ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7428–6]

RIN 2060–AH67

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing an allowance system to control the U.S. consumption and production of ozone-depleting substances (ODSs)known as hydrochlorofluorocarbons (HCFCs). While much less destructive to the stratospheric ozone layer than chlorofluorocarbons (CFCs), HCFCs do contribute to ozone depletion and alternatives are generally available. The HCFC allowance system is part of EPA's program to reduce the emissions of ODSs to protect the stratospheric ozone layer. Protection of the stratospheric ozone layer helps reduce rates of skin cancer and cataracts. The U.S. is obligated under the Montreal Protocol on Substances that Deplete the Ozone Layer to limit HCFC consumption to a specific level and to reduce it in a step-wise fashion beginning January 1, 2004. The U.S. has also agreed to limit production to a specific level beginning January 1, 2004. This action also includes a petition process for exemptions to the January 1, 2003, phaseout of HCFC–141b.

EFFECTIVE DATE: January 21, 2003.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–98–33 at the Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW, Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202)566–1742, Fax: (202)566–1741.

FOR FURTHER INFORMATION CONTACT: Vera Au, EPA, Global Programs Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 564–2216.

SUPPLEMENTARY INFORMATION: Under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol), the U.S. and other industrialized countries that are Parties to the Protocol have agreed to limit production and consumption of hydrochlorofluorocarbons (HCFCs) and to phase out consumption in a step-wise fashion over time, culminating in a complete phaseout in 2030. Title VI of the Clean Air Act (CAA) authorizes the U.S. EPA to promulgate regulations to manage the consumption and production of HCFCs until the total phaseout in 2030. In 1992, a graduated consumption phaseout was established under the Protocol for industrialized countries and in 1993 the EPA established a chemical-by-chemical phaseout to implement the graduated consumption phaseout (58 FR 65018, December 10, 1993). The consumption cap became effective in 1996 and consumption in the U.S. was about 15% percent below the cap for many years. In 1998 and 1999, consumption rose to levels that approached the cap so options for an allowance system were offered for comment with the publication of the Advance Notice of Proposed Rulemaking on April 5, 1999 (64 FR 16373). The Notice of Proposed Rulemaking was published on July 20, 2001, (66 FR 38064) and a public hearing was held on August 27, 2001, for comments on the proposed rule.

Abbreviations and Acronyms Used in This Document

Act—Clean Air Act Amendments of 1990
ANPRM—Advance Notice of Proposed Rulemaking
Article 2 countries—industrialized countries
Article 5 countries—developing countries
CAA—Clean Air Act Amendments of 1990
cap—limitation in level of production or consumption
CFC—chlorofluorocarbon
CFR—Code of Federal Regulations
EPA—Environmental Protection Agency
FDA—Food and Drug Administration
FR—Federal Register
HCFC—hydrochlorofluorocarbon
NASA—National Aeronautics and Space Administration
NODA—Notice of Data Availability
NPRM—Notice of Proposed Rulemaking
ODP—ozone depletion potential (40 CFR part 82)
ODS—ozone-depleting substance
Party—Signatory country to the *Montreal Protocol on Substances that Deplete the Ozone Layer*
Protocol—*Montreal Protocol on Substances that Deplete the Ozone Layer*
SBREFA—Small Business Regulatory Enforcement Fairness Act
SNAP—Significant New Alternatives Policy
UNEP—United Nations Environment Programme
U.S.—United States

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I. Regulated Entities

The HCFC allowance allocation system will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers
Chlorofluorocarbon gas importers	325120	2869	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas exporters	325120	2869	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters
Polystyrene foam product manufacturing	326140	3086	Plastics foam Products (Polystyrene Foam Products)
Urethane and other foam product (except polystyrene) manufacturing.	326150	3086	Insulation and cushioning, foam plastics (except polystyrene) manufacturing

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

II. Background

A. How Do the Montreal Protocol on Substances That Deplete the Ozone Layer and the U.S. Phase Out HCFCs?

In 1990, the Parties to the Protocol identified HCFCs as transitional substitutes for CFCs and other more destructive ODSs (ozone-depleting substances). In 1992, the Parties created a detailed phaseout schedule for HCFCs, with a cap on consumption for Article 2 (industrialized) countries like the U.S. The Protocol defines consumption as production plus imports minus exports. The consumption cap is derived from the formula of 2.8 percent of the Party's CFC consumption in 1989, plus the Party's consumption of HCFCs in 1989. Based on this formula, the consumption cap for the U.S. is 15,240 ODP-weighted metric tonnes, effective January 1, 1996.

The Parties created a schedule with graduated reductions and the eventual phaseout of the consumption of HCFCs. The schedule calls for a 35 percent reduction of the cap in 2004, followed by a 65 percent reduction in 2010, a 90 percent reduction in 2015, a 99.5 percent reduction in 2020, and a total phaseout in 2030. The U.S. must comply with this phaseout schedule under the Protocol.

In 1992, EPA was petitioned by environmental groups and industry to implement the required phaseout by eliminating the most ozone-depleting HCFCs first. Based on the available data at the time, EPA believed that the U.S. could meet, and possibly exceed, the required Protocol reductions through the chemical-by-chemical phaseout. In 1993, as authorized by Section 606 of the Clean Air Act Amendments of 1990 (CAA), the U.S. established a phaseout schedule that will eliminate HCFC–141b, HCFC–22, and HCFC–142b first (58 FR 65018, December 10, 1993; 58 FR 15014, March 18, 1993).

In 1999, the Parties agreed to a cap on HCFC production for industrialized countries, effective January 1, 2004. This cap was derived from the average of the Party's consumption cap (2.8 percent of the Party's CFC consumption in 1989, plus the Party's HCFC consumption in 1989) and the result of the same formula for production (2.8 percent of the Party's CFC production in 1989, plus the Party's HCFC production in 1989). This formula results in a U.S. production cap of 15,537 ODP-weighted metric tonnes. As authorized by Section 606 of the CAA, EPA is adopting provisions in today's rule that are consistent with that production cap.

B. What Sections of the Clean Air Act Apply to This Rulemaking?

Five sections of the CAA apply to this rulemaking. Section 602 requires that EPA publish a list of class II controlled substances. This list appears in 40 CFR part 82, subpart A, Appendix B. Since publication of the initial list, no new substances have been added to the list. Section 602 also requires that EPA assign ozone-depleting potentials (ODPs) to all class II controlled substances. Appendix B to part 82, subpart A in the regulatory text of this document lists class II controlled substances and their corresponding ODPs as currently specified by the Protocol.

HCFC reporting requirements mandated in Section 603 were in 40 CFR 82.13(n) and (o) but have been removed. Recordkeeping requirements and amended reporting requirements have been placed instead in 40 CFR 82.24.

Section 605 of the CAA requires EPA to promulgate regulations to phase out the production and consumption and restrict the use of HCFCs in accordance with the schedule set forth in that

section and subject to any acceleration as authorized by Section 606.

Section 606 allows for acceleration of the phaseout of ODSs based on a decision by EPA or to conform to any acceleration under the Protocol.

Section 607 of the Act requires EPA to permit the transfer of any class II allowances on an ODP-weighted basis with an offset. The transfer plus the offset must result in greater total reduction in production in that year than would otherwise occur, to provide an environmental benefit.

Section 616 allows the U.S. to transfer allowances to another Party under certain conditions. Although the language in paragraph 5 bis of Article 2 of the Protocol restricts the U.S. from trading away HCFC consumption allowances to another Party because of the U.S. per capita consumption of CFCs in 1989, it is possible for the U.S. to trade production allowances.

III. Discussion of Comments on the July 20, 2001, Notice of Proposed Rulemaking (NPRM)

EPA published an NPRM on July 20, 2001, proposing an allowance allocation system and a petition process for HCFC–141b (66 FR 38064). Thirty-three comments were filed in Docket A–98–33 and fourteen of the forty attendees spoke at the public hearing held on August 27, 2001, in Washington, DC. The comments that arrived after the close of the comment periods were filed in the docket. Five producers and three importers were among the commenters; at times the producers who are also importers commented as members of the second group. Sixteen of the commenters were either distributors or users of HCFCs and four commenters were trade associations representing producers, importers, users, or a combination of the three. Four of the companies had more than one representative send in comments.

For a more detailed discussion of the options for an allowance allocation system that led to the proposal, refer to the ANPRM (Advance Notice of Proposed Rulemaking) published April 5, 1999 (64 FR 16373).

A. Will Production and Consumption Allowances Be Available?

EPA created a unit of measure called an allowance to control production and consumption of class I substances and made it equal to one kilogram of the ODS. An allowance represented the marketable rights and privileges granted to a company to produce or import a specific quantity of the specific substance. There were two types of allowances: production allowances and consumption allowances.

In the allowance system for class I ODSs, a company was required to expend both production and consumption allowances to be able to produce. A company was required to expend consumption allowances to be able to import. Consumption allowances were refunded or returned to the exporting company for future use in the same calendar year after EPA received proper documentation reflecting an export.

EPA proposed to use both production and consumption allowances in the HCFC allowance system. EPA proposed requiring a company to expend both consumption and production allowances to be able to produce HCFCs. To be able to import, EPA proposed requiring a company to expend consumption allowances. EPA proposed that after submitting the proper documentation verifying an export, the company would be refunded consumption allowances. Besides seeking comment on the inclusion of production and consumption allowances in an HCFC allowance system, EPA also requested comment on the potential value of an allowance. The proposal asked for comment on the potential value of an allowance and whether it would take into account the differing ozone depletion potentials of each HCFC and each HCFC's impending phaseout date.

Only two commenters chose to mention production and/or consumption allowances. One commenter generally supported having production and consumption allowances in the HCFC allowance system. The other commenter was only concerned about production allowances for HCFC–141b.

With today's action, EPA is including consumption and production allowances in the HCFC allowance system for several reasons. The consumption cap that is already in place and the production cap that will be effective in 2004 necessitate the allocation of both types of allowances. Because many companies receiving allowances are familiar with the class I system of allowances, EPA believes their experience with the class I system will simplify the management of the class II allowance system. EPA is also requiring a company to expend both consumption and production allowances to be able to produce. To be able to import, EPA is requiring a company to expend consumption allowances. EPA is requiring a company to submit the proper documentation to EPA to verify an export for the refund of the consumption allowances associated with the quantity of HCFC exported.

B. Will Allowances Be Tracked Chemical-by-Chemical?

As in the class I allowance system, EPA is assigning each allowance a value of one kilogram of a class II controlled substance. To produce or import, companies will expend allowances by kilograms.

EPA proposed instituting a chemical-by-chemical absolute kilogram system for allocating and transferring allowances rather than an ODP-weighted approach. Of the ten commenters who commented on this issue, five were in favor of the ODP-weighted approach and five in favor of the chemical-by-chemical approach. One of the commenters favoring the chemical-by-chemical approach believed that it was the simplest for accounting purposes and would provide EPA with the least amount of recordkeeping. This commenter also believed that it provided less chance of error from a company using the wrong formula to convert ODP weighting between chemicals. Flexibility in trading allowances was an important concern for all the commenters. Three of the commenters supporting the ODP-weighted system felt the chemical-by-chemical system would be acceptable as long as maximum flexibility in trading was retained.

Since the U.S. is implementing the phaseout on a chemical-by-chemical basis as discussed in the proposal, EPA will need to monitor production and consumption of each chemical. As one commenter pointed out, a ''chemical-by-chemical allowance system will promote chemical-by-chemical recordkeeping and reporting.'' A more detailed discussion of the need for a chemical-by-chemical approach is contained in the proposal.

EPA is establishing the chemical-by-chemical absolute kilogram system to allocate and transfer allowances in the HCFC allowance system. The production of one kilogram of HCFC would require the expenditure of one production allowance and one consumption allowance. The import of one kilogram of HCFC would require the expenditure of one consumption allowance.

Part of the flexibility included in the HCFC allowance system in response to the commenters' concern about ease of transferring allowances is EPA's decision not to group HCFCs (Section III.G.1). Class I substances were grouped and transfers were only permitted among class I substances in the same

group. With today's action, allowance holders may trade allowances among HCFCs. The offset EPA has selected to impose on transfers should not be a burden or hinder the flexibility of the system (Section III.G.8).

C. Will Allowances Be Distributed on a One-Time Basis?

EPA proposed allocating HCFC allowances on a one-time basis. This would mean the allocations would remain the same from control period to control period (one calendar year to the next) until each chemical is phased out or until the percentage of baseline allowances is reduced to ensure compliance with the Protocol cap. Only through permanent transfers of allowances would a company's baseline allocation be changed.

Of the eight commenters on this issue, seven were in favor of a one-time allocation. One commenter believed that a one-time distribution of allowances is the simplest allocation method from both the EPA's and the company's perspective. Many of those that favored a one-time allocation expressed a concern that the long-term use of one-time allocations would not adequately reflect future market needs.

One commenter proposed that EPA allocate on a year-by-year or period-by-period basis, with each period covering 2–3 years. EPA believes that both of these methods would create much uncertainty in the industry and require constant readjustment of baselines by EPA and industry. EPA believes that a year-by-year allocation would hamper allowance holders' long-term planning for production or import. EPA also believes that allocating every two or three years would only be a minor improvement over the year-by-year method and create administrative burden for both the Agency and industry. Therefore, EPA is not adopting either of these methods.

One producer noted the critical need for reallocation prior to 2010 for on-going service needs for equipment manufactured prior to December 31, 2009. This commenter favored a one-time allocation of the full 10 percent permitted at least one year prior to the 2010 phaseout date. EPA recognizes the need to determine the allocation level for the 2010 reduction step in HCFC–22 and HCFC–142b allowances and will monitor the market to determine the quantity needed for servicing equipment manufactured before December 31, 2009. EPA intends to achieve this reduction step through notice and comment prior to 2010 and will likely implement the reduction by simply listing a percent of baseline allowances to be granted in Section 82.16 for years after 2009.

EPA proposed distributing baseline allowances for all HCFCs but believes that the continuously developing HCFC market would be hampered by such a distribution. Many commenters favored changing the baseline allocations at some future date to reflect shifts in the market. EPA is therefore distributing baseline HCFC allowances only for HCFC–141b, HCFC–22 and HCFC–142b on a one-time basis. The reductions and phaseout of these three HCFCs are earlier than for the other HCFCs because they are more damaging to the ozone layer. EPA believes that the HCFC market may continue to evolve and that some sectors may switch from the higher ozone-depleting HCFCs, such as HCFC–141b, HCFC–22, and HCFC–142b to the lower ozone-depleting HCFCs, such as HCFC–123, HCFC–124, and HCFC–225ca and HCFC–225cb. EPA believes that the current market proportions of these lower-ODP HCFCs do not reflect the needs of a rapidly expanding market and that distributing allowances for these HCFCs at this time would unnecessarily restrict their supply and impede transitions to less ozone-depleting substances. EPA intends to continue to monitor the market trends as more users transition to less ozone-depleting HCFCs and as more non-ozone-depleting alternatives become available.

D. Will 100 Percent of the U.S. Cap Be Allocated?

EPA proposed allocating 100 percent of historical HCFC activity in the U.S. after determining that the aggregate of each individual company's highest consumption and production would be below the caps.

Thirteen commenters agreed that EPA should allocate at least 99 or 100 percent of the consumption and production caps to maximize the available material to meet the needs of the marketplace. Producers, importers, and users were unanimous in this respect. They believed that allocating less could result in artificial shortages or increase the price of HCFCs. Three of the commenters had no objection to allocating allowances to new entrants or narrow post-phaseout uses of HCFC–141b but felt that the remaining allowances under the cap should be reallocated. They argued that not allocating those allowances would leave a shortfall in the marketplace and place unnecessary pressure on users.

One importer believed that EPA should determine a fair allocation to eligible late entrants and then determine if this method provided an equitable allocation before allocating 100 percent of baseline consumption. This commenter believed that small and disadvantaged businesses did not have the economic resources of the larger multinational companies, especially the producers. According to the commenter, such small businesses would have the ability to continue their business and meet their business plan if they receive an equitable allocation.

1. Consumption Allowances

EPA proposed allocating 100 percent of each company's historical consumption as the baselines for all class II controlled substances and reserving the remaining amount above these aggregate baselines and below the cap for eligible late entrants into the HCFC market and as credits for reductions of substitutes regulated under Title VI that are created as by-product(s) in the manufacture of HCFCs (Section III.M). EPA proposed that new entrants would be small businesses that began importing after the end of 1997 and before April 5, 1999, the date of publication of the ANPRM. EPA believes that such small businesses might not have been aware of the impending rulemaking that would affect their ability to continue in the HCFC market.

Although all commenters indicated a preference for allocating 100 percent of the allowances under the consumption cap, some were willing to grant allowances to late entrants and narrow post-phaseout uses of HCFC–141b. A commenter from the user community of HCFCs had no objection to allocating to new entrants but felt that the remaining allowances after that allocation is completed should be distributed to avoid unnecessary pressure on users. Another commenter from the same community suggested a formula for distributing remaining allowances under the cap after the need for narrow post-phaseout uses of HCFC–141b was satisfied. That same commenter also felt that the amount for narrow post-phaseout uses of HCFC–141b should not exceed 2 to 5 percent. None commented on credits for reductions of substitutes regulated under Title VI that are created as by-product(s) in producing HCFCs. There were also no commenters on the possibility of auctioning off the remaining allowances. Most commenters were in favor of re-allocating the remaining allowances to listed allowance-holders.

With today's action, EPA is allocating up to 100 percent of the U.S. consumption cap by allocating consumption allowances to listed individual companies only for HCFC–

141b, HCFC–22, and HCFC–142b. Included in today's allocation are allowances for a new entrant to the HCFC market in accordance with the proposal. EPA is allocating the full amount of the U.S. consumption cap by distributing allowances on a pro-rata basis to the listed allowance-holders above their highest historical consumption and after the needs of new entrants have been addressed. EPA will not reserve any allowances as credits for reductions of substitutes regulated under Title VI that are created as by-product(s) in producing HCFCs.

EPA will continue to monitor HCFC market trends and consider whether to adjust the allowance allocations through notice and comment rulemaking to ensure the U.S. meets its obligations under the Protocol.

2. Production Allowances

Using the formula agreed to by the Parties in 1999 for calculating the production cap, U.S. production would be frozen at 15,537 metric tonnes through the various phaseout years beginning with 2004. The United States' formal obligation to comply with the cap would begin following Senate ratification of this change to the Protocol and the deposit of the U.S. instrument of ratification with the United Nations. Today's rule avoids any actions that would be inconsistent with this obligation. If the Parties change the current provisions associated with the production cap, EPA will amend its regulations to reflect any changes in U.S. obligations under the Protocol.

Since the aggregate of each company's historical production is below the production cap, EPA proposed allocating 100 percent of each company's historical production level as the baseline for production allowances. One producer who noted that the aggregate of production baselines was well below the production cap proposed using the difference between the aggregate and the cap solely for HCFC–141b because the commenter felt the HCFC–141b sector is clearly under-served versus current market demand. Since EPA anticipates the need to allocate allowances for narrow post-phaseout uses of HCFC–141b, EPA is establishing a petition process for HCFC–141b exemption allowances, as discussed below in Section E. The quantity of HCFC–141b exemption allowances that will be allocated for narrow post-phaseout uses will be determined after review of the petitions.

Nine commenters were concerned about what would happen if a producer chose not to use all of its allowances or decided to permanently discontinue production of an HCFC. Three were in favor of retiring unused allowances. Some of these commenters believed a company that restricted production in order to create a larger market share for an alternative would receive a financial windfall. By discontinuing production, a company could create a larger market share for a higher-priced alternative it preferred to promote. They also felt that granting allowances to a company that had ceased production meant rewarding the company with marketable assets it did not deserve. These commenters were concerned that allowing a company to hold back its allowances could create HCFC shortages and price increases. Six were in favor of reallocating the unused allowances to the remaining allowance holders of that specific HCFC to prevent market shortages or price increases. One commenter also suggested that any unused HCFC–141b production allowances should be reallocated on a pro-rata basis among HCFC–141b allowance-holders rather than among all HCFC allowance-holders.

Since baselines were determined on the basis of the highest historical production for each company in the years 1994 through 1997, EPA believes that allocating to all the companies active in those years will provide a potential supply of HCFCs that exceeds the historical demand but that most accurately reflects the true HCFC market in the United States during that period. Although the Agency proposed allocating each company its highest production during the particular years, resulting in an aggregate U.S. production less than the U.S. cap, with today's action EPA is allocating each company an additional pro-rata amount above their highest historical production which brings the U.S. aggregate allocation up to and equal to the cap. Because allocating allowances up to the cap should ensure a more than adequate supply of HCFCs, EPA is not including provisions in today's action that would require reallocation of production allowances that have not been used. Finally, today's action makes allowances easily tradable with minimal regulatory interference and oversight, thereby encouraging companies to make business decision as they would in an unregulated industry.

Because production will be frozen at a constant level throughout the various phaseout years, EPA is granting export production allowances so that U.S. producers can manufacture and export the phased-out HCFCs following the respective production phaseouts. Beginning January 1, 2004, export production allowances can only be used to produce for export either to: (1) Parties listed in Appendix L who are also listed in Appendix C as having ratified the Beijing Amendments or (2) Parties not listed in Appendix L that are listed in Appendix C as having ratified the Copenhagen Amendments. Prior to January 1, 2004, there is no HCFC trade restriction under the Montreal Protocol. A more detailed discussion concerning the allocation and expending of export production allowances can be found in Section III.H. below.

E. Will There Be HCFC–141b Exemption Allowances for Continuing Needs?

1. Who May Submit a Petition for HCFC–141b Exemption Allowances Beyond January 1, 2003

On July 20, 2001, EPA proposed to provide space vehicle/defense allowances for HCFC–141b to a U.S. agency, department or instrumentality, or related entities involved in space vehicle endeavors. EPA proposed allocating these exemption allowances for extremely narrow needs after a demonstration by petition to EPA that no viable alternative exists for HCFC–141b and that space vehicle or national security viability is at issue if HCFC–141b cannot be used for the specified purpose (66 FR 38064). EPA also proposed to provide allowances to U.S. military departments for extremely narrow needs after a demonstration by petition to EPA that no viable alternative exists for HCFC–141b in narrow defense uses such as cleaning of oxygen equipment and aircraft parts. Based on information provided to the Agency prior to the proposal, through comments on the ANPRM published in the **Federal Register** on April 5, 1999 (64 FR 16373), EPA believed that the National Aeronautics and Space Administration (NASA), the U.S. Air Force, and the U.S. Navy were the only entities with continuing needs for HCFC–141b beyond January 1, 2003.

Because no other sectors submitted comments to the ANPRM identifying technical constraints of transitioning from HCFC–141b to alternatives, the Agency believed that technically feasible alternatives would be available for other uses and did not propose post-phaseout allowances for any other uses of HCFC–141b. However, through comments on the NPRM on July 20, 2001 (66 FR 38064) and as part of a separate action under the Agency's Significant New Alternatives Policy (SNAP) program (65 FR 42653), EPA received information to suggest that certain polyurethane foam applications, such as spray foam used for roof and wall insulation, have technical

constraints that may impede their transition away from HCFC–141b by January 1, 2003. To address these concerns and any unforeseen need for HCFC–141b, two commenters recommended that EPA allow any entity to petition the Agency for HCFC–141b allowances beyond January 1, 2003. EPA could then, on a case-by-case basis, evaluate the petitioner's assertions that no viable alternatives are available to meet the needs of that specific petitioner. With today's action, EPA agrees with comments indicating there may be legitimate needs for limited HCFC–141b production and import beyond January 1, 2003 for non-space/defense applications. Therefore, EPA is expanding the petition process to also include any HCFC–141b formulator who can identify technical constraints in transitioning from HCFC–141b to alternatives. In § 82.3, EPA is defining formulator as an entity that distributes a class II chemical(s) or blends of a class II chemical(s) to persons who use the chemical(s) for a specific application identified in a petition for HCFC 141-b exemption allowances. Further, in order to reflect the expansion of the petition process, EPA is using the term ''HCFC–141b exemption allowance'' in the final rule in lieu of ''space vehicle/defense allowance.'' EPA is adding a definition of ''HCFC–141b exemption allowance'' to § 82.3.

Although EPA is creating a process to allow any HCFC–141b formulator to petition for production or import allowances for HCFC–141b beyond January 1, 2003, the Agency believes that there will be a small number of petitioners with legitimate claims that there are no technically viable and commercially available alternatives to HCFC–141b beyond January 1, 2003. EPA believes that some petitioners in the following categories are most likely to meet the criteria established in today's rulemaking:

- A U.S. agency, department or instrumentality, or related entities involved in space vehicle endeavors;
- U.S. military departments for defense uses such as cleaning of oxygen equipment and aircraft parts; and
- Some formulators that produce polyurethane foam systems for use in insulating spray and pour foam applications.

Each individual petitioner must provide a clear and specific justification for needing access to HCFC–141b production or import beyond January 1, 2003. The Agency will accept and review annual submissions of petitions which will provide up-to-date information on HCFC–141b needs. As described in more detail below, the petitioner must provide adequate documentation to prove that alternatives are not technically viable, and that stockpiled HCFC–141b is not technically or commercially available (for example, taking into consideration undue costs for storage and transportation) to meet their transitional needs.

2. Definition of ''Space Vehicle''

Several commenters asked EPA to define ''space vehicle'' in order to clearly establish what is covered under ''space vehicle endeavors''. These commenters asked the Agency to adopt an existing definition established at 40 CFR 63.742 for the National Emissions Standards for Hazardous Air Pollutants (NESHAP) program. That definition, which was established specifically for the NESHAP for Aerospace Manufacturing and Rework Facilities, is:

> Space vehicle means a man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with tests, transport, and storage, which through contamination can compromise the space vehicle performance.

To establish a consistent definition, EPA agrees with the proposed language and has included it with other definitions in § 82.3 of this final rule. However, because this definition encompasses a broad spectrum of equipment and/or applications, EPA would like to emphasize that HCFC–141b exemption allowances will only be granted for particular uses where HCFC–141b alternatives have not been developed to meet the technical demands of the specific space vehicle application (*e.g.,* foam blowing agent for thermal protection system needs of space vehicles designed to travel beyond the limit of the earth's atmosphere). As discussed in more detail below, the technical constraints of the specific application must be described in detail in the petition.

3. Definition of ''Formulator''

In § 82.3, EPA has also defined ''formulator'' so that it is clear who may petition the Agency for HCFC–141b exemption allowances beyond January 1, 2003. A ''formulator'' is an entity that distributes a class II controlled substance(s) or blends of a class II controlled substance(s) to persons who use the controlled substance(s) for a specific application identified in the formulator's petition for HCFC–141b exemption allowances. In all the HCFC–141b uses EPA is aware of, the formulator is responsible for meeting the testing and code requirements as opposed to the end user. Therefore, in order to reduce the burden of petitioning, EPA designed the process so the end user does not apply for the exemption allowance. The petitioners should either be the intermediary who blends the HCFC–141b and sells it to an end user or in cases where the end use application employs just the HCFC–141b directly, the petitioner should be the chemical manufacturer. Formulators include system houses who produce polyurethane foam systems for use in spray and pour foam applications. A foam system typically consists of two transfer pumps that deliver the ingredients (polyisocyanate from one side and a mixture including the blowing agent 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. Spray foam is a polyurethane or polyisocyanurate cellular plastic which is applied as an atomized liquid or froth directly onto a substrate using commercial spray foam equipment specifically designed for this purpose. This liquid or froth begins to react, rise, and form its cellular structure in place on the substrate in typically less than 1–2 seconds after it is applied. Spray foam is generally used as a thermal insulation, floatation aid or air infiltration barrier.

Spray and pour foam applications account for approximately 20% of the HCFC–141b used in 2001. The spray foam sector of the polyurethane industry is a diverse sector that involves an array of applications including: Roofing, building envelope insulation, agriculture tanks, pipes and vessels, marine and original equipment manufacture (OEM). The pour foam sector of the polyurethane industry is also a diverse sector that involves an array of applications including: Commercial refrigeration (such as walk-in coolers but not consumer refrigeration), doors (such as entry doors or garage doors), refrigerated transport, picnic coolers, vending machines, commercial and residential architectural panels, tank and pipe insulation, marine flotation foams, floral foam, and taxidermy foams.

Because formulators produce polyurethane systems for a wide array of applications, EPA would like to emphasize that HCFC–141b exemption allowances will only be granted where a petitioner can demonstrate that stockpiled quantities of HCFC–141b

produced prior to January 1, 2003 are not or will not be available in sufficient quantities and the HCFC–141b alternatives have not yet been developed to meet specific technical constraints within a particular application (*e.g.,* spray foam for roofing applications).

The definition of ''formulator'' will also cover manufacturers that blend and package pressurized aerosol solvents. Although HCFC–141b is illegal in most non-aerosol solvent applications, it is an acceptable substitute as an aerosol solvent in certain cleaning applications and as a mold release agent. One commenter expressed concern with the timing of the HCFC–141b phaseout and the ability of aerosol solvent packaging companies to transition. EPA believes that sufficient alternatives are available for these applications in general and that it is unlikely that a petitioner would be able to demonstrate that they meet the criteria established under § 82.18 for additional HCFC–141b production/import beyond January 1, 2003. However, EPA believes it is appropriate to keep the petition process open to users of HCFC–141b as an aerosol solvent so that the Agency can address any need that may arise in the aerosol solvent end use. Furthermore, given the definition of formulator, EPA recognizes there might be other niche applications not specifically covered by SNAP that could legitimately petition and qualify for the HCFC–141b exemption. Thus, the petition process is open to other formulators of products containing HCFC–141b, enabling EPA to evaluate and address the various needs across multiple sectors in the most effective manner.

4. Petition Process To Include All HCFC–141b Formulators

EPA believes it is appropriate to open the petition process for all formulators of HCFC–141b. This will provide all HCFC–141b users an equal opportunity to demonstrate their need for an ''HCFC–141b exemption allowance.'' At this time and based on the information the commenters provided, the Agency believes that entities involved in space vehicle endeavors, U.S. military departments that use HCFC–141b for defense-related applications, and formulators within the spray polyurethane foam sector are likely to have the clearest need for ''HCFC–141b exemption allowances.''

In response to the HCFC allowance allocation proposal published on July 20, 2001 (66 FR 38081), EPA received requests for an extension to the HCFC–141b phaseout for the spray and pour polyurethane foam sector. EPA received seven comments on the continued need for HCFC–141b in this sector past the production and import ban effective January 1, 2003. Reasons given for such an extension were: (1) Lack of commercially viable alternatives; (2) minimal environmental impact; (3) the same consideration as the space vehicle/defense entities that requested an exemption; (4) availability of production and consumption allowances under the cap; (5) inability of small businesses to stockpile; and (6) the results of the Caleb Management Services report (discussed below).

EPA also received comments from spray and pour foam manufacturers as part of a separate action under the Agency's Significant New Alternatives Policy (SNAP) program (65 FR 42653). In that action, EPA proposed a variety of restrictions on the use of HCFCs in foam end-uses.

A final rule was published on July 22, 2002, under the SNAP program (67 FR 47703). In response to comments on the proposal, the Agency gathered additional information on certain sectors. The Agency published a Notice of Data Availability (NODA) on May 23, 2001, making the new information pertaining to the foam industry available for public comment (66 FR 28408). The NODA included a review of the challenges facing the polyurethane spray foam industry and other systems house based applications (Air Docket A–2000–18, IV-D–78). This review was conducted by an EPA consultant who was hired to assess HCFC foam sector usage in the U.S. and determine the technical viability of alternatives in those applications (Caleb Management Service report). The Caleb report identified some technical hurdles faced by some current HCFC–141b users in spray and pour foam applications.

As with other insulation, spray foam products must meet product-specific standards which in turn are cross-referenced into the various building codes operated across the country. Technical considerations for final products in the spray and pour foam sectors include thermal performance, durability, density, cell structure (open vs. closed), finish, surface adhesion, and dimensional stability of the foam along with its ability to meet fire codes. Technical challenges that are unique to this sector are a function of the ambient conditions under which spray (and sometimes pour) foam are applied. These ambient conditions result in the potential need for special equipment and a wide array of formulations to meet different ambient conditions and the variety of end-use applications. Extensive field trials are also needed to ensure that foam can be applied properly and that it will maintain its structure and thermal insulation value over time. Re-formulating and testing is typically done by each systems house. Systems houses are relied upon for much of the technical expertise and support provided to on-site contractors and others in the sector.

There are approximately 15–20 U.S. systems houses that formulate spray foam systems for roofing contractors and other customers that number in the thousands. Several systems house companies are large businesses, but many are small businesses. Although EPA believes that alternatives to HCFC–141b are currently or potentially available for spray foam applications, some smaller systems houses may need more time to develop and fully test these next-generation spray foam alternatives, especially for roofing applications where durability over multiple seasons has to be evaluated. Therefore, by opening the petition process up to formulators of HCFC–141b, the Agency is providing the smaller systems houses with flexibility so that diligent efforts can be taken, where needed, to test the next generation products, meet building codes and fire tests, and to have commercially available products. However, the Agency is committed to facilitating the transition away from ozone-depleting compounds as quickly as possible. Timing is discussed in more detail below.

Pour foam systems are also developed by systems houses. Some pour foam applications have thermal performance requirements similar to spray foam. Also, like spray foam systems, pour foam products tend to be sold in drums or other containers where the isocyanate is kept separate from the blowing agent and other ingredients (systems). However, there are some significant distinctions between the two end-uses. For example, some applications in these sub-segments are factory-controlled (e.g., commercial refrigeration) which means greater potential for making a liquid to gaseous transition or implementing hydrocarbon alternatives. Additionally, many pour foam applications do not have rigorous product requirements such as thermal insulation value, or extended field tests under ambient conditions.

Given the broadening of the petition process and development of the HCFC–141b exemption allowances, EPA recognizes that some formulators may petition the Agency for additional HCFC–141b in pour foam applications because their ability to use the same equipment in mixing spray and pour

formulas is central to their operations. However, EPA does not believe that the technical constraints that arise from product requirements and field application of spray foam also necessarily apply to pour foam applications. For example, although buoyancy foam may demonstrate very similar application constraints and concerns as spray foam, there is no thermal requirement associated with buoyancy foam, and field trials of new formulations over several seasons are not required. Many companies with pour foam applications have already made transitions from HCFC–141b to gaseous blowing agents such as HFC–134a, HCFC–22 and HCFC–22/142b blends, and liquid blowing agents such as hydrocarbons and water. Nonetheless, EPA will consider petitions for pour foam and other HCFC–141b applications because, within the wide range of end-uses, there may be HCFC–141b users who currently have technical constraints in transitioning from HCFC–141b to non-ozone-depleting alternatives. EPA believes that it is appropriate to allow these formulators to demonstrate their needs. If formulators within these or other applications can demonstrate that they have not had access to and/or have been unable to fully implement ozone-friendly alternatives to meet their thermal or dimensional performance, flammability control or other product requirements, and they meet the criteria established in § 82.18, EPA will grant a limited quantity of HCFC–141b exemption allowances for a limited time.

5. Information Supporting Decision to Expand the Petition Process

All of the information can be obtained through EPA's Air Docket (see Addresses section above for docket contact info). Please refer to Air Docket A–98–33 when seeking supporting documents.

Allocation Rule: Comments on the space vehicle/defense petition process and other HCFC–141b users' needs for HCFC–141b beyond January 1, 2003. *Air Docket:* A–98–33: IV–D–07, IV–D–09, IV–D–14, IV–D–18, IV–D–26, IV–D–27, IV–D–30, IV–D–32, IV–F–03, IV–F–05, IV–G–01, IV–G–02, IV–G–03, IV–G–04.

SNAP Rule: Pre-proposal letters, Comments to the July 11, 2000 SNAP proposal (65 FR 42653), Notice of Data Availability (NODA) published on May 23, 2001 (66 FR 28408) and comments to the NODA. Air Docket: A–98–33, IV–D–66.

Other Correspondence: The Agency received a variety of additional correspondence commenting on the issue of the HCFC–141b phaseout on January 1, 2003, and a possible extension and/or exemption. A specific request for an extension to the HCFC–141b phaseout was submitted to the Agency by Polythane Systems, Inc. As part of this request, the commenter asserted that a combination of factors would prevent their company, as well as others in the pour and spray foam industry, from being able to transition from HCFC–141b by January 1, 2003. These factors include safety and flammability concerns and unavailability of sufficient test quantities of alternative blowing agents, the need for several years of field testing of new roof technologies to ensure adequate performance, and economic and logistical constraints in accessing stockpiled quantities of HCFC–141b. Many letters in support of the Polythane Systems, Inc. request were sent to EPA by individual companies and Congressional representatives. *Air Docket:* A–98–33: IV–D–35 to IV–D–64 and IV–G–06, IV–G–07, IV–G–08, IV–G–09.

6. Reason for Petition Process

Of the seven commenters to the proposal who addressed continued use of HCFC–141b, five favored a broad extension of the phaseout date for HCFC–141b until proven cost-effective alternatives are available. Some commenters suggested that HCFC–141b be phased out later than 2003 and suggested that 2004, 2005, 2020, or 2029 be the new phaseout date. Others suggested no phaseout date at all. Two commenters indicated a preference for granting an exemption to the spray and foam polyurethane sector after January 1, 2003, by providing allowances modeled after the space vehicle/defense allowances proposed in the July 20, 2001, rule.

In light of these comments, EPA considered whether it was appropriate to extend the phaseout, grant an industry-wide exemption or provide an exemption modeled after the space vehicle/defense petition process proposed. After considering these options, EPA maintains that it is inappropriate to change the January 1, 2003 phaseout date established in 1993 or grant an industry-wide exemption for the spray/pour foam industry. Within the spray and pour foam industry there are disparities between those who have had access to alternatives and resources to implement alternatives in a timely fashion and those who have faced legitimate technical hurdles because they have not had access to alternatives. Additionally, there are numerous end-use applications within this industry and HCFC–141b may be needed in some applications and not in others. EPA does not believe it is appropriate to provide an industry-wide exemption to accommodate those specific companies and/or end-uses that may need a limited amount of HCFC–141b, for a limited time. Further, EPA does not believe an industry-wide exemption would guarantee that small users with technical constraints would have access to the HCFC–141b produced after January 1, 2003, because they would be forced to compete with other companies for a limited amount of HCFC–141b. Also, EPA believes that an industry-wide exemption limited to the spray and pour foam industry would not provide for unforeseen needs for HCFC–141b in other sectors. Finally, hundreds if not thousands of companies have been relying on the phaseout date for HCFC–141b for nearly 10 years and have made investments accordingly. EPA believes that changing that date would be unfair to those companies who have invested in the transition from HCFC–141b.

EPA believes that expanding the petition process in today's rule provides access to additional HCFC–141b beyond January 1, 2003 for legitimate needs.

7. Total Quantity for Exemption

EPA proposed (July 20, 2001) to limit the total quantity of the HCFC–141b exemption per year for space vehicle or narrow defense needs to one (1) percent of the aggregate of the U.S. HCFC–141b baselines. This reflected the expected small number of requests for small quantities from space vehicle/defense uses. Several commenters requested that EPA state the exact amount in order to clarify that their specific space vehicle/defense needs could be met. Because EPA is expanding the petition process in today's final rule, the Agency is not adopting its proposed limit on the amount of HCFC–141b that would be available for the space vehicle/defense needs. The quantity provided will be based on the needs of each petitioner as demonstrated through their petition (*see* § 82.18). The U.S. obligation under the Protocol is to control consumption [production + import − export], with a 35 percent reduction in the HCFC consumption cap beginning January 1, 2004. EPA will not authorize quantities of HCFCs under the exemption process that would cause the U.S. to exceed the HCFC consumption cap as agreed under the Montreal Protocol. If HCFC–141b requested in petitions exceeds the amount available under the cap, preference will be given to petitioners who can demonstrate the most vital

needs and the available amount may be allocated on a pro-rata basis.

8. How Long EPA Will Continue To Receive/Review Petitions

EPA proposed to create an exemption process for the continued production or import of HCFC–141b up to January 1, 2010 for applications related to critical space vehicle needs or narrow defense needs in cases where alternatives and stockpiled, recovered or recycled quantities are deemed to be technically infeasible for use. EPA believed that this was appropriate because the 65 percent reduction in consumption required by 2010 to meet U.S. obligations under the Montreal Protocol may preclude continued availability of the space vehicle/defense exemption beyond 2010. In the proposal, EPA stated that the availability of the exemption would be revisited in the rulemaking implementing the January 1, 2010 phaseout.

Space vehicle/defense commenters agreed that the 2010 time frame was reasonable as long as EPA adhered to the stated intention to revisit the possibility of providing exemptions beyond 2010 for space/vehicle and defense needs. Because these commenters indicated that they may need HCFC–141b beyond 2010, EPA has decided to withdraw this proposed end-date for the petition process for space/vehicle defense needs. Instead, the quantity that might be granted for space vehicle/defense needs will be analyzed during periodic petition reviews in light of available amounts under the U.S. Protocol cap. Although the 65 percent reduction in consumption required in 2010 may preclude continued availability of the space vehicle/defense exemption, EPA will consider the consumption figures when conducting case-by-case reviews of HCFC–141b petitions. Annual renewals of petitions will provide up-to-date information on HCFC–141b needs and EPA can compare continuing needs with the current consumption figures to determine whether it is appropriate to renew exemptions. This will provide sufficient assurance that HCFC–141b exemptions will not jeopardize U.S. compliance with Montreal Protocol requirements.

Although there may be additional need for HCFC–141b in space vehicle and defense applications up to and possibly beyond January 1, 2010, it is unlikely that other petitioners will be able to meet the criteria established under § 82.18 for more than 1 year beyond January 1, 2003. The only industries which have indicated need for HCFC–141b beyond January 1, 2003, are the spray and pour sectors of the foam industry, in particular small systems houses that develop spray and pour foam formulations. EPA believes that the large part of the spray and pour foam sector will be well into alternative development by January 1, 2003. Although there may be continuing research into new alternatives, much of the work is expected to be completed over the next year in developing potential systems for in-house trials, conducting preliminary fire testing and field testing, conducting additional fire testing to certify building code requirements, and finally observing field trials. Field trials could take 6 to 12 months or more.

In anticipation of the HCFC–141b phaseout, systems houses have been aggressively formulating foam systems and testing new foam products containing alternatives to HCFC–141b. Spray and pour foam products that meet all relevant thermal, flammability and other product requirements using HCFC–141b alternatives are commercially available today, such as foam for garage and entry doors, picnic coolers, refrigerated trucks, marine flotation foam, and water heaters. EPA recognizes that many (or all) of those products were developed on a proprietary basis and their existence does not imply that the industry as a whole has overcome all technical hurdles. However, EPA believes that the current availability of foam systems using several HCFC–141b alternatives supports the viability of those alternatives and that technical constraints will be a function of the timing of commercial availability of the alternatives rather than technical feasibility of the alternatives. With the exception of HFC–245fa, all of the SNAP approved alternatives to HCFC–141b have been commercially available in sufficient quantities for research and development for more than 5 years. Although HFC–245fa is only now becoming fully available on a commercial scale from a recently completed plant, EPA believes the spray and pour foam industries have had access to sufficient quantities of HFC–245fa for research, development, and testing purposes since early 2001 and in many cases before. Therefore, by 2004, EPA believes that most, if not all, formulators in this sector will have had sufficient time to test and implement alternatives.

EPA believes all or almost all formulators can have fully-approved commercially available foam systems using alternatives by the end of 2004. Because EPA cannot anticipate the specific constraints of every spray and pour foam formulator, EPA is not at this time establishing an end-date to the petition process for HCFC–141b exemption allowances. Instead, EPA will review petition renewals annually to determine whether it is appropriate to continue granting HCFC–141b exemptions based on technical need. As stated above, petition requests will be compared to current consumption figures to ensure that HCFC–141b exemptions will not jeopardize U.S. compliance with Montreal Protocol requirements.

9. Information To Be Submitted in a Petition

As proposed, EPA requires that the following information be submitted by petitioners: (a) Name and address of entity; (b) Name of contact person and phone and FAX number(s), and e-mail address; (c) quantity (in kilograms) of HCFC–141b needed for each relevant control period, supported by documentation about past use for at least the previous three years; (d) quantities of HCFC–141b, if any, contained in systems that were sold to other systems houses for at least the previous three years; (e) description of markets and applications being served by use of HCFC–141b; (f) technical description of processes in which HCFC–141b is being used; (g) technical description of the specific condition(s) under which the product will be applied; (h) technical descriptions of why alternatives and substitutes are not sufficient to eliminate the use of HCFC–141b; (i) amount of stockpiled HCFC–141b (on-hand, taken title to, or available from a supplier) along with an analysis showing why stockpiled, recovered or recycled quantities are deemed to be infeasible for use; (j) an estimate of the number of control periods over which such an exemption would be necessary; (k) description of continuing investigations into and progress on possible alternatives and substitutes. Petitioners should indicate what information they are claiming as Confidential Business Information. Information claimed as confidential will be treated in accordance with EPA's regulations on confidential business information at 40 CFR part 2 subpart B. EPA will notify petitioners of deficiencies and give them an opportunity to provide information needed to fully complete the petition. However, if petitioners do not respond to EPA's requests for additional information within 15 days of the request and the petition remains incomplete, HCFC–141b exemption allowances will not be granted. Petitioners should also be aware that

EPA will consider other available information such as the availability and technical and economic feasibility of stockpiles and the industry-wide progress on implementing alternatives when deciding whether to grant exemptions.

Although EPA is expanding the petition process beyond space vehicle/defense petitioners, the Agency believes that the items listed above will provide the information EPA needs to make individual decisions on granting additional HCFC–141b to petitioners taking into account their specific application. To avoid an overly burdensome process, EPA is not requiring this information to be submitted in any specific format nor does EPA expect petitioners to generate new information. The Agency published the rule establishing the January 1, 2003, phaseout date in 1993. Thus, HCFC–141b users should be able to demonstrate that they have been engaged for some time in the process of sourcing, testing and implementing alternatives in anticipation of the phaseout. Because of the many years that have elapsed since the phaseout date was established, the information needed to address the items above should be readily available.

In order to support the quantity of HCFC–141b requested, petitioners should submit information on historical purchasing. EPA is not establishing a strict method of determining historical use. EPA will accept documentation demonstrating the petitioner's HCFC–141b use covering 3 years or more. For example, petitioners may submit existing copies of purchasing receipts or company records to support their petition request. This information will allow EPA to determine whether the total amount of HCFC–141b requested after 2003 is reasonable. If the amount requested differs significantly from the amount historically purchased, petitioners should provide a detailed explanation for the discrepancy.

A description of the markets and applications being served by use of HCFC–141b should include a description of where the chemical is used (*i.e.*, foam blowing agent, solvent) and why it provides benefits in the specific application. Petitioners will also have to provide technical descriptions of processes in which HCFC–141b is being used. For example, if a petitioner is requesting HCFC–141b for a polyurethane foam system, the petitioner must identify whether it is a spray or pour foam process and the application (*e.g.,* roofing, tank and pipe insulation). If a petitioner is requesting HCFC–141b for multiple processes and applications, the petitioner must identify the amount of HCFC–141b that is being requested for each process and application. EPA believes this information is necessary to assess the technical needs and demands of specific processes and applications. For example, EPA may approve a petitioner's request for HCFC–141b to be used in spray roofing applications, but deny the same petitioner's request for HCFC–141b in a non-insulating pour foam application.

In order for EPA to assess the merits of each petition, petitioners will need a technical description of why alternatives and substitutes are not sufficient to eliminate the use of HCFC–141b. Petitioners should indicate what technical constraints have prevented them from obtaining or implementing their preferred alternative. For example, if building or fire codes have not yet been met with existing products petitioners should provide evidence of tests demonstrating that these standards can not be met using alternatives. Petitioners must also explain why stockpiled, recovered or recycled quantities are not feasible (*e.g.*, technical or economic constraints) or are unavailable. Petitioners should provide evidence supporting this explanation. For example, technical constraints could include unavailability of HCFC–141b stockpiles that meet quality specifications because of contamination. Economic constraints could include unavailability of HCFC–141b stockpiles at prices that would not put an undue financial hardship on the petitioner. Evidence that stockpiled HCFC–141b is simply unavailable could consist of letters from suppliers indicating that stockpiled HCFC–141b is unavailable or phone logs of inquiries made on the availability of stockpiled HCFC–141b (including the person contacted and the date of the conversation).

In order for EPA to project potential future needs and assess the progress of each company in implementing alternatives, petitioners must estimate the number of control periods over which they will continue to need HCFC–141b. The estimate must be based on a detailed description of past investigations into possible alternatives and substitutes and a timeline of future efforts and activities to research and test alternatives. The detailed description of the efforts made by each petitioner to acquire, test, and implement alternatives is a critical item required in each petition. Petitioners must submit a list of alternatives considered, purchased or sampled along with the dates purchased and copies of receipts verifying that information. The petitioner must also submit a summary of their in-house development program, including summaries of all relevant test results and their significance to the petitioner's subsequent decision-making and selection of a preferred alternative(s). Full supporting test data and relevant certificates must be made available on request. This includes in-house tests (*e.g.* preliminary burn tests for foam applications) and final product tests conducted by accredited organizations such as Underwriter's Laboratory or Factory Mutual in order to determine whether products meet applicable codes. If a petitioner has made good faith efforts to test and implement their preferred alternatives and they can demonstrate that they are not yet in a position to transition away from HCFC–141b for legitimate reasons (*e.g.*, no access to stockpiles), EPA will likely approve their request for additional HCFC–141b. If a petitioner cannot demonstrate that past efforts have been made to pursue and implement alternatives, EPA will likely deny the petition.

10. Deadline for Submitting Petitions

A person seeking an exemption for the production and import of HCFC–141b under § 82.15 would need to submit a petition for the exemption under § 82.18. Although EPA proposed that petitions would be due on July 1, 2002, this date is no longer appropriate due to the timing of publication of this final rule. Although several space vehicle/defense commenters suggested that EPA allow petitioners to submit petitions up to six months after the date of final publication of this rule, that would no longer provide sufficient time for EPA to receive and review petitions and grant exemptions in light of the January 1, 2003, phaseout date for HCFC–141b. Therefore, EPA has decided to accept petitions for the 2003 control period for up to 90 days after the date of publication of this rule although petitions received within the first 30 days will be given primary consideration for an exemption. EPA believes it is important to establish a fixed date for submission of petitions in order to process petitions in a timely manner while giving the petitions due consideration and ensuring that EPA meets requirements established under the Montreal Protocol. Those who submit after 30 days, but before 90 days, are more at risk of denial on the grounds that additional allocations would jeopardize compliance with the limits established under the Montreal Protocol. Because most of the information needed to support a

petition should be readily available, EPA believes 30 days allows sufficient time for petitioners to provide the information requested and collect and compile supporting documentation. In subsequent years, the Agency will accept petition renewals on or before October 31st of the control period for an exemption for the next control period. This is explained in more detail below. Although EPA may request additional information from petitioners after these deadlines, the Agency will not consider petitions filed after these dates or entertain requests for more HCFC–141b than was requested in original petitions and/or subsequent renewals.

11. Length of Review Process

EPA proposed a 90-day review period for the space vehicle/defense petitions. In this final rule, EPA is adopting a maximum 21 business day review period for all HCFC–141b exemption petitions in order to expedite the review process and award the HCFC–141b exemption allowances to the petitioners in a reasonable amount of time. Within 21 business days, EPA will review each petition and determine the amount of HCFC–141b that will be granted to each petitioner for the specified control period. If more information is needed, EPA will contact the applicant and specify the necessary information. EPA will consider the merits of each individual petition and industry-wide data on the availability and viability of alternatives. EPA retains the right to disallow HCFC–141b exemption allowances based on information received regarding, *inter alia,* fraud, misrepresentation, inconsistency with Articles and Decisions under the Montreal Protocol, inconsistency with the CAA Amendments of 1990, or other reasons related to human health and the environment.

12. Notification of Petitioners

To allocate HCFC–141b exemption allowances, EPA will send an e-mail or letter to the petitioner identifying the total amount of newly produced or imported HCFC–141b that may be acquired within the control period by allocating HCFC–141b exemption allowances in this amount. This same letter will be placed in EPA's Air Docket A–98–33 with the total amount of the allowance redacted in order to protect the business interests of the petitioner. If EPA decides not to grant the request for any of the reasons stated in § 82.18, EPA will issue an objection letter disallowing the request which will include the reasons for the decision. Within ten working days after receipt of the objection letter, the requestor may file a one-time appeal, with supporting reasons. EPA may affirm the objection or grant allowances, as she/he finds appropriate in light of the available evidence. If no appeal is taken by the tenth day after receipt of the objection letter, the disallowance will be final on that day.

13. How HCFC–141b Exemption Allowances Will Be Expended

Once HCFC–141b exemption allowances have been granted, the petitioner must find a supplier of HCFC–141b. Holding HCFC–141b exemption allowances for production or import does not imply or mandate production or import; each user must locate a willing supplier and negotiate supply. The petitioner must locate a supplier and send a letter to the producer/importer indicating: (1) Total quantity of allowances held; (2) quantity of allowances expended to date; (3) quantity of allowances requested; and (4) a written verification that the HCFC–141b to be manufactured is for the express purpose of meeting the HCFC–141b exemption needs. In addition, the petitioner must attach a copy of the EPA letter indicating total HCFC–141b exemption allowances allocated to them. If the quantity requested does not exceed remaining allowances (total quantity of allowances held minus quantity of allowances expended to date), the producer/importer may fill the request.

14. Transfer of HCFC–141b Exemption Allowances or Carryover into Subsequent Control Periods

HCFC–141b exemption allowances are not transferable between petitioners or in a chemical-to-chemical trade with other HCFCs. Unexpended HCFC–141b exemption allowances cannot be carried over into subsequent control periods. Unexpended HCFC–141b allowances expire at the end of the control period for which they were allocated. If there are needs beyond the control period for which the HCFC–141b was allocated, petitioners may renew their request for HCFC–141b exemption allowances for the next control period as described below.

15. Transfer of HCFC–141b Exemption Allowances in an Acquisition

EPA does not want to attach value to the allowances and provide an economic incentive for companies to petition the Agency for HCFC–141b exemption allowances. Allowances are issued on the basis of need. Therefore, if a company (the acquirer) acquires another company (the acquiree) that holds HCFC–141b exemption allowances, the acquirer must submit a renewal petition to EPA. The HCFC–141b exemption allowances held by the acquiree disappear with the purchase of the acquiree. The petition must justify why the acquirer does not possess the technical capability or does not have access to adequate stockpiles to meet the needs of the newly acquired customers and in turn requires the HCFC–141b exemption allowances. Lack of technical capability means the company has not already developed and tested alternative formulations for the same markets to meet same or similar technical requirements. The acquirer should submit the petition at the time of the acquisition of the other company holding the HCFC–141b exemption allowances, provide the necessary documentation confirming the acquisition, and follow the requirements listed for a renewal petition pursuant to § 82.18. EPA will review the petition within 21 business days and inform the acquirer of the decision in a letter.

16. Reporting and Recordkeeping Requirements

To facilitate accurate tracking of exempted HCFC–141b production and use, EPA proposed three levels of reporting. First, EPA proposed that the petitioner would report quarterly to EPA on: The type of product made with or containing HCFC–141b; the specific application of the product; the quantity of HCFC–141b used or contained in the product; and the identity of the manufacturer of the product. Second, EPA proposed that the formulator of the foam or cleaning product submit information quarterly to EPA delineating the quantity of HCFC–141b received; the quantity of HCFC–141b used or contained in the product; the identity of the producer or importer supplying the HCFC–141b; the identity of the recipient of the product made with or containing HCFC–141b; and the quantity of HCFC–141b used or contained in the product sent to the recipient. Finally, EPA proposed that the HCFC–141b manufacturer or importer would report to EPA, on a quarterly basis, the total amount of HCFC–141b produced to provide for exemptions. EPA believed that it was appropriate to require reporting from the point of origin to the final end use of HCFC–141b in order to ensure that newly produced/imported HCFC–141b was used for specific exempted purposes to meet the needs identified by petitioners and that quarterly reporting at all three levels would facilitate EPA's tracking of consumption figures and compliance with the HCFC cap.

Several commenters believed that the proposed reporting requirements as outlined above would be overly burdensome. These commenters suggested that EPA should establish annual reporting requirements and allow 45 days to prepare information consistent with the class I reporting system. One commenter suggested EPA should grant broad exemptions without imposing any reporting or ongoing petitioning obligations. The Agency maintains that reporting is necessary in order for the Agency to track HCFC–141b production and use. EPA modified the proposed requirements to reduce the number of entities reporting, the amount of information reported, and the frequency of reporting for petitioners. EPA is also increasing the number of days provided to prepare reports.

In today's final action, EPA is only requiring petitioners and chemical manufacturers/importers to report HCFC–141b acquisition and production/import. Petitioners are required to provide semi-annual reports of total quantities of HCFC–141b received to date within the same control period and the name of the supplier of HCFC–141b. Reports are due 30 days after the second quarter (July 31st) and 30 days after the fourth quarter (January 31st of the subsequent year). Commenters suggested that reporting be conducted on an annual basis consistent with class I reporting. EPA notes that this is an inaccurate description of class I reporting requirements. In the class I system, reports must be filed quarterly. Consistent with the class I reporting system, EPA is finalizing the proposed quarterly reporting scheme for chemical manufacturers/importers. Chemical manufacturers/importers must report the amount of HCFC–141b produced or imported for exemptions and submit copies of HCFC–141b requests with their quarterly class II reports within 30 days of the end of each quarter.

Petitioners must maintain records for three years. Records include: petitions with supporting documentation; EPA letter allocating HCFC–141b exemption allowances; requests for production/importation of HCFC–141b; written verification that the HCFC–141b purchased is for the express purpose of meeting the HCFC–141b exemption needs; HCFC–141b purchasing receipts; and sales receipts for HCFC–141b products sold.

17. Renewal of Requests for HCFC–141b Exemption Allowances Beyond the First Control Period

Although EPA proposed that HCFC–141b exemptions for space vehicle/defense be updated every three years via submission of an updated report, the Agency has decided to allocate HCFC–141b exemption allowances for one-year intervals. If a petitioner seeks additional HCFC–141b and believes they still meet the criteria established under § 82.18 of this final rule, EPA will evaluate renewal petitions on an annual basis. To apply for renewal of HCFC–141b exemption allowances, petitioners must submit a petition by October 31st of the year preceding the year for which the HCFC–141b is requested. The petition need only include updated information. Petitioners will not be required to submit information previously submitted to the Agency. The update should indicate the following: whether the entity has found no viable substitute and will need to extend their exemption for the next control period; why the entity believes no alternatives are viable for their application; and a detailed description of continuing investigations into and progress on possible alternatives and substitutes. Although the EPA believed the 3-year period was appropriate for space vehicle/defense needs, today's expanded petition process allows for users who may not meet the criteria established under § 82.18 for more than one year. Therefore, EPA will consider petitions and renewals on an annual basis in order to determine continued need for HCFC–141b. Although this process is more burdensome, the Agency believes annual reviews will more accurately reflect current technical needs of all petitioners including space vehicle/defense petitioners. EPA will continue to evaluate this periodic review cycle and the associated burden to assess whether it might be changed.

EPA will conduct no more than a 21-day review of the renewal request. If the petitioner meets the criteria established under § 82.18 and providing the HCFC–141b exemption allowances do not jeopardize U.S. compliance with Montreal Protocol and CAA requirements, EPA will allocate HCFC–141b exemption allowances for the next control period. Furthermore, a petitioner who does not apply for the HCFC–141b exemption in 2003 can submit a petition by October 31st for an exemption in 2004. In that case, the petition would be a full petition following the information requirements spelled out in § 82.18.

18. Penalties for Exceeding HCFC–141b Exemption Allowances

Any petitioner and/or chemical manufacturer/importer who knowingly orders production or import, or produces or imports, in excess of the quantity of unexpended HCFC–141b exemption allowances held by the petitioner may be fined up to $27,500 per kilogram of HCFC–141b produced/imported above total quantity of HCFC–141b exemption allowances held. EPA may inspect facilities to verify that information provided in a petition is accurate and to review records to ensure compliance. The fine for not complying with recordkeeping requirements is up to $27,500 per day, per violation.

19. Criteria for Approval/Disapproval

EPA may grant HCFC–141b exemption allowances if the Agency determines the allowances are necessary to maintain either safety, operational or technical viability.

EPA may decide not to grant HCFC–141b exemption allowances if the Agency determines:

(A) The needs can be met by the use of a substance other than HCFC–141b;

(B) It is technically and economically feasible to use existing supplies of HCFC–141b;

(C) There is evidence of fraud or misrepresentation;

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

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

(F) There is an inadequate demonstration of efforts undertaken to research and implement alternatives; or

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

20. Other Limitations to Approval of Petitions

In addition to constraints due to overall HCFC consumption limits, petitioners should be aware of other requirements that will limit EPA's ability to continue granting exemptions beyond 2010. Section 605 of the CAA contains certain constraints on use, production, and consumption of HCFCs beginning in 2015. In addition, CAA section 605(b)(2) prohibits production of class II controlled substances on or after January 1, 2030. These constraints are discussed in more detail in the proposal (66 FR 38082).

F. How Were the Baselines Established?

Section 601(2) of the CAA states that EPA may select ''a representative calendar year'' to serve as the baseline for allowance allocations for HCFCs. EPA believes that because it is allocating to entities that have very different production and import histories, no one year was representative for all companies. EPA believes that selecting only one year would

disadvantage many. EPA believes that by not selecting a year after 1997 it will avoid creating an uneven playing field that skews allocations to those companies with ample resources and good access to information. As a result, EPA proposed allocating allowances to every company based on their individual highest ODP-weighted consumption among the years 1989, and 1994 through 1997. More information on why EPA selected these particular years is contained in the proposal (66 FR 38071). EPA believes that selecting the year of highest activity for individual companies over a range of years creates less of a disadvantage to the industry and the HCFC market as a whole than selecting a single year.

Many of the sixteen commenters were either concerned about adequate future supplies for their industries or maximum market share for HCFCs with later phaseout dates. Two commenters generally supported the years selected by EPA but felt these years might not adequately serve future demand. The remainder objected to the inclusion of 1989, believed that only 1997 would be the most representative of the market, or felt that none of those years were representative and only the ''most recent'' year would serve. Two commenters agreed with EPA that selecting any year from 1998 on would create a windfall for those who increased their activity after a series of stakeholder meeting discussing the impending allowance allocation system. Three commenters requested that EPA ensure the accuracy of the allocation figures before finalizing the proposed rule. Two producers proposed allowing companies to select another year besides their highest consumption year. They stated that it would allow the company a better mix of HCFCs for their market and perhaps benefit the environment or the rest of the market if the difference in allowances were reallocated.

EPA agrees with commenters that the future evolution of the HCFC market requires an allocation different than proposed and for that reason is only apportioning allowances at this time for the most ozone-depleting HCFCs (HCFC–141b, HCFC–22 and HCFC–142b). In addition, EPA is committed to monitoring future HCFC market demand and may consider future changes to allowance allocations through future notice and comment rulemaking.

EPA tried to ensure the accuracy of the consumption figures, especially those for small businesses, by verifying database records against the paper records submitted by the pertinent company. In many cases this involved painstakingly correlating revisions to reporting forms sent in a year later than the original report.

EPA understands the concern of those who believed that a fixed allocation will not fully address future market demands. EPA believes that incorporating a high degree of flexibility in the transfers of allowances, especially its decision not to group HCFCs and restrict transfers to those within the same group, will assist in responding to market decisions and trends. The ability to import used HCFCs and to use stockpiled material after the phaseout dates are other factors that will likely avoid significant disruption of use. Finally, today's action apportions each company a quantity of allowances that exceeds its historical activity because of the pro-rating up to the U.S. cap, thereby further addressing concerns about a shortage in supply. As discussed above, EPA intends to continue to monitor the market trends as more users transition to less ozone-depleting HCFCs and more non-ozone-depleting alternatives become available.

With today's action, EPA is assigning individual consumption baseline years to each company by selecting its highest ODP-weighted consumption year from among the years 1994, 1995, 1996, and 1997. EPA is also assigning individual production baseline years to each company by selecting its highest ODP-weighted production year from among the years 1994, 1995, 1996, and 1997. EPA's decision to remove 1989 from the range of years for the selection of consumption and production baselines was based on reassessments after numerous commenters indicated the marked difference between the HCFC market in 1989 versus the more recent evolving HCFC market. The mix of HCFCs being produced in 1989 would markedly constrain the market and its participants compared to the more recent mix of HCFCs needed to support current uses. Allowance holders to which EPA proposed to grant allowances for their 1989 activity as their best consumption year will receive their best consumption year from among 1994, 1995, 1996, and 1997. By not establishing baselines in this action for the HCFCs with relatively low ozone depleting potential, EPA is preserving more flexibility for companies whose mix of HCFCs is currently in flux. In addition, companies that wish to obtain allowances for different HCFCs may take advantage of the transfer provisions. EPA proposed an exception to its policy to not use 1998 or later years as part of a company's baseline in an effort to assist small businesses in the HCFC market who might not have been familiar with EPA's plans to develop an allowance system for HCFCs. EPA proposed granting available HCFC consumption allowances to late entrants into the import market that met certain conditions: (1) The HCFC market is their primary source of business income; (2) they began importing HCFCs after the end of 1997 but before the publication of the ANPRM on April 5, 1999, and (3) they accurately reported all relevant required quarterly import information to EPA prior to the publication date of the NPRM, July 20, 2001.

EPA received eight comments on granting available HCFC allowances to late entrants. Two producers and one importer opposed the proposal. They believed that companies that failed to take the trouble to know and comply with the rules to report HCFCs should not be rewarded with allowances and that the proposal was an attempt to artificially create a basis for allocation. The third criterion listed above is intended to ensure that companies are not rewarded for a failure to file required reports. In addition, EPA believes that compliance with reporting requirements does not automatically deliver information about additional regulations under consideration. EPA also believes that small businesses may have been disadvantaged regarding the changeable nature of regulations and the need for monitoring the **Federal Register** for notices of proposed regulations.

One commenter stated that opening up 1998 as a baseline year for new entrants justified including that year for all companies receiving baseline allowances. EPA does not equate late entrants with companies that were notified about and/or attended the stakeholder meetings. The companies that were notified of or attended stakeholder meetings in early 1998 were given information about how EPA would establish HCFC baselines. Immediately following these meetings, several companies significantly increased their production/imports. Because late entrants were not actively participating in the HCFC market in the early and mid-1990s they were therefore presumably unaware of the baseline-setting procedures being considered by EPA. As a result of their late entrance into the HCFC market there are fewer years from which EPA can make a baseline determination than for companies with an established history in the HCFC market.

The remaining five commenters, made up of users of HCFCs and trade associations, were mainly concerned that after late entrants received their allocations, any allowances left be reallocated to the rest of the field to

avoid a shortfall in the supply of HCFCs. With today's action, EPA is in fact pro-rating historical levels and allocating additional allowances up to the U.S. cap after the late entrants receive their allocations to address concerns about a shortfall in supply.

One commenter requested a definition of ''primary source'' regarding the source of income from HCFCs for late entrants. EPA believes that if a company is obtaining 80 percent or more of its business income from the HCFC market, then the HCFC market is that business' ''primary source'' of income. EPA is granting available allowances to late entrants subject to the conditions discussed above. One late entrant submitted the required documentation demonstrating that: (1) They began importation of HCFCs in March 1999 after formation in February 1999; (2) they accurately reported all relevant required quarterly import information to EPA prior to the publication date of the NPRM, July 20, 2001; and (3) their refrigerant imports represented 96 percent of their gross refrigerant volume. In addition to meeting the criteria stated above, this company also demonstrated that they are a woman-owned, small and disadvantaged business enterprise; and although aware of regulatory requirements regarding the importing of refrigerant, they were unaware of the impending ANPRM, April 5, 1999. The allowances allocated to this late entrant are included in the list of consumption allowance holders in this document.

The list of consumption allowance-holders in this document includes an importer that did not appear in the NPRM. This importer was in the market during the years 1994, 1995, 1996, and 1997 but EPA requested additional information in order to verify the import records prior to publication of the NPRM. EPA did not receive this company's documentation in time to verify the data and assign them a baseline in the NPRM. Subsequent to publication of the NPRM the requisite information was submitted and verified by EPA. Based on this information, EPA is establishing baseline allowances for this company with today's action.

G. Will I Be Able to Transfer Allowances?

EPA proposed processing all transfers of allowances within three working days from when EPA receives an e-mail or fax or a written request for an inter-pollutant or inter-company transfer. EPA will send a reply showing the new balance of unexpended allowances. EPA's decision to propose such a fast processing time was intended to ensure that transfers are easy and EPA's role is not disruptive to market transactions. EPA believes that it will have sufficient time to ensure that the company making the transfer has the requisite number of unexpended allowances. Two commenters supported this proposed procedure. One commenter felt this was a reasonable turnaround time, as long as EPA can tolerate the work load and that the three days should not put undue burden on requesting companies. EPA will process all transfers in the time period discussed above.

Of the nine addressing transfers, seven commenters advocated maximum flexibility in transferring allowances. This flexibility was considered imperative if tracking were done on the proposed chemical-by-chemical basis instead of the ODP-weighted option. The commenters also said that an offset ratio no higher than the proposed 0.1 percent would also contribute to flexibility in the system. Three commenters favored allowing transfers of Article 5 allowances to increase the flexibility of the transfer system. One of the three commenters felt this is an appropriate policy that will encourage Article 5 countries to transition within their economic means to less ozone-depleting chemicals without undue social burden and still achieve the goal of reducing ozone-depleting chemicals worldwide. EPA agrees with the commenters and is establishing procedures for transfers with maximum flexibility within the constraints of the allowance system.

1. Transfers Within Groups of HCFCs

EPA is permitted to establish groups of HCFCs under Section 607(b)(3) of the Act. Within such a framework, inter-pollutant transfers of allowances would be limited to chemicals within an assigned group. The Act does not require any such grouping for HCFCs and EPA did not propose to group. EPA believed that limiting transfers by grouping HCFCs would decrease the flexibility many commenters requested. Therefore, HCFCs will not be grouped and allowance holders will be able to transfer among all HCFCs as long as the resulting HCFC has not been phased out.

2. Inter-Pollutant Transfers

Section 607(b) of the Act permits inter-pollutant transfers of ODSs. An inter-pollutant transfer is the transfer of an allowance of one substance to an allowance of another substance on an ODP-weighted basis. In addition, Section 607 requires that any transfer result in a benefit to the environment. The offset contained in today's action is intended to fulfill this mandate.

Inter-pollutant transfers are sometimes called intra-company transfers because a company might shift allowances internally from one ODS to another to react to shifts in demand. For example, a company might wish to transfer 10,000 kilograms of HCFC–142b allowances for HCFC–22 allowances, which would result in 11,818 kilograms of HCFC–22 because of the adjustment for the ODPs of the two chemicals. The calculation would proceed like this: the 10,000 kilograms of HCFC–142b allowances are multiplied by the ODP of HCFC–142b (0.065) and then divided by the ODP of HCFC–22 (0.055), yielding 11,818 kilograms of HCFC–22 allowances. The 0.1 percent offset is then subtracted from 11,818 kilograms.

EPA proposed allowing inter-pollutant transfers (or intra-company transfers) in conjunction with the chemical-by-chemical tracking system. One commenter felt this reasonable proposal will easily enable companies to take advantage of the capability for transfers without undue burden. Only one commenter preferred no inter-pollutant transfers because of the belief that allowing such transfers would reduce the sense of urgency in researching alternatives to HCFCs. Inter-pollutant transfers allow companies to respond to market forces and achieve economies of scale in production and import, but as the phaseouts and reductions in consumption proceed, the opportunities for inter-pollutant transfers will decrease over time. This tightening of the ability to transfer allowances parallels the tightening of the overall quantity of allowances, leading to greater incentives for research into and development of alternatives. In addition, companies that wish to continue to supply their customers will have incentives to research and develop alternatives over the long term while conducting inter-pollutant transfers during the short term.

Because the consumption and production allowances for a specific HCFC disappear after its phaseout date, inter-pollutant transfers of those allowances will no longer be possible after the phaseout date. For example, after HCFC–141b is phased out on January 1, 2003, a company cannot transfer ODP-weighted HCFC–141b production or consumption allowances for HCFC–22 allowances. No production or consumption allowances for HCFC–141b will exist after December 31, 2002.

EPA will process inter-pollutant transfers within three working days from when EPA receives a fax or a request for the transfer. EPA will send

a reply showing the new balance of unexpended allowances, taking into account the 0.1 percent offset.

3. Inter-Company Transfers

Section 607(c) of the Act permits inter-company transfers of allowances. Inter-company transfers are transfers of allowances, for the same ODS under a chemical-by-chemical system, from one company to another company. For example, Company A would transfer its allowances to Company B who wished to have more allowances. Both companies would need to record and report the chemical(s) associated with that transfer. The requisite offset would be deducted by EPA from the transferor's allowance balance when processing the transfer.

EPA proposed to allow inter-company transfers, with an environmental offset and to process all transfer requests within three working days from when EPA receives the request.

Because the consumption and production allowances for a specific HCFC disappear after its phaseout date, EPA proposed that inter-company transfers of those allowances will no longer be possible after its phaseout date. For example, after HCFC–141b is phased out on January 1, 2003, a company cannot transfer its HCFC–141b production or consumption allowances to another company. No production or consumption allowances for HCFC–141b will exist after December 31, 2002.

EPA also proposed allowing inter-company transfers of Article 5 allowances to allow for shifts in production that would permit market efficiencies.

One commenter expressed support for inter-company transfers and the remaining commenters were silent on this issue. EPA will allow inter-company transfers of production allowances and consumption allowances until the phaseout date of each HCFC and will allow inter-company transfers of Article 5 allowances. After the phaseout date for a specific HCFC, EPA will allow inter-company transfers of export production allowances. EPA will process inter-company transfers within three working days from when EPA receives a fax or a request for the transfer. EPA will send replies showing the new balances of unexpended allowances for each company. The transferor's new balance will reflect the 0.1 percent offset.

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

Section 607(c) of the CAA authorizes inter-company combined with inter-pollutant transfers, subject to certain requirements. EPA proposed allowing inter-pollutant transfers combined with inter-company transfers for HCFCs, with a 0.1 percent offset. These transfers will be treated as a single transaction and therefore require only a 0.1 percent offset. Three of the ten commenters on transfers specifically favored inter-pollutant transfers combined with inter-company transfers. One commenter felt this capability is flexible and will enable companies to meet their production/import needs. Seven commenters generally supported maximum flexibility in transfers. EPA will allow inter-pollutant transfers combined with inter-company transfers of production allowances and consumption allowances up to the phaseout date of each HCFC. A 0.1 percent offset will be required to provide the environmental benefit called for in the CAA.

The chemical-by-chemical phaseout will affect the availability of these transfers and the types of allowances over time. For example, after the 2003 phaseout of HCFC–141b and before 2010, a company receiving export production allowances and Article 5 allowances for HCFC–141b could engage in inter-company transfers of those allowances, but not in inter-pollutant transfers. In 2010, when export production allowances and Article 5 allowances for HCFC–22 and HCFC–142b become available, these allowances will be transferable with the ones for HCFC–141b.

5. International Trades of Current-Year Allowances

For purposes of industrial rationalization, international trades of production and consumption allowances are permitted in some circumstances but require more review than inter-pollutant and inter-company transfers. The Protocol defines industrial rationalization in Article 1 as ''the transfer of all or a portion of the calculated level of production of one Party to another, for the purpose of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures.''

(a) Consumption Allowances

In Article 2, the Protocol restricts the international trade of HCFC consumption by linking it with CFC consumption. A more detailed discussion may be found in II.I.5 of the NPRM (66 FR 38076). Under the Protocol, the U.S. cannot trade HCFC consumption to another Party because the U.S. per capita CFC consumption in 1989 was 1.28 kilograms, well above the 0.25 kilogram per capita limit required of a Party trading consumption to another Party.

However, the Protocol allows the U.S. to potentially receive a trade of HCFC consumption from another Party. Only two Article 2 countries, Norway and Poland, had a per capita CFC consumption in 1989 below 0.25 kilograms. These are the only Parties from which the U.S. could potentially receive a trade of HCFC consumption.

Only two of the ten commenters on transfers singled out international consumption trades for special mention. One commenter felt that such trades would be difficult to engage in and would therefore likely not be a part of their import business. A commenter who was interested in the trade of consumption rights from Norway and Poland requested that the provisions be included in the final rule. Today's action creates provisions and requirements for EPA's processing of a request to trade consumption from one of the two eligible countries to the U.S. To trade consumption from a Party, EPA must receive a letter from that country's diplomatic embassy stating that their consumption level is being reduced by the amount being traded, in accordance with 82.18(d).

(b) Production Allowances

During the eleventh Meeting of the Parties in 1999, the adoption of a production cap provided the potential for trades of production between Parties. Because of the minimal restrictions placed on the trade of HCFC production compared to trade of HCFC consumption, EPA proposed provisions for the international trade of production allowances and the subsequent calculations necessary to revise the production limits for all traders trading production in the same control period.

Only three commenters out of ten commenting on transfers discussed international trades of production and two were in favor while one was not. EPA did not receive any comments suggesting alternative methods of calculating the revised production limits. If EPA approves the proposed trade, the Administrator is required to establish revised production limits for the trader so that the aggregate domestic production permitted after the trade reflects the effect of the trade of production allowances. Such trades cannot result in an increase in production over what would have occurred in the absence of the trade. EPA will notify each trader of the revised production limit after approving the trade of production allowances to a Party rather than waiting to the end of the control period; traders will then be able to make timely market decisions

with the remaining production allowances. EPA received one comment on the proposed method of determining the trader's balance of production allowances, pointing out that the provided formula could result in a negative number. EPA tested the formula and is adjusting it accordingly to prevent any negative result. In today's rule EPA is finalizing the method of calculating the trader's balance as follows: the Administrator would issue a notice revising the trader's balance of production allowances to equal the lesser of: (a) The unexpended production allowances held by the trader minus the quantity of production allowances traded; or (b) the unexpended production allowances held by the trader minus the amount by which the U.S. average annual production of the HCFC being traded for the three years prior to the trade is less than the total allowable production of the controlled substance under this subpart minus the amount traded. For those more comfortable with formulas, the method can be expressed in this manner:

$f = (a - d)$, if $c \leq b$

or

$f = a - [(c - b) - d]$, if $c > b$

where a=the person's unexpended production allowances, b=the U.S. 3-year average production for that HCFC, c=the total allowable U.S. production for that HCFC, and d=the actual quantity being traded, and f=the person's revised production allowance level. This formula is based on the language of Section 616 of the CAA.

The single dissenting commenter encouraged prohibiting trades of production because of the economic hardship that such trades can produce for American workers, users of HCFCs and suppliers to plants that produce HCFCs. This commenter felt that trades of production away from the U.S. can reduce the total amount of allowable production, thereby distorting markets and the availability of a substance. The legal framework in which EPA proposed the system for international trades of HCFC production is governed by the Protocol and the CAA. The Parties to the Protocol met in 1999 and decided to allow for trades of production rights between Parties because they recognized the need for industrial rationalization. The Parties acknowledged that companies would likely want to consolidate HCFC production in different countries so that a company could achieve economies of scale. In addition, Section 616 of the CAA indicates that Congress contemplated trades of production rights between the U.S. and other Parties to the Protocol. There have been international trades of class I production allowances since the establishment of the allowance system for class I ozone-depleting substances. EPA received many comments on the NPRM supporting flexible trade mechanisms because they reduce regulatory interference in the global HCFC market. In following the model established for class I ozone-depleting substance, the Agency will consider (1) possible creation of economic hardship; (2) possible effects on trade; (3) potential environmental implications, and (4) the total amount of unexpended production allowances held by United States entities, by asking for concurrence on international trades from the Department of Commerce, the United States Trade Representative, and the Department of State.

The commenter also considered approvals of international trades a significant administrative action and believed that publishing the proposed trade in the **Federal Register** would allow users and other affected persons an opportunity to comment on the economic impact of the proposed international trade. EPA did not adopt such procedures for international trades under the class I system and believes that they would cause excessive delays in acting on requests for international trades which is contrary to the desire of almost all commenters for a flexible, unburdensome system.

Beginning January 1, 2004, EPA will only allow international trades of production allowances to and from Parties that are either: (1) Listed in Appendix L and have ratified the Beijing Amendments as listed in Appendix C, or (2) not listed in Appendix L but are listed in Appendix C as having ratified the Copenhagen Amendments. EPA will revise the production limits for all traders trading production allowances in the same control period following the calculations discussed above.

6. Transfers of Current-Year Allowances

A transfer of current-year allowances means the allowances being traded can only be expended for production or import in that specific control year. Transfers of current-year allowances do not permanently change the quantity of baseline allowances assigned to a company. A transfer of current-year allowances is a temporary transfer and is reflected in a company's balance of allowances for the control period in which the transfer occurred. EPA proposed allowing transfers of current-year allowances and of the ten commenters on transfers, two explicitly favored current-year transfers of allowances. One of the two favorable commenters stated that the transfer should be subject to the minimum possible offset. The rest of the commenters generally supported all kinds of transfers that might confer the maximum degree of flexibility in the transfer system.

EPA will allow trades of current year allowances so companies will have flexibility to respond to market forces and achieve economies of scale in production and import.

7. Permanent Transfers of Baseline Allowances

The permanent transfer of baseline allowances is a lasting shift of some quantity of a company's allowances to another company. The permanent nature of the transfer makes it different from the transfer of current-year allowances. In all relevant subsequent years, the transferor's quantity of baseline allowances would be permanently reduced, while the transferee's quantity of baseline allowances would be permanently increased. For example, if a person transfers baseline allowances of HCFC–22, their baseline would be decreased permanently by the transfer amount, and the recipient would gain HCFC–22 baseline allowances, minus the offset, on a permanent basis. Subsequent inter-pollutant transfers of these baseline allowances would also be permitted. However, at the time of a reduction step or a phaseout of the substance, the current holder of baseline allowances that were received in a permanent transfer would be the person who would have them deducted.

EPA proposed allowing such permanent transfers of allowances for HCFCs. Only two of the ten commenters on transfers singled out permanent transfers for favorable comment. One commenter felt that they should be subject to the minimum possible offset. The other commenter believed that as the industry evolves and the companies with it, allowing permanent transfers may enable better production techniques and/or streamlining of facilities. The rest of the commenters generally supported all kinds of transfers that might confer the maximum degree of flexibility in the transfer system. EPA will allow permanent transfers of baseline allowances with those allowances disappearing at the phaseout date for the specific HCFC, regardless of what inter-pollutant transfers had taken place.

8. Offset for a Transfer of Allowances

Section 607(c) of the CAA requires that transfers result in a greater environmental benefit than would occur in the absence of such a transfer. This can be achieved by an offset for inter-pollutant and inter-company transfers. However, inter-pollutant transfers combined with inter-company transfers would only require one offset. Since international transfers are governed by Section 616 of the CAA and that section does not contain similar requirements for an environmental benefit, no offset was proposed for such transfers.

EPA proposed a 0.1 percent offset be applied to inter-pollutant and inter-company transfers to afford an environmental benefit associated with domestic transfers. Of the ten commenters on transfers, three commenters supported the proposed 0.1 percent offset while one commenter proposed a 0.05 percent offset. EPA believes that the 0.1 percent offset reflects the lower ODP of class II controlled substances compared to class I substances; allows for simplicity in calculation; and still provides an environmental benefit associated with domestic transfers. EPA believes that a lower offset, such as the 0.05 percent proposed by a commenter would reflect the lower ODP of class II controlled substances but provide such a small environmental benefit as to be valueless. The remaining commenters did not mention the offset. One of the supporters of the 0.1 percent offset suggested no offset at all for intra-company transfers, a one-time offset for inter-company transfers, and only a one-time offset over the lifetime of a permanent transfer. This suggestion could not meet the requirement of Section 607(a) of the CAA. That section requires EPA's regulations to ensure that ''transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II controlled substances that would occur in that year in the absence of such transactions.'' Intra-company transfers are transactions ''under the authority of'' Section 607 of the Act. They are specifically provided for in Section 607(b). Thus, it is not possible to waive the offset requirement entirely for intra-company transfers. In addition, a one-time offset for other types of transfers would not ensure ''greater total reductions'' in subsequent years and thus would not meet the requirements of Sections 607(a) and (c).

EPA is requiring a 0.1 percent offset for inter-pollutant and inter-company transfers. Inter-pollutant transfers combined with inter-company transfers would be treated as a single transaction and therefore require only a 0.1 percent offset. International transfers will require no offset.

H. Will Production for Export Be Allowed After Each Phaseout?

Because the U.S. is phasing out HCFCs chemical-by-chemical rather than by percentage, it is possible to produce an HCFC for export even after it is phased out domestically. To differentiate pre-phaseout allowances from post-phaseout allowances, a new type of allowance was necessary for the phased-out HCFCs and EPA proposed creation of an ''export production allowance.'' The first HCFC scheduled for phaseout in the U.S. is HCFC–141b. EPA believes that foreign demand for HCFC–141b will continue in years beyond the U.S. 2003 phaseout.

1. Exports to Parties

Since production and consumption allowances for HCFC–141b will no longer exist as of January 1, 2003, but the potential for overseas markets for HCFC–141b will still exist, EPA proposed allowing production for export only to Parties that had ratified the Copenhagen Amendments. EPA proposed allocating ''export production allowances'' equal to 100 percent of baseline production allowances for HCFC–141b with the requirement that HCFC–141b produced in the U.S. under these allowances be exported to Parties listed in Appendix C as having ratified the Copenhagen Amendments.

Two commenters were concerned that EPA would cease allocating export production allowances for HCFC–141b as early as December 31, 2009, and requested that allowances be available until December 31, 2029. One commenter suggested that since exports from the European Union are allowed through 2025, the U.S. should follow suit and not unfairly prejudice U.S. business. In the NPRM, EPA proposed that these allowances would remain available at least until December 31, 2009, and that EPA expected to re-evaluate the availability of export production allowances for HCFC–141b, HCFC–22, and HCFC–142b. EPA had planned to issue a rule prior to 2010 which would allocate export production allowances for subsequent control periods, taking into account any relevant modifications to the Protocol or the CAA. With today's action, EPA is allocating export production allowances until 2030 for HCFC–141b, HCFC–22 and HCFC–142b. If the Protocol modifies the formula for the production cap, EPA will modify the allocation of export production allowances through notice and comment rulemaking accordingly. One commenter agreed with the proposal to provide for export production allowances as long as the exports were exported to Parties that have ratified the Beijing Amendments. EPA proposed to limit exports to Parties that have ratified the Copenhagen Amendments. The issue of limiting exports to certain Parties arises because at the eleventh meeting in 1999, the Parties agreed to an amendment to the Protocol requiring that, beginning January 1, 2004, each Party shall ban HCFC imports from and exports to countries that have not ratified the amendments that contain control measures for HCFCs. This ban reflects a strategy by the Parties to encourage ratification of the Protocol and each successive package of amendments. The majority of the control measures for HCFCs are contained in the Copenhagen Amendments. However, the control measures to cap HCFC production were included with the trade ban provisions in the Beijing Amendments. After further review, EPA has decided that the proposed interpretation of the trade ban was incorrect. However, EPA is not adopting the commenter's interpretation. EPA has concluded that the trade ban should be interpreted such that countries need only have ratified the amendments that contain controls measures relevant to that country. EPA believes the HCFC production control measures are only relevant to countries that produce HCFCs and therefore believes the trade ban should differentiate between countries that produce HCFCs, and those that do not produce HCFCs. Today's action lists countries that produce HCFCs in Appendix L, according to the UNEP Ozone Secretariat's compilation of information submitted in accordance with Article 7 of the Montreal Protocol. With today's action, starting January 1, 2004, trade in HCFCs with producing countries will be restricted to only those that have ratified the Beijing Amendments. If a country is not an HCFC producer, then trade in HCFCs will be restricted to only those that have ratified the Copenhagen Amendments. Article 4, paragraph 8 of the Protocol recognizes that countries may actually be complying with relevant control measures without having officially ratified the Protocol or its relevant Amendments and permits the Parties to meet and determine that imports from and exports to these countries is permitted. With today's action, EPA is also including the potential for a country to be determined by the Parties to be complying with the relevant

control measures, in which case they would be listed in Appendix C, Annex 2 of the Protocol, and HCFC trade with that country would be allowed. In summary, beginning January 1, 2004, the HCFC trade ban provisions limit production for export to Parties that are either: (1) Listed in Appendix L of this subpart and have ratified the Beijing Amendments as listed in Appendix C, Annex 1 of the Protocol, or (2) not listed in Appendix L of this subpart but listed in Appendix C, Annex 1 of the Protocol, as having ratified the Copenhagen Amendments, or (3) listed in Appendix C, Annex 2 of the Protocol, as being a foreign state complying with the Beijing Amendments if the foreign state is listed in Appendix L of this subpart, or as being a foreign state complying with the Copenhagen Amendments if the foreign state is not listed in Appendix L of this subpart.

Because production will be frozen at a constant level throughout the various phaseout years, unless there are further changes to the Protocol, EPA is granting export production allowances to produce the phased-out HCFCs at that level after the respective phaseouts. Export production allowances may only be used to produce for export to Parties that are either: (1) Listed in Appendix L and have ratified the Beijing Amendments as listed in Appendix C, or (2) not listed Appendix L but are listed in Appendix C as having ratified the Copenhagen Amendments. The production allowances for the phased-out HCFC before the phaseout date are equivalent to the export production allowances after the phaseout date.

2. Exports to Article 5 Countries

The Protocol allows for production of HCFCs at a level of 15 percent of production baseline explicitly for export to Article 5 countries to meet their basic domestic needs (Article 5 countries are listed in Appendix E to Subpart A of Part 82). But Section 605(d)(2)(B) of the CAA requires that between 2015 and 2030 the production for Article 5 countries be limited to 10 percent of baseline. Between 2030 and 2040, Section 605(d)(2)(B)allows production of 15 percent of baseline for Article 5 countries. In order to reconcile the percentages allowed by the Protocol and by the CAA, the schedule for Article 5 allowances will be: 15 percent of production baseline from January 1, 2003 (HCFC–141b) or January 1, 2010 (HCFC–22 and HCFC–142b) through December 31, 2014; 10 percent of production baseline from January 1, 2015 through December 31, 2029; and 15 percent of production baseline from January 1, 2030 through December 31, 2039.

EPA proposed allocating 15 percent of production baseline of the phased-out chemical for export to Article 5 countries after the U.S. phaseout date. Article 5 allowances could be expended without accompanying consumption allowances. Most commenters on Article 5 allowances were primarily interested in the ability to transfer these among themselves to respond to market demands. As explained above in Section III.G, EPA is permitting transfers of Article 5 allowances.

One commenter noted that the proposal indicated Article 5 allowances would be available only until 2030 while the Act would allow them until 2040. In verifying the authority to grant Article 5 allowances, EPA noted the Act authorizes Article 5 allowances up to 10 percent between 2015 and 2030 and up to 15 percent between 2030 and 2040 while the Protocol authorizes 15 percent throughout. Section 614 of the CAA states ''In the case of conflict between any provision this title [Title VI of the CAA] and any provision of the Montreal Protocol, the more stringent provision shall govern.'' Consistent with Section 614, EPA has written today's final rule to reflect the most stringent percentages.

I. Will There Be a Petition System for Importing Used HCFCs?

The Parties to the Protocol allow the import of used ODSs outside of the consumption cap because they believe this will reduce the burden of the transition to alternatives. The Parties to the Protocol also believe that allowing trade in already existing used material will offset the need for new global production.

Because illegal imports of virgin CFCs occurred in the absence of a petition process for importing used CFCs, EPA believes that a petition process for importing used HCFCs is needed. EPA anticipates that attempts to illegally import virgin HCFCs will occur as HCFCs are phased out and the supply of HCFCs diminishes in the face of continuing demand. EPA proposed a petition process for the import of used HCFCs similar to the process for class I substances, such as CFCs, to ensure that relevant class II imports are legitimately used previous to import. In finalizing the proposed petition process for used class II controlled substances, EPA has also taken into consideration comments on proposed changes to the petition process for used class I substances (64 FR 41627).

1. Petition for Each Individual Shipment

EPA proposed that a petition to import used HCFCs be submitted on a shipment-by-shipment basis. The information in a petition and the quantity a person wishes to import into the U.S. must be limited to a specific shipment and a single U.S. Customs entry. Since there were no comments concerning this provision, EPA will establish the shipment-by-shipment petition process as proposed.

2. Threshold Quantity Requiring a Petition

EPA proposed a threshold quantity of five (5) pounds or more of used HCFCs for an individual shipment that requires a petition to import. The five (5) pound threshold allows a company to take three samples from a large ISO-tank for laboratory analysis and send the samples to a test facility in the U.S. without being subject to the petition requirements. Since there were no comments concerning this provision, EPA will retain the proposed threshold quantity.

3. Information Requirements

EPA proposed that petitions contain the type of information needed to independently verify the previous use of the HCFC. For example, EPA proposed that the importer supply contact information for the entire chain of custody of the used HCFC in the petition. EPA also proposed requiring a copy of the contract for the purchase of the used HCFC and information on the intended use. In light of efforts by the Parties to the Protocol to implement a licensing system for exports as well as imports, EPA proposed that the petitioner obtain an export license from the appropriate government agency in the country of export. EPA requested comment on the utility and burden of supplying information about the name, make and model number of the equipment from which the HCFC was removed as a means of verifying that the material had been truly used in the operation of equipment.

In today's final rule, EPA is including a requirement that the petition contain ''a list of the name, make and model number of the equipment from which the material was recovered at each source facility.'' EPA believes that the submission of this information is vital to the Agency's ability to verify that the controlled substance was, in fact, previously used and is not simply a quantity of falsely labeled controlled substance that was newly produced. In the class I petition process, EPA uses information about the specific

equipment to verify that the quantity a petitioner wants to import could have been recovered from that equipment during the normal course of its operation. In general, the Agency has access to technical specifications for most equipment, including their typical ODS ''charge'' or amount of ODS they can hold. Over the years, the Agency has received many petitions to import tens of metric tonnes of an ODS claimed to have been recovered from specific equipment when the equipment's specifications indicated that the amount specified in the petition would not typically have been held in, or recovered from, the specific equipment (even in leaky, malfunctioning situations) over a 10-year period. Based on these kind of analyses, and contact with the source facility, EPA has been able to object to petitions. The Agency also wants to note that most petitions received to date have included this information. Finally, EPA believes that the petitioner must take some responsibility for ensuring that the ODS was previously used before submitting a petition, and to do this the petitioner should follow the chain of custody of the material back to the source facility and equipment from which it was recovered. This diligence in tracing ODS back to the source facility would allow a petitioner to include the specific information about the equipment from which it was recovered. Because U.S. obligations under the Protocol limit imports to zero after the phaseout, the Agency's ability to independently verify that a quantity of ODS was, in fact, recovered at a source facility from specific equipment is the most critical step in ensuring the U.S. compliance under the international treaty.

Several commenters on proposed changes to the petition process for used class I substances took issue with the proposed requirement that the importer submit ''* * * a copy of the contract for the purchase of the controlled substance that includes the name, address, contact person, phone number and fax number of the purchaser.'' The commenters requested that EPA clarify this information requirement, which appeared both in the proposed changes to the class I petition process and in the proposed class II petition process. EPA intended that the petitioner provide a copy of the contract for the purchase of the controlled substance by the ultimate user in the United States. The commenters argued that in many cases the petitioner does not know the ultimate purchaser of the material at the time the petition is being submitted. EPA believes that in some instances the importer of a used controlled substance will already know the purchaser, but this will not always be the case. Therefore, EPA is revising the proposed language so that the final requirement reads: ''A description of the intended use of the used control substance, and when possible, the name, address, contact person, phone number and fax number of the ultimate purchaser in the United States.''

One commenter on the proposed petition process for class II controlled substances noted that equipment is commonly ''top charged,'' meaning a little material is added to the equipment. This was in response to the requirement that the importer supply the date the material was put into equipment at each source facility and that the material must have remained in the equipment for at least 24 months prior to recovery. The commenter requested that EPA clarify whether a refrigeration system that is top charged within 24 months of the material's proposed import date may be imported as used material. In § 82.24(c)(3)(iv), EPA proposed the 24 month period for an HCFC to be considered ''used'' in order to make certain that imported HCFCs were actually employed in a working system (*e.g.*, as a refrigerant). Several commenters on the identical proposed change to the petition process for used class I substances pointed out that the phrase ''dated documents,'' as used in this proposed requirement, is ambiguous. The proposed information requirement in (iv) was, ''A detailed description of the previous use of the controlled substance at each source facility and dated documents indicating the date the material was put into the equipment at each source facility (material must have remained in the equipment at least 24 months prior to recovery to be considered previously used)''. The commenters suggested that the phrase ''dated documents'' needs clarification as to whether the Agency is seeking documents dated at the time the ODS was put into the equipment or documents dated at the time a person submits a petition certifying, to the best of their knowledge, when the ODS was put into the equipment. In addition, several commenters expressed concern that finding documents that are dated from the time the ODS was put into the equipment may be virtually impossible because enterprises only keep documents for a limited number of years and the equipment could have been filled with the ozone-depleting substance many years ago. Commenters on the proposed changes to the petition process for class I substances also pointed out a number of practical objections to the proposed requirement that the ODS must have remained in the equipment for at least 24 months. Two commenters on those proposed changes suggested that instead of requiring documents regarding the date when the controlled substance was put into equipment EPA could request such documents be submitted, when possible, but at a minimum require the petitioner to certify a ''best estimate'' of the length of time that the ODS was in the equipment. EPA believes that these are useful suggestions. In addition, EPA believes that the practical realities cited by commenters regarding a minimum residence time for the ODS in equipment makes such a requirement unworkable. Thus, instead of retaining the language from the proposal, EPA is adopting the following language in today's final action: ''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.''

4. Timing for Review of a Petition

Based on its experiences with the 15 working-day time limit for processing petitions to import used CFCs, EPA proposed forty (40) working days to allow more time for the review of petitions to import used HCFCs. The period for review would begin on the working day after EPA's Global Programs Division receives the petition, with no automatic approval. The proposed 40 working-day period is an effort to balance responsiveness and thoroughness in review of the petition. While EPA will make every effort to respond to the petitioner within the 40 working-day period, a lack of response does not constitute a grant of authority to import. A commenter stated that given the large amount of data requiring verification, it may be difficult for EPA to verify the information within two months. EPA believes that 40 working days will be adequate to review each petition in all but exceptional cases, based on EPA's experience processing petitions to import used CFCs. The provisions are finalized as proposed.

5. Reasons for Issuing an Objection Notice

Since 1994, EPA has worked with the Department of Justice, the Internal Revenue Service, the Customs Service, the State Department, and the Department of Defense to confirm the information in petitions to import used

CFCs. Based on this experience, EPA proposed a list of reasons for issuing an objection notice to a petition to import used HCFCs.

EPA proposed five reasons for issuing an objection notice that are included in today's action. Reason (A) is a lack of sufficient information. Reason (B) is the submission of false or misleading information. If the transaction appears to be contrary to the provisions of the *Vienna Convention on Substances that Deplete the Ozone Layer,* the Montreal Protocol and Decisions by the Parties, or the Protocol's non-compliance procedures, EPA may issue an objection notice pursuant to reason (C).

Under reason (D), EPA may issue an objection notice if the exporting country has not granted an export license for the shipment. Finally, under reason (E), EPA may disallow a petition to import used HCFCs from an Article 5 country that has reclamation facilities subsidized by the Multilateral Fund (MLF).

In the proposed rule, reason (B) for issuing an objection notice read as follows: ''If the Administrator determines that any portion of the petition contains false or misleading information or has reason to believe that the petition contains false or misleading information.'' One of the commenters on the proposed changes to the petition process for class I substances stated that an EPA objection under reason (B) might be ''based on unsubstantiated allegations or unfounded belief.'' EPA agrees that the phrase ''has reason to believe'' may be too vague. Thus, in today's action, EPA is modifying reason (B) for issuing an objection notice to read: ''If the Administrator determines that any portion of the petition contains false or misleading information, or the Administrator has information from other U.S. or foreign government agencies indicating that the petition contains false or misleading information.''

EPA received one comment on its proposal to issue an objection notice for any petition to import used HCFCs from an Article 5 country that has reclamation facilities subsidized by the MLF. The intent of the MLF was to allow Article 5 countries to reclaim used HCFCs for their domestic needs. The commenter stated that there were technically valid reasons for allowing imports of used HCFCs from Article 5 countries that had MLF reclamation facilities. That commenter believed that most of those facilities were simple and not capable of technically complex reclamation. However, the complexity of HCFC reclamation from Article V countries' equipment and appliances has no bearing on the proposed petitioning process, because the process only applies to the import of used HCFCs and not the import of equipment containing HCFCs; therefore, EPA is finalizing this proposed basis for issuing an objection notice. EPA would not want to circumvent the efforts of Article 5 countries in establishing their own HCFC management plans. EPA believes that if it allowed the import of used HCFCs from such Article 5 countries that this action might jeopardize the countries' efforts to properly handle used HCFCs and reduce their domestic demand for newly produced material. In today's final action, this reason for objection appears as reason (E).

EPA proposed two reasons for issuing an objection notice that are not included in today's final action. In the proposed rule, reason (F) was: ''If the Administrator has received information indicating that a person listed in the petition has produced at any time false information regarding trade in class II controlled substances as defined in this subpart, including information required by EPA or required by the appropriate government agency in the exporting country.'' Reason (G) was: If the Administrator has received information indicating that a person listed in the petition is in violation of a requirement in any regulation under Title VI of the Clean Air Act.'' Commenters on the proposed changes to the petition process for class I substances objected to the likely use of ''hearsay'' and information ''incorrectly or maliciously'' provided to EPA during its petition review. EPA agrees that the potential for abuse of these reasons by competitors or disgruntled employees is too great. Thus, reasons (F) and (G) are not being included in today's action.

In addition, in this final action EPA has combined two reasons relating to the exporting country's desire not to allow the export. Reason (D) is sufficiently broad to cover both a refusal to grant an export license in a particular instance and a general policy of not allowing exports.

Finally, EPA is modifying the proposed language for § 82.13(g)(3)(iv) to clarify that it is retaining the discretion not to object to a petition. The new language states: ''In cases where the Administrator does not object to the petition based on the criteria listed in paragraph (c)(4)(i) of this section, the Administrator will issue a non-objection notice.''

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

EPA proposed requiring that the petition and the non-objection notice from EPA accompany each shipment through U.S. Customs in the belief that this would facilitate clearance through customs. One commenter believed that in most circumstances no documentation other than labeling accompanies the shipment. This commenter also believed that the paperwork and the shipment are not processed simultaneously and suggested that EPA should require that the documentation be sent to the freight forwarder and accompany the bill of lading. In saying that the non-objection notice must accompany the shipment, EPA intends to require that the non-objection notice be submitted and reviewed by U.S. Customs with all documentation associated with a shipment, *i.e,* the bill of lading and Customs entry form. EPA respectfully disagrees with the commenter's belief that the paperwork does not accompany the shipment as it passes U.S. Customs. EPA frequently receives calls from U.S. Customs port inspectors asking questions about individual shipments of CFCs that are at the port, when the associated bill of lading and Customs entry form are not accompanied by the EPA non-objection notice. When there is no EPA non-objection notice issued for such a shipment, it is seized by U.S. Customs as an illegal import in violation of regulations under authority of the CAA. However, when U.S. Customs inspectors call EPA and the non-objection notice accompanies the bill of lading and the Customs entry form, it is an easier process to ''clear'' the shipment. The Agency wants to note that the commenter did not provide a rationale for why the non-objection notice should not accompany the shipment through U.S. Customs. Because the petitioner must receive the non-objection notice *before* the shipment leaves the foreign country of export, timing cannot be the reason for not including a non-objection notice with a shipment's entry through U.S. Customs. EPA believes requiring that the non-objection notice accompany the shipment's entry will expedite HCFC imports through U.S. Customs.

J. Will There be New Restrictions on Imports To and Exports From Specific Parties?

At the eleventh meeting in 1999, the Parties agreed to an amendment to the Protocol requiring that, beginning January 1, 2004, each Party shall ban HCFC imports from and exports to countries that have not ratified the amendments with control measures for HCFCs relevant to that country. This ban reflects a strategy by the Parties to encourage ratification of the Protocol

and each successive package of amendments. EPA proposed to make its HCFC regulations consistent with this provision by including a ban on import or export of any quantity of HCFCs from or to any state that was not a Party to the Copenhagen Amendments, unless that state was complying with the Copenhagen Amendments.

Only one commenter requested clarification concerning allocation rights of an importer of record that previously imported from a non-Party. EPA agrees with the commenter's assumption that all consumption allowances allocated to importers are valid upon promulgation of the rule. However, beginning January 1, 2004, EPA notes that these allowances may only be expended to produce for export to, or to import from, Parties that are either: (1) Listed in Appendix L and have ratified the Beijing Amendments as listed in Appendix C, or (2) not listed in Appendix L but are listed in Appendix C as having ratified the Copenhagen Amendments.

EPA will allow trade with all Parties upon promulgation of this rule, but on January 1, 2004, trade will be restricted to Parties that are either: (1) Listed in Appendix L and have ratified the Beijing Amendments as listed in Appendix C, or (2) not listed in Appendix L but are listed in Appendix C as having ratified the Copenhagen Amendments, or (3) listed in Appendix C, Annex 2 of the Protocol, as complying with the Beijing Amendments if the foreign state is listed in Appendix L, or as complying with the Copenhagen Amendments if the foreign state is not listed in Appendix L. The UNEP Web site maintains a real-time list of current Parties to the Protocol and all its amendments for those wishing to ensure they are viewing the most current list. The Internet address is: *http://www.unep.org/ozone/ratif.shtml.*

K. Will There Be Changes in Definitions?

Because some of the definitions referred only to class I substances and new definitions were necessary to explain provisions for HCFCs, EPA proposed modifications to the existing definitions and the addition of new definitions to § 82.3.

1. Modifications

EPA proposed modifying the definitions for the following terms to include HCFCs: ''baseline consumption allowances''; ''baseline production allowances''; ''consumption allowances''; ''production allowances''; and ''Article 5 allowances.'' There were no comments on these modifications.

Since the following terms do not apply to HCFCs, EPA proposed modifying them to make them explicitly apply to class I substances only: ''destruction credits''; and ''transformation credits.'' There were no comments and the Agency notes that the statutory time period in which a person could obtain these credits for class I controlled substances has passed, so is removing them from the rule.

EPA proposed modifying the definition for ''Party'' to include an example relating to the HCFC trade ban that the Parties agreed to in the 1999 Beijing Amendments. One commenter stated that the example implied that the term ''Party'' as used in provisions based on the Beijing Amendments includes foreign states that have not ratified the Beijing Amendments and requested that EPA clarify the example. This commenter believed that trade in HCFCs should only be permitted among foreign states that have ratified the 1999 Beijing Amendments. EPA agrees that the example in the proposed definition was confusing. In fact, EPA interprets the HCFC trade ban provisions agreed to in the 1999 Beijing Amendments as limiting imports from and exports to Parties that are either: (1) Listed in Appendix L and have ratified the Beijing Amendments as listed in Appendix C, or (2) not listed Appendix L but are listed in Appendix C as having ratified the Copenhagen Amendments. Therefore, with today's action the example is being removed from the definition of Party.

2. Additions

EPA proposed adding the following new definitions: ''export production allowances''; ''unexpended export production allowances''; ''individual shipment''; ''non-objection notice''; ''source facility.'' With today's action, EPA is replacing the concept of ''space vehicle/defense allowances'' with the broader concept of ''HCFC–141b exemption allowances.'' Accordingly, EPA is adopting definitions for ''HCFC–141b exemption allowances'' and ''unexpended HCFC–141b exemption allowances'' in lieu of ''space vehicle/defense allowances'' and ''unexpended space vehicle/defense allowances.''

EPA also proposed to adopt definitions for ''individual shipment,'' ''non-objection notice,'' and ''source facility'' as part of a separate rulemaking involving changes to the petition process for used class I substances (63 FR 41627). EPA has taken into consideration comments received in the course of that rulemaking prior to adopting these definitions in final form. In the class I rulemaking, EPA received one comment on the definition of ''individual shipment.'' The comment asked for a clarification of the phrase ''not to be dis-aggregated,'' which appeared in the definition as initially proposed. The comment also pointed out an inconsistency between this phrase and the phrase ''not to be aggregated,'' which appeared in the initial paragraph under § 82.13(g)(2) and the proposed § 82.24(c)(3). With this action, EPA is adding a definition of ''individual shipment'' to § 82.3 that does not employ the phrase ''not to be dis-aggregated'', and is removing the phrase ''not to be aggregated'' from the proposed language for § 82.24(c)(3). The intent of the definition continues to be the same as explained in the rule published in the **Federal Register** on August 4, 1998 (63 FR 41627); that an importer shall submit a petition to import a specific quantity of used class I controlled substance as a single U.S. Customs entry. If an importer cannot arrange for the entire quantity to be shipped as one entry through U.S. Customs, the importer is required to submit to EPA a separate petition for the quantity of each individual U.S. Customs entry of a used controlled substance.

One commenter on the proposed petition process for used class II controlled substances believed EPA should clarify whether the definition of ''individual shipment'' may include a shipment that is the aggregate of many other shipments of used HCFCs. The commenter requested that EPA detail the documentation required for such an aggregated shipment. ''Individual shipment'' as it pertains to the threshold quantity requiring a petition means the total weight in kilograms of the HCFC that the petitioner wishes to import into the United States at one specific instance and that can be imported as a single U.S. Customs entry. Petitioners who wish to aggregate HCFCs from different sources into one ''individual shipment,'' must make certain that their petition has the required multiple source information that makes up the individual shipment. For example, an importer that petitions the Agency to import an individual shipment of used HCFCs from more than one source must itemize the petition requirements applicable to each source. This itemization will be done based on the weight contribution of each source to the individual shipment. If the individual shipment consists of different HCFCs from multiple sources, EPA will respond in writing regarding each quantity of each specific HCFC. For example, if an individual shipment

consists of HCFC–22 and HCFC–123, EPA will cite the quantity for each substance in one notice.

In the rulemaking to change the petition process for used class I substances, EPA received one comment on the proposed definition of ''source facility.'' As proposed, that definition reads as follows: ''the exact location at which a used controlled substance was recovered from a piece of equipment, including the name of the company responsible for, or owning the location, a contact person at the location, the mailing address for that specific location, and a phone number and a fax number for the contact person at the location.'' The commenter stated that the phrase ''exact location'' is too specific, believing that it could refer to the valve or fitting on the piece of equipment from which the used controlled substance is recovered. The commenter pointed out that the valve or fitting will not have a mailing address. The commenter suggests replacing the phrase ''exact location'' with the word ''site.'' EPA believes there may be some merit to the commenter's concern about the specificity of the proposed phrase. EPA's intent was to refer to the postal address of the owner of the equipment from which the ozone-depleting substance was recovered, not the exact location of the specific piece of equipment. However, to maintain the consistency of the wording within the definition, EPA is replacing the phrase ''exact location'' with the word ''location'' rather than site.

L. Will Other Regulatory Options Be Used To Control HCFCs?

Other authorities under Title VI are available to ensure that the U.S. complies with its phaseout schedule for HCFCs. These programs include the SNAP program, labeling of products made with ODSs, and the ban on non-essential products containing ODSs. These programs affect the sale and/or use of HCFCs rather than their production, import, and export. The allowance system directly affects the production, import, and export of HCFCs.

Eight commenters were unanimous in their belief that implementing these provisions to maintain compliance with the Protocol cap was unnecessary.

1. Labeling

Under Section 611 of the Act, EPA could require labels on products containing or made with HCFCs before January 1, 2015. Beginning on that date, all products containing or manufactured with HCFCs must bear a label indicating the association with a substance that harms public health and the environment by destroying ozone in the upper atmosphere.

EPA did not propose to use labeling to discourage HCFC usage and to ensure compliance with the Protocol. Nine commenters agreed with the EPA position. At this time, EPA will not use labeling to further control HCFCs but will continue to evaluate the potential benefit of labeling requirements. Future action, if pursued, would be done through notice and comment rulemaking.

2. SNAP Approval and Restrictions

The Significant New Alternatives Policy program as authorized by Section 612 of the Act publishes lists of acceptable and unacceptable substitutes for HCFCs. In some SNAP sector end-uses, HCFCs have been listed as acceptable substitutes, but the availability of zero-ODP alternatives has increased in some of these uses. It is therefore possible that SNAP determinations regarding existing HCFC acceptable uses could be revised.

EPA did not propose to include any SNAP-related provisions in this rule. Seven of the eight commenters on regulatory options agreed with the EPA decision not to include SNAP-related provisions in this rule. The eighth commenter was silent on this issue. Although EPA is not including any SNAP provisions with the allowance system, it is possible that future independent SNAP approvals and restrictions might affect HCFC production and consumption.

3. Non-Essential Products Ban

Section 610(d) of the Act prohibits the sale, distribution, or offer for sale or distribution in interstate commerce, of certain non-essential products that contain or are made with HCFCs. EPA is authorized to grant exceptions to the ban under certain conditions.

EPA did not propose any provisions that would use the non-essential products ban to ensure compliance with the HCFC caps under the Protocol. Five of the eight commenters on regulatory options agreed with this decision; the other three were silent on the issue of a Section 610(d) ban. Although EPA is not including provisions in this rule relating to the non-essential products ban, it is possible that future independent evaluations of whether certain products containing or manufactured with HCFCs qualify as non-essential products might affect HCFC consumption.

M. Will There Be Consumption Allowance Credits for Reductions of HCFC Production By-Products Regulated by Title VI?

EPA realizes that there is at least one case where the production of an HCFC creates a by-product that is also regulated under Title VI of the Act. In an effort to encourage emissions reductions of such by-products, EPA has explored incentives for voluntary reductions. EPA sought comment on a proposal to provide one production allowance and one consumption allowance to producers of HCFCs for each kilogram of by-product that is reduced. Allowances could be granted only to the extent available under the cap. Only one commenter was in favor but stated that EPA would have to be certain that adequate allowances were available after the new entrant allocations are calculated. This commenter felt that such an incentive approach would be difficult to monitor and verify. Because there was not widespread support for the proposal and the Agency agrees that adequate monitoring will be difficult, EPA is not reserving any remaining allowances under the cap as an incentive to reduce by-products regulated under Title VI in the production of HCFCs.

N. What Will the Reporting and Recordkeeping Requirements Be?

EPA proposed reporting and recordkeeping requirements similar to those used for class I substances. The requirements include quarterly reports listing each chemical and the quantities (in kilograms) produced, imported, exported, transformed, and destroyed. In order to allow EPA to gather more accurate and timely HCFC market information and fulfill its reporting obligations under the Protocol, EPA proposed to expand the basic reporting and recordkeeping requirements for HCFC transactions that have been in place since 1996.

Five commenters felt the proposed reporting and recordkeeping requirements were excessive or overly burdensome and unnecessary. Three commenters stated that the proposal to require reporting within 15 days after each quarter failed to provide companies sufficient time to gather the information required and to ensure the accuracy of the data. The current regulations require reporting within 45 days after each quarter. EPA has requested that companies report within 15 days after each quarter during 2001 instead of the required 45 days so it could better monitor quarterly consumption figures. Most companies

were able to comply with this request, allowing EPA to track whether domestic consumption was close to the U.S. consumption cap. However, EPA wishes be responsive to the commenters' concern that 15 days is insufficient time. Therefore, with today's action, EPA is requiring reporting within 30 days after each quarter. EPA believes that this is a sufficient period of time to allow companies to gather the information and ensure its accuracy before submission to EPA. EPA has decided not to retain the current 45-day reporting requirement because of the continuing need to monitor compliance with the U.S. consumption cap as closely as possible.

Three commenters were concerned that certain proposed reporting requirements may involve the provision of highly confidential business information. EPA will treat all business information submitted under the HCFC reporting requirements in accordance with the confidential business information provisions at 40 CFR Part 2, Subpart B.

One commenter suggested that supplying hard copies of the records EPA requires, such as the quarterly reports, may demand more human resources than anticipated since these documents are not readily available through normal business electronic systems. EPA has doubled the reporting period from the proposed 15 days to 30 days to allow more time for filing quarterly reports. This commenter suggested that allowance holders with computer records be allowed to supply a minimal number of hard copies and allow the computerized records to provide the first level of recourse to resolve discrepancies. EPA is making the forms available electronically, as a first step. In addition, EPA is working to make it possible for people to complete the forms electronically with special guidance on a ''file naming protocol.'' EPA wants to create this ''file naming protocol'' so forms completed electronically by producers and importers can be saved with similar nomenclature for transmission to EPA by email. For example, the company, Acme Ltd., might complete the third-quarter importer's report electronically and save the document with the name 3Q_ImpR_Acme and send it, by email, to EPA. The Agency believes guidance on a ''file naming protocol'' will ease the process for electronically filing, searching and identifying forms for both the Agency and companies, and be especially helpful if a question arises about information in a specific form. EPA will strive to have forms available that can be completed electronically by the regulatory deadline for submission of the first-quarter reports (30 days after the end of the quarter in 2003), and will make every effort to have them available no later than for submission of second-quarter reports. Concurrent with the process for making it possible to electronically complete forms for submission by email, EPA is pursuing technical and logistical questions about creating a secure Web-based system for direct electronic reporting of data. If EPA deems that it is feasible and efficient to create a secure Web-based database for direct electronic reporting, then EPA will work to bring such a system online by 2004. This commenter also suggested that records should be maintained for two years rather than the three years proposed by EPA. However, 3 years is the standard retention period for records concerning both class I and class II controlled substances. (40 CFR 82.13(d)). EPA is not changing this pre-existing requirement in this final rule.

In order to ensure that EPA reports accurate information to the Montreal Protocol on behalf of the U.S., the Agency requires that companies send revisions to reports no more than 180 days after the due date for the specific report. EPA reports data on U.S. national production and consumption of controlled substances in accordance with obligations under Article 7 of the Montreal Protocol. This information is used by the Parties to assess compliance with phaseout obligations under Article 2 of the Protocol. To ensure accuracy in U.S. data reported under Article 7 of the Protocol, EPA requests that companies limit revisions to their reporting to no longer than 180 days after the required submission date under § 82.24.

1. Producers

For determining violations, EPA proposed to assume a company had produced at full capacity during a control period if the producer failed to keep records of production or failed to submit reports on production for that control period. One commenter suggested that EPA consider notifying the company and allow the company 30 days in which to comply before assuming the company had produced at full capacity. The commenter believed that such a grace period would alleviate a potentially harsh sanction for inadvertent non-compliance or difficulty in obtaining the required information in a timely manner. If a producer determines that it is unable to report in 30 days because of difficulty in obtaining information, it should immediately notify EPA and give EPA an estimate of when it can comply with the reporting requirements. U.S. producers have been required to report to EPA since 1996 but inadvertent non-compliance after many years of experience may still occur. EPA currently contacts producers after the end of the reporting period if a report has not been filed. Under the new 30-day reporting period, companies will be notified if a report has not been received after 30 days due to inadvertent non-compliance. The producer will be allowed an additional 15 days in which to file a report, after which the determination of violations will begin.

One commenter wondered whether a bill of lading would be sufficient verification of an export to an affiliate in an Article 5 country for expending Article 5 allowances since EPA proposed requiring written verification. For recordkeeping purposes, EPA will accept a bill of lading as proof of export to an affiliate in an Article 5 country.

Two commenters believed that the 100-pound recordkeeping threshold for spills or releases of HCFCs should not include Toxic Release Inventory quantities for fugitive emissions. EPA agrees that producers need not include Toxic Release Inventory quantities for fugitive emissions. In addition, EPA is clarifying that this recordkeeping requirement applies only to spills or releases that occur while the producer has title to the chemical.

With respect to the proposed reporting requirement at § 82.24(b)(1)(vi), a producer pointed out that it sometimes sells to wholesalers who may export a portion of the shipment intended for transformation or destruction and the producer may not be aware of it. The commenter believed that producers should not be accountable for reporting these sales and that their responsibility should be limited to those shipments where the ''Ship to'' destination is to a foreign entity. EPA agrees that the producer need only report the names and quantities of HCFCs exported by that producer and has removed the phrase ''or by other U.S. persons'' from the reporting requirement.

2. Exporters

A producer that manufactures for the export market questioned whether it needed to supply the source of the HCFC and the date it was purchased if it was shipping directly to its own affiliate in another country. EPA believes interactions between a U.S. producer and an overseas affiliate probably generate some form of paperwork to document the manufacture of an HCFC that is subsequently exported to the affiliate. The producer/exporter may substitute

this paperwork that is already generated to document an ''order'' for an HCFC to be exported to an overseas affiliate in lieu of an invoice.

3. Transformation and Destruction

Three commenters requested that EPA clearly state that HCFCs used as feedstocks; HCFC heels in tank trailers, cylinders, and drums; and used HCFCs are exempted from the rule. Two of the three commenters suggested eliminating the proposed recordkeeping and reporting requirements associated with these exemptions. Section 82.15 (prohibitions for class II control substances) in the rule exempts the production and import of HCFCs for transformation or destruction purposes. That same section exempts the import of transhipments, heels, and used HCFCs from the prohibitions. EPA believes no further clarification of these exemptions is necessary. Although there are no allowances associated with feedstock, heels, and used HCFCs, the Protocol requires reporting of these quantities by each of the Parties. Therefore, EPA needs to obtain basic information regarding such activities. Accordingly, EPA is adopting the reporting and recordkeeping requirements as proposed.

Another commenter on the proposed requirement that producers maintain dated records for HCFCs used as feedstock proposed that production records be enough to satisfy this requirement. Under the Protocol and CAA, quantities of HCFCs used for feedstock are exempt from calculations of production and consumption. However, in accordance with obligations under the Protocol EPA must report the total amount of HCFCs produced, imported and exported for use as a feedstock during a calendar year to the Parties. The intent of monitoring feedstock quantities is to ensure there is no abuse of the exemption. Because feedstock quantities can be produced, imported and exported in one year and may not actually be transformed during that same calendar year EPA is retaining the requirement that producers, importers and exporters submit a transformation verification for class II controlled substance as proposed.

A commenter on reporting requirements for those purchasing HCFCs for transformation felt a change in timing for transformation should not require a revised verification since inventory fluctuations might influence the decision to transform. The proposed requirement calls for a ''period of time over which the person intends to transform'' the HCFCs rather than a specific date. The person reporting may estimate the period of time during which the transformation might take place rather than report a specific date, however, the Agency is not requiring a re-submission of the verification as proposed if the timing happens to change.

A commenter on the reporting of transformation or destruction believed that submitting invoices or sales agreements 15 days after the end of the quarter might be difficult and suggested that this be changed to a recordkeeping requirement. EPA has expanded the reporting period from 15 days to 30 days to allow the exporter more time to submit the required paperwork. This is especially important at the end of the fourth quarter, when the annual figures are compiled and any discrepancies might occur. EPA is retaining this as a reporting, rather than a recordkeeping, requirement in order to meet U.S. reporting obligations under the Protocol.

4. Heels

One producer suggested that heel weights be excluded from the reporting requirements in § 82.24(f) since the company does not normally record these quantities in rail car shipments or tank trucks. The commenter adds that it is possible to record the heels remaining in rail cars because tare weights are assigned. The commenter feels that heels in tank trucks are irrelevant because customers are only billed for the net amount of HCFCs delivered. The commenter believes that reporting of heels that are not normally recorded will result in additional cost and provide little environmental benefit.

EPA believes that the supplier and the customer both possess information regarding the total mass (weight) for the container, whether it be a tank truck or a rail car. As suggested by the commenter, the residual quantity (heel) in a rail car is the difference between the empty weight of the rail car and the tare weight after a delivery. Suppliers very typically determine the weight of a rail car or tank truck after a delivery to be able to know the how much to bill the customer (weight before the delivery minus weight after the delivery = amount delivered). The residual quantity (heel) in a tank truck would be calculated in the same manner; the difference between the empty weight of the tank truck and the tare weight after the delivery. EPA believes that determining the residual quantity (heel) in this manner will not result in additional cost to the supplier.

The industry rule of thumb is that a heel is up to ten percent of the volume of the container. If the residual quantity entering the United States is ten percent or less of the total volume, the residual quantity may be considered a heel. The supplier may certify that the heel will remain in the container and be included in a future shipment; be recovered and transformed; be recovered and destroyed, or be recovered for a non-emissive use. If the residual quantity entering the United States is greater than ten percent, then it may not be considered a heel and the importer will be required to expend consumption allowances. Non-reporting of residual quantities greater than ten percent of the total volume provides the supplier with additional consumption allowances it has not been granted and compromises the environmental benefits of the phaseout.

The commenter requests that EPA clarify that ''heels'' do not apply to small containers but only to bulk shipments because cylinders and small containers are by definition returned empty and are not weighed. In most cases, they are presumed empty; in some cases, they are vented to a thermal oxidizer before being refilled. No residual quantity, whether in small containers or large ISO tanks, can qualify as a heel unless it represents ten percent or less of the volume of the container.

The same commenter requested that the notice the Department of Transportation mandates in 49 CFR 172.203(e)(1&2) for bulk shipments precede the heel weight on the bill of lading. EPA agrees with the commenter that the heel weight may follow the notice ''RESIDUE: Last Contained * * *'' on the bill of lading.

The commenter noted that an invoice seldom accompanies a heel and that U.S.-mandated labeling of a shipping container from an Article 5 country may be a particular problem. EPA requests the heel weight be indicated on the bill of lading or the invoice to allow the importer more than one place on which to record the heel weight in case one or the other document is not available. EPA will monitor the ability of Parties, especially Article 5 countries, to include U.S.-mandated information on the documents accompanying heels to determine if further refinements are necessary.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the

requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

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

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

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

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

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

B. Executive Order 13045: Children's Health Protection

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

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

C. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirements in this document are directed to economic entities that either produce, import, export, transform, destroy or use HCFCs in very narrow applications, and not to State or local governments. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

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

The requirements in this final rule are directed to economic entities that either produce, import, export, transform, destroy, or use HCFCs in very narrow applications, and not to Indian tribal governments or their communities.

E. Executive Order 13211: Energy Effects

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects because the phaseout timetable for HCFCs, originally established in 1993, occurs over many decades giving industries long planning horizons for changing to alternative substances and for adjusting new technologies. Over this long time horizon, industries are re-tooling and maximizing energy efficiencies. Switches from HCFCs to alternative substances and new technologies that have already taken place, or are in process, are resulting in energy savings for the manufacturer and the consumer.

F. Congressional Review Act

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

G. National Technology Transfer and Advancement Act

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

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Paperwork Reduction Act

The information collection requirements in this rule [have been (or will be)] submitted for approval to the

Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2014.01) and a copy may be obtained from Sandy Farmer, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

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

Reporting requirements mandated in Section 603 of the CAA relative to HCFCs are currently in place in 40 CFR 82.13(n) and (o). This rule contains new recordkeeping requirements and expanded reporting requirements to ensure accurate expenditures of allowances and trades of allowances. Responses to the collection of information are mandatory pursuant to Section 114 of the CAA.

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

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

Start-up costs are estimated to amount to $219,108, after which annual industry cost is estimated to be $253,089 to maintain records of production, import, and export; submit quarterly reports to EPA on production, import and export; provide additional information requested by EPA; prepare transfer claims; and submit petitions to import used HCFCs. The latter two functions are not periodical tasks but are initiated by the person based on business decisions.

In order to receive the benefit of HCFC–141b exemption allowances, HCFC–141b formulators and U.S. agencies, departments or instrumentalities, or related entities involved in space vehicle endeavors are being asked to petition the Agency annually for exemption to produce or import HCFC–141b beyond the January 1, 2003 phaseout date. The approximate number of petitioners is likely to be 15–20 entities. EPA is requiring that the entities supply technical descriptions of the processes in which HCFC–141b is being used, the areas where the product will be applied, and why alternatives and substitutes are not sufficient to eliminate the use of HCFC–141b. EPA is also requiring that entities supply a detailed analysis showing why stockpiled, recovered, or recycled quantities are not technically feasible for use and a detailed description of continuing investigations into and progress on possible alternatives and substitutes by the applicants.

Entities granted HCFC–141b exemption allowances for the production of HCFC–141b products will be required to report semiannually to EPA on the total quantity of HCFC–141b received to date and the name of the supplier. The supplier of HCFC–141b (the ''producer'' or ''importer'' under the regulations) will report quarterly along with their other quarterly reporting to EPA the amount of HCFC–141b supplied to a petitioner granted HCFC–141b exemption allowances and submit copies of the requests. It is estimated that the annual reporting burden for the recipient of the allowances is about 20 hours at a cost of about $864 and the burden for the manufacturer is about 20 hours at a cost of about $1,538.

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

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

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

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that is identified by the North American Industry Classification System code (NAICS) in the Table below.

Type of Enterprise	NAICS Code	Size Standard (number of employees)
Organic Chemical Wholesaling	422690	100

(2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

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

We have determined that approximately 13 small businesses that are eligible for allowances under this rule, would receive allowances, for which recordkeeping and reporting to

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

Additionally, in this final rule EPA is adopting a petition process for HCFC–141b that is open to all entities. We expect that approximately 15 formulators of HCFC–141b, some which are small businesses, will petition the Agency for HCFC–141b exemption allowances. Those qualifying entities will be granted a benefit in the form of HCFC–141b exemption allowances which allow limited continued production of HCFC–141b beyond the long-established phaseout date. We estimate that each petitioner will experience an impact of .002 percent of revenues.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities.

With respect to the petition process for HCFC–141b exemption allowances, the economic impact on all affected entities, and especially the economic impact on small entities, has been reduced to every extent possible. For example, EPA has minimized the economic impact by only requesting information that is readily available to all expected to petition. In addition, in all the HCFC–141b uses EPA is aware of, the formulator is responsible for meeting the testing and code requirements as opposed to the end user. Therefore, in order to reduce the burden of petitioning, EPA designed the process so the end user does not need to apply for the exemption allowance.

With respect to the allowance allocation system as a whole, EPA has taken a number of steps to reduce burden and provide flexibility. Although small entities receiving allowance allocations will be subject to the same recordkeeping and reporting requirements as the larger entities, for purposes of tracking allowance trades and expenditures, the small entities will be on the same footing as the larger entities; they will be receiving their best year of activity in the range of years discussed above as a baseline year for determining allowance allocations, and will be able to conduct their business with a degree of certainty in a competitive market. Like the large entities, the small entities will receive allowances for the entire phaseout period, with the necessary adjustments each calendar year to accommodate the required reductions in consumption agreed to by the Parties to the Protocol and the phaseouts of HCFC–22 and HCFC–142b.

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

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

In the proposal EPA notified the industry that late entrants to the HCFC market could still be allocated allowances if they provided proper documentation. One small entity provided sufficient information and is allocated allowances in today's action. EPA also carefully reviewed the quarterly reports submitted by other small entities for the baseline years under consideration to ensure that the correct quantities have been ascribed to each entity for each year. EPA consulted with the small entities in order to reconcile any disparities encountered during the record review.

J. Unfunded Mandates Reform Act

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

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector that may result in expenditures of $100 million or more in any one year. Entities in the private sector that either produce, import, export, transform, destroy or use HCFCs in very narrow applications will be

operating under an allowance allocation system very similar to the system selected for CFCs (53 FR 30566, August 12, 1988). The CFC allowance allocation system was determined to be the most economically efficient, market-based, and simple to administer in meeting the requirements of the Protocol. Recordkeeping for HCFCs will be similar to that for CFCs but will be somewhat simplified due to the absence of essential use allowances, destruction credits, and transformation credits. The experience gained by those entities familiar with the CFC allowance allocation system will carry over in the class II allowance allocation system.

In addition, the UMRA does not apply to rules that are necessary for the national security or the ratification or implementation of international treaty obligations. As a Party to the Protocol, the U.S. must comply with the phaseout schedule for HCFCs created in 1992 the consumption cap for HCFCs established in 1996. This final rule contains provisions to implement these obligations.

Thus, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

List of Subjects in 40 CFR Part 82

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

Dated: December 18, 2002.

Christine Todd Whitman,

Administrator.

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

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

Subpart A—Production and Consumption Controls

2. Amend § 82.3 as follows:

a. Revise the section heading.

b. Revise the definitions for ''Article 5 allowances'', ''Baseline consumption allowances'', ''Baseline production allowances'', ''Confer'', ''Consumption allowances'', ''Party'', ''Production allowances.''

c. Remove the definitions for ''Destruction credits'', and ''Transformation credits.''

d. Add new definitions in alphabetical order for the terms ''Export production allowances'', ''Formulator'', ''HCFC–141b exemption allowances'', ''Individual shipment'', ''Non-objection notice'', ''Source facility'', ''Space vehicle'', ''Unexpended export production allowances'', and ''Unexpended HCFC–141b exemption allowances''.

The revisions and additions read as follows:

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

* * * * *

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

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

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

* * * * *

Confer means to shift the essential-use allowances obtained under § 82.4(t) from the holder of the unexpended essential-use allowances to a person for the production of a specified controlled substance, or to shift the HCFC–141b exemption allowances granted under § 82.16(h) from the holder of the unexpended HCFC–141b exemption allowances to a person for the production or import of the 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 and 82.10, 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.

* * * * *

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

* * * * *

Formulator means an entity that distributes a class II controlled substance(s) or blends of a class II controlled substance(s) to persons who use the controlled substance(s) for a specific application identified in the formulator's petition for HCFC–141b exemption allowances.

* * * * *

HCFC–141b exemption allowances means the privileges granted to a HCFC–141b formulator; an agency, department, or instrumentality of the U.S.; or a non-governmental space vehicle entity by this subpart to order production of or to import HCFC–141b, as determined in accordance with § 82.16(h).

* * * * *

Individual shipment means the kilograms of a used 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) and 82.24(c)(4).

* * * * *

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

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

* * * * *

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

* * * * *

Source facility means the location at which a used controlled substance was recovered from a piece of equipment, including the name of the company responsible for, or owning the piece of

equipment, a contact person at the location, the mailing address for that specific location, and a phone number and a fax number for the contact person at the location.

* * * * *

Space vehicle means a man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with tests, transport, and storage, which through contamination can compromise the space vehicle performance.

* * * * *

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

* * * * *

Unexpended HCFC–141b exemption allowances means HCFC–141b exemption allowances that have not been used. A person's unexpended HCFC–141b exemption allowances are the total of the quantity of the HCFC–141b exemption allowances the person has authorization under § 82.16(h) to hold for that control period, minus the quantity of HCFC–141b that the person has had produced or has had imported at that time during the same control period.

* * * * *

3. Amend § 82.4 as follows:

a. Revise the section heading.

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

c. Redesignate paragraphs (t) through (w) as (n) through (q).

The revision reads as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

4. Amend § 82.5 as follows:

a. Revise the section heading.

b. Remove paragraph (h).

The revision reads as follows:

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

* * * * *

5. Amend § 82.6 as follows:

a. Revise the section heading.

b. Remove paragraph (h).

The revision reads as follows:

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

* * * * *

6. Section 82.8 is removed and reserved.

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

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

* * * * *

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

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

* * * * *

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

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

* * * * *

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

§ 82.12 Transfers of allowances for class I controlled substances.

* * * * *

11. Amend § 82.13 as follows:

a. Revise the section heading;

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

c. Redesignate paragraphs (p) through (cc) as (n) through (aa).

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

* * * * *

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

§ 82.15 Prohibitions for class II controlled substances.

(a) *Production.* (1) Effective January 21, 2003, no person may produce class II controlled substances in excess of the quantity of unexpended production allowances, unexpended Article 5 allowances, unexpended export production allowances, or conferred unexpended HCFC–141b exemption allowances held by that person for that substance under the authority of this subpart at that time in that control period, unless the substances are transformed or destroyed domestically or by a person of another Party, or unless they are produced using an exemption granted in paragraph (f) of this section. Every kilogram of excess production constitutes a separate violation of this subpart.

(2) Effective January 21, 2003, no person may use production allowances to produce a quantity of class II controlled substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class II controlled substances. No person may use consumption allowances to produce a quantity of class II controlled substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class II controlled substances.

(b) *Import.* (1) Effective January 21, 2003, no person may import class II controlled substances (other than transhipments, heels or used class II controlled substances), in excess of the quantity of unexpended consumption allowances, or conferred unexpended HCFC–141b exemption allowances held by that person under the authority of this subpart at that time in that control period, unless the substances are for use in a process resulting in their transformation or their destruction, or unless they are produced using an exemption granted in paragraph (f) of this section. Every kilogram of excess import constitutes a separate violation of this subpart.

(2) Effective January 21, 2003, no person may import, at any time in any control period, a used class II controlled substance, without having submitted a petition to the Administrator and received a non-objection notice in accordance with § 82.24(c)(3) and (4). A person issued a non-objection notice for the import of an individual shipment of used class II 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 class II controlled substance stated in the non-objection notice. Every kilogram of import of used 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)(3) and (4) constitutes a separate violation of this subpart.

(c) Production with Article 5 allowances. No person may introduce into U.S. interstate commerce any class II controlled substance produced with Article 5 allowances. Every kilogram of a class II controlled substance that was produced with Article 5 allowances that is introduced into U.S. interstate commerce constitutes a separate violation under this subpart. No person may export any class II controlled substance produced with Article 5 allowances to a non-Article 5 Party to the Protocol as listed in Appendix E to this subpart. Every kilogram of a class II controlled substance that was

produced with Article 5 allowances that is exported to a non-Article 5 Party to the Protocol as listed in Appendix E of this subpart constitutes a separate violation under this subpart.

(d) Production with export production allowances. No person may introduce into U.S. interstate commerce any class II controlled substance produced with export production allowances. Every kilogram of a class II controlled substance that was produced with export production allowances that is introduced into U.S. interstate commerce constitutes a separate violation under this subpart.

(e) Trade with Parties. Effective January 1, 2004, no person may import or export any quantity of a class II controlled substance listed in Appendix A to this subpart, from or to any foreign state that is not listed as a Party either:

(1) In Appendix L of this subpart and also listed in Appendix C, Annex 1 of the Protocol as having ratified the Beijing Amendments, or

(2) In Appendix C, Annex 1 of the Protocol as having ratified the Copenhagen Amendments but not listed in Appendix L of this subpart, or

(3) In Appendix C, Annex 2 of the Protocol, as being a foreign state complying with the Beijing Amendments if the foreign state is listed in Appendix L of this subpart, or as being a foreign state complying with the Copenhagen Amendments if the foreign state is not listed in Appendix L of this subpart.

(f) Exemptions. (1) Medical Devices [Reserved]

§ 82.16 Phaseout schedule of class II controlled substances.

(a) In each control period as indicated in the following table, 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:

Control period	Percent of HCFC–141b	Percent of HCFC–22 & HCFC–142b
2003	0	100
2004	0	100
2005	0	100
2006	0	100
2007	0	100
2008	0	100
2009	0	100

(b) Effective January 1, 2003, no person may produce HCFC–141b except for use in a process resulting in its transformation or its destruction, for export under § 82.18(a) using unexpended Article 5 allowances, for export under § 82.18(b) using unexpended export production allowances, for HCFC–141b exemption needs using unexpended HCFC–141b exemption allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2003, no person may import HCFC–141b (other than transhipments, heels or used class II controlled substances) in excess of the quantity of unexpended HCFC–141b exemption allowances held by that person except for use in a process resulting in its transformation or its destruction, or for exemptions permitted in § 82.15(f).

(c) Effective January 1, 2010, no person may produce HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation or their destruction, for use in equipment manufactured before January 1, 2010, for export under § 82.18(a) using unexpended Article 5 allowances, or for export under § 82.18(b) using unexpended export production allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2010, no person may import HCFC–22 or HCFC–142b (other than transhipments, heels or used class II controlled substances) for any purpose other than for use in a process resulting in their transformation or their destruction, for exemptions permitted in § 82.15(f), or for use in equipment manufactured prior to January 1, 2010.

(d) Effective January 1, 2015, no person may produce class II controlled substances not previously controlled, for any purpose other than for use in a process resulting in their transformation or their destruction, for use as a refrigerant in equipment manufactured before January 1, 2020, for export under § 82.18(a) using unexpended Article 5 allowances, or for export under § 82.18(b) using unexpended export production allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2015, no person may import class II controlled substances not subject to the requirements of paragraph (b) or (c) of this section (other than transhipments, heels or used class II controlled substances) for any purpose other than for use in a process resulting in their transformation or their destruction, for exemptions permitted in § 82.15(f), or for use as a refrigerant in equipment manufactured prior to January 1, 2020.

(e) 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 export under § 82.18(b) using unexpended export production 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).

(f) Effective January 1, 2030, no person may produce class II controlled substances, for any purpose other than for use in a process resulting in their transformation or their destruction, for export under § 82.18(a) using unexpended Article 5 allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2030, no person may import class II controlled substances 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).

(g) Effective January 1, 2040, no person may produce class II controlled substances 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).

(h) Petition for HCFC–141b exemption allowances.

(1) Effective January 21, 2003, a formulator of HCFC–141b, an agency, department, or instrumentality of the U.S., or a non-governmental space vehicle entity, may petition EPA for HCFC–141b exemption allowances for the production or import of HCFC–141b after the phaseout date, in accordance with this section. The petitioner must submit the following information to the Director of EPA's Office of Atmospheric Programs no later than April 21, 2003, for the 2003 control period; and, for any subsequent control period, no later than October 31st of the year preceding the control period for which the HCFC–141b exemption allowances are requested:

(i) Name and address of the HCFC–141b formulator, U.S. government entity or non-governmental space vehicle entity;

(ii) Name of contact person, phone number, fax number and e-mail address;

(iii) Quantity (in kilograms) of HCFC–141b needed for each relevant calendar year, supported by documentation about past use for at least the previous three years;

(iv) Quantities of HCFC–141b, if any, contained in systems that were sold to other systems houses for at least the previous three years;

(v) Description of the markets and applications served by the use of HCFC–141b or systems based on HCFC–141b;

(vi) Technical description of processes in which HCFC–141b is being used;

(vii) Technical description of the specific conditions under which the product will be applied;

(viii) Technical description of why alternatives and substitutes are not sufficient to eliminate the use of HCFC–141b;

(ix) Amount of stockpiled HCFC–141b (on-hand, taken title to, or available from a supplier) along with a detailed analysis showing why stockpiled, recovered or recycled quantities are deemed to be unavailable, or technically or commercially infeasible for use (for example, taking into consideration undue costs for storage and transportation);

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

(xi) A detailed description of continuing investigations into and progress on possible alternatives and substitutes;

(xii) A list of alternatives considered, purchased or sampled, including dates and copies of receipts for verification;

(xiii) A summary of the petitioner's in-house development program including summaries of all relevant test results and their significance to subsequent decision-making and technology selection. Full supporting test data must be available on request including alternative tested and date on which it was tested;

(xiv) A clear statement of the preferred technical option(s) being pursued at the time of the petition and the reasoning for this selection;

(xv) A summary of product test results conducted on the preferred technical option(s) by accredited organizations in order to determine whether products meet applicable codes. Relevant test reports and certifications must be made available on request; and

(xvi) A description of the further development testing to be carried out over the number of control periods identified under paragraph (h)(1)(x) of this section.

(2) Within 21 business days of receipt of the petition, the Director of EPA's Office of Atmospheric Programs will issue to a HCFC–141b formulator, agency, department, or instrumentality of the U.S., or non-governmental space vehicle entity that has petitioned for HCFC–141b exemption allowances, based on information received in accordance with paragraph (h)(1) of this section, a notice indicating one of the following:

(i) A determination by the Director of EPA's Office of Atmospheric Programs to grant a specific quantity of HCFC–141b exemption allowances (in kilograms) for the production or import of HCFC–141b in a specified control period based on an assessment that HCFC–141b is necessary to maintain either safety, or operational or technical viability;

(ii) A determination by the Director of EPA's Office of Atmospheric Programs to request additional information because the information received in accordance with paragraph (h)(1) of this section is not sufficient to decide whether to grant or deny HCFC–141b exemption allowances. The Director of EPA's Office of Atmospheric Programs will decide whether to grant or deny HCFC–141b exemption allowances within 30 days of receipt of the additional information. However, if the petitioner fails to submit the additional information within 20 days of the request, such failure constitutes a basis for denying the petition for HCFC–141b exemption allowances.

(iii) A determination by the Director of EPA's Office of Atmospheric Programs to deny a grant of HCFC–141b exemption allowances due to one or more of the following reasons:

(A) The needs can be met by the use of a substance other than HCFC–141b;

(B) The needs can be met by the use of existing supplies of HCFC–141b;

(C) There is evidence of fraud or misrepresentation;

(D) Approval of the HCFC–141b exemption allowances would be inconsistent with U.S. obligations under the provisions of the Montreal Protocol (including Decisions agreed by the Parties);

(E) Approval of the HCFC–141b exemption allowances would be inconsistent with the Clean Air Act;

(F) There is an inadequate demonstration of efforts undertaken to research and implement alternatives; or

(G) Granting the HCFC–141b exemption allowances may reasonably be expected to endanger human health or the environment.

(3) Within ten working days after receipt of a notice outlining a determination by the Director of EPA's Office of Atmospheric Programs to deny a grant of HCFC–141b exemption allowances due to one or more of the reasons in paragraph (h)(2)(iii) of this section, the petitioner may file with the Director of EPA's Office of Atmospheric Programs a one-time appeal with elaborated information. The Director of EPA's Office of Atmospheric Programs may affirm the determination to deny a grant of HCFC–141b exemption allowances or make a determination to grant HCFC–141b exemption allowance, in light of the available evidence submitted with the appeal. If no appeal is submitted by the tenth day after receipt of the notice outlining a determination by the Director of EPA's Office of Atmospheric Programs to deny a grant of HCFC–141b exemption allowances, the denial will be final on that day.

(4) Any entity that has previously petitioned for HCFC–141b exemption allowances under paragraph (h)(1) of this section may file a petition for renewal for a subsequent control period by October 31st of the year preceding that control period. The petition for renewal must contain the following information:

(i) Name and address of the HCFC–141b formulator, U.S. government entity or non-governmental space vehicle entity;

(ii) Name of contact person, phone number, fax number and e-mail address;

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

(iv) Description of markets and applications being served by the use of HCFC–141b;

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

(vi) A technical description of the specific conditions under which the product is still being applied;

(vii) Technical description of why alternatives and substitutes are still not sufficient to eliminate the use of HCFC–141b;

(viii) Amount of stockpiled HCFC–141b (on-hand, taken title to, or available from a supplier) along with a detailed analysis showing why stockpiled, recovered or recycled quantities are deemed to be technically or economically infeasible for use; and

(ix) A detailed description of continuing investigations into and progress on possible alternatives and substitutes and how this activity differs from information given in the previous request.

(5) A person granted HCFC–141b exemption allowances by the Director of EPA's Office of Atmospheric Programs under paragraph (h)(2)(i) or (h)(3) of this section may request a quantity of HCFC–141b be produced or imported in the specified control period listed in the notice by conferring the rights to produce or import to a producer or importer.

(6) The HCFC–141b exemption allowances held by one entity do not automatically transfer to an acquiring

entity. Any entity acquiring another company holding HCFC–141b exemption allowances must submit a renewal application in accordance with paragraph (h)(4) of this section at the time of the acquisition in order to qualify for the HCFC–141b exemption allowances.

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

Effective January 1, 2003, the following persons are apportioned baseline production allowances for HCFC–141b, HCFC–22, or HCFC–142b as set forth in the following table:

Person	Controlled substance	Allowances(kg.)
AlliedSignal (Honeywell)	HCFC–22	37,378,252
	HCFC–141b	28,705,200
	HCFC–142b	2,417,534
Ausimont USA	HCFC–142b	6,541,764
DuPont Company	HCFC–22	42,638,049
Elf Atochem (ATOFINA)	HCFC–22	28,219,223
	HCFC–141b	24,647,925
	HCFC–142b	16,131,096
LaRoche Industries	HCFC–141b	17,756,508
MDA Manufacturing	HCFC–22	2,383,835

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

(a) *Article 5 allowances.* (1) Effective January 1, 2003, a person apportioned baseline production allowances under § 82.17 is also apportioned Article 5 allowances, equal to 15 percent of their baseline production allowances for the specified HCFC for each control period up until December 31, 2014, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(2) Effective January 1, 2015, for all HCFCs, a person apportioned baseline production allowances under § 82.17 is also apportioned Article 5 allowances, equal to 10 percent of their baseline production allowances for the specified HCFC for each control period up until December 31, 2029, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(3) Effective January 1, 2030, for all HCFCs, a person apportioned baseline production allowances under § 82.17 is also apportioned Article 5 allowances, equal to 15 percent of their baseline production allowances for the specified HCFC for each control period up until December 31, 2039, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(b) *Export production allowances.* (1) Effective January 1, 2003, a person apportioned baseline production allowances for HCFC–141b under § 82.17 is also apportioned export production allowances equal to 100 percent of their baseline production allowances for HCFC–141b for each control period up until December 31, 2029, to be used for the production of HCFC–141b for export only, in accordance with this section.

(2) [Reserved]

(c) *International trades of production allowances, export production allowances and Article 5 allowances.* (1) A person may increase or decrease its production allowances, export production allowances, or Article 5 allowances, for a specified control period through trades with another Party to the Protocol as set forth in this paragraph (c). Effective January 1, 2004, a nation listed either: in Appendix L of this subpart that is also listed in Appendix C, Annex 1 of the Protocol as having ratified the Beijing Amendments, or in Appendix C, Annex 1 of the Protocol as having ratified the Copenhagen Amendments but not listed in Appendix L of this subpart, or in Appendix C, Annex 2 of the Protocol, as being a foreign state complying with the Beijing Amendments if the foreign state is listed in Appendix L of this subpart, or as being a foreign state complying with the Copenhagen Amendments if the foreign state is not listed in Appendix L of this subpart must agree either to trade to the person for the current control period some quantity of production that the nation is permitted under the Montreal Protocol or to receive from the person for the current control period some quantity of production that the person is permitted under this subpart. The person must expend its consumption allowances allocated under § 82.19, or obtained under § 82.20 in order to produce with the additional production allowances.

(2) *Trade from a Party—Information requirements.* (i) A person requesting a trade from a Party must submit to the Administrator a signed document from the principal diplomatic representative in that nation's embassy in the U.S. stating that the appropriate authority within that nation will establish or revise production limits for the nation to equal the lowest of the following three production quantities:

(A) The maximum production that the nation is allowed under the Protocol minus the quantity (in kilograms) to be traded;

(B) The maximum production that is allowed under the nation's applicable domestic law minus the quantity (in kilograms) to be traded; or

(C) The average of the nation's actual national production level for the three years prior to the trade minus the production to be traded.

(ii) A person requesting a trade from a Party must also submit to the Administrator a true copy of the document that sets forth the following:

(A) The identity and address of the person;

(B) The identity of the Party;

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

(D) The chemical type and quantity (in kilograms) of production being traded;

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

(F) The control period(s) to which the trade applies; and

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

(3) *Trade to a Party—Information requirements.* A person requesting a trade to a Party must submit a request that sets forth the following information to the Administrator:

(i) The identity and address of the person;

(ii) The identity of the Party;

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

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

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

(4) *Review of international trade request to a Party.* After receiving a trade request that meets the requirements of paragraph (c)(3) of this section, the Administrator may, at his/her discretion, consider the following factors by seeking concurrence from the Department of Commerce, the United States Trade Representative, and the Department of State, where appropriate, in deciding whether to approve such a trade:

(i) Possible creation of domestic economic hardship;

(ii) Possible effects on trade;

(iii) Potential environmental implications; and

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

(5) *Notice of trade.* If the request meets the requirement of paragraph (c)(2) of this section for trades from Parties and paragraphs (c)(3) and (4) of this section for trades to Parties, the Administrator will issue the person a notice. The notice will either grant or deduct production allowances or export production allowances or Article 5 allowances and specify the control period to which the trade applies. The Administrator may disapprove the trade request contingent on the consideration of factors listed in paragraph (c)(4) of this section for trades to Parties.

(i) For trades from a Party, the Administrator will issue a notice revising the allowances held by the recipient of the trade to equal the unexpended production allowances, unexpended export production allowances, or unexpended Article 5 allowances held by the recipient of the trade under this subpart plus the quantity of allowable production traded from the Party.

(ii) For trades to a Party, the Administrator will issue a notice revising the production limit for the trader to equal the lesser of:

(A) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the trade or minus the quantity traded; or

(B) The unexpended production allowances held by the trader minus the amount by which the U.S. average annual production of the class II controlled substance being traded for the three years prior to the trade is less than the total allowable production of that class II controlled substance under this subpart minus the amount traded; or

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

(6) Revised notices of production limits for subsequent traders. If after one person obtains approval of a trade of allowable production of a class II controlled substance to a Party and other persons obtain approval for trades of the same class II controlled substance during the same control period, the Administrator will issue revised notices. The notices will revise the production limits for each of the other persons trading to equal the lesser of:

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

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

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

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

(C) The result of paragraph (c)(6)(ii)(A) of this section multiplied by the result of paragraph (c)(6)(ii)(B) of this section;

(D) The quantity derived in paragraph (c)(6)(i) of this section, minus the result of paragraph (c)(6)(ii)(C) of this section;

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

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

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

(iii) The result of paragraph (c)(7)(i) of this section multiplied by the result of paragraph (c)(7)(ii) of this section.

(iv) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the person plus the result of paragraph (c)(7)(iii) of this section;

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

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

(a) Effective January 1, 2003, the following persons are apportioned baseline consumption allowances for HCFC–141b, HCFC–22, or HCFC–142b as set forth in the following table:

Person	Controlled substance	Allowances (kg)
ABCO Refrigeration Supply	HCFC–22	279,366
Air Systems	HCFC–22	13,514
Allied (Honeywell)	HCFC–22	35,392,492
	HCFC–141b	20,749,489
	HCFC–142b	1,315,819
Altair Industries	HCFC–22	279,935
Ausimont USA	HCFC–22	99,643
	HCFC–142b	3,047,386
Automatic Equipment Sales of VA	HCFC–22	54,088
Condor Products	HCFC–22	666,171
Continental	HCFC–141b	20,315

Person	Controlled substance	Allowances (kg)
Discount Refrigerants	HCFC–22	375,328
	HCFC–141b	994
DuPont Company	HCFC–22	38,814,862
	HCFC–141b	9,049
	HCFC–142b	52,797
Elf Atochem (ATOFINA)	HCFC–22	29,524,481
	HCFC–141b	25,405,570
	HCFC–142b	16,672,675
Full Circle	HCFC–22	14,865
HG Refrigeration Supply	HCFC–22	40,068
ICC Chemical Corp.	HCFC–141b	81,225
ICI Americas (INEOS)	HCFC–22	2,546,305
Kivlan & Co. (Dynatemp)	HCFC–22	2,028,980
Klomar Ship Supply	HCFC–22	8,585
LaRoche Industries	HCFC–141b	16,097,869
MDA Manufacturing	HCFC–22	2,541,545
Mondy-Global	HCFC–22	281,824
National Refrigerants	HCFC–22	5,480,315
Refricenter of Miami	HCFC–22	381,293
Refricentro	HCFC–22	45,979
Rhone-Poulenc	HCFC–22	52,090
R-Lines	HCFC–22	63,172
Saez	HCFC–22	37,936
Solvay Fluorides	HCFC–22	313,966
	HCFC–141b	3,940,115
TESCO Distributors	HCFC–22	48,049
Tulstar Products	HCFC–141b	89,913

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

(a) A person may obtain at any time during the control period, in accordance with the provisions of this section, consumption allowances equivalent to the quantity of class II controlled substances that the person exported from the U.S. and its territories to a foreign state, in accordance with this section, when that quantity of class II controlled substance was produced in the U.S. with expended consumption allowances.

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

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

(ii) The exporter's Employer Identification Number;

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) *International trades of consumption allowances.* (1) A person may increase its consumption allowances for a specified control period through trades with another Party to the Protocol as set forth in this paragraph (b). A person may only receive consumption from Poland or Norway, or both, and only if the nation agrees to trade to the person for the current control period some quantity of consumption that the nation is permitted under the Montreal Protocol.

(2) Trade from a Party—Information requirements. A person must submit the following information to the Administrator:

(i) A signed document from the principal diplomatic representative in the Polish or Norwegian embassy in the U.S. stating that the appropriate authority within that nation will establish or revise consumption limits for the nation to equal the lowest of the following three consumption quantities:

(A) The maximum consumption that the nation is allowed under the Protocol minus the quantity (in kilograms) traded;

(B) The maximum consumption that is allowed under the nation's applicable domestic law minus the quantity (in kilograms) traded; or

(C) The average of the nation's actual consumption level for the three years prior to the trade minus the consumption traded.

(ii) A person requesting a consumption trade from Poland or Norway must also submit to the Administrator a true copy of the document that sets forth the following:

(A) The identity and address of the person;

(B) The identity of the Party;

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

(D) The chemical type and quantity (in kilograms) of consumption being traded;

(E) Documentation that the Party possesses the necessary quantity of unexpended consumption rights;

(F) The control period(s) to which the trade applies; and

(3) *Notice of trade.* If the request meets the requirement of paragraph (b)(2) of this section for trades from Parties, the Administrator will issue the person a notice. The notice will grant consumption allowances and specify the control period to which the trade applies. The Administrator may disapprove the trade request if it does not meet the requirements of paragraph (b)(2) of this section.

(4) *Trade from a Party.* The Administrator will issue a notice revising the allowances held by the recipient of the trade to equal the unexpended consumption allowances held by the recipient of the trade under this subpart plus the quantity of allowable consumption traded from the Party.

(5) *Effective date of revised consumption limits.* The change in consumption allowances will be effective on the date that the notice is issued.

§ 82.21 [Reserved].

§ 82.22 [Reserved].

§ 82.23 Transfers of allowances of class II controlled substances.

(a) *Inter-company transfers.* Effective January 1, 2003, a person (''transferor'') may transfer to any other person (''transferee'') any quantity of the transferor's class II consumption allowances, production allowances, export production allowances, or Article 5 allowances for the same type of allowance as follows:

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

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

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

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

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

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

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

(G) For trades of consumption allowances, production allowances, export production allowances, or Article 5 allowances, the quantity of the 0.1 percent offset applied to the unweighted quantity traded that will be deducted from the transferor's allowance balance.

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

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

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

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

(b) *Inter-pollutant transfers.* (1) Effective January 1, 2003, a person (transferor) may convert consumption allowances or production allowances for one class II controlled substance to the same type of allowance for another class II controlled substance listed in Appendix B of this subpart, following the procedures described in paragraph (b)(3) of this section.

(2) Inter-pollutant transfers will be permitted at any time during the control period and during the 30 days after the end of a control period.

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

(i) The identity and address of the transferor;

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

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

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

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

(vi) The quantity (in kilograms) of allowances to be added to the transferee's unexpended allowances for the second class II controlled substance,

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

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

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

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

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

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

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

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

(d) A person receiving a permanent transfer of baseline production allowances or baseline consumption allowances (the transferee) for a specific class II controlled substance will be the person who has their baseline allowances adjusted in accordance with phaseout schedules in this section.

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

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

(1) Reports required by this section must be mailed to the Administrator within 30 days of the end of the applicable reporting period, unless otherwise specified.

(2) Revisions of reports that are required by this section must be mailed to the Administrator within 180 days of the end of the applicable reporting period, unless otherwise specified.

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

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

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

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

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

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

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

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

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

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

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

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

(viii) For destruction in the U.S. or by a person of another Party, one copy of

a destruction verification as required in paragraph (e) of this section for a particular destroyer, destroying the same class II controlled substance, and a list of additional quantities shipped to that same destroyer for the quarter;

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

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

(xi) A list of the HCFC 141b-exemption allowance holders from whom orders were received and the quantity (in kilograms) of HCFC–141b requested and produced.

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

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

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

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

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

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

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

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

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

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

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

(xi) Transformation verification in the case of transformation, or the destruction verification in the case of destruction as required in paragraph (e) of this section showing that the purchaser or recipient of a class II controlled substance, in the U.S. or in another country that is a Party, certifies the intent to either transform or destroy the class II controlled substance, or sell the class II controlled substance for transformation or destruction in cases when allowances were not expended;

(xii) Written verifications from a U.S. purchaser that the class II controlled substance was exported to a Party in accordance with the requirements in this section, in cases where export production allowances were expended to produce the class II controlled substance;

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

(xiv) Written verifications from a U.S. purchaser that HCFC–141b was manufactured for the express purpose of meeting HCFC–141b exemption needs in accordance with information submitted under § 82.16(h), in cases where HCFC–141b exemption allowances were expended to produce the HCFC–141b.

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

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

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

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

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

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

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

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

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

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

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

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

(xi) A list of the HCFC 141b-exemption allowance holders from whom orders were received and the quantity (in kilograms) of HCFC–141b requested and imported.

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

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

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

(iii) The quantity (in kilograms) of class II controlled substances other than

transhipments or used substances imported for use in processes resulting in their transformation or destruction;

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

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

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

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

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

(ix) The importer number for the shipment;

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

(xi) The invoice for the import;

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

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

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

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

(xvi) Written verifications from a U.S. purchaser that HCFC–141b was imported for the express purpose of meeting HCFC–141b exemption needs in accordance with information submitted under § 82.16(h), and that the quantity will not be resold, in cases where HCFC–141b exemption allowances were expended to import the HCFC–141b.

(3) *Petition to import used class II controlled substances and transhipments—Importers.* For each individual shipment over 5 pounds of a used class II controlled substance as defined in § 82.3, an importer must submit directly to the Administrator, at least 40 working days before the shipment is to leave the foreign port of export, the following information in a petition:

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

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

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

(iv) A detailed description of the previous use of the class II 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;

(v) A list of the name, make and model number of the equipment from which the material was recovered at each source facility;

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

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

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

(ix) The name, address, contact person, phone number and fax 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 and phone and fax numbers of that person;

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

(xii) 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;

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

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

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

(i) The Administrator may issue an objection notice to a petition for the following reasons:

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

(B) If the Administrator determines that any portion of the petition contains false or misleading information, or the Administrator has information from other U.S. or foreign government agencies indicating that the petition contains false or misleading information;

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

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

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

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

(iii) Any information contained in the re-petition which is inconsistent with the original petition must be identified

and a description of the reason for the inconsistency must accompany the re-petition.

(iv) In cases where the Administrator does not object to the petition based on the criteria listed in paragraph (c)(4)(i) of this section, the Administrator will issue a non-objection notice.

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

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

(A) Revoke the non-objection notice;

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

(C) Take appropriate enforcement actions.

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

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

(A) A copy of the petition;

(B) The EPA non-objection notice;

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

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

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

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

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

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

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

(1) *Reporting—Exporters.* For any exports of class II controlled substances not reported under § 82.20 (additional consumption allowances), or 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.:

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

(ii) The exporter's Employer Identification Number;

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

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

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

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

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

(viii) For persons reporting transformation or destruction, the invoice or sales agreement containing language similar to the transformation verifications that the purchaser or recipient of imported class II controlled substances intends to transform those substances, or destruction verifications showing that the purchaser or recipient intends to destroy the class II controlled substances (as provided in paragraph (e) of this section).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) *Reporting—Transformation and destruction.* Any person who transforms or destroys class II controlled substances and who has submitted a transformation verification ((paragraph (e)(3) of this section) or a destruction verification (paragraph (e)(5) of this section) to the producer or importer of

the class II controlled substances, must report the following:

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

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

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

(i) The transformation verification shall include the following:

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

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

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

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

(E) Signature of the verifying person.

(ii) [Reserved]

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

(i) The destruction unit's destruction efficiency;

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

(iii) The methods used to determine destruction efficiency;

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

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

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

(i) The destruction verification shall include the following:

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

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

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

(D) Signature of the verifying person.

(ii) [Reserved]

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

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

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

(i) That the residual quantity (in kilograms) in each shipment is no more than 10 percent of the volume of the container;

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

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

(B) Be recovered and transformed;

(C) Be recovered and destroyed; or

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

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

(g) *HCFC 141b exemption allowances—Reporting and recordkeeping.*

(1) Any person allocated HCFC–141b exemption allowances who confers a quantity of the HCFC–141b exemption allowances to a producer or import and places an order for the production or import of HCFC–141b with a verification that the HCFC–141b will only be used for the exempted purpose and not be resold must submit semi-annual reports, due 30 days after the end of the second and fourth respectively, to the Administrator containing the following information:

(i) Total quantity (in kilograms) HCFC–141b received during the 6 month period; and

(ii) The identity of the supplier of HCFC–141b on a shipment-by-shipment basis during the 6 month period.

(2) Any person allocated HCFC–141b exemption allowances must keep records of letters to producers and importers conferring unexpended HCFC–141b exemption allowances for the specified control period in the notice, orders for the production or import of HCFC–141b under those letters and written verifications that the HCFC–141b was produced or imported for the express purpose of meeting HCFC–141b exemption needs in accordance with information submitted under § 82.16(h), and that the quantity will not be resold.

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

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

Controlled Substance	ODP
1. Dichlorofluoromethane (HCFC–21)	0.04
2. Monochlorodifluoromethane (HCFC–22)	0.055
3. Monochlorofluoromethane (HCFC–31)	0.02
4. Tetrachlorofluoroethane (HCFC–121)	0.01–0.04
5. Trichlorodifluoroethane (HCFC–122)	0.02–0.08
6. Dichlorotrifluoroethane (HCFC–123)	0.02
7. Monochlorotetrafluoroethane (HCFC–124)	0.022
8. Trichlorofluoroethane (HCFC–131)	0.007–0.05
9. Dichlorodifluoroethane (HCFC–132)	0.008–0.05
10. Monochlorotrifluoroethane (HCFC–133)	0.02–0.06
11. Dichlorofluoroethane (HCFC–141b)	0.11
12. Monochlorodifluoroethane (HCFC–142b)	0.065

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

Controlled Substance	ODP
13. Chlorofluoroethane (HCFC–151)	0.003–0.005
14. Hexachlorofluoropropane (HCFC–221)	0.015–0.07
15. Pentachlorodifluoropropane (HCFC–222)	0.01–0.09
16. Tetrachlorotrifluoropropane (HCFC–223)	0.01–0.08
17. Trichlorotetrafluoropropane (HCFC–224)	0.01–0.09
18. Dichloropentafluoropropane (HCFC–225ca)	0.025
19. Dichloropentafluoropropane (HCFC–225cb)	0.033
20. Monochlorohexafluoropropane (HCFC–226)	0.02–0.10
21. Pentachlorofluoropropane (HCFC–231)	0.05–0.09
22. Tetrachlorodifluoropropane (HCFC–232)	0.008–0.10
23. Trichlorotrifluoropropane (HCFC–233)	0.007–0.23
24. Dichlorotetrafluoropropane (HCFC–234)	0.01–0.28
25. Monochloropentafluoropropane (HCFC–235)	0.03–0.52
26. Tetrachlorofluoropropane (HCFC–241)	0.004–0.09
27. Trichlorodifluoropropane (HCFC–242)	0.005–0.13
28. Dichlorotrifluoropropane (HCFC–243)	0.007–0.12
29. Monochlorotetrafluoropropane (HCFC–244)	0.009–0.14
30. Trichlorofluoropropane (HCFC–251)	0.001–0.01
31. Dichlorodifluoropropane (HCFC–252)	0.005–0.04
32. Monochlorotrifluoropropane (HCFC–253)	0.003–0.03
33. Dichlorofluoropropane (HCFC–261)	0.002–0.02
34. Monochlorodifluoropropane (HCFC–262)	0.002–0.02
35. Monochlorofluoropropane (HCFC–271)	0.001–0.03

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

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

APPENDIX C TO PART 82 SUBPART A.—PARTIES TO THE MONTREAL PROTOCOL (AS OF JUNE 14, 2002).

[Updated lists of Parties to the Protocol and the Amendments can be located at the website for UNEP's Ozone Secretariat. A check mark indicates ratification/accession/acceptance/approval of the agreement.]

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Albania	√				
Algeria	√	√	√		
Angola	√				
Antigua and Barbuda	√	√	√	√	
Argentina	√	√	√	√	
Armenia	√				
Australia	√	√	√	√	
Austria	√	√	√	√	
Azerbaijan	√	√	√	√	
Bahamas	√	√	√		
Bahrain	√	√	√	√	
Bangladesh	√	√	√	√	
Barbados	√	√	√		
Belarus	√	√			
Belgium	√	√	√		
Belize	√	√	√		
Benin	√	√	√		
Bolivia	√	√	√	√	
Bosnia & Herzegovina	√				
Botswana	√	√	√		
Brazil	√	√	√		
Brunei Darussalam	√				
Bulgaria	√	√	√	√	√
Burkina Faso	√	√	√		
Burundi	√	√	√	√	√
Cambodia	√				
Cameroon	√	√	√		
Canada	√	√	√	√	√
Cape Verde	√	√	√	√	
Central African Republic	√				
Chad	√	√	√	√	
Chile	√	√	√	√	√
China	√	√			
Colombia	√	√	√		
Comoros	√	√			

APPENDIX C TO PART 82 SUBPART A.—PARTIES TO THE MONTREAL PROTOCOL (AS OF JUNE 14, 2002).—Continued

[Updated lists of Parties to the Protocol and the Amendments can be located at the website for UNEP's Ozone Secretariat. A check mark indicates ratification/accession/acceptance/approval of the agreement.]

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Congo	√	√	√	√	√
Congo, Democratic Republic of	√	√	√		
Costa Rica	√	√	√		
Cote d'Ivoire	√	√			
Croatia	√	√	√	√	√
Cuba	√	√	√		
Cyprus	√	√			
Czech Republic	√	√	√	√	√
Denmark	√	√	√		
Djibouti	√	√	√	√	
Dominica	√	√			
Dominican Republic	√	√	√		
Ecuador	√	√	√		
Egypt	√	√	√	√	
El Salvador	√	√	√	√	
Equatorial Guinea.					
Estonia	√	√	√		
Ethiopia	√				
European Community	√	√	√	√	√
Federated States of Micronesia	√	√	√	√	√
Fiji	√	√	√		
Finland	√	√	√	√	√
France	√	√	√		
Gabon	√	√	√	√	√
Gambia	√	√			
Georgia	√	√	√	√	
Germany	√	√	√	√	
Ghana	√	√	√		
Greece	√	√	√		
Grenada	√	√	√	√	
Guatemala	√	√	√	√	√
Guinea	√	√			
Guyana	√	√	√	√	
Haiti	√	√	√	√	
Honduras	√	√	√		
Hungary	√	√	√	√	√
Iceland	√	√	√	√	
India	√	√			
Indonesia	√	√	√		
Iran, Islamic Republic of	√	√	√	√	
Ireland	√	√	√		
Israel	√	√	√		
Italy	√	√	√	√	
Jamaica	√	√	√		
Japan	√	√	√		
Jordan	√	√	√	√	√
Kazakhstan	√	√			
Kenya	√	√	√	√	
Kiribati	√				
Korea, Democratic People's Republic of	√	√	√	√	√
Korea, Republic of	√	√	√	√	
Kuwait	√	√	√		
Kyrgyzstan	√				
Lao, People's Democratic Republic	√				
Latvia	√	√	√	√	
Lebanon	√	√	√	√	
Lesotho	√				
Liberia	√	√	√		
Libyan Arab Jamahiriya	√	√			
Liechtenstein	√	√	√		
Lithuania	√	√	√		
Luxembourg	√	√	√	√	√
Macedonia, The Former Yugoslav Republic of	√	√	√	√	√
Madagascar	√	√	√	√	√
Malawi	√	√	√		
Malaysia	√	√	√	√	√
Maldives	√	√	√	√	
Mali	√	√			
Malta	√	√			

APPENDIX C TO PART 82 SUBPART A.—PARTIES TO THE MONTREAL PROTOCOL (AS OF JUNE 14, 2002).—Continued

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Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Marshall Islands	√	√	√		
Mauritania	√				
Mauritius	√	√	√		
Mexico	√	√	√		
Moldova	√	√	√		
Monaco	√	√	√	√	
Mongolia	√	√	√	√	
Morocco	√	√	√		
Mozambique	√	√	√		
Myanmar	√	√			
Namibia	√	√			
Nauru	√				
Nepal	√	√			
Netherlands	√	√	√	√	√
New Zealand	√	√	√	√	√
Nicaragua	√	√	√		
Niger	√	√	√	√	
Nigeria	√	√	√	√	
Norway	√	√	√	√	√
Oman	√	√	√		
Pakistan	√	√	√		
Palau	√	√	√	√	√
Panama	√	√	√	√	√
Papua New Guinea	√	√			
Paraguay	√	√	√	√	
Peru	√	√	√		
Philippines	√	√	√		
Poland	√	√	√	√	
Portugal	√	√	√		
Qatar	√	√	√		
Romania	√	√	√	√	
Russian Federation	√	√			
Rwanda	√				
Saint Kitts & Nevis	√	√	√	√	√
Saint Lucia	√	√	√	√	√
Saint Vincent and the Grenadines	√	√	√		
Samoa	√	√	√	√	√
Sao Tome and Principe	√	√	√	√	√
Saudi Arabia	√	√	√		
Senegal	√	√	√	√	
Seychelles	√	√	√		
Sierra Leone	√	√	√	√	√
Singapore	√	√	√	√	
Slovakia	√	√	√	√	√
Slovenia	√	√	√	√	
Solomon Islands	√	√	√	√	
Somalia	√	√	√	√	√
South Africa	√	√	√		
Spain	√	√	√	√	√
Sri Lanka	√	√	√	√	
Sudan	√	√	√		
Suriname	√				
Swaziland	√				
Sweden	√	√	√	√	√
Switzerland	√	√	√		
Syrian Arab Republic	√	√	√	√	
Tajikistan	√	√			
Tanzania, United Republic of	√	√			
Thailand	√	√	√		
Togo	√	√	√	√	√
Tonga	√				
Trinidad and Tobago	√	√	√	√	
Tunisia	√	√	√	√	
Turkey	√	√	√		
Turkmenistan	√	√			
Tuvalu	√	√	√	√	
Uganda	√	√	√	√	
Ukraine	√	√	√	√	
United Arab Emirates	√				

APPENDIX C TO PART 82 SUBPART A.—PARTIES TO THE MONTREAL PROTOCOL (AS OF JUNE 14, 2002).—Continued

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Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
United Kingdom	√	√	√	√	√
United States of America	√	√	√		
Uruguay	√	√	√	√	
Uzbekistan	√	√	√		
Vanuatu	√	√	√		
Venezuela	√	√	√	√	
Viet Nam	√	√	√		
Yemen	√	√	√	√	
Yugoslavia	√				
Zambia	√	√			
Zimbabwe	√	√	√		

15. Add Appendix L to read as follows:

Appendix L to Part 82 Subpart A—Parties to the Montreal Protocol That Have Reported Production of HCFCs Since 1996 in Accordance With Article 7, paragraph 3, of the Montreal Protocol

Argentina
Australia
Brazil
Canada
China
France
Germany
Greece
India
Italy
Japan
Korea, Republic of
Mexico
Netherlands
Russian Federation
South Africa
Spain
United Kingdom
Venezuela

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