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Protection of Stratospheric Ozone: Reconsideration of Petition Criteria and Incorporation of Montreal Protocol Decisions; Direct Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6129–2]

RIN 2060–AG48

Protection of Stratospheric Ozone: Reconsideration of Petition Criteria and Incorporation of Montreal Protocol Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: With this action, EPA is revising the accelerated phaseout regulation that governs the production, import, export, transformation and destruction of substances that deplete the ozone layer under the authority of Sections 602, 604, 605, 606, and 614 of Title VI of the Clean Air Act Amendments of 1990 (CAA or the Act). Today's amendments reflect changes in U.S. obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) due to recent amendments and decisions by signatory countries to this international agreement. Additionally, in response to a petition submitted to EPA, the Agency is removing the requirement in the petition process for imports of used class I controlled substances that a person must certify knowledge of tax liability. Other amendments are designed to ease the burden on affected companies while continuing to ensure compliance with Title VI of the CAA and meet U.S. obligations under the Protocol.

DATES: This rule will become effective October 5, 1998 without further notice unless the Agency receives relevant adverse comment by September 3, 1998. Should the agency receive such comments, it will publish a timely withdrawal informing the public that this rule will not take effect. If a public hearing is requested, the comment period will end 30 days after the date of the public hearing, in which case, EPA will publish a document in the **Federal Register** announcing the hearing information and the extended comment period.

ADDRESSES: Comments on this rulemaking should be submitted in duplicate (two copies) to: Air Docket No. A–92–13, U.S. Environmental Protection Agency, 401 M Street, SW, Room M–1500, Washington, DC 20460. Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Protection Hotline at 1–800–269–1996.

Materials relevant to this rulemaking are contained in Docket No. A–92–13. The Docket is located in room M–1500, First Floor, Waterside Mall at the address above. The materials may be inspected from 8 a.m. until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Tom Land, U.S. Environmental Protection Agency, Stratospheric Protection Division, Office of Atmospheric Programs, 6205J, 401 M Street, SW., Washington, DC 20460, 202–564–9185.

SUPPLEMENTARY INFORMATION: The EPA is revising the accelerated phaseout regulation as a direct final rule without prior proposal because the Agency views these revisions as noncontroversial and anticipates no relevant adverse comments. The EPA is also publishing a companion proposed rule to this direct final rule in this issue of the **Federal Register** to serve as the proposal should adverse comments be filed on provisions of the direct final rule. Should the Agency receive relevant adverse comment on the direct final rule, it will publish a timely withdrawal informing the public that the rule will not take effect. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on these revisions to 40 CFR part 82, subpart A should do so at this time.

Relevant adverse comment will be addressed in a subsequent final rulemaking document.

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I. Background

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone-depleting substances were promulgated by the Environmental Protection Agency (EPA or the Agency) in the **Federal Register** on May 10, 1995 (60 FR 24970) and on December 20, 1994 (59 FR 65478). The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol).[1] The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 4, 1988. Congress then enacted, and President Bush signed into law, the Clean Air Act Amendments of 1990 (CAA or the Act) that included Title VI on Stratospheric Ozone Protection. Today's actions amend the existing EPA regulations published under Sections 604, 605, 606 and 614 of the CAA governing the production and consumption of ozone-depleting substances. Today's amendments are designed to ensure the U.S. meets its obligations under the Protocol and the CAA.

EPA derives its authority for today's action from sections 602, 604, 605, 606, and 614 of the CAA. Many of today's changes are made to reflect adjustments or amendments to the Protocol or decisions taken by the Parties to the Protocol at their meetings from 1995 through 1997. EPA is acting in accordance with section 614 of the CAA in amending the regulations to reflect these changes. Section 614 of the CAA states that Title VI of the Act ''shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities of obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of [Title VI of the CAA] and any provision of the Montreal Protocol, the more stringent provision shall govern.'' Section 606 of the CAA allows EPA to accelerate the phaseout schedules found in sections 604 and 605 of the Act.

Today's action adjusts the regulatory framework promulgated under section 606, while retaining the accelerated phaseout dates. The changes in today's action are made to close loopholes in existing regulatory language, to ease the burden on the regulated community, to clarify existing requirements and to lessen EPA's administrative burden in implementing the Allowance Program (the Program).

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

In developing the Allowance Program, EPA collected information on the amounts of ozone-depleting substances produced, imported, exported, transformed and destroyed within the United States for specific baseline years for specific chemicals. This information was used to establish the U.S. production and consumption ceilings for these chemicals. The data were also used to assign company-specific production and import rights to companies that were in most cases producing or importing during the specific year of data collection. These production or import rights are called ''allowances.'' Due to the complete phaseout of many of the ozone-depleting chemicals, the quantities of production allowances and consumption allowances granted to companies for those chemicals were gradually reduced and eventually eliminated. Production allowances and consumption allowances continue to exist for only one specific class I controlled ozone-depleting substance—methyl bromide. All other production or consumption of class I controlled substances is prohibited under the Protocol and the CAA, but for a few narrow exemptions.

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the ''use'' of a controlled substance, but rather is defined as production plus imports minus export of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under these regulations, unless otherwise precluded under separate regulations.

The specific names and chemical formulas for the controlled ozone-depleting substances in the Groups of class I controlled substances are in Appendix A and Appendix F in Subpart A of 40 CFR part 82. The specific names and chemical formulas for the class II controlled ozone-depleting substances are in Appendix B and Appendix F in Subpart A.

Although the regulations phased out the production and consumption of class I, Group II (halons) on January 1, 1994, and all other class I controlled substances (except methyl bromide) on January 1, 1996, a very limited number of exemptions exist, consistent with U.S. obligations under the Protocol. The regulations allow for the manufacture of phased-out class I controlled substances, provided the substances are either transformed, or destroyed. (40 CFR 82.4(b)) They also allow limited manufacture if the substances are (1) exported to countries listed under Article 5 of the Protocol, (2) produced for essential uses as authorized by the Protocol and the regulations, or (3) produced with destruction or transformation credits. (40 CFR 82.4 (b))

The regulations allow import of phased-out class I controlled substances provided the sources are either transformed or destroyed. (40 CFR 82.4(d)) Limited exceptions to the ban on the import of phased-out class I controlled substances also exist if the substances are: (1) previously used, (2) imported for essential uses as authorized by the Protocol and the regulations, or (3) a transhipment or a heel. (40 CFR 82.4(d))

[1] Several revisions to the original 1988 rule were issued on the following dates: February 9, 1989 (54 FR 6376), April 3, 1989 (54 FR 13502), July 5, 1989 (54 FR 28062), July 12, 1989 (54 FR 29337), February 13, 1990 (55 FR 5005), June 15, 1990 (55 FR 24490) and June 22, 1990 (55 FR 25812) July 30, 1992 (57 FR 33754), and December 10, 1993 (58 FR 65018).

II. Revisions to the Stratospheric Ozone Protection Program

A. Amendments to § 82.3—Definitions

1. Adding a Definition for the Term ''Confer'' That Pertains to Essential-Use Allowances

EPA is adding a definition for the term ''confer'' to reflect wording already in the current regulatory text as published in the **Federal Register** on May 10, 1995 (60 FR 24970). Section 82.4(b) currently includes references to ''conferred unexpended essential-use allowances'' and ''conferred unexpended destruction and transformation credits.'' The preamble to the final rule published in the **Federal Register** on May 10, 1995 described how the holder of essential-use allowances could confer those unexpended essential-use allowances to a producer or importer. (60 FR at 24976.) The preamble to the May 10, 1995 final rule also described how the holder of destruction and transformation credits could confer the right to produce or import under the credits to a producer or importer. (60 FR at 24973–24974.) EPA is adding a definition to § 82.3 that ''confer means to shift the rights obtained under § 82.4(t) for essential-use allowances from the holder of the unexpended essential-use allowance to a person for the production of a specified controlled substance, or to shift the rights obtained under § 82.9(f) for destruction and transformation credits from the holder of the unexpended destruction and transformation credits to a person for the production of a specified controlled substance.''

2. Adding Destruction Technologies to the List of Those Approved in the Definition of Destruction

EPA is adding two new approved destruction processes to the list of technologies currently appearing in the regulation under the definition of destruction (60 FR 24970, 24987; 40 CFR 82.3). The Parties to the Montreal Protocol at the Seventh Meeting in 1995 decided to include radio frequency plasma destruction in the list of approved technologies. The Protocol's Technology and Economic Assessment Panel (TEAP) reviewed test results from the technology's operation and verified that radio frequency plasma destruction meets the suggested minimum emission standards approved by the Parties (Decision IV/11). EPA believes that the technical review and recommendation by the TEAP of radio frequency plasma destruction and the subsequent approval by the Parties to the Protocol warrants today's inclusion of the technology in the list of approved destruction processes found under the definition of destruction in § 82.3 (60 FR 24970).

EPA is also adding, solely for the destruction of foams, the limited inclusion of municipal solid waste incinerators in the list of approved technologies in the definition of destruction currently found in § 82.3 of the regulation (60 FR 24970, 24987). The Parties to the Montreal Protocol at the Fifth Meeting in 1993 decided to include municipal solid waste incinerators in the list of approved technologies, but only for the destruction of foams containing ozone-depleting substances. The TEAP reviewed the test results from the operation of municipal solid waste incinerators for the destruction of foams that contain ozone-depleting substances and verified that the technology meets the suggested minimum emission standards approved by the Parties at the Fourth Meeting (Decision IV/11). EPA believes that the technical review and recommendation by the TEAP of municipal solid waste incinerators for the destruction of foams that contain ozone-depleting substances and the subsequent approval by the Parties to the Protocol warrants today's inclusion of the technology in the list of approved destruction technologies found under the definition of destruction in § 82.3 (60 FR 24970, 24987).

3. Simplifying the Definition of ''Importer''

EPA is simplifying the definition of ''importer'' for enforcement purposes. Over the past few years, EPA has worked with an inter-agency taskforce of other Federal Agencies to enforce against the illegal import of banned class I controlled substances. Members of the inter-agency taskforce include EPA, the Department of Justice, the U.S. Customs Service, the Internal Revenue Service, the Department of State, and other interested agencies. Enforcement personnel from taskforce agencies have discovered difficulties in working with the definition of importer listed in the May 10, 1995 final rule (60 FR 24988) in building cases against illegal importers due to ambiguities about who ultimately is responsible. Thus, enforcement officials from EPA and other taskforce agencies suggested that EPA simplify the definition of the term ''importer'' to eliminate ambiguities and to make it easier to enforce. EPA is simplifying the definition of ''importer'' to be ''the importer of record listed on U.S. Customs Service forms for imported controlled substances, used controlled substances or controlled products.''

4. Adding a Definition for the Phrase ''Source Facility'' That Pertains to the Petition Process for Imports of Used Controlled Substances

EPA is adding a definition to § 82.3 for the term ''source facility.'' The term ''source'' was included in the regulatory text of § 82.13(g)(2)(iii) regarding petitions to import used class I controlled substances but was not defined in § 82.3 of the final rule published in the **Federal Register** on May 10, 1995 (60 FR 24970). As explained in the preamble to the May 10, 1995 final rule, the intent of the petition process is to allow EPA to independently verify whether a class I controlled substance is, in fact, previously used. EPA established the petition process because quantities of class I controlled substances were entering the U.S. mis-identified as ''used'' when they were, in fact, newly produced ozone-depleting chemicals. Under the Protocol, trade in previously used controlled substances is permitted even after the phaseout dates. To independently verify that a quantity of class I controlled substance was previously used, EPA needs detailed information about the source facility from which the material was recovered. EPA discovered that companies petitioning to import used class I controlled substances under the current requirements need clarification of the term ''source facility'' so that they can submit complete information to allow independent verification. In distributing information about the petition process, EPA has clarified that source facility means the exact location from 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, as well as a phone number and a fax number for the contact person at the location. In choosing this definition for the term ''source facility,'' EPA considered whether it was sufficiently clear for a person wishing to submit a petition to import used class I controlled substances as well as for EPA to independently verify that the quantity of material cited in the petition was, in fact, previously used.

5. Clarifying the Definition of Transhipment

In today's action, EPA would like to clarify the definition of ''transhipment'' of controlled substances and make the distinction between a transhipment and

an import that is subsequently re-exported. The first discussion of transhipment appeared in the proposed rulemaking published in the **Federal Register** on March 18, 1993 (58 FR 15014, 15044). The March 18, 1993 proposed rulemaking raised the issue of transhipments pursuant to Decision IV/14 of the Fourth Meeting of the Parties, which addressed transhipments of bulk substances from the country of origin, through a third country, to the country of final destination. Decision IV/14 of the Parties to the Protocol clarifies that transhipments are not included in the third country's calculation of consumption. Recall that consumption means production plus imports minus exports.

The December 10, 1993 final rulemaking defined ''transhipment'' as ''the continuous shipment of a controlled substance from a foreign state of origin through the United States or its territories to a second foreign state of final destination.'' (58 FR 65018, 65064). The clarifying phrase ''as long as the shipment does not enter into United States jurisdiction'' was added on May 10, 1995 (60 FR 24970, 24983).

Re-packaging a shipment that is passing through the United States would make it an import and a subsequent export under the provisions of the Montreal Protocol. Such a shipment would count toward the United States' calculation of its level of consumption. As an Article 2 country under the Montreal Protocol, the United States is obligated to have a calculated level of consumption equal to zero for all class I controlled substances (except those substances in Group VI, like methyl bromide, which are on a different phaseout schedule). Any re-packaging of shipments of class I controlled substances moving through the United States could therefore be a violation of the United States' obligations under the Protocol. Thus, EPA is adopting a definition of transhipment that does not permit a shipment to be re-packaged. The current definition distinguishes between a transhipment and a shipment that is imported, re-packaged and then exported, by using the phrase, ''continuous shipment.'' A continuous shipment enters and leaves the United States and is not repackaged or manipulated in any manner before it exits for its final destination. In the context of U.S. Customs regulations (19 CFR § 123 and § 19 CFR 19), the term ''manipulation'' has a specific meaning regarding whether a shipment is to be ''cleaned, sorted, repacked or otherwise changed in condition'' as it travels in transit through United States jurisdiction. In today's action, EPA is stating that a transhipment as defined under this Subpart cannot be re-packaged, sorted, or otherwise changed in condition.

In conjunction with the clarification of the definition of transhipment proposed in the **Federal Register** on November 20, 1994 (59 FR 56276), EPA discussed re-packaging of controlled substances during transhipments. The discussion was prompted by concerns of a company that brings large quantities of a controlled substance in tank ships that are unloaded to on-shore tanks in the United States. The quantities of controlled substance put into these on-shore tanks are loaded directly onto other ships bound for foreign destinations. EPA does not consider the unloading of a controlled substance from a tank ship directly into a large receiving tank for eventual re-loading onto another tank ship to be re-packaging. When the controlled substance is directly unloaded from a ship into an on-shore tank and then directly loaded from that same tank onto a different ship the package for the controlled substance does not change while it is within the United States jurisdiction, and therefore is not re-packaged. In contrast, when a controlled substance is unloaded from a ship onto a dock in the United States in, for example, a 1-ton ISO tank and the controlled substance is transferred from the 1-ton ISO tank to either smaller or larger containers, it is considered to be re-packaged. EPA does not consider the transfer of controlled substances between ships in U.S. ports to be re-packaging.

EPA is continuing to exempt transhipments from the limits and requirements set forth in the prohibitions of § 82.4. Transhipments do not include imports where any form of re-packaging occurs for a shipment of controlled substance as it moves through the United States or its territories before it is exported to a foreign country. In the final rule published in the **Federal Register** on May 10, 1995, EPA decided against broadening the definition of transhipment to allow re-packaging. EPA believes that re-packaging of controlled substances coming from a foreign state of origin, moving through the United States or its territories, bound for a final destination in another foreign state renders the controlled substance an import for purposes of the Montreal Protocol. Today's action clarifies the meaning of the definition of transhipment vis-à-vis re-packaging and corrects the grammar in the current definition to read, ''transhipment means the continuous shipment of a controlled substance from a foreign state of origin through the United States or its territories to a second foreign state of final destination, as long as the shipment does not enter into United States jurisdiction. A transhipment, as it moves through the United States or its territories, cannot be re-packaged, sorted or otherwise changed in condition.''

B. Amendments to § 82.4—Prohibitions

1. Licensing Imports and Exports of Listed Controlled Substances—Both Newly Manufactured and Previously Used

EPA believes that current regulatory requirements can be used to satisfy the United States' obligation to establish a licensing system for imports and exports of new and used controlled substances, in accordance with a recent amendment to the Montreal Protocol. At the Ninth Meeting of the Parties to the Protocol (1997, Montreal), the Parties agreed to amend Article 4, with the addition of section B. Paragraph 1 of Article 4B reads: ''Each Party shall, by 1 January 2000 or within three months of the date of entry into force of this Article for it, whichever is the later, establish and implement a system for licensing the import and export of new, used, recycled and reclaimed controlled substances in Annexes A, B, C and E.'' Under paragraph 3 of Article 4B, each Party is obligated to report to the Ozone Secretariat ''within three months of the date of introducing its licensing system.''

EPA wishes to address this change to Article 4B to ensure compliance with the Protocol and the CAA. Section 614(b) of the CAA states, ''[t]his title as added by the Clean Air Act Amendments of 1990 shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities of obligations of the United States to implement fully the provisions of the Montreal Protocol.'' Thus, today's discussion of the U.S. licensing system is relevant to ensuring compliance with both the Protocol and Title VI of the CAA.

Under the current regulatory framework, only companies with one of several types of licenses are allowed to import or export controlled substances and used controlled substances not exempted under § 82.4(d), and (h) of the final rule published in the **Federal Register** on May 10, 1995 (60 FR 24970). EPA will consider holders of all type of

allowances, credits or non-objection notices to be holders of licenses in accordance with U.S. obligations under the Protocol. The types of allowances that will be considered licenses include production and consumption allowances, Article 5 allowances and essential-use allowances. The specifics of what EPA will consider as licenses and other types of imports and exports exempted from licensing are discussed below. Other systems EPA considered for licensing imports and exports of controlled substances are also described below.

In implementing various provisions of the Montreal Protocol and Title VI of the CAA, EPA currently requires certain types of licenses to import or export class I controlled substances. Imports of class I controlled substances (except Group VI substances) are currently banned, but for exemptions and exceptions contained in § 82.4 of the final rule published in the **Federal Register** on May 10, 1995. The exemptions in this rule (40 CFR Part 60 Subpart A) are permitted under the Protocol and the CAA.

Companies allocated production and consumption allowances in §§ 82.5 and 82.6 of the May 10, 1995 final rule for class I, Group VI controlled substances (*i.e.*, methyl bromide) will be considered holders of licenses (in the form of allowances) for the import and export of this specific class I controlled substance. Companies granted essential-use allowances under the provisions of section 82.4(t) will also be considered holders of licenses to import a restricted quantity of the specific class I controlled substance(s) during the specified control period. Likewise, a person obtaining a non-objection notice in response to a petition to import used class I controlled substances in accordance with § 82.4(j) and § 82.13(g)(2) and (3) will be considered the holder of a shipment-specific import license.

The current regulations, published in the **Federal Register** on May 10, 1995 (60 FR 24970), have few restrictions on exports. The current regulations limit the quantity of class I controlled substances a company can produce for export to Article 5 countries through the allocation in § 82.9 of Article 5 allowances. Therefore, companies allocated Article 5 allowances in § 82.9 will be considered to be holders of licenses to export. In addition, § 82.4(k) of the current rule (§ 82.4(l) of today's amendments) prohibits a person from exporting a class I, Group I or Group II controlled substance to a foreign state that is a non-Party to the Protocol. This section also prohibits the export of class I, Group III, IV, or V substances to a foreign state not party to the 1990 amendments to the Protocol. In Part II.B.4 and Part II.B.5 below, EPA is adding a prohibition on exports of class I, Group VII controlled substances to non-Parties in accordance with amendments to the Protocol agreed to in Vienna in 1995.

For class II controlled substances (HCFCs), in accordance with the amendment agreed to by the Parties to the Protocol in 1997, EPA will consider importers and exporters who submit quarterly reports as currently required in § 82.13(n) of Subpart A to be the holders of import and export licenses. EPA is adopting this approach for class II controlled substances as a temporary measure. The Agency will soon publish an Advance Notice of Proposed Rulemaking (ANPRM) that will describe potential control measures for ensuring U.S. consumption of class II controlled substances remains under the cap established under Article 2F of the Protocol. The ANPRM will describe options being considered for establishing an allowance system to control production, import and export of class II controlled substances. At the time EPA establishes controls through allowances, to limit U.S. consumption of class II controlled substances, the allowances will be considered licenses for imports and exports.

In developing today's rule, EPA considered other licensing systems, including one that would require a company to request a license prior to importing class I controlled substances, including those for exempted purposes, such as transformation, destruction, and heels. In addition, EPA considered a parallel licensing system for exports that would require a company to request a license prior to exporting class I controlled substances for exempted purposes, such as transformation or destruction. EPA believes that the 1997 amendment to Article 4 of the Protocol that requires a ''system for licensing the import and export of new, used, recycled and reclaimed controlled substances'' does not extend to controlled substances destroyed by approved technologies or used as feedstocks, since these amounts are not included in the definitions of production or consumption under the Protocol. EPA's consideration of other licensing systems included: a shipment-by-shipment approach, a quarterly approach, a yearly approach, a quantity specific approach, and a non-quantity specific approach. EPA decided not to adopt these alternative licensing systems in order to minimize burden on the regulated community and conserve Agency resources.

EPA's decision to treat existing requirements as a licensing system in no way relieves a person importing and exporting controlled substances or used controlled substances from the existing recordkeeping and reporting requirements in §§ 82.9 through 82.13.

2. Control of Exported Products That Rely on Class I Controlled Substances for Their Continuing Functioning to Article 5 Parties

EPA is amending the regulation to control the export of products that rely on class I controlled substances for their continuing functioning to Article 5 Parties, in accordance with Decision IX/9 agreed to by the Parties to the Protocol at the 9th Meeting in Montreal in 1997. Decision IX/9 ''recommend[s] to non-Article 5 Parties to adopt appropriate measures to control, in cooperation with the importing Article 5 Parties, the export of used products and equipment, other than personal effects, whose continuing functioning relies on supply of substances listed in Annexes A and B of the Montreal Protocol [CFCs, halons, carbon tetrachloride, and methyl chloroform].''

Decision IX/9 was taken by the Parties to the Protocol in recognition of the concern expressed by Article 5 Parties that CFC-technologies, and other technologies relying on class I controlled substances for their continuing functioning, are decommissioned in Article 2 Parties and ''dumped'' into their markets. Article 5 Parties have until 2010 to complete their phaseout of production and consumption of class I controlled substances (except Group VI substances). This phaseout date for Article 5 Parties is ten (10) years after the phaseout date originally established for non-Article 5 Parties at the 1990 Meeting of the Parties (London Amendments). Since 1990, the non-Article 5 Parties have agreed to accelerate their phaseout date for class I controlled substances (except Group VI substances).

Due to the existence of alternative technologies, some Article 5 Parties view products that rely on class I controlled substances for their continuing functioning as being obsolete. Some Article 5 Parties say exports from industrialized nations of products that rely on class I controlled substances foster continued dependence on these substances and retard their transition to non-ODS technologies. EPA supports a speedy transition away from class I controlled substances in Article 5 Parties and has considered various ways in which the U.S. can support this transition through

restrictions and controls on exported products whose continuing functioning relies on class I controlled substances.

EPA has considered several methods for implementing Decision IX/9 taken by the Parties to the Protocol in 1997 at the Anniversary Meeting in Montreal. It should be noted that the phrase ''continuing functioning'' was chosen by the Parties to refer to products that need to be re-filled with class I controlled substances to continue to serve their intended purpose; the decision did not capture other products, such as metered-dose inhalers. In today's action, EPA is adding a restriction on exports of products whose continuing functioning relies on class I controlled substances that will be triggered when, and if, EPA receives a notification from an Article 5 government that the import of a particular type of product is restricted and the manufacture of that product with specified ozone-depleting substances is banned in that Article 5 country. The relevant agency or the consulate of the Article 5 Party must provide EPA with a copy of the national law, regulation or other administrative action creating a restriction on imports of products that rely on class I controlled substances for their continuing functioning and restricting their manufacture within the same country. With today's action EPA is adding a new § 82.4(m) to establish the framework for a ban on the export of products whose continuing functioning relies on class I controlled substances. Upon receipt of an official document from the government of an Article 5 Party, EPA will publish a notice in the **Federal Register** triggering the specific ban on all exports from the United States of products that rely on class I controlled substances for their continuing functioning to the specific Article 5 Party. The specific Article 5 Party will be listed in Appendix J to Subpart A.

In addition, EPA is considering the creation of a licensing system for U.S. exports of products whose continuing functioning relies on class I controlled substances. A licensing system would be used to monitor exports of products from the U.S. to Article 5 countries as an additional control measure that would work in parallel with the ban described above.

3. Prohibit Imports and Exports of HBFCs From or to Non-Parties To the Protocol

EPA is amending the existing regulation to prohibit the import or export of hydrobromofluorocarbons (HBFCs) (class I, Group VII controlled substances) from or to a foreign state that is not a Party to the 1992 Copenhagen Amendments to the Montreal Protocol. In today's action, EPA is adding § 82.4(l)(3) to ban trade in HBFCs with non-Parties to the Copenhagen Amendments to ensure the United States meets its obligations under the Protocol. HBFCs are very uncommon substances and EPA has no record of U.S. trade in these class I controlled substances. Article 4, paragraph 1 ter of the Protocol bans the import of HBFCs from any country not a Party to the Copenhagen Amendments. Article 4, paragraph 2 ter of the Protocol bans exports of HBFCs to any Party that has not ratified the Copenhagen Amendments.

The current regulation (60 FR 24970; 40 CFR 82.4(k)(1)) prohibits the import and export of class I, Group I or Group II controlled substances from or to foreign states not Parties to the Montreal Protocol (1987). In addition, the current regulation (60 FR 24970; 40 CFR 82.4(k)(2)) prohibits the import and export of class I, Group III, Group IV, and Group V controlled substances from or to foreign states not Parties to the London Amendments (1990). These bans on imports from and exports to non-Parties reflect an agreed strategy by signatory countries for encouraging ratification of the Montreal Protocol and each successive package of amendments.

4. Application Process for Exemptions to the HCFC Phaseout for Specific National Security Uses

In today's action, EPA is creating a very limited exemption to the U.S. accelerated phaseout dates for class II controlled substances, known collectively as hydrochlorofluorocarbons (HCFCs). EPA believes U.S. government national security interests have vital needs for specific, small quantities of HCFC–141b beyond the phaseout dates contained in § 82.4(l) and(m) of the final rule published in the **Federal Register** on May 10, 1995 (60 FR 24970). EPA is creating an exemption to the accelerated phaseout of the production and import of HCFC–141b for national security purposes. EPA believes that the new § 82.4(u)(3) will not adversely affect compliance with the provisions of the Clean Air Act Amendments of 1990 or the U.S. obligations under the Montreal Protocol as amended.

A person seeking an exemption for the production and import of HCFCs for national security purposes under § 82.4(u)(3) must apply for the exemption under § 82.9. Today's action includes a streamlined application and review process under § 82.9(g) for national security allowances. The application process requires a U.S. government entity with a national security interest to submit the following information to EPA: (a) name and address of national security entity; name of contact person and phone and fax numbers and e-mail address; (b) quantity (in kilograms) of HCFC–141b needed for the control period for the national security interest; (c) a description of the national security interest met by the use of HCFC–141b; (d) a technical description of the use of HCFC–141b; (e) a technical description of why alternatives and substitutes are not sufficient or suitable to eliminate the national security use of HCFC–141b; and (f) a detailed analysis showing why stockpiled, recovered or recycled quantities are deemed to be technically and economically infeasible for use.

EPA will review the application in order to determine whether to grant national security allowances for the specific quantity of HCFC–141b for the control period. If more information is needed, EPA will contact the applicant and specify the needed information. EPA will retain the right to disallow the national security allowances based on information received regarding, inter alia, fraud, misrepresentation, inconsistency with Articles and Decisions under the Montreal Protocol, inconsistency with the intent of the Clean Air Act Amendments of 1990, or other reasons related to human health and the environment.

EPA considered other approaches to a national security exemption for the production and import of HCFCs. EPA considered whether the exemption should be specific for one, or two, or all of the HCFCs (e.g., specific exemptions only for 141b, 22, or 142b for national security purposes.) To date, EPA has received only specific requests for national security exemptions for 141b. Therefore, EPA believes there is no need for a broader exemption and accordingly is limiting the exemption to HCFC–141b.

EPA is also establishing a specific application period ending December 1, 1999. By limiting the time frame for accepting applications, EPA is providing a strong incentive for U.S. government entities with national security interests to review their HCFC–141b needs and conduct long-term planning. By limiting the time frame for the review of applications, EPA would also be reducing the Agency's long-term burden to continually review claims of national security interest.

EPA considered conducting a one-time period of review of petitions for national security allowances to be

finalized by publication of a notice with a list of acceptable and unacceptable national security exemptions to the class II phaseout dates. EPA decided not to adopt this approach because the Agency expects very few applications for national security allowances for class II controlled substances.

Another option in the implementation of an exemption for the production and import of HCFCs beyond the accelerated phaseout would be a limit on the total quantity of any HCFC that one U.S. government entity could request and obtain in a control period. Finally, EPA could limit the number of control periods for which a U.S. government entity with national security interests may apply for an HCFC exemption. EPA did not adopt these options to limit the quantity of material or the control periods because the Agency expects the numbers of requests and the quantities to be very small.

The Agency is creating an exemption process for the continued production or import of HCFC–141b up to January 1, 2030, for applications related to national security in cases where stockpiled, recovered or recycled quantities are deemed to be technically and economically infeasible for use. Upon request by a Federal Government Agency, the Administrator may grant authorization for production or import of a specified quantity, for a specified period of time. Only agencies of the Federal Government can request production or import quantities under this exception. Thus, companies and other organizations that are contractors, grantees or otherwise service providers for the Federal Government must first secure approval and endorsement through the Agency which requires products made with or containing HCFCs. Approval for production or import does not imply or mandate production; each user must locate a willing supplier and negotiate supply. It should be noted that under CAA section 605(b)(1), beginning January 1, 2015, it will be unlawful for any person to produce any class II substance in excess of baseline production levels.

The Agency believes technically feasible and economically viable alternatives will be available for all commercial and the vast majority of non-commercial uses of HCFCs prior to their phaseout dates. However, there may be specialized uses where stockpiled, recovered, or recycled quantities are technically inadequate or economically not viable. At this time, the only foreseeable use of this authorization is for ballistic insulation foam used for space exploration and possibly cleaning applications for oxygen generators in the military.

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

5. Simplify Procedure for Apportioning Essential-Use Allowances

EPA is simplifying the yearly process for apportioning essential-use allowances to U.S. companies. With today's action, EPA is creating a mechanism to allocate essential-use allowances for future control periods beginning in 1999 by a letter from the Agency to each person nominated by the United States to the Secretariat of the Montreal Protocol for an essential use exemption. After allocating the essential-use allowances, EPA will publish a **Federal Register** notice containing a summary of the allocations.

In establishing the process for exempting essential uses from the phaseout, EPA published a proposed rule in the **Federal Register** on November 10, 1994 (59 FR 56276) and then published the final rule on May 10, 1995 (60 FR 24970). These rules discussed the essential-use exemption process and allocated essential-use allowances for 1996 and 1997. EPA published a rule allocating essential use allowances for 1998 on January 28, 1998 (63 FR 4359). Given the need for quick action in allocating allowances, EPA is simplifying the process for allocating essential-use allowances for each control period by issuing allowances by letter, followed by a notice summarizing the allocations.

Given the extensive review prior to authorization by the Parties to the Protocol, EPA believes the allocation of essential-use allowances through rulemaking is unnecessary.

In discussing the essential-use process in the preamble to the November 10, 1994 proposed rule (59 FR 56276, 56282–56283), EPA described the steps necessary to submit an application domestically. In the same passage, EPA discussed the procedure that the U.S. government follows in nominating uses to the Parties to the Protocol. Before the U.S. makes a nomination to the Parties for an essential-use exemption, EPA and other relevant government agencies carefully review applications in light of the criteria established in Decision IV/25 and subsequent Decisions of the Parties to the Protocol that govern essential uses. The U.S. takes great pains to ensure that each nomination submitted to the Parties reflects a truly essential need for a phased-out controlled substance. The Parties carefully consider the review and recommendations of the Montreal Protocol's Technical and Economic Assessment Panel (TEAP) and its Technical Options Committees (TOCs) before authorizing the production of controlled substances for essential uses beyond the phaseout dates. With today's action, EPA is announcing its intent to allocate the total quantity of essential-use authorizations for the calendar year that were approved by the Parties.

6. Prohibit Import of Class I Controlled Substances for Essential-Uses Except by Companies Allocated Essential-Use Allowances

EPA is prohibiting the import of class I controlled substances for essential uses by any person that is not allocated essential-use allowances. EPA is making this change to ensure that the import is actually used for the allocated essential use, to simplify the recordkeeping and reporting procedures for U.S. companies and to ease the administrative burden of tracking imports of exempted quantities by the Federal government. Today's amendment changes the current regulations regarding the ability to confer essential-use allowances for imports. The current regulations (60 FR 24970; 40 CFR 82.4(e), § 82.13(g)(1)(xvi)) allow holders of essential-use allowances to confer to another U.S. company the rights to import quantities of phased-out class I controlled substances. With today's action, EPA is requiring that U.S. entities allocated essential-use allowances be the actual importers of class I controlled substances. EPA believes that U.S. companies allocated essential-use allowances can work with customs brokers to ensure that their company is listed as the importer of record on U.S. Customs Service entry documents. By eliminating the option of conferring essential-use allowances to import class I controlled substances EPA is attempting to simplify the reporting and

recordkeeping requirements in § 82.13 of the final rule and ease the U.S. government's task of tracking imports.

In an effort to combat illegal imports of class I controlled substances, EPA joined forces with many Federal agencies to create an inter-agency taskforce. As the supply of ozone-depleting substances has declined, the residual demand has prompted the development of a black market for phased-out ozone-depleting substances. In 1995, the U.S. Customs Service began assisting EPA in monitoring imports of ozone-depleting substances. U.S. Customs Service inspectors now call EPA to confirm that any import of class I controlled substances is exempted under one of the special provisions in § 82.4 of the regulation, such as essential uses. EPA believes that confirming, tracking and cross-checking imports of class I controlled substances for essential uses will be easier if the actual holder of the essential-use allowance is listed as the importer of record or consignee on the U.S. Customs Service entry document (Customs form 7501). In addition, EPA believes that recordkeeping and reporting requirements will be simplified for U.S. companies if the holder of the essential-use allowances is responsible for submitting the importer's quarterly report.

C. Amendments to § 82.9—Availability of Production Allowances in Addition to Baseline Production Allowances

1. Clarification of Increases or Decreases of Article 5 Allowances Due to International Transfers

EPA is clarifying the regulations regarding trades of Article 5 allowances. To address the confusion about the permissibility of trades of Article 5 allowances and because trades are allowed under the provisions of the Montreal Protocol, EPA is removing the phrase ''Until January 1, 1996'' from § 82.9(c) and adding the phrase ''or Article 5 allowances'' in the first sentence after ''production allowances.''

The regulatory text published in the **Federal Register** on May 10, 1995 is silent regarding trades of Article 5 allowances with other Parties to the Montreal Protocol. However, at the time of publication, EPA wrote in the preamble its interpretation of the Montreal Protocol stating, ''With today's action, EPA permits inter-pollutant and inter-company transfers of Article 5 allowances as proposed but is not permitting inter-Party trades. The Agency determined that inter-Party trades of Article 5 allowances would violate the provision of the Protocol that specifically allows additional production by each Party for export to Article 5 countries.'' (60 FR 24980)

EPA subsequently learned that the Parties to the Protocol do in fact permit inter-Party trades of Article 5 production. The United Nations Environment Programme (UNEP) document from the 1993 Bangkok meeting (UNEP/OzL.Pro.5/8) titled, ''Transfer of Production Rights under Article 2 of the Montreal Protocol'' asks the question in paragraph 5(a), ''Can a Party transfer to another Party its right to produce controlled substances to meet the basic domestic needs of the Parties under Article 5, paragraph 1?'' In the same UNEP document (UNEP/OzL.Pro.5/8), paragraph 6 responds, ''Concerning the question in paragraph 5(a) above , it appears that the term ''calculated level of production' contained in paragraph 5 of Article 2 includes production to meet the basic domestic needs of the Parties operating under Article 5, paragraph 1. Therefore, a Party can transfer to another Party its right to produce to meet the basic domestic needs of the Parties operating under Article 5, paragraph 1.'' Based on the text in the Montreal Protocol document (UNEP/OzL.Pro.5/8), EPA is clarifying that inter-Party trades of Article 5 allowances are permissible.

D. Amendments to § 82.12—Transfers

1. Increases or Decreases of Essential-Use Allowances Due to Emergency International Transfers

EPA is amending the current regulation to allow the transfer of MDI essential-use authorizations to or from other Parties under limited situations to reflect Decision IX/20 taken by the Parties at the 1997 Ninth Meeting in Montreal. Decision IX/20 allows the transfer of essential-use authorizations for CFCs for MDIs between Parties without prior review at a Meeting of the Parties only in emergency situations only if specific conditions are met. There is only one precedent for the transfer of MDI essential-use authorizations between two Parties. In this one case, New Zealand submitted a request to transfer previously approved MDI essential-use authorizations to Australia. New Zealand requested the transfer because of the planned closure of its MDI production facility and an agreement with Australia that the MDIs would be manufactured in Australia and shipped to New Zealand. New Zealand's request was submitted with sufficient time prior to the Meeting of the Parties for the TEAP to review and make a recommendation regarding the transfer. The Parties to the Protocol approved the transfer of New Zealand's essential-use allowances for CFCs for MDIs to Australia. Today's action reflects the creation of a safety valve for emergency cases in which a transfer of essential-use authorizations from one Party to another would need to occur without opportunity for prior review and approval of a Meeting of the Parties. Today's action and Decision IX/20 allow an emergency transfer with the Parties to the Protocol approving the action after-the-fact.

Decision IX/20 taken at the Ninth Meeting of the Parties allows the transfer of essential-use allowances for CFCs for MDIs between two countries without prior approval by the Parties only in emergency situations and under very specific conditions. If any specific condition is not met, the transfer may not occur. Decision IX/20 states that: ''in an emergency situation,'' the transfer of essential-use authorizations may be allowed by the Ozone Secretariat, in consultation with the Technology and Economic Assessment Panel, if the following conditions are met: ''(a) the transfer applies only up to the maximum level that has previously been authorized for the calendar year in which the next Meeting of the Parties is to be held, (b) both Parties involved agree to the transfer, (c) the aggregate annual level of authorizations for all Parties for essential uses of MDIs does not increase as a result of the transfer, and (d) the transfer or receipt is reported by each Party involved on the essential-use quantity accounting format approved by the Eighth Meeting of Parties by paragraph 9 of decision VIII/9.''

During the discussion of Decision IX/20, the Parties clarified that the intent of the phrase ''in an emergency situation,'' was to allow a safety provision for the supply of CFCs for MDIs if there is a disaster, such as a fire at the only MDI manufacturing facility within a country. Thus, EPA will approve transfers of essential-use authorizations only if the emergency situation is the result of a catastrophic natural event or war. A request to transfer essential-use allowances due to poor planning or management will not be considered an emergency situation for purposes of today's amendment. Furthermore, an emergency situation must also be shown to seriously threaten the treatment of patients with asthma or chronic obstructive pulmonary disease (COPD) within one of the countries in the proposed transfer.

With today's action, EPA will not allow the transfer of essential-use allowances from one U.S. company to

another company within the United States. EPA believes that information on the U.S. MDI market indicates domestic essential-use allowances are distributed in a manner that will allow for continued treatment of patients with asthma and COPD in the event of an interruption of supply of CFCs or a problem with manufacturing at one facility or one company. EPA's analysis indicates a measure of redundancy in the domestic market to respond to such contingencies.

The procedures for transferring essential-use authorizations prior to the meeting of the Parties to address an emergency situation require a company to submit a very detailed description of the emergency and an analysis demonstrating the serious impact the emergency will have on patients. A U.S. holder of essential-use allowances for CFCs for MDIs or a U.S. manufacturer of MDIs identified through prior arrangement with a foreign manufacturer of MDIs may submit a request for approval to EPA regarding an emergency situation that requires the transfer of essential-use authorizations. The information to be submitted in a request for an emergency transfer of essential-use allowances is listed in Section 82.12(a)(3). The request must certify the accuracy of the information submitted and fully document the emergency situation that was created by a catastrophic natural event or war, including, where appropriate, submission of photos, reports from local, state or Federal authorities, or a report from an independent auditor. In a case when the emergency situation exists in a foreign state the request must include a letter from the foreign environmental ministry and a letter from the foreign health ministry verifying the emergency situation and the serious threat the emergency situation poses for the treatment of patients with asthma and COPD in that country. Submission of a request to transfer essential-use authorizations for CFCs for MDIs does not guarantee EPA's approval of or agreement with the requested transfer. Rather, EPA will review the information provided and use it to independently verify that the emergency situation exists and that the emergency situation seriously threatens the health and treatment of patients with asthma or COPD.

In reviewing a request for an emergency transfer of essential-use authorizations for CFCs for MDIs, EPA may consider the following factors:

(1) Information sufficient to make a determination regarding whether the situation is an emergency due to a catastrophic natural event or war; (2) possible serious threats to the treatment of patients with asthma and COPD; (3) possible creation of economic hardship; (4) possible effects on trade; (5) potential environmental implications; and (6) the total amount of unexpended essential-use allowances held by United States entities.

After a review of these factors in consultation with other agencies of the U.S. Federal government, a notice will be issued through the U.S. Department of State, to the UNEP Ozone Secretariat, either agreeing or disagreeing with the transfer of essential-use authorizations and specifying the control period to which the transfer applies. For an approved trade from a Party, EPA will issue a notice that revises the essential-use allowances held by the person for the control period in question to equal the unexpended essential-use allowances held by the person under Subpart A plus the amount of essential-use authorizations transferred from the Party. For an approved trade to a Party, EPA will issue a notice that revises the essential-use allowances held by the person to equal the unexpended essential-use allowances held by the person under Subpart A minus the amount of essential-use authorizations transferred to the Party for the specific control period.

E. Amendments to § 82.13—Recordkeeping and Reporting Requirements

1. Removal of Producer Requirement To Report the Quantity of Used Material Received That Contains Recycled or Reclaimed Controlled Substances

EPA is removing the reporting requirement under § 82.13(f)(3)(v) that asks producers of class I controlled substances to report on ''the quantity of used material received containing controlled substances that are recycled or reclaimed.'' Because of the phaseout, EPA believes most producers either closed their facilities or drastically reduced their business in class I ozone-depleting substances (except Group VI substances). Class I controlled substances used as refrigerants are controlled under authority of Section 608 of the CAA in the regulations published under 40 CFR Part 82, Subpart F. Reclaimers of refrigerants are required to be EPA-certified under section 82.164 and required to report information about their reclamation process annually under section 82.166. U.S. producers of class I controlled substances are, in general, not accepting recycled or reclaimed material because class I controlled substances are being recycled and reclaimed by special facilities that handle refrigerants or re-process wastes. Today's action eliminates the reporting requirement in 82.13(f)(3)(v) because EPA tracks the reclamation of refrigerants under the 608 regulations and producers are no longer accepting used controlled substances after the phaseout of class I controlled substances.

2. Add to the Producer Recordkeeping and Reporting Requirements the Need To Maintain and Submit a Certification That a Quantity of Class I Controlled Substance Will Be Used as a Process Agent

EPA is adding the requirement that producers of class I controlled substances maintain a record obtained from purchasers certifying the purchasers' intent to use the cited quantity as a process agent in accordance with the current definition of controlled substance in Section 82.3. EPA is requiring that the purchaser certify that it will use the total quantity of purchased class I controlled substance as a process agent in accordance with the definition of controlled substance in the final rule published in the **Federal Register** on May 10, 1995 (60 FR 24970). EPA is also requiring that producers submit the certifications received with their quarterly reports.

EPA is adding today's recordkeeping and reporting requirement for process agents due to a change in the treatment of process agents under the Montreal Protocol. Since 1996, the Parties to the Protocol have agreed to treat process agents in the same manner as feedstocks, that is, the same as controlled substances that are transformed. In accordance with Decisions VI/10 and VII/10, since the phaseout of class I controlled substances, the production of these substances for use as a process agent has been treated as transformation for purposes of recordkeeping and reporting under this regulation. At the Ninth Meeting of the Parties in 1997, the Parties did not extend beyond the 1998 control period the treatment of process agents in a manner similar to feedstocks.

When the Parties to the Protocol decided not to extend the treatment of process agents in a manner similar to feedstocks, the treatment of process agents reverted to an earlier decision by the Parties. Decision VI/12, taken by the Parties in 1992, clarifies the definition of controlled substances and states that ''insignificant quantities of controlled substances originating from inadvertent or coincidental production during a manufacturing process, from unreacted feedstock, or from their use as process

agents which are present in chemical substances as trace impurities, or that are emitted during production manufacture or handling, shall be considered not to be covered by the definition of a controlled substance contained in paragraph 4 of Article 1 of the Montreal Protocol.'' Decision IV/12 is reflected in the current definition of controlled substances in Section 82.3 as published in the **Federal Register** on May 10, 1995. Thus, the production of controlled substances for use as a process agent is not included in the definition of controlled substances in the regulation.

A very small number of manufacturing processes in the U.S. use a class I controlled substance as a process agent. In almost every case, the manufacturing process uses carbon tetrachloride to control or maintain a chemical reaction. Many companies have submitted a description of their manufacturing process to EPA, asking if their process would be considered a process agent use of a class I controlled substance. In such cases, a producer of a class I controlled substance can rely on the letter from EPA to determine if the purchaser can purchase the material as a process agent. If a producer of a class I controlled substance is unsure about whether the manufacturing process of a potential new purchaser qualifies as a process agent use, the producer should refer the purchaser to EPA for a determination.

3. Clarify the Need for Letters That Confer Essential-Use Allowances and Destruction and Transformation Credits to Producers and That These Letters Be Submitted With Producer's Quarterly Reports

EPA is issuing a clarification of existing requirements. EPA is clarifying that holders of essential-use allowances that place orders for class I controlled substances must confer essential-use allowances to the producer in order to receive the material. EPA is also clarifying that the letter that confers the essential-use allowances must certify that the quantity of class I controlled substance is being purchased solely for the specified essential use and will not be resold or used in any other manufacturing process. Similarly, laboratory customers that place orders for class I controlled substances must certify that the quantity of class I controlled substance is being purchased solely for laboratory applications and will not be resold or used in manufacturing. Distributors of laboratory supplies that place orders for class I controlled substances must certify that the controlled substances were purchased for sale to laboratory customers who make the above certifications.

EPA is clarifying that producers must submit to the Agency a copy of letters that confer any essential-use allowances or destruction and transformation credits. Under the current reporting requirements found in § 82.13(f)(3)(xi) and (xii) of the final rule published in the **Federal Register** on May 10, 1995 (60 FR 24970), producers must submit ''a list of essential-use allowance holders * * * from whom orders were placed'' as well as ''the certifications from essential-use allowance holders.'' Under the current reporting requirements at § 82.13(f)(3)(iv), producers must submit data on the number of expended and unexpended essential-use allowances and destruction and transformation credits conferred to them for each quarter.

In 1996 and 1997, few producers and importers submitted letters from purchasers conferring essential-use allowances or certifying that the controlled substances were purchased solely for the specified essential uses. With today's action, EPA is clarifying that holders of essential-use allowances must write a letter conferring the essential use allowances to the producer, and that this letter must certify that material is purchased solely for the specified essential-use and will not be resold or used in any other manufacturing process. Laboratory customers that place orders for class I controlled substances must certify that the quantity of class I controlled substance is being purchased solely for laboratory applications and will not be resold or used in manufacturing. Distributors of laboratory supplies must certify that the material is purchased solely for sale to laboratory customers who certify that the substances will only be used for laboratory applications and will not be resold or used in manufacturing.

As explained in Section II.B.8. above, EPA is prohibiting holders of essential-use allowances from conferring the right to import, and instead, requiring them to become the actual importer of phased-out class I controlled substance. EPA is also requiring that distributors of laboratory supplies follow the same procedures and, as they have done since 1996, act as the importer of the quantity of phased-out class I controlled substance that is exempted under the essential-use provisions for laboratory and analytical uses.

EPA is clarifying an existing requirement that copies of letters that confer essential-use allowances and that certify that the material is purchased solely for the specified essential use be included with the producer's quarterly reports to EPA.

4. Changes to the Petition Process for Importing Used Class I Controlled Substances

EPA is changing the petition process for imports of used class I controlled substances. Today's changes clarify existing requirements. In addition, some of the amendments are designed to give EPA greater ability to ensure imports are, in fact, used controlled substances (i.e., not newly produced substances).

The original reason the Parties to the Protocol agreed to permit international trade in previously used ozone-depleting substances beyond the Protocol's control regimes was to ease the transition to alternatives. In addition, the Parties believed that allowing trade in quantities of already existing used material would offset the need for new production globally. EPA believes that, in many cases, the opposite may be occurring. The diminishing supplies and hence rising prices of class I controlled substances in the U.S., combined with continued production of virgin material in Article 5 countries, creates an opportunity for such large financial gain that, instead of offsetting new production, it is likely that trade in used controlled substances is fostering new production. Evidence increasingly indicates that new production overseas is being clandestinely diverted to the U.S. and other non-Article 5 countries as exports of ''used'' material. To the extent that the petition process unwittingly encourages mislabelling or adulteration of new production overseas, and the submission of false information, it undermines the Parties' original intention in permitting trades of used ozone-depleting substances.

Although today's amendments simply tighten the existing requirements, EPA is also considering a complete ban on imports of used class I controlled substances. EPA is considering an import ban on used class I controlled substances because of the enormous burden, both in logistics and in resources, to independently verify the information in petitions to guarantee that shipments are, in fact, previously used controlled substances. Without physically inspecting each site from which a class I controlled substance is recovered from equipment, EPA is making decisions based on the documents and information provided by petitioners. EPA is also considering a ban on imports of specific used controlled substances instead of a

comprehensive ban on all used class I controlled substances.

EPA believes that, in some cases, the petition requirements published in the May 10, 1995 final rule (60 FR 24970; 40 CFR § 82.13(g)(2)) have been misunderstood. EPA hopes today's clarifications will reduce the number of times EPA objects to a petition and then objects to re-submissions of the same petition due to insufficient information before finally approving the complete petition package. EPA believes that, in other cases, the petition process has been abused. EPA is making today's changes in the hopes that the provisions of the petition process can be adequately tightened to guard against abuses and guarantee that imported material is truly previously used.

a. Clarification that a Petition to Import Used Class I Controlled Substances is Submitted for Each Individual Shipment. EPA would like to clarify that a petition to import used class I controlled substances may only be submitted on a shipment by shipment basis. EPA is not changing the current requirement with this action but clarifying the existing requirement in § 82.13(g)(2). The information in a petition and the quantity a person wishes to import into the United States must be limited to a specific shipment and a single U.S. Customs entry. If an importer cannot arrange for the entire quantity to be shipped as one entry through U.S. Customs, the importer is required to submit more than one petition for the quantity in each individual Customs entry.

b. Changing the de minimis Quantity for an Individual Shipment for which a Person is Required to Submit a Petition to Import Used Class I Controlled Substances. EPA is reducing the *de minimis* amount for an individual shipment for which a person is required to submit a petition to import used class I controlled substances. Section 81.13(g)(2) of the final rule published in the **Federal Register** on May 10, 1995, requires a person to submit a petition to import used class I controlled substances ''for each individual shipment over 150 pounds.'' A *de minimis* amount of 150 pounds was established in the May 10, 1995 final rule to allow companies to import small samples of material so they could run laboratory analyses and determine if reclamation would be physically possible and economically justifiable before importing a large tank. EPA has since learned that samples of class I controlled substances are generally taken from large tanks in special cylinders that generally weigh less than 2 pounds. EPA is therefore setting the *de minimis* quantity at five (5) pounds. EPA is setting the *de minimis* quantity at five pounds in order to avoid the unnecessary import of class I controlled substances. EPA believes that a quantity of 150 pounds is much larger than necessary to meet laboratory analysis needs. A *de minimis* level of five pounds allows a company to take three samples from a large ISO-tank for laboratory analysis and send those samples to a testing facility in the U.S. without being subject to the petition requirements. In developing today's amendments, EPA also considered requiring that a person who wishes to import any quantity of used class I controlled substance, regardless of the size, be required to submit a petition, thereby eliminating the *de minimis* level altogether. EPA decided not to eliminate the *de minimis* level altogether in order to minimize burden on the regulated community and conserve Agency resources.

c. Revised and Expanded Information Requirements for a Petition to Import Used Class I Controlled Substances. EPA is amending the regulation to include a more comprehensive and detailed list of information that will be required for petitions to import used class I controlled substances. Most of these changes are intended to make the current regulatory text more explicit regarding the type of information that EPA needs to independently verify, above all, the previous use of the controlled substance. Today's action adds a requirement under § 82.13(g)(2) that contact information for the entire chain of custody of the used controlled substance be provided in the petition. For example, EPA is stating that a petition include complete contact information for: every source facility from which the used controlled substance was recovered, every company that collected the material from the equipment, every previous owner of the material, and every company that will be exporting the used controlled substance.

EPA is also requiring that a petition to import used class I controlled substances include dated documents indicating the time the material was put into the equipment. EPA is requiring that the petition to import used class I controlled substances include the name, make and model number of the equipment from which the material was removed. The current text under § 82.13(g)(2)(vi) requires a petition to provide the ''intended use'' of the controlled substance. Today's amendment calls for, in addition to the intended use, a copy of a contract for the purchase of the controlled substance. In light of efforts by Parties to the Protocol to implement a licensing system for exports as well as imports, EPA is requiring that the petition provide an export license from the appropriate government agency in the country of export.

d. Removal of the Information Requirement regarding the Certification of Tax Liability for Used Class I Controlled Substances from the Petition. EPA is removing the requirement in § 82.13(g)(2) (viii) of the current rule from the list of information to be included with a petition to import used class I controlled substances. This provision required an importer to certify that the purchaser of the used, recycled or reclaimed substance ''is liable for the payment of the tax.'' See 60 FR 24970 (May 10, 1995). EPA published a stay of this provision on January 31, 1996 (61 FR 3316), and published an extension of the stay on June 11, 1996 (61 FR 29485). EPA believes that this provision failed to establish a clear and comprehensive reference to Internal Revenue Service (IRS) tax requirements that the Agency could implement effectively. EPA believes it is more appropriate to defer interpretation of regulatory requirements regarding excise taxes for ozone-depleting chemicals to the Internal Revenue Service (IRS), the Federal agency given authority for these taxes under the Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget Reconciliation Act of 1990 and the Energy Policy Act of 1992. EPA understands from the IRS that there is an excise tax on bulk shipments of used class I controlled substances, used class I controlled substances, products containing class I controlled substances and products made with but not containing class I controlled substances. However, EPA requests that all questions regarding the excise taxes on ozone-depleting chemicals be directed to the Internal Revenue Service.

e. Timing for EPA Review of a Petition. EPA is clarifying and amending the current regulatory language in § 82.13(g)(2) and (3) published in the **Federal Register** on May 10, 1995, regarding the timing for EPA's review of petitions to import used class I controlled substances. First, EPA is extending the current 15 working-day time limit within which EPA must respond to a petition. Given the large number of petitions being submitted (182 in 1997), combined with the fact that EPA will likely require more time to independently verify the additional information required with today's notice, EPA is extending the current time limit for the review of a petition from 15 to 40 working days. Second,

EPA is clarifying that the time for review begins on the working day after EPA's Stratospheric Protection Division actually receives the petition.

EPA included a time limit for the review of a petition to import used class I controlled substances in the May 10, 1995 final rule (61 FR 24970) in an attempt to reduce regulatory burden. In the May 10, 1995 final rule, EPA made approval of a petition automatic if, after 15 working days, the person who submitted the petition had not received a notification from EPA. Through experience and the unforeseen volume of incoming petitions, EPA learned that the 15 working-day time limit was too short a period for EPA to conduct a thorough review and automatic approvals were occurring of petitions that the Agency would not have otherwise approved. Today's action is designed to correct the issue of too short a time period for the review of petitions leading to automatic approvals of petitions that would not otherwise be approved.

EPA considered many other time frames for the review of petitions to import used class I controlled substances, including a complete elimination of any time limit for EPA's review of a petition. EPA considered time frames for the review of a petition to import used class I controlled substances from the current 15 working-days to as long as 180 working-days. EPA also considered whether to include an automatic approval provision with any of these time limits. EPA decided that a 40-day time frame with no automatic approval would allow the Agency to balance the goals of responsiveness to legitimate requests and thoroughness in identifying abuses of the petition process.

f. Clarification of Reasons for Issuing an Objection Notice to a Petition to Import Used Class I Controlled Substances. EPA is amending the list of reasons for which the Agency may disallow a petition to import used class I controlled substances. Section 82.4(i) of the regulation published in the **Federal Register** on May 10, 1995, requires a person to comply with the petition procedures in § 82.13(g)(2) and (3). The current regulation in § 82.13(g)(3) states that, ''if the Administrator determines that the information is insufficient, or there is reason to disallow the import, the Administrator will issue an objection notice.'' EPA is adding a more detailed list of the reasons for disallowing an import of used class I controlled substances.

As explained in the preamble of the May 10, 1995 final rule, EPA attempts to independently verify the information contained in a petition to import used class I controlled substances, with special attention given to confirming the prior use of the material. EPA's effort to confirm the information in a petition is conducted with support from other government agencies that are members of the inter-agency taskforce combating illegal imports of ozone-depleting substances. Since 1994, EPA has worked with the inter-agency taskforce members who include the Department of Justice, the Internal Revenue Service, the Customs Service, the State Department, and the Department of Defense. In the two years of implementing the petition process, EPA has received a variety of petitions to import used class I controlled substances. Many of the petitions provide insufficient information or provide information that EPA has reason to doubt is sufficient to confirm that the material is, in fact, previously used. EPA also learned during two years of reviewing petitions that other agencies sometimes have important insights regarding the specific information listed in a petition.

EPA is amending its list of reasons for which the Agency might issue an objection notice to a petition to import used class I controlled substances.

The first reason for disallowing a petition is a clarification of the current regulatory text, which says that the petition must provide the information required in § 82.13(g)(2) and that insufficient information or what appears to be insufficient information in response to these requirements is a basis for disallowing a petition.

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

EPA may issue objection notices for petitions to import used controlled substances that are contrary to provisions of the Vienna Convention on Substances that Deplete the Ozone Layer, the Montreal Protocol and its amendments and decisions, and the non-compliance procedures outlined and instituted by the Implementation Committee of the Montreal Protocol. Section 614(b) of the CAA states that in the case of conflict between the CAA and the Montreal Protocol, the more stringent provision shall govern. Thus, EPA may, and will, object to any petition submitted to EPA that contains information about a transaction that is recognized to be contrary to the provisions of the Convention and the Protocol, including its amendments and decisions.

With today's action EPA may disallow a petition if the appropriate government agency in the exporting country has not agreed to issue an export license for the individual shipment of used controlled substance that is cited in the petition.

EPA may disallow petitions due to official statements made by foreign governments. EPA believes that foreign governments may make official statements either to the United States or to the Parties to the Montreal Protocol that would warrant an objection notice to a petition to import used controlled substances from that country. Certain countries have stated to the Implementation Committee of the Montreal Protocol that they are no longer allowing exports of used controlled substances. If a country states that it is no longer allowing exports or if it reports that it has not granted any export licenses EPA will treat this as grounds for issuing an objection notice for a petition to import from that country.

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

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

EPA will not grant petitions to import used class I controlled substances if it is determined that, for the current control period, the U.S. demand for the specific controlled substance can be satisfied from domestic stockpiles and

from recycling and reclamation programs for existing quantities in domestic equipment. If such a determination is made, EPA would view further importation of quantities of that specific used class I controlled substances to be unwarranted. Furthermore, EPA decided that conditions established for disbursing monies to specific country projects by the Executive Committee of the Montreal Protocol's Multilateral Fund may be a basis for objecting to petitions. EPA believes no used controlled class I substances should be imported from countries where reclamation capacity, for that specific controlled substance, has been or is being installed through assistance of the Multilateral Fund. The United States contributes approximately one fourth of all funds going to the Multilateral Fund, the general purpose of which is to assist countries operating under Article 5(1) of the Protocol to make the transition away from ozone-depleting substances; and a transition policy includes the development of reclamation facilities in order to optimize the use of existing ozone-depleting substances so as to avoid unnecessary production of virgin materials. Thus, EPA views the importation of used class I controlled substances from countries where reclamation capacity has been supported by the Multilateral Fund to run counter to U.S. interest, and counter to the aims of a global phaseout strategy.

With today's actions, EPA is clarifying and expanding the list of reasons for objecting to a petition to give the Agency greater leverage in its efforts to ensure that trade in previously used material is consistent with the CAA and is in accordance with U.S. obligations under the Protocol.

g. Requirement that the Petition and the Non-Objection Letter from EPA for the Import of Used Class I Controlled Substances Accompany the Shipment through U.S. Customs Clearance. EPA is adding a requirement that the petition and the non-objection notice from EPA approving the import of a used class I controlled substance accompany each shipment through U.S. Customs. In the preamble to the final rule published in the **Federal Register** on May 10, 1995, EPA suggested that the petition and EPA approval letter accompany the shipment of used class I controlled substances through U.S. Customs. However, EPA did not make this a requirement in the regulatory language. Today EPA is adding this requirement to § 82.13(g) such that all importers of used class I controlled substances must provide these documents to bring a shipment into the United States. EPA believes that presenting the petition and EPA-approval letter with a shipment will facilitate the clearance through U.S. Customs.

5. Requirement That Importers of Controlled Substances and Used Controlled Substances Use the Harmonized Commodity Codes Specified in This Regulation in Completing Customs Entry Documents

EPA is requiring that importers of controlled substances and used controlled substances file Customs entry documents (Form 7501) containing the specified Harmonized Tariff Schedule numbers listed in the new Appendix K to 40 CFR Part 82, Subpart A. Monitoring compliance with the regulatory requirements under this accelerated phaseout rule will be facilitated by consistency in the Harmonized Tariff Codes used on Customs entry forms. The regulations of the U.S. Customs Service require importers to properly identify the contents of a shipment, including the use of the proper commodity code number from the Harmonized Tariff Schedule. EPA cross-checks and monitors imports and exports of controlled substances and used controlled substances by reviewing information from the U.S. Customs Service. Both EPA and Customs believe a consistent list of numbers from the Harmonized Tariff Schedule will ease tracking, reporting, and compliance monitoring of the ozone-depleting substance phaseout program.

6. Modify the Requirement for a Sales Contract That Certifies Exported Controlled Substances Will Be Transformed or Destroyed

The current regulations state that exporters of class I controlled substances must submit to EPA a sales contract certifying that the exported controlled substances will be transformed or destroyed. (40 CFR 82.13(h)(8)) EPA is changing the requirement in § 82.13(h)(8) to a requirement similar to the current requirement for importers in § 82.13(g)(3)(xii). The new requirement requires exporters to submit an invoice or sales agreement that includes language similar to the IRS certificate for transformation or the destruction verification for exports of class I controlled substances to Article 5 Parties to the Protocol (developing countries).

7. Applying the Recordkeeping and Reporting Requirements to Material Obtained From Importers as Well as Producers for a Person Who Transforms or Destroys Class I Controlled Substances

EPA is extending the recordkeeping and reporting requirement for persons involved in second-party transformation and second-party destruction of class I controlled substances, to the quantities they themselves did not import.

EPA is adding a requirement that persons keep records if they transform or destroy class I controlled substances that they did not import. The current regulatory text in § 82.13(i) requires a person to keep these records only if they did not produce the transformed or destroyed class I controlled substance.

With today's action, EPA is also adding to § 82.13(m) a requirement that persons report to EPA the names and quantities of class I controlled substances they transform or destroy when they submit an IRS certificate of intent to transform or a destruction verification to an importer. The current regulatory text in § 82.13(m) requires persons to report within 45 days of the end of the control period the quantities of class I controlled substances they transform or destroy for which they submitted an IRS certificate of intent to transform or a destruction verification to a producer. EPA is now making the recordkeeping and reporting requirements apply equally whether the person who transforms or destroys the substances obtains them from a producer or an importer.

8. Changes to the Recordkeeping and Reporting Requirements for Entities Allocated Essential-Use Allowances

EPA is changing the recordkeeping and reporting requirements for entities allocated essential-use allowances in accordance with a decision taken by the Parties to the Protocol at the Eighth Meeting in 1996. Decision VIII/9 approved a new reporting format for the quantities of production and consumption of controlled substances obtained by Parties under the essential-use authorizations. This accounting framework, included in annex IV of the document entitled ''Report of the Eighth Meeting of the Parties to the Montreal Protocol on Substances That Deplete the Ozone Layer'' (UNEP/OzL.Pro.8/12), is designed to assist the Parties in, among other things, monitoring the amount of controlled substances acquired through production or through import under essential-use authorizations.

EPA is adopting the exact format approved by the Parties to the Protocol

as an adjustment to the quarterly reporting requirements for each company allocated essential-use allowances. Under today's action, each company receiving a letter from EPA that allocates essential-use allowances for a control period will be required to submit the information in the Protocol's accounting framework for each quarter. Much of the information required in the Protocol accounting framework is currently required under § 82.13(u) of the rule published in the **Federal Register** on May 10, 1995.

The Protocol accounting framework for essential uses is designed to assist the Parties in determining whether quantities of controlled substances claimed for essential uses are actually being produced or imported. EPA wishes to ensure that quantities of phased-out controlled substances that the United States nominates to the Parties as being essential are fully justified. EPA believes today's requirement that companies holding essential-use allowances complete the Protocol accounting framework will ultimately help the United States in making credible nominations for future years. The accounting framework should make more apparent the quantity of phased-out controlled substance that each company obtains by expending its essential-use allowances and the amount of that material each company then uses in a given year for accomplishing the specifically designated essential use. To more accurately track the use of CFCs obtained under the essential-use exemption, today's requirement requires submission of data on the number of units of each specific product manufactured in a control period. A company exhibiting a pattern of holding unexpended essential-use allowances at the end of control periods, or a company exhibiting a pattern of holding quantities of controlled substances obtained with expended essential-use allowances that are not incorporated into the designated end product during that same control period, may indicate over-inflated requests for quantities of phased-out controlled substances. The United States government does not want the appearance of overinflated requests to jeopardize future approval by the Parties of requests for essential-use quantities for controlled substances.

The essential-use procedures developed internationally and domestically are designed to strictly control and limit exceptions to the production and consumption phaseout of ozone-depleting substances while at the same time encouraging a transition to a complete phaseout. EPA believes that, in accordance with the intent of the Decisions taken by the Parties to the Protocol, each kilogram of a controlled substance authorized after the phaseout must be justified as being essential. The U.S. government, and EPA in particular, is committed to working with U.S. companies to continue to obtain the justified quantities of phased-out controlled substances for essential uses.

9. Changes to the Reporting Requirement for Distributors of Laboratory Supplies Under the Global Laboratory Essential-Use Exemption

EPA is making several changes and additions to the current § 82.13(v) to ease the reporting burden for companies supplying class I controlled substances under the laboratory essential-use exemption. EPA will require that companies distributing laboratory supplies in accordance with the global essential-use exemption in the current § 82.4(r) (82.4(t) in these amendments), and Appendix G to Subpart A, maintain as records the certifications from each laboratory customer for each class I controlled substance ordered in a control period. EPA will not, however, require that distributors of laboratory supplies submit the certifications with each quarterly report. Under today's amendments, distributors of laboratory supplies will continue to receive certifications from labs that class I controlled substances are being purchased solely for laboratory and analytical purposes and are not being used for manufacturing and will not be resold. The distributor of laboratory supplies will continue to collect the certifications but will not be required to forward them to EPA. The distributor of laboratory supplies will continue to report each quarter the total quantity of each class I controlled substance sold to each customer under the global essential-use exemption (new § 82.13(x)). Similarly, the distributor will continue to report each quarter the quantity of each such substance received from each producer or importer (new § 82.13(v)). The total quantity reported will reflect the quantity of each class I controlled substance ordered by all laboratories during the quarter. Each of the labs ordering a class I controlled substance will have submitted to the distributor, for the distributor to maintain in accordance with recordkeeping requirements, a one-time-per-year certification as in § 82.13(w) of the rule published in the **Federal Register** on May 10, 1995 (new § 82.13(y)).

EPA is collecting information on the total quantity of class I controlled substances produced and imported under the global laboratory essential-use exemption in order to meet reporting obligations under the Protocol. In addition, EPA is collecting information on the total quantity of class I controlled substances sold to labs in order to meet reporting obligations under the Protocol. EPA believes these obligations under the Protocol can be met through today's changes while at the same time reducing the reporting burden for distributors of laboratory supplies.

With today's action, EPA is permitting companies only distributing class I controlled substances as reference standards for calibrating laboratory equipment to request an extension of the reporting requirement (new § 82.13(z)). EPA is providing that companies distributing reference standards of class I controlled substances may write a letter to the Agency requesting to file annual rather than quarterly reports. The quantities of class I controlled substances contained in a reference standard for calibrating laboratory analytical equipment, such as a gas chromatograph, are typically thousandths or ten thousandths of a kilogram. EPA is creating a process for replacing the quarterly reporting requirement with an annual reporting requirement for companies that only sell laboratory reference standards, because the total quantity of a class I controlled substance sold by such companies under the global essential-use exemption during a year will often be less than a kilogram. EPA is creating this process for lengthening the reporting period for companies that only sell reference standards of class I controlled substances to ease the overall reporting burden.

Today's changes are designed to reduce the overall reporting burden without creating opportunities for abuse of the essential-use exemption for laboratory and analytical purposes. EPA wishes to note that today's action does not change the packaging and purity requirements found in Appendix G for class I controlled substances distributed for laboratory and analytical purposes under the global essential-use exemption.

III. Miscellaneous Additional Changes

Included with today's revisions are miscellaneous corrections and minor changes, such as the inclusion of a specific address in the definition for ''Administrator'' in § 82.3. The rule also includes corrections in § 82.9(a) regarding Article 5 allowances available to those producers listed in § 82.5 and in accordance with the Montreal Protocol. This rule re-publishes an updated Appendix C to Subpart A,

listing Parties to the Montreal Protocol and its amendments. Also included are the new Appendix J and Appendix K to Subpart A.

IV. Summary of Supporting Analysis

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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 by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a written statement is required under section 202, 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, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Section 203 of the UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local and tribal governments, in the aggregate, or by the private sector, in any one year. Most of the provisions in today's rule fulfill the obligations of the United States under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer, as well as those requirements specifically set forth by Congress in sections 604, 606 and 614 of the Clean Air Act Amendments of 1990. The remainder merely serve to clarify existing regulatory text and therefore impose no new additional enforceable duties on governmental entities or the private sector. The majority of the amendments do not create significant additional costs for either the public or the private sector because they address various implementation issues without major changes in policy. Viewed as a whole, all of today's amendments do not create a Federal mandate resulting in costs of $100 million or more in any one year for State, local and tribal governments, in the aggregate, or for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this proposal does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

The Agency performed an initial screening analysis and determined that this regulation does not have a significant economic impact on a substantial number of small entities. EPA characterized the regulated community by identifying the SIC codes of the companies affected by this rule. The Agency determined that the members of the regulated community affected by today's rule are generally not small businesses. Small governments and small not-for-profit organizations are not subject to the provisions of today's rule. The provisions in the accelerated phaseout rule and today's action regulate large, multinational corporations that either produce, import, export, transform or destroy ozone-depleting chemicals controlled by this rule. To the extent that today's actions affect entities other than large, multinational corporations, there are few that are small entities and the economic impact is negligible. Thus, today's rule will not have a significant economic impact on a substantial number of small entities. The rule includes changes to recordkeeping or reporting requirements. Those changes included in today's rule that increase reporting burden only apply to large companies (pharmaceutical companies holding essential-use allowances). In general, for small entities, the changes in today's action reduce reporting and recordkeeping.

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.

C. 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 OMB review and the requirements of the Executive Order. The Order defines a ''significant'' regulatory action as one that is likely to result in a rule that may:

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

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

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

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

It has been determined by EPA and OMB that this rule is not a ''significant regulatory action'' within the meaning of the Executive Order.

D. Applicability of E.O. 13045 Children's Health Protection

This rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

E. Paperwork Reduction Act

The revised information collection requirements in these amendments have been submitted for approval to 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. 1432.17) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW., Washington, DC

20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The additional information requirements in these amendments are not effective until OMB approves them.

The information collection under this rule is authorized under sections 603(b) and 114 of the Clean Air Act Amendments of 1990 (CAA). This information collection is conducted to meet U.S. obligations under Article 7, Reporting Requirements, of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol); and to carry out the requirements of Title VI of the CAA, including sections 603 and 614.

The reporting requirements included in the amendments to the current rule are designed to:

(1) Ensure compliance with the restrictions on production, import and export of controlled ozone-depleting substances after the phaseout of class I substances (except methyl bromide) after January 1, 1996;

(2) Allow exempted production and import for certain essential uses and the consequent tracking of that production and import;

(3) Address industry and Federal concerns regarding the illegal import of mislabelled used controlled substances that are claimed to be undercutting U.S. markets;

(4) Respond to industry comments on the functioning of the program to streamline reporting and eliminate administrative inefficiencies;

(5) Satisfy U.S. obligations under the international treaty, the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7;

(6) Fulfill statutory obligations under Section 603(b) of Title VI of the Clean Air Act Amendments of 1990 (CAA) for reporting and monitoring;

(7) Provide information to report to Congress on the production, use and consumption of class I and class II controlled substances as statutorily required in Section 603(d) of Title VI of the CAA.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B, and will be disclosed only if EPA determines that the information is not entitled to confidential treatment. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

The information collection requirements for this action have an estimated reporting burden averaging 23.3 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing the collection of information.

The estimate includes the time needed to comply with EPA's reporting requirements, as well as that used for the completion of the reports under the amended regulations.

Collection activity	Number of respondents	Responses/ respondent	Total responses	Hours per response	Total hours
Producer's Report	8	4	32	16	512
Importer's Report	12	4	48	16	768
Notification of Trade	2	1	2	2	4
Export Report	10	1	10	80	800
Lab Certification	1000	1	1000	1	1000
Class II Report	14	4	56	16	896
Transformation & Destruction	15	1	15	80	1200
Essential Use Allowance Holders	12	4	48	32	1536
Lab Suppliers	4	4	16	24	384
Lab Suppliers—Reference Standards	10	1	10	16	160
Total burden hrs	.....	.....	.....	.....	7260

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.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence.

F. Executive Order 12875

Today's action does not impose any unfunded mandate upon any State, local, or tribal government; therefore, Executive Order 12875 does not apply to this rulemaking.

G. Submission to Congress and the General Accounting Office

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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 82

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

Dated: July 17, 1998.

Carol M. Browner,

Administrator.

40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

Subpart A—Production and Consumption Controls

2. Section 82.1 is revised to read as follows:

§ 82.1 Purpose and scope.

(a) The purpose of the regulations in this subpart is to implement the Montreal Protocol on Substances that Deplete the Ozone Layer and sections 602, 603, 604, 605, 606, 607, 614 and 616 of the Clean Air Act Amendments of 1990, Public Law 101–549. The Protocol and section 604 impose limits on the production and consumption (defined as production plus imports minus exports, excluding transhipments and used controlled substances) of certain ozone-depleting substances, according to specified schedules. The Protocol also requires each nation that becomes a Party to the agreement to impose certain restrictions on trade in ozone-depleting substances with non-Parties.

(b) This subpart applies to any person that produces, transforms, destroys, imports or exports a controlled substance or imports or exports a controlled product.

§ 82.2 [Removed and reserved]

3. Section 82.2 is removed and reserved.

4. Section 82.3 is amended by adding new definitions in alphabetical order for the terms ''Confer'', ''Individual Shipment'', ''Montreal Anniversary Amendments'', ''National Security Allowances'', ''Non-Objection Notice'', and ''Source Facility'' and revising definitions in alphabetical order for ''Administrator'', ''Destruction'', ''Importer'', ''Nations complying with, but not joining, the Protocol'', ''Transhipment'', and ''Unexpended Essential-Use Allowances''.

§ 82.3 Definitions.

As used in this subpart, the term:

Administrator means the Administrator of the United States Environmental Protection Agency or his authorized representative. For purposes of reports and petitions, the Administrator must be written at the following mailing address: EPA (6205J), Stratospheric Protection Division, 401 M Street, SW, Washington, DC 20460.

* * * * *

Confer means to shift the essential-use allowances obtained under § 82.4(u) from the holder of the unexpended essential-use allowance to a person for the production of a specified controlled substance, or to shift the destruction and transformation credits obtained under § 82.9(f) from the holder of the unexpended destruction and transformation credits to a person for the production of a specified controlled substance.

* * * * *

Destruction means the expiration of a controlled substance to the destruction efficiency actually achieved, unless considered completely destroyed as defined in this section. Such destruction does not result in a commercially useful end product and uses one of the following controlled processes approved by the Parties to the Protocol:

(1) Liquid injection incineration;
(2) Reactor cracking;
(3) Gaseous/fume oxidation;
(4) Rotary kiln incineration;
(5) Cement kiln;
(6) Radio frequency plasma; or
(7) Municipal waste incinerators only for the destruction of foams.

* * * * *

Importer means the importer of record listed on U.S. Customs Service forms for imported controlled substances, used controlled substances or controlled products.

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

* * * * *

Montreal Anniversary amendments means the Montreal Protocol, as amended at the Ninth Meeting of the Parties to the Montreal Protocol in Montreal in 1997.

National Security allowances means the privileges granted by this subpart to produce or import class II controlled substances until January 1, 2015, as determined by the Administrator in accordance with § 82.9(g).

Nations complying with, but not joining, the Protocol means any nation listed in Appendix C, Annex 2, to this subpart.

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).

* * * * *

Source facility means the exact location from 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, as well as a phone number and a fax number for the contact person at the location.

* * * * *

Transhipment means the continuous shipment of a controlled substance, from a foreign state of origin through the United States or its territories, to a second foreign state of final destination, as long as the shipment does not enter into United States jurisdiction. A transhipment, as it moves through the United States or its territories, cannot be re-packaged, sorted or otherwise changed in condition.

* * * * *

Unexpended essential-use allowances means essential-use allowances that have not been used. At any time in any control period a person's unexpended essential-use allowances are the total of the level of essential-use allowances the person has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has imported or had produced in that control period until that time.

* * * * *

5. Section 82.4 is amended by revising paragraphs (d), (e), by redesignating paragraphs (l) through (s) as (n) through (u) and redesignating paragraphs (f) through (k) as (g) through (l); by revising newly designated paragraph, (j), (t), and by adding paragraphs (f), (m), (l)(4), (t)(3), and (u)(3) to read as follows:

§ 82.4 Prohibitions.

* * * * *

(d) Effective January 1, 1996, for any class I, Group I, Group II, Group III,

Group IV, Group V, or Group VII controlled substances, no person may import (except for transhipments or heels), at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended essential-use allowances or exemption as allocated under this section, or the amount of unexpended destruction and transformation credits obtained under § 82.9, held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess importation (other than transhipments or heels) constitutes a separate violation of this subpart.

(e) Effective January 1, 1996, no person may place an order by conferring essential-use allowances for the production of the class I controlled substance, at any time in any control period, in excess of the amount of unexpended essential-use allowances, held by that person under the authority of this subpart at that time for that control period. Effective January 1, 1996, no person may import a class I controlled substance with essential-use allowances, at any time in any control period, in excess of the amount of unexpended essential-use allowances, held by that person under the authority of this subpart at that time for that control period. No person may import or place an order for the production of a class I controlled substance with essential-use allowances, at any time in any control period, other than for the class I controlled substance(s) for which they received essential-use allowances under paragraph (u) of this section. Every kilogram of excess production ordered in excess of the unexpended essential-use allowances conferred to the producer constitutes a separate violation of this subpart. Every kilogram of excess import in excess of the unexpended essential-use allowances held at that time constitutes a separate violation of this subpart.

(f) Effective January 1, 1996, no person may place an order by conferring transformation and destruction credits for the production of the class I controlled substance, at any time in any control period, in excess of the amount of transformation and destruction credits, held by that person under the authority of this subpart at that time for that control period. Effective January 1, 1996, no person may import class I controlled substance, at any time in any control period, in excess of the amount of transformation and destruction credits, held by that person under the authority of this subpart at that time for that control period. No person may import or place an order for the production of a class I controlled substance with transformation and destruction credits, at any time in any control period, other than for the class I controlled substance(s) for which they received transformation and destruction credits as under § 82.9(f). Every kilogram of excess production ordered in excess of the unexpended transformation and destruction credits conferred to the producer constitutes a separate violation of this subpart. Every kilogram of excess import in excess of the unexpended transformation and destruction credits held at that time constitutes a separate violation of this subpart.

* * * * *

(j) Effective January 1, 1995, no person may import, at any time in any control period, a used class I controlled substance, without having received a non-objection notice from the Administrator in accordance with § 82.13(g)(2) and (3). A person issued a non-objection notice for the import of an individual shipment of used controlled substances may not transfer or confer the right to import, and may not import any more than the exact quantity, in kilograms, of the used controlled substance cited in the non-objection notice. Every kilogram of importation of used controlled substance in excess of the quantity cited in the non-objection notice issued by the Administrator in accordance with § 82.13(g)(2) and (3) constitutes a separate violation.

* * * * *

(l) * * *

(4) Import or export any quantity of a controlled substance listed in Class I, Group VII, in Appendix A to this subpart, from or to any foreign state not Party to the Copenhagen Amendments (as noted in Appendix C, Annex l, to this subpart), unless that foreign state is complying with the Copenhagen Amendments (as noted in Appendix C, Annex 2, to this subpart.

(m) Effective October 5, 1998, no person may export a controlled product to a Party listed in Appendix J of this subpart in any control period after the control period in which EPA publishes a notice in the **Federal Register** listing that Party in Appendix J of this subpart. EPA will publish a notice in the **Federal Register** that lists a Party in Appendix J if the Party formally presents to the U.S. a government document through its embassy in the United States stating that it has established a ban on the import of controlled products and a ban on the manufacture of those same controlled products.

* * * * *

(t) Effective January 1, 1996, essential-use allowances are apportioned to a person under paragraph (t)(2) of this section for the exempted production or importation of specified class I controlled substances solely for the purposes listed in paragraphs (t)(1)(i) and (ii) of this section. Effective October 5, 1998 production and importation of class I controlled substances for the purposes listed in paragraph (t)(1)(iii) of this section are exempted as an essential use if conducted in accordance with requirements in § 82.13(v) through (z) and Appendix G to subpart A.

* * * * *

(3) Effective for the 1999 control period and thereafter, EPA will allocate essential-use allowances for quantities of a specific class I controlled substance by means of a confidential letter to each person nominated by the United States to the UNEP Ozone Secretariat of the Montreal Protocol and approved by the Parties for an essential use exemption for the control period in question. EPA will thereafter publish a notice in the **Federal Register** of the allocations made for the control period in question.

(u) The following exemptions apply to the production and consumption restrictions under paragraphs (n), (o), and (p), of this section:

* * * * *

(3) National security interests—A person may obtain national security allowances to produce HCFC–141b after January 1, 2003, as an exemption to paragraph (n) of this section, only for specific purposes deemed by the Administrator to be national security interests in accordance with the procedures in § 82.9. A person may obtain national security allowances to import HCFC-141b after January 1, 2003, as an exemption to paragraph (o) of this section, only for specific purposes deemed by the Administrator to be national security interests in accordance with the procedures in § 82.9. No person may produce or import a class II controlled substance under this paragraph on or after January 1, 2030.

6. Section 82.9 is amended by revising the section heading and paragraphs, (a) and (c), and adding paragraph (g) to read as follows:

§ 82.9 Availability of allowances in addition to baseline production allowances.

(a) Every person apportioned baseline production allowances for class I controlled substances under § 82.5 (a) through (f) of this subpart is also granted Article 5 allowances equal to:

(1) 10 percent of their baseline production allowances listed for class I, Group I, Group III, Group IV, and Group V controlled substances listed under

§ 82.5 of this subpart for each control period ending before January 1, 1996;

(2) 10 percent of their baseline production allowances for class I, Group VI controlled substances listed under § 82.5 of this subpart for each control period ending before January 1, 2001;

(3) 15 percent of their baseline production allowances for class I, Group II controlled substances listed under § 82.5 of this subpart for each control period beginning January 1, 1994, until January 1, 2003;

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

(5) 15 percent of their baseline production allowances for class I, Group VI controlled substances listed under § 82.5 of this subpart for each control period beginning January 1, 2005, until January 1, 2015.

* * * * *

(c) A company may increase or decrease its production allowances or its Article 5 allowances by trading with another Party to the Protocol according to the provision under this paragraph (c). A nation listed in Appendix C to this subpart (Parties to the Montreal Protocol) must agree either to transfer to the person for the current control period some amount of production that the nation is permitted under the Montreal Protocol or to receive from the person for the current control period some amount of production that the person is permitted under this subpart. If the controlled substance is to be returned to the Party from whom production allowances are received, the request for production allowances shall also be considered a request for consumption allowances under § 82.10(c). If the controlled substance is to be sold in the United States or to another Party (not the Party from whom the allowances are received), the U.S. company must expend its consumption allowances allocated under § 82.6 and § 82.7 in order to produce with the additional production allowances.

(1) For trades from a Party, the person must obtain from the principal diplomatic representative in that nation's embassy in the United States a signed document stating that the appropriate authority within that nation has established or revised production limits for the nation to equal the lesser of the maximum production that the nation is allowed under the Protocol minus the amount transferred, the maximum production that is allowed under the nation's applicable domestic law minus the amount transferred, or the average of the nation's actual national production level for the three years prior to the transfer minus the production transferred. The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

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

(iv) The chemical type and level of production being transferred;

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

(vi) 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.

(2) For trades to a Party, a person must submit a transfer request that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

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

(iv) The chemical type and level of allowable production to be transferred; and

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

(3) After receiving a transfer request that meets the requirements of paragraph (c)(2) of this section, the Administrator may, at his discretion, consider the following factors in deciding whether to approve such a transfer:

(i) Possible creation of economic hardship;

(ii) Possible effects on trade;

(iii) Potential environmental implications; and

(iv) The total amount of unexpended production allowances held by United States entities.

(4) The Administrator will issue the person a notice either granting or deducting production allowances or Article 5 allowances and specifying the control period to which the transfer applies, provided that the request meets the requirement of paragraph (c)(1) of this section for trades from Parties and paragraphs (c)(2) of this section for trades to Parties, unless the Administrator has decided to disapprove the trade under paragraph (c)(3) of this section for trades to Parties. For a trade from a Party, the Administrator will issue a notice that revises the allowances held by the person to equal the unexpended production allowances or Article 5 allowances held by the person under this subpart plus the level of allowable production transferred from the Party. For a trade to a Party, the Administrator will issue a notice that revises the production limit for the person to equal the lesser of:

(i) The unexpended production allowances or Article 5 allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances or Article 5 allowances held by the person under this subpart minus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production allowable for that substance under this subpart minus the amount transferred. The change in allowances will be effective on the date that the notice is issued.

(5) If after one person obtains approval for a trade of allowable production of a controlled substance to a Party, one or more other persons obtain approval for trades involving the same controlled substance and the same control period, the Administrator will issue notices revising the production limits for each of the other persons trading that controlled substance in that control period to equal the lesser of:

(i) The unexpended production allowances or Article 5 allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances or Article 5 allowances held by the person under this subpart minus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production for that substance under this subpart multiplied by the amount transferred divided by the total amount transferred by all the other persons trading the same controlled substance in the same control period minus the amount transferred by that person.

(iii) The Administrator will also issue a notice revising the production limit for each person who previously obtained approval of a trade of that substance in that control period to equal the unexpended production allowances or unexpended Article 5 allowances held by the person under this subpart plus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is

less than the total allowable production under this subpart multiplied by the amount transferred by that person divided by the amount transferred by all of the persons who have traded that controlled substance in that control period. The change in production allowances or Article 5 allowances will be effective on the date that the notice is issued.

* * * * *

(g) Effective October 5, 1998, and until December 31, 1999, an agency, department, or instrumentality of the United States may petition the Administrator for national security allowances for HCFC–141b in accordance with § 82.4(v) and as an exemption to prohibitions in §§ 82.4(o) through 82.4(p) by submitting the following:

(1) Name and address of U.S. government national security entity; name of contact person and phone and fax numbers and e-mail address;

(2) Quantity (in kilograms) of HCFC–141b needed for the control period for the national security interest;

(3) A description of the national security interest met by the use of HCFC–141b;

(4) A technical description of the use of HCFC–141b;

(5) A technical description of why alternatives and substitutes are not sufficient to eliminate the national security use of HCFC–141b; and

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

(i) Effective October 5, 1998, the Administrator will issue an agency, department, or instrumentality of the United States national security allowances for HCFC–141b that the Administrator determines are necessary to national security interests based on information received in accordance with paragraph (g) of this section. The Administrator may decide not to grant national security allowances if: the national security interest can be met by the use of a substance other than HCFC–141b; the national security interest can be met by the use of existing supplies of HCFC–141b; there is evidence of fraud or misrepresentation; approval of the allowances would be inconsistent with the Montreal Protocol or Decisions of the Parties; approval of the allowances would be inconsistent with the Clean Air Act Amendments of 1990; or approval of the allowances may reasonably be expected to endanger public health or welfare. The grant of national security allowances will be effective on the date that the notice specified in paragraph (g)(2) of this section is issued.

(ii) Effective October 5, 1998, if the Administrator decides not to grant the request for national security allowances for any of the reasons stated in paragraph (g)(1) of this section, the Administrator will issue an objection letter disallowing the request for national security allowances. Within ten working days after receipt of the objection letter, the requestor may file a one-time petition of appeal, with supporting reasons, with the Administrator. The Administrator may affirm the disallowance or grant an allowance, as she/he finds appropriate in light of the available evidence. If no appeal is taken by the tenth day after receipt of the objection letter, the disallowance will be final on that day.

7. Section 82.12 is amended by adding paragraph (a)(3) to read as follows:

§ 82.12 Transfers.

(a) * * *

(3) A person holding essential-use allowances for class I, Group I controlled substances for metered-dose inhalers (MDIs) may increase or decrease their essential-use allowances in an emergency situation by trading with another Party to the Protocol according to the provisions under this paragraph (a)(3). A nation listed in Appendix C to this subpart (Parties to the Montreal Protocol) must agree either to transfer to the person for a specified control period some amount of their essential-use authorizations for MDIs that the nation is permitted under the Montreal Protocol or to receive from the person for a specified control period some amount of essential-use allowances that the person is permitted under this subpart.

(i) For trades from a Party or to a Party, the person must submit to the Administrator a request to revise and transfer essential-use authorizations that sets forth the following:

(A) The identity and address of the person;

(B) The identity of the Party;

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

(D) The chemical type and level of essential-use authorizations being transferred;

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

(F) Documentation and analysis confirming the emergency situation due to a catastrophic natural event or war regarding the manufacture of MDIs, (if the situation exists in a foreign state, a signed document from the principal diplomatic representative in that nation's embassy in the United States introducing a letter from the authority within that foreign state responsible for health and a letter from the authority within that foreign state responsible for environmental international agreements certifying an emergency situation due to a catastrophic natural event or war and agreeing to a transfer of essential-use authorizations);

(G) Documentation and analysis that demonstrates the emergency situation seriously threatens the treatment of patients with asthma or Chronic Obstructive Pulmonary Disease (COPD), (if the situation exists in a foreign state, a signed document from the principal diplomatic representative in that nation's embassy in the United States introducing a letter from the authority within that foreign state responsible for health and a letter from the authority within that foreign state responsible for environmental international agreements certifying an emergency situation that seriously threatens the treatment of patients with asthma or COPD and agreeing to a transfer of essential-use authorizations); and

(H) A certification of the accuracy of the information submitted.

(ii) After receiving a transfer request that meets the requirements of paragraph (a)(3) of this section, the Administrator may, at her/his discretion, consider the following factors in deciding whether to approve such a transfer:

(A) Information sufficient to make a determination regarding whether the situation is an emergency due to a catastrophic natural event or war;

(B) Possible serious threats to the treatment of patients with asthma and COPD;

(C) Possible creation of economic hardship;

(D) Possible effects on trade;

(E) Potential environmental implications; and

(F) The total amount of unexpended essential-use allowances held by United States entities.

(iii) The Administrator will issue a notice to the UNEP Ozone Secretariat, through the U.S. Department of State, agreeing with the transfer of essential-use authorizations and specifying the control period to which the transfer applies, provided that the request meets the requirement of paragraph (a)(3)(i), of this section for trades from Parties or trades to Parties, unless the Administrator has decided to disapprove the trade under paragraph (a)(3)(ii) of this section. For an approved trade from a Party, the Administrator will issue a letter that revises the

essential-use allowances held by the person to equal the unexpended essential-use allowances held by the person under this subpart plus the amount of essential-use authorizations transferred from the Party for the specific control period. For an approved trade to a Party, the Administrator will issue a notice that revises the essential-use allowances held by the person to equal the unexpended essential-use allowances held by the person under this subpart minus the amount of essential-use authorizations transferred to the Party for the specific control period.

* * * * *

8. Section 82.13 is amended by revising paragraphs (b), (f)(1)(iv), (f)(2) introductory text, (f)(2) (xiv), and (f)(2)(xvi), by adding (f)(2)(xvii), by removing paragraph (f)(3)(v) and redesignating (f)(3)(vi) through (xiii) as (f)(3)(v) through (xii), and revising newly designated (f)(3)(xi) through (xiii), by revising paragraphs (g)(1)(vii), (g)(1)(xvi), (g)(2) and the first (g)(3), by adding paragraph (g)(1)(xvii), by redesignating the second (g)(3) ''Reporting Requirements—Importers,'' as (g)(4) and revising the newly designated (g)(4)(iii) and (xiii), by adding paragraphs (g)(4)(xiv) and (g)(4)(xv), by revising paragraphs (h)(8), (i) introductory text, (m), (u), (v), and redesignating paragraph (w) as paragraph (y), and adding paragraphs (w), (x) and (z) to read as follows:

§ 82.13 Recordkeeping and reporting requirements.

* * * * *

(b) 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.

* * * * *

(f) * * *

(1) * * *

(iv) The quantity of any fugitive losses accounted for in the production figures; and

* * * * *

(2) Every producer of a class I or class II controlled substance during a control period must maintain the following records:

* * * * *

(xiv) Written verifications that essential-use allowances were conveyed to the producer for the production of specified quantities of a specific controlled substance that will only be used for the named essential-use and not resold or used in any other manufacturing process.

* * * * *

(xvi) Written verifications from a U.S. purchaser that the controlled substance was exported to an Article 5 country in cases when Article 5 allowances were expended during production; and

(xvii) Written certifications that the quantities of controlled substances purchased will be used as a process agent in accordance with the definition of controlled substance in § 82.3.

* * * * *

(3) * * *

(xi) The certifications from essential-use allowance holders stating that the controlled substances were purchased solely for specified essential uses and will not be resold or used in any other manufacturing process;

(xii) In the case of laboratory essential uses, a certification from distributors of laboratory supplies that controlled substances were purchased for sale to laboratory customers who certify that the substances will only be used for laboratory applications and will not be resold or used in manufacturing; or, if sales are made directly to laboratories, certifications from laboratories that the controlled substances will only be used for laboratory applications and will not be resold or used in manufacturing; and

(xiii) The certifications from purchasers of controlled substances that the controlled substance will be used as a process agent in accordance with the definition of controlled substance in § 82.3.

* * * * *

(g) * * *

(1) * * *

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

* * * * *

(xvi) Copies of certifications that imported controlled substances are being purchased for essential laboratory and analytical applications or being purchased for eventual sale to laboratories that certify the controlled substances are for essential laboratory applications.

(xvii) Written certifications that the quantities of controlled substances purchased will be used as a process agent in accordance with the definition of controlled substance in § 82.3.

* * * * *

(2) Petitioning—importers of used, recycled or reclaimed controlled substances. For each individual shipment (not to be aggregated) over 5 pounds of a used 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 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 controlled substance was recovered;

(iv) 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);

(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 controlled substance, and 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;

(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 controlled substance from the equipment, the name and phone and fax numbers of that person;

(xi) If the imported 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 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 section 608 (§ 82.152(g)) of the CAA, if not already reclaimed to those specifications; and

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

(3) Starting on the first working day following receipt by the Administrator of a petition to import a used class I controlled substance, the Administrator will initiate a review of the information submitted under paragraph (g)(2) 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 I controlled substance.

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

(A) If the Administrator determines that the information is insufficient, that is, if the petition lacks or appears to lack any of the information required under paragraph (g)(2) of this section;

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

(C) If the importer wishes to import a used class I controlled substance from a country which is, for that particular controlled substance, out of compliance regarding its phaseout obligations under the Protocol or the transaction in the petition is contrary to other provisions in the Vienna Convention or 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 controlled substance;

(E) If allowing the import of the used class I controlled substance would run counter to the spirit of statements made by government officials in the country of recovery or export regarding controlled ozone-depleting substances;

(F) If the Administrator has received information indicating that a person listed in the petition has at any time been willing to produce false information regarding trade in controlled substances, including information required by EPA or required by the appropriate government agency in the exporting country;

(G) If the Administrator has received information indicating that a person listed in the petition is in violation of a requirement in any regulation published by the U.S. Environmental Protection Agency;

(H) If the Administrator determines that, for the current control period, the U.S. demand for the controlled substance cited in the petition can be satisfied by domestic stockpiles and estimated recycling and reclamation of quantities contained in domestic equipment; or

(I) If reclamation capacity is installed or is being installed for that specific 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 appeal of re-petition will be accepted for any petition received by EPA.

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

(iv) In cases where the Administrator has no reason to object to the petition based on the criteria listed in paragraph (g)(3)(i) of this section, the Administrator will issue a non-objection notice.

(v) To pass the approved used class I 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 controlled substance is not imported into the United States; and

(C) Take appropriate enforcement actions.

(vii) Once the Administrator issues a non-objection notice, the person receiving the non-objection notice is required to import the individual shipment of used class I controlled substance 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 I 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.

(4) * * *

(iii) The quantity of those controlled substances imported that are used controlled substances.

* * * * *

(xiii) The certifications from essential-use allowance holders and laboratory customers stating that the controlled substances were purchased solely for specified essential uses and will not be resold or used in manufacturing; or, if sales are made directly to laboratories, certifications from laboratories that the controlled substances will only be used for laboratory applications and will not be resold or used in manufacturing;

(xiv) In the case of laboratory essential uses, a certification from distributors of laboratory supplies that controlled substances were purchased for sale to laboratory customers who certify that the substances will only be used for laboratory applications and will not be resold or used in manufacturing; and

(xv) The certifications from purchasers of controlled substances that the controlled substance will be used as a process agent in accordance with the definition of controlled substance in § 82.3.

* * * * *

(h) * * *

(8) The invoice or sales agreement containing language similar to the Internal Revenue Service Certificate that the purchaser or recipient of imported controlled substances intends to transform those substances, or

destruction verifications (as in paragraph (k) of this section) showing that the purchaser or recipient intends to destroy the controlled substances.

(i) Every person who has requested additional production allowances under § 82.9(e) of this subpart or destruction and transformation credits under § 82.9(f) of this subpart or consumption allowances under § 82.10(b) of this subpart or who transforms or destroys class I controlled substances not produced or imported by that person must maintain the following:

* * * * *

(m) Any person who transforms or destroys class I controlled substances who has submitted an IRS certificate of intent to transform or a destruction verification (as under paragraph (k) of this sectioin) to the producer or importer of the controlled substance, must report the names and quantities of class I controlled substances transformed and destroyed for each control period within 45 days of the end of such control period.

* * * * *

(u) Holders of essential-use allowances—reporting. Within 30 days of the end of every quarter, any person allocated essential-use allowances through an EPA letter must submit to the Administrator a report containing the following information:

(1) The quantity of each controlled substance, in kilograms, purchased and received from each producer and each importer during that quarter;

(2) The gross quantity of each controlled substance, in kilograms, that was used for the essential use during that quarter (for Metered Dose Inhalers, this is the total quantity of each controlled substance that was filled into Metered Dose Inhalers canisters during the quarter and the quantity used in the manufacturing process that may have been emitted, used for cleaning, recycled or destroyed);

(3) The quantity of each controlled substance, in kilograms, that was destroyed during the quarter (for Metered Dose Inhalers, the controlled substance was used in the manufacture of Metered Dose Inhalers but was not incorporated into marketable Metered Dose Inhalers canisters);

(4) The quantity of each controlled substance, in kilograms, that was emitted during the essential-use during the quarter;

(5) For Metered Dose Inhalers, for the fourth quarter report only, the quantity of each controlled substance, in kilograms, that was incorporated into all marketable Metered Dose Inhalers;

(6) For Metered Dose Inhalers, for the fourth quarter report only, the quantity of each controlled substance, in kilograms, contained in Metered Dose Inhalers that were exported during the control period;

(7) For the fourth quarter report only, the quantity of each controlled substance, in kilograms, held in inventory, that was acquired with essential use allowances in all control periods;

(8) For the fourth quarter report only, the quantity of each controlled substance, in kilograms, in a stockpile that is owned by the company or is being held on behalf of the company under contract, and was produced or imported through the use of production allowances and consumption allowances prior to the phaseout; and

(9) For Metered Dose Inhalers, for the fourth quarter report only, the total number of units of each specific product manufactured in the control period, (including marketable and defective units).

(v) Any distributor of laboratory supplies receiving class I controlled substances under the global laboratory essential-use exemption for sale to laboratory customers must report quarterly the quantity received of each class I controlled substance from each producer or importer.

(w) Any distributor of laboratory supplies who purchased controlled substances under the global laboratory essential-use exemption must maintain as records copies of certifications from laboratory customers provided to the distributor pursuant to paragraph (y) of this section.

(x) Any distributor of laboratory supplies who purchased controlled substances under the global laboratory essential-use exemption must submit quarterly (except distributors following procedures in § 82.4(z)) the quantity of each controlled substance purchased by each laboratory customer whose certification was previously provided to the distributor pursuant to paragaph (y) of this section.

* * * * *

(z) Any distributor of laboratory supplies, who purchased class I controlled substances under the global laboratory essential-use exemption, and who only sells the class I controlled substances as reference standards for calibrating laboratory analytical equipment, may write a letter to the Administrator requesting permission to submit the reports required under paragraph (x) of this section annually rather than quarterly. The Administrator will review the request and issue a notification of permission to file annual reports if, in the Administrator's judgment, the distributor meets the requirements of this paragraph. Upon receipt of a notification of extension from the Administrator, the distributor must submit annually the quantity of each controlled substance purchased by each laboratory customer whose certification was previously provided to the distributor pursuant to paragraph (y) of this section.

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

Appendix C to Subpart A—Parties to the Montreal Protocol (as of February 19, 1998)

Foreign state	Montreal protocol	London amend-ments	Copenha-gen amend-ments
Algeria	✔	✔	
Antigua and Barbuda	✔	✔	✔
Argentina	✔	✔	✔
Australia	✔	✔	✔
Austria	✔	✔	✔
Azerbaijan	✔	✔	✔
Bahamas	✔	✔	✔
Bahrain	✔	✔	✔
Bangladesh	✔	✔	
Barbados	✔	✔	✔
Belarus	✔	✔	
Belgium	✔	✔	✔
Belize	✔	✔	✔
Benin	✔		

Foreign state	Montreal protocol	London amend-ments	Copenha-gen amend-ments
Bolivia	✔	✔	✔
Bosnia and Herzegovina	✔		
Botswana	✔	✔	✔
Brazil	✔	✔	✔
Brunei Darussalam	✔		
Bulgaria	✔		
Burkina Faso	✔	✔	✔
Burundi	✔		
Cameroon	✔	✔	✔
Canada	✔	✔	✔
Central African Republic	✔		
Chad	✔		
Chile	✔	✔	✔
China	✔	✔	
Colombia	✔	✔	✔
Comoros	✔	✔	
Congo	✔	✔	
Congo, Democratic Republic of	✔	✔	✔
Costa Rica	✔		
Cote d'Ivoire	✔	✔	
Croatia	✔	✔	✔
Cuba	✔		
Cyprus	✔	✔	
Czech Republic	✔	✔	✔
Denmark	✔	✔	✔
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	✔	✔	✔
Greneda	✔	✔	
Guatemala	✔		
Guinea	✔	✔	
Guyana	✔		
Honduras	✔		
Hungary	✔	✔	✔
Iceland	✔	✔	✔
India	✔	✔	
Indonesia	✔	✔	
Iran, Islamic	✔	✔	✔
Ireland	✔	✔	✔
Israel	✔	✔	✔
Italy	✔	✔	✔
Jamaica	✔	✔	✔
Japan	✔	✔	✔
Jordan	✔	✔	✔
Kenya	✔	✔	✔
Kiribati	✔		
Korea, Democratic People's Republic of	✔		
Korea, Republic of	✔	✔	✔
Kuwait	✔	✔	✔
Latvia	✔		
Lebanon	✔	✔	
Lesotho	✔	✔	
Liberia	✔	✔	✔
Libyan Arab Jamahiriya	✔		
Liechtenstein	✔	✔	✔
Lithuania	✔	✔	✔

Foreign state	Montreal protocol	London amend-ments	Copenha-gen amend-ments
Luxembourg	✔	✔	✔
Madagascar	✔		
Malawi	✔	✔	✔
Malaysia	✔	✔	✔
Madives	✔	✔	
Mali	✔	✔	
Malta	✔	✔	
Marshall Islands	✔	✔	✔
Mauritania	✔		
Mauritius	✔	✔	✔
Mexico	✔	✔	✔
Modlova	✔		
Monaco	✔	✔	
Mongolia	✔	✔	✔
Morocco	✔	✔	✔
Mozambique	✔	✔	✔
Myanmar	✔	✔	
Namibia	✔	✔	
Nepal	✔	✔	
Netherlands	✔	✔	✔
New Zealand	✔	✔	✔
Nicaragua	✔		
Niger	✔	✔	
Nigeria	✔		
Norway	✔	✔	✔
Pakistan	✔	✔	✔
Panama	✔	✔	✔
Papua New Guinea	✔	✔	
Paraguay	✔	✔	
Peru	✔	✔	
Philippines	✔	✔	
Poland	✔	✔	✔
Portugal	✔	✔	
Qatar	✔	✔	✔
Romania	✔	✔	
Russian Federation	✔	✔	
Saint Kitts & Nevis	✔		
Saint Lucia	✔		
Saint Vincent and the Grenadines	✔	✔	✔
Samoa	✔		
Saudi Arabia	✔	✔	✔
Senegal	✔	✔	
Seychelles	✔	✔	✔
Singapore	✔	✔	
Slovakia	✔	✔	✔
Slovenia	✔	✔	
Solomon Islands	✔		
South Africa	✔	✔	
Spain	✔	✔	✔
Sri Lanka	✔	✔	✔
Sudan	✔		
Suriname	✔		
Swaziland	✔		
Sweden	✔	✔	✔
Switzerland	✔	✔	✔
Syrian Arab Republic	✔		
Tajikistan	✔	✔	
Tanzania, United Republic of	✔	✔	
Thailand	✔	✔	✔
The Former Yugoslav Republic of Macedonia	✔		
Togo	✔		
Trinidad and Tobago	✔		
Tunisia	✔	✔	✔
Turkey	✔	✔	✔
Turkmenistan	✔	✔	
Tuvalu	✔		
Uganda	✔	✔	
Ukraine	✔	✔	
United Arab Emirates	✔		
United Kingdom	✔	✔	✔
USA	✔	✔	✔
Uruguay	✔	✔	✔

Foreign state	Montreal protocol	London amendments	Copenhagen amendments
Uzbekistan	✔		
Vanuatu	✔	✔	✔
Venezuela	✔	✔	✔
Viet Nam	✔	✔	✔
Yemen	✔		
Yugoslavia	✔		
Zambia	✔	✔	
Zimbabwe	✔	✔	✔

Note: Updated lists of Parties to the Protocol and the Amendments can be located at: www.unep.org/unep/secretar/ozone/home.htm

10. Appendix J to Subpart A is added and reserved to read as follows:

Appendix J to Subpart A—Parties to the Montreal Protocol Classified Under Article 5(1) That Have Banned the Import of Controlled Products That Rely on Class I Controlled Substances for Their Continuing Functioning

[Reserved]

11. Appendix K to Subpart A is added to read as follows:

Appendix K to Subpart A—Commodity Codes From the Harmonized Tariff Schedule for Controlled Substances and Used Controlled Substances

Description of commodity or chemical	Commodity code from harmonized tariff schedule
CFC–11	2903.41.0000
CFC–12	2903.42.0000
CFC–113	2903.43.0000
CFC–114	2903.44.0010
CFC–115	2903.44.0020
HALONS	2903.46.0000
CFC–13, CFC–111, CFC–112, CFC–211, CFC–212, CFC–213, CFC–214, CFC–215, CFC–216, CFC–217	2903.45.0000
HCFC–22	2903.49.9010
HCFC–21, HCFC–31, HCFC–123, HCFC–124, HCFC–133, HCFC–141b, HCFC–142b, HCFC–225	2903.49.0000
OTHER, HALOGENATED	2903.49.9060
MIXTURES (R–500, R–502, ETC.)	3824.71.0000
MIXTURES, OTHER	3824.79.0000
CARBON TETRACHLORIDE	2903.14.0000
METHYL CHLOROFORM	2903.19.6010
METHYL BROMIDE	2903.30.1520

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