 days of the end of the applicable reporting period, unless otherwise specified.

* * * * *

(f) * * *

(2) * * *

(xvii) For methyl bromide, dated records of the quantity of controlled substances produced for quarantine and preshipment applications and quantity sold for quarantine and preshipment applications;

(xviii) Written certifications that quantities of methyl bromide produced solely for quarantine and preshipment applications were purchased by distributors or applicators to be used only for quarantine applications and preshipment applications in accordance with the definitions in this subpart; and

(xix) Written verifications from a U.S. purchaser that methyl bromide produced solely for quarantine and preshipment applications, if exported, will be exported solely for quarantine applications and preshipment applications upon receipt of a certification in accordance with the definitions of this subpart and requirements in paragraph (h) of this section.

(xx) For methyl bromide, dated records such as invoices and order forms, and a log of the quantity of controlled substances produced for critical use, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use, and the quantity sold for critical use, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use;

(xxi) Written certifications that quantities of methyl bromide produced for critical use were purchased by distributors, applicators, or approved critical users to be used or sold only for critical use in accordance with the definitions and prohibitions in this subpart. Certifications must be maintained by the producer for a minimum of three years and;

(xxii) For methyl bromide, dated records such as invoices and order forms, and a log of the quantity of controlled substances produced solely for export to satisfy critical uses authorized by the Parties for that control period, and the quantity sold solely for export to satisfy critical uses authorized by the Parties for that control period.

(3) * * *

(xiii) The amount of methyl bromide sold or transferred during the quarter to a person other than the producer solely for quarantine and preshipment applications;

(xiv) A list of the quantities of methyl bromide produced by the producer and exported by the producer and/or by other U.S. companies, to a Party to the Protocol that will be used solely for quarantine and preshipment applications and therefore were not produced expending production or consumption allowances; and

(xv) For quarantine and preshipment applications of methyl bromide in the United States or by a person of another Party, one copy of a certification that the material will be used only for quarantine and preshipment applications in accordance with the definitions in this subpart from each recipient of the material and a list of additional quantities shipped to that same person for the quarter.

(xvi) For critical uses of methyl bromide, producers shall report annually the amount of critical use methyl bromide owned by the reporting entity, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use, as well as quantities held by the reporting entity on behalf of another entity, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use along with the name of the entity on whose behalf the material is held; and

(xvii) A list of the quantities of methyl bromide produced by the producer and exported by the producer and/or by other U.S. companies in that control period, solely to satisfy the critical uses authorized by the Parties for that control period; and

* * * * *

(g) * * *

(1) * * *

(xi) The quantity of imports of used, recycled or reclaimed class I controlled substances;

* * * * *

(xv) Dated records of the quantity of controlled substances imported for an essential use;

* * * * *

(xvii) Dated records of the quantity of methyl bromide imported for quarantine and preshipment applications and quantity sold for quarantine and preshipment applications;

(xviii) Written certifications that quantities of methyl bromide imported solely for quarantine and preshipment applications were purchased by distributors or applicators to be used only for quarantine and preshipment applications in accordance with the definitions in this subpart; and

(xix) Written verifications from a U.S. purchaser that methyl bromide imported solely for quarantine and preshipment applications, if exported, will be exported solely for quarantine and preshipment applications upon receipt of a certification in accordance with the definitions of this Subpart and requirements in paragraph (h) of this section.

(xx) For methyl bromide, dated records such as invoices and order forms, of the quantity of controlled substances imported for critical use, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use, and the quantity sold for critical use, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use, and;

(xxi) Written certifications that quantities of methyl bromide imported for critical use were purchased by distributors, applicators, or approved critical users to be used or sold only for critical use in accordance with the definitions and prohibitions in this subpart. Certifications must be maintained by an importer for a minimum of three years.

(2) Petitioning—Importers of Used, Recycled or Reclaimed Controlled Substances. For each individual shipment over 5 pounds of a used controlled substance as defined in §82.3, except for imports intended for destruction and Group II used controlled substances shipped in aircraft halon bottles for hydrostatic testing and imports intended for destruction, 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) Name, commodity code, and quantity in kilograms of the used controlled substance to be imported;

(ii) Name and address of the importer, the importer ID number, and the contact person's name, email address, and phone number;

(iii) Name, address, contact person, email address, and phone number of all previous source facilities from which the used controlled substance was recovered or the government agency storing the controlled substance;

(iv) A detailed description of the previous use of the controlled substance at each source facility and a best estimate of when the specific controlled substance was put into the equipment at each source facility, and, when possible, documents indicating the date the material was put into the equipment; or an official letter from the exporting country that the controlled substance is used;

* * * * *

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

* * * * *

(viii) A description of the intended use of the used controlled substance, and, when possible, the name, address, contact person, email address, and phone number of the ultimate purchaser in the United States;

(ix) Name, address, contact person, email address, and phone number of the U.S. reclamation facility, where applicable;

(x) If someone at the source facility recovered the controlled substance from the equipment, the name, email address, and phone number of that person;

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

(xii) An English translation of the export license, or application for 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, and quantity authorized for export in kilograms on the export license(s);

(xiii) If the imported used controlled substance is intended to be sold as a refrigerant in the U.S., the name, address, and email address of the EPA-certified U.S. reclaimer who will bring the material to the standard required under section 608 (§82.152(g)) of the CAA, if not already reclaimed to those specifications.

* * * * *

(xv) If the used controlled substance is stored by a foreign national government in a bank of used class I controlled substances, or by a privately-operated bank authorized by the foreign national government to collect and store class I controlled substances, an official letter from the

appropriate government agency in that country where the material is stored may be provided in lieu of the information required in subparagraphs (iii) through (vi) of this paragraph.

(3) * * *

(i) * * *

(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 §82.13(g)(2) or other information that may be requested during the review of the petition necessary to verify that the controlled substance is used;

* * * * *

(vii) A person receiving the non-objection notice is permitted to import the individual shipment only within one year of the date stamped on the non-objection notice.

* * * * *

(4) * * *

(xv) The amount of methyl bromide sold or transferred during the quarter to a person other than the importer solely for quarantine and preshipment applications;

(xvi) A list of the quantities of methyl bromide exported by the importer and or by other U.S. companies, to a Party to the Protocol that will be used solely for quarantine and preshipment applications and therefore were not imported expending consumption allowances; and

(xvii) For quarantine and preshipment applications of methyl bromide in the United States or by a person of another Party, one copy of a certification that the material will be used only for quarantine and preshipment applications in accordance with the definitions in this

subpart from each recipient of the material and a list of additional quantities shipped to that same person for the quarter.

(xviii) For critical uses of methyl bromide, importers shall report annually the amount of critical use methyl bromide owned by the reporting entity, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use, as well as quantities held by the reporting entity on behalf of another entity, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use along with the name of the entity on whose behalf the material is held.

* * * * *

(5) Certification of Intent to Import for Destruction. For each individual shipment of a class I controlled substance imported with the intent to destroy that substance, an importer must submit electronically to the Administrator, at least 30 working days before the shipment is to leave the foreign port of export, the following information:

(i) Name, commodity code, and quantity in kilograms of each controlled substance to be imported,

(ii) Name and address of the importer, the importer ID number, and the contact person's name, email address, and phone number;

(iii) 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 the certification of intent to import for destruction 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 U.S. entry of the individual shipment;

(iv) Name, address, contact person, email address, and phone number of the responsible party at the destruction facility;

(v) An English translation of an export license, or application for an export license, from the appropriate government agency in the country of export, and quantity authorized for export in kilograms on the export license(s);

(vi) A certification of accuracy of the information submitted in the certification.

(6) For each individual shipment of a class I controlled substance imported with the intent to destroy that substance, an importer must submit to the Administrator a copy of the destruction verification within 30 days after destruction of the controlled substance(s).

(7) (i) Starting on the first working day following receipt by the Administrator of a certification of intent to import a class II controlled substance for destruction, the Administrator will initiate a review of the information submitted under paragraph (c)(6) of this section and take action within 30 working days to issue either an objection-notice or a non-objection notice for the individual shipment to the person who submitted the certification of intent to import the class II controlled substance for destruction.

(ii) The Administrator may issue an objection notice if the petition lacks or appears to lack any of the information required under this subparagraph or for the reasons listed in §82.24(c)(4)(i)(B)-(E).

(iii) In cases where the Administrator does not object to the petition, the Administrator will issue a non-objection notice.

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

(v) 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 controlled substance is not imported into the U.S.; and

(C) Take appropriate enforcement actions.

(8) A person receiving the non-objection notice is permitted to import the individual shipment only within one year of the date stamped on the non-objection notice.

(9) A person receiving a non-objection notice from the Administrator for a certification of intent to import class I controlled substances for destruction must maintain the following records:

(i) A copy of the certificate of intent to import for destruction;

(ii) The EPA non-objection notice;

(iii) A copy of the export license or export license application;

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

(v) The date, amount, and type of controlled substance sent for destruction, per shipment;

(vi) An invoice from the destruction facility verifying the shipment was received; and

(vii) A copy of the destruction verification from the destruction facility.

(h) * * *

(1) For any exports of class I controlled substances (except methyl bromide) not reported under paragraph (f)(3) of this section (reporting for producers of controlled substances), the

exporter who exported a class I controlled substance (except methyl bromide) must submit to the Administrator the following information within 45 days after the end of the control period in which the unreported exports left the United States:

(i) * * *

(ii) The exporter's Employer Identification Number;

(iii) The type and quantity of each controlled substance exported including the quantity of controlled substance that is used, recycled or reclaimed.

* * * * *

(2) For any exports of methyl bromide not reported under paragraph (f)(3) of this section (reporting for producers of controlled substances), the exporter who exported methyl bromide must submit to the Administrator the following information within 45 days after the end of each quarter in which the unreported exports left the United States:

(i) * * *

(ii) The exporter's Employer Identification Number;

(iii) The quantity of methyl bromide exported by use (transformation, destruction, critical use, or quarantine and preshipment);

(iv) The date on which, and the port from which, the methyl bromide was exported from the United States or its territories;

(v) The country to which the methyl bromide was exported;

* * * * *

(viii) The invoice or sales agreement containing language similar to the Internal Revenue Service Certificate that the purchaser or recipient of imported methyl bromide intends to transform those substances, the destruction verifications (as in paragraph (k) of this section)

showing that the purchaser or recipient intends to destroy the controlled substances, or the certification that the purchaser or recipient and the eventual applicator will only use the material for quarantine and preshipment applications in accordance with the definitions in this subpart.

* * * * *

(v) Any distributor of laboratory supplies who purchased controlled substances under the global essential laboratory and analytical use exemption must submit quarterly the quantity of each controlled substance purchased by each laboratory customer or distributor whose certification was previously provided to the distributor pursuant to paragraphs (w) of this section, the contact information for the source company from which material was purchased, and the laboratories to whom the material is sold.

(w) * * *

(2) The name, email address, and phone number of a contact person for the laboratory customer;

* * * * *

(y) Every distributor of methyl bromide who purchases or receives a quantity produced or imported for quarantine or preshipment applications under the exemptions in this subpart must comply with the following recordkeeping and reporting requirements:

(1) Every distributor of quarantine and preshipment methyl bromide must certify to the producer, importer, or distributor from whom they purchased or received the controlled substance that quantities purchased or received will be sold only for quarantine applications or preshipment applications in accordance with the definitions in this subpart.

(2) Every distributor of quarantine and preshipment methyl bromide must receive from an applicator, exporter, or distributor to whom they sell or deliver the controlled substance a

certification, prior to delivery, stating that the quantity will be used or sold solely for quarantine applications or preshipment applications in accordance with definitions in this subpart.

(3) Every distributor of quarantine and preshipment methyl bromide must maintain the certifications as records for 3 years.

(4) Every distributor of quarantine and preshipment methyl bromide must report to the Administrator within 45 days after the end of each quarter, the total quantity delivered to applicators or end users for quarantine applications and preshipment applications in accordance with definitions in this Subpart.

(z) Every applicator of methyl bromide who purchases or receives a quantity produced or imported solely for quarantine or preshipment applications under the exemptions in this subpart must comply with the following recordkeeping and reporting requirements:

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

(2) Reporting—Applicators. Every applicator who purchases or receives methyl bromide that was produced or imported for quarantine and preshipment applications under the exemptions in this subpart shall provide the distributor of the methyl bromide, prior to shipment, with a certification that the methyl bromide will be used only for quarantine applications or preshipment applications as defined in this subpart.

(aa) Every commodity owner, shipper or their agent requesting an applicator to use methyl bromide that was produced or imported solely for quarantine and preshipment

applications under the exemptions of this subpart must maintain a record for 3 years, for each request, certifying knowledge of the requirements associated with the exemption for quarantine and preshipment applications in this subpart and citing the requirement that justifies its use. The record must include the following statement: "I certify knowledge of the requirements associated with the exempted quarantine and preshipment applications published in 40 CFR part 82, including the requirement that this letter cite the treatments or official controls for quarantine applications or the official requirements for preshipment requirements."

* * * * *

8. Add §82.14 to read as follows:

§82.14 Process for electronic reporting.

(a) Submissions of reports that are available to be submitted through the Central Data Exchange, import petitions, and certifications of intent to import ODS for destruction and any related supporting documents must be submitted electronically to EPA via the Central Data Exchange.

(b) You can register and access the Central Data Exchange as follows:

(1) Go to EPA's Central Data Exchange website at https://cdx.epa.gov and follow the links for the submission of ozone-depleting substances.

(2) Call EPA's Central Data Exchange Help Desk at 1-888-890-1995.

(3) E-mail the EPA's Central Data Exchange Help Desk at HelpDesk@epacdx.net.

9. Amend §82.15 by:

a. Redesignating paragraphs (g)(5) and (g)(6) as (g)(6) and (g)(7), respectively; and

b. Adding paragraphs (b)(3), (g)(5) and (g)(8).

The additions read as follows:

§82.15 Prohibitions for class II controlled substances.

* * * * *

(b) * * *

(3) Effective [**date 30 days after effective date of final rule**], no person may import for purposes of destruction, at any time in any control period, a class II controlled substance for which EPA has apportioned baseline production and consumption allowances, without having submitted a certification of intent to import for destruction to the Administrator and received a non-objection notice in accordance with §82.24(c)(6). A person issued a non-objection notice for the import of an individual shipment of class II controlled substances for destruction may not transfer or confer the right to import, and may not import any more than the exact quantity (in kilograms) of the class II controlled substance stated in the non-objection notice. For imports intended to be destroyed in the U.S., a person issued a non-objection notice must destroy the controlled substance in the year cited in the non-objection letter, may not transfer or confer the right to import, and may not import any more than the exact quantity (in kilograms) of the class II controlled substance stated in the non-objection notice. Every kilogram of import of class II controlled substance in excess of the quantity stated in the non-objection notice issued by the Administrator in accordance with §82.24(c)(6) constitutes a separate violation of this subpart.

* * * * *

(g) * * *

(5) (i) Effective January 1, 2020, no person may introduce into interstate commerce or use HCFC-123 or HCFC-124 (unless used, recovered and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction; for use as a refrigerant in equipment manufactured before January 1, 2020; for use as a fire suppression streaming agent

listed as acceptable for use or acceptable subject to narrowed use limits for nonresidential applications in accordance with the regulations at subpart G of this part to the extent permitted under paragraph (ii) of this subsection; for export to Article 5 Parties under §82.18(a); as a transshipment or heel; or for exemptions permitted under paragraph (f) of this section.

(ii) HCFC-123 that was produced or imported after January 1, 2020 may be used as a fire suppression streaming agent only to service equipment manufactured before January 1, 2020. HCFC-123 that was produced or imported prior to January 1, 2020 (or used, recovered and recycled) may be used as a fire suppression streaming agent in equipment manufactured before or after January 1, 2020.

(iii) Notwithstanding the prohibition on use in paragraph (g)(5)(i) of this section, the use of HCFC-123 as a refrigerant in equipment manufactured between January 1, 2020 and December 31, 2020 is permitted if the conditions of this paragraph are met. The HCFC-123 must be in the possession of an entity that will complete the manufacture of the appliance and imported prior to January 1, 2020. The appliance components must be ready for shipment to a construction location prior to **July 24, 2019** and be specified in a building permit or a contract dated before **July 24, 2019** for use on a particular project. All HCFC-123 used to service such appliances on or after January 1, 2021 must be used, recovered, or recycled/reclaimed.

*****

(8) Effective **[DATE 30 DAYS AFTER EFFECTIVE DATE OF FINAL RULE]**, no person may sell or distribute, or offer for sale or distribution, any class II substance that they know, or have reason to know, was imported in violation of this section, except for such actions needed to re-export the controlled substance. Every kilogram of a controlled substance imported

in contravention of this paragraph that is sold or distributed, or offered for sale or distribution, constitutes a separate violation of this subpart.

10. Amend §82.16 by revising the tables in paragraph (a) and revising paragraph (e).

§ 82.16 Phaseout schedule of class II controlled substances.

(a) *Calendar-year Allowances.* (1) In each control period as indicated in the following tables, each person is granted the specified percentage of baseline production allowances and baseline consumption allowances for the specified class II controlled substances apportioned under §82.17 and §82.19:

TABLE 1 TO PARAGRAPH (a) CALENDAR-YEAR HCFC PRODUCTION ALLOWANCES

Control Period	Percent of HCFC-141b	Percent of HCFC-22	Percent of HCFC-142b	Percent of HCFC-123	Percent of HCFC-124	Percent of HCFC-225ca	Percent of HCFC-225cb
2003	0	100	100	-	-	-	-
2004	0	100	100	-	-	-	-
2005	0	100	100	-	-	-	-
2006	0	100	100	-	-	-	-
2007	0	100	100	-	-	-	-
2008	0	100	100	-	-	-	-
2009	0	100	100	-	-	-	-
2010	0	41.9	0.47	0	125	125	125
2011	0	32	4.9	0	125	125	125
2012	0	17.7	4.9	0	125	125	125
2013	0	30.1	4.9	0	125	125	125
2014	0	26.1	4.9	0	125	125	125
2015	0	21.7	0.37	0	5	0	0
2016	0	21.7	0.32	0	5	0	0
2017	0	21.7	0.26	0	5	0	0
2018	0	21.7	0.21	0	5	0	0
2019	0	21.7	0.16	0	5	0	0
2020	0	0	0	0	8	0	0
2021	0	0	0	0	8	0	0
2022	0	0	0	0	8	0	0
2023	0	0	0	0	7	0	0
2024	0	0	0	0	6	0	0

2025	0	0	0	0	5	0	0
2026	0	0	0	0	4	0	0
2027	0	0	0	0	3	0	0
2028	0	0	0	0	2	0	0
2029	0	0	0	0	1	0	0
2030	0	0	0	0	0	0	0

TABLE 2 TO PARAGRAPH (a) CALENDAR-YEAR HCFC CONSUMPTION ALLOWANCES

Control Period	Percent of HCFC-141b	Percent of HCFC-22	Percent of HCFC-142b	Percent of HCFC-123	Percent of HCFC-124	Percent of HCFC-225ca	Percent of HCFC-225cb
2003	0	100	100	-	-	-	-
2004	0	100	100	-	-	-	-
2005	0	100	100	-	-	-	-
2006	0	100	100	-	-	-	-
2007	0	100	100	-	-	-	-
2008	0	100	100	-	-	-	-
2009	0	100	100	-	-	-	-
2010	0	41.9	0.47	125	125	125	125
2011	0	32	4.9	125	125	125	125
2012	0	17.7	4.9	125	125	125	125
2013	0	18	4.9	125	125	125	125
2014	0	14.2	4.9	125	125	125	125
2015	0	7	1.7	100	8.3	0	0
2016	0	5.6	1.5	100	8.3	0	0
2017	0	4.2	1.2	100	8.3	0	0
2018	0	2.8	1	100	8.3	0	0
2019	0	1.4	0.7	100	8.3	0	0
2020	0	0	0	32.3	8	0	0
2021	0	0	0	32.3	8	0	0
2022	0	0	0	32.3	8	0	0
2023	0	0	0	28	7	0	0
2024	0	0	0	24	6	0	0
2025	0	0	0	20	5	0	0
2026	0	0	0	16	4	0	0

2027	0	0	0	12	3	0	0
2028	0	0	0	8	2	0	0
2029	0	0	0	4	1	0	0
2030	0	0	0	0	0	0	0

* * * * *

(e)(1) 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 exemptions permitted in §82.15(f). 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 exemptions permitted in §82.15(f).

(2) Effective January 1, 2020, no person may produce HCFC-123 for any purpose other than for use in a process resulting in its transformation or its 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 exemptions permitted in §82.15(f). Effective January 1, 2020, no person may import HCFC-123 for any purpose other than for use in a process resulting in its transformation or its destruction, for use as a refrigerant in equipment manufactured before January 1, 2020, for use as a fire suppression streaming agent in equipment manufactured before January 1, 2020 listed as acceptable for use or acceptable subject to narrowed use limits for nonresidential applications, or for exemptions permitted in §82.15(f).

* * * * *

11. Amend §82.23 by

a. Removing and reserving paragraph (a)(i)(F); and

b. Adding paragraphs (b)(1)(i) and (ii).

The addition reads as follows:

§82.23 Transfers of allowances of class II controlled substances.

* * * * *

(b) * * *

(1) * * *

(i) Effective January 1, 2020, a person (transferor) may only convert allowances for one class II controlled substance for which EPA has issued allowances under §82.16 to another class II controlled substance for which EPA has issued allowances under §82.16.

(ii) [Reserved].

* * * * *

12. Amend §82.24 by:

a. Revising paragraphs (a)(1), (b)(2)(iv), (c)(3)(i)-(iii), (vi), (viii)-(xiii), (c)(4)(i)(A), (c)(4)(vii), and (d)(1) introductory text;

b. Removing and reserving paragraphs (b)(1)(iv), (ix), and (xi), (b)(2)(xii) and (xiv), (c)(1)(vi) and (xi), (c)(2)(xvi), (d)(2), and (g); and

c. Adding paragraphs (c)(6)-(10).

The revisions and addition read as follows:

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

(a) * * *

(1) Reports required by this section must be submitted to the Administrator within 45 days of the end of the applicable reporting period, unless otherwise specified. Starting **[date 30 days after effective date of final rule]**, reports that are available for submission through the Central Data Exchange must be submitted electronically through that tool.

* * * * *

(b) * * *

(2) * * *

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

* * * * *

(c) * * *

(3) * * *

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

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

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

* * * * *

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

* * * * *

(viii) A description of the intended use of the used class II controlled substance, and, when possible, the name, address, contact person, email address, and phone number of the ultimate purchaser in the United States;

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

(x) If someone at the source facility recovered the class II controlled substance from the equipment, the name, email address, and phone number of that person;

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

(xii) An English translation of an export license, or application for 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, and quantity authorized for export in kilograms on the export license(s);

(xiii) If the imported used class II controlled substance is intended to be sold as a refrigerant in the U.S., the name, address, and email address of the EPA-certified 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.

(4) * * *

(i) * * *

(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 or other information that may be requested during the review of the petition necessary to verify that the controlled substance is used;

* * * * *

(vii) A person receiving the non-objection notice is permitted to import the individual shipment only within one year of the date stamped on the non-objection notice.

* * * * *

(6) Certification of Intent to Import for Destruction. For each individual shipment of a class II controlled substance imported with the intent to destroy that substance, an importer must submit electronically to the Administrator, at least 30 working days before the shipment is to leave the foreign port of export, the following information:

(i) Name, commodity code, and quantity in kilograms of each controlled substance to be imported,

(ii) Name and address of the importer, the importer ID number, and the contact person's name, email address, and phone number;

(iii) 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 the certification of intent to import for destruction 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 U.S. entry of the individual shipment;

(iv) Name, address, contact person, email address, and phone number of the responsible party at the destruction facility;

(v) An English translation of an export license, or application for an export license, from the appropriate government agency in the country of export, and quantity authorized for export in kilograms on the export license(s);

(vi) A certification of accuracy of the information submitted in the certification.

(7) For each individual shipment of a class II controlled substance imported with the intent to destroy that substance, an importer must submit to the Administrator a copy of the destruction verification within 30 days after destruction of the controlled substance(s).

(8) (i) Starting on the first working day following receipt by the Administrator of a certification of intent to import a class II controlled substance for destruction, the Administrator will initiate a review of the information submitted under paragraph (c)(6) of this section and take action within 30 working days to issue either an objection-notice or a non-objection notice for the individual shipment to the person who submitted the certification of intent to import the class II controlled substance for destruction.

(ii) The Administrator may issue an objection notice if the petition lacks or appears to lack any of the information required under this subparagraph or for the reasons listed in §82.24(c)(4)(i)(B)-(E).

(iii) In cases where the Administrator does not object to the petition, the Administrator will issue a non-objection notice.

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

(v) 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 controlled substance is not imported into the U.S.; and

(C) Take appropriate enforcement actions.

(9) A person receiving the non-objection notice is permitted to import the individual shipment only within one year of the date stamped on the non-objection notice.

(10) A person receiving a non-objection notice from the Administrator for a certification of intent to import class II controlled substances for destruction must maintain the following records:

(i) A copy of the certificate of intent to import for destruction;

(ii) The EPA non-objection notice;

(iii) A copy of the export license or export license application;

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

(v) The date, amount, and type of controlled substance sent for destruction, per shipment;

(vi) An invoice from the destruction facility verifying the shipment was received; and

(vii) A copy of the destruction verification from the destruction facility.

(d) * * *

(1) Reporting—Exporters. For any exports of class II controlled substances not reported under paragraph (b)(2) of this section (reporting for producers of class II controlled substances), each exporter who exported a class II controlled substance must submit to the Administrator the following information within 30 days after the end of each quarter in which the unreported exports left the U.S.:

* * * * *

13. Revise Appendix K to read as follows:

Appendix K to Subpart A of Part 82—Commodity Codes from the Harmonized Tariff Schedule for Controlled Substances and Used Controlled Substances

Description of commodity or chemical	Commodity code from harmonized tariff schedule
Class II:	
HCFC-22 (Chlorodifluoromethane)	2903.71.0000
HCFC-123 (Dichlorotrifluoroethane)	2903.72.0020
HCFC-124 (Monochlorotetrafluoroethane)	2903.79.1000
HCFC-141b (Dichlorofluoroethane)	2903.73.0000
HCFC-142b (Chlorodifluoroethane)	2903.74.0000
HCFC-225ca, HCFC-225cb (Dichloropentafluoropropanes)	2903.75.0000
HCFC-21, HCFC-31, HCFC-133, and other HCFCs	2903.79.9070
HCFC Mixtures (R-401A, R-402A, etc.)	3824.74.0000
Class I:	
CFC-11 (Trichlorofluoromethane)	2903.77.0010
CFC-12 (Dichlorodifluoromethane)	2903.77.0050
CFC-113 (Trichlorotrifluoroethane)	2903.77.0020
CFC-114 (Dichlorotetrafluoroethane)	2903.77.0030
CFC-115 (Monochloropentafluoroethane)	2903.77.0040
CFC-13, CFC-111, CFC-112, CFC-211, CFC-212, CFC-213, CFC-214, CFC-215, CFC-216, CFC-217, and other CFCs	2903.77.0080
CFC Mixtures (R-500, R-502, etc.)	3824.71.0100
Carbon Tetrachloride	2903.14.0000
Halon 1301 (Bromotrifluoromethane)	2903.76.0010
Halon, other	2903.76.0050
Methyl Bromide	2903.39.1520
Methyl Chloroform	2903.19.6010

14. Amend §82.62 by adding, in alphabetical order, the definition for "polyurethane foam systems" to read as follows:

§82.62 Definitions.

* * * * *

Polyurethane Foam System means an item consisting of two transfer pumps that deliver ingredients (polyisocyanate or isocyanate from one side and a mixture including the blowing agent, catalysts, flame retardants, and/or stabilizers from the other side) to a metering/mixing device which allows the components to be delivered in the appropriate proportions.

* * * * *

15. Amend §82.66 by:

a. Revising paragraphs (d)(2)(vi) and (e); and

b. Adding paragraph (f).

The revisions and addition read as follows:

§82.66 Nonessential Class I products and exceptions.

* * * * *

(d) ***

(2) ***

(vi) Document preservation sprays which contain CFC-113 as a solvent, but which contain no other CFCs, and/or document preservation sprays which contain CFC-12 as a propellant, but which contain no other CFCs, and which are used solely on thick books, books with coated or dense paper and tightly bound documents;

(e) Any air-conditioning or refrigeration appliance as defined in CAA 601(l) that contains a Class I substance used as a refrigerant; and

(f) Any polyurethane foam system that contains any CFC.

16. Amend §82.104 by revising paragraphs (c) and (h) introductory text to read as follows:

§82.104 Definitions.

* * * * *

(c) *Completely destroy* means to cause the destruction of a controlled substance by one of the destruction processes approved by the Parties and listed in §82.3 of subpart A at a demonstrable destruction efficiency of 98 percent or more or a greater destruction efficiency if required under other applicable federal regulations.

* * * * *

(h) *Destruction* means the expiration of a controlled substance to the destruction efficiency actually achieved, unless considered completely destroyed as defined in this section. Such destruction might result in a commercially useful end product but such usefulness would be secondary to the act of destruction. Destruction must be achieved using one of the controlled processes approved by the Parties and listed in the definition of *destruction* in §82.3 of subpart A.

* * * * *

17. Amend §82.106 by revising paragraph (a) to read as follows:

§82.106 Warning statement requirements.

(a) Effective January 1, 2020, each container of fire suppression agent containing HCFC-123 produced or imported after that date shall bear the following warning statement, meeting the requirements of this subpart for placement and form:

WARNING: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere. Do not use to service equipment manufactured on or after January 1, 2020.

* * * * *

18. Amend §82.270 by revising paragraph (e) introductory text to read as follows:

§82.270 Prohibitions.

* * * * *

(e) Effective April 6, 1998, no person shall dispose of halon except by sending it for recycling to a recycler operating in accordance with NFPA 10 and NFPA 12A standards, or by

arranging for its destruction using one of the controlled processes approved by the Parties and listed in the definition of *destruction* in §82.3 of subpart A.

* * * * *

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