Federal Register

Wednesday
May 10, 1995

Part II

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Administrative Changes and Amendment to Transhipment Provision in Final Rule to Phase Out Ozone-Depleting Chemicals; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5199–1]

RIN 2060–AF80 and AE70

Protection of Stratospheric Ozone: Administrative Changes to Final Rule to Phase Out Ozone-Depleting Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA amends the current regulation to phase out the production and consumption of most ozone-depleting substances. This action clarifies aspects of the regulation as provided under section 604 and 606 of the Clean Air Act Amendments of 1990 (CAA). To ensure an orderly phaseout of the production and consumption of chlorofluorocarbons (CFCs), carbon tetrachloride, methyl chloroform and hydrobromofluorocarbons in 1996, and of halons after 1994, this action alters the administrative requirements of the regulations so companies may continue to produce for special exempted uses. Today's action also clarifies administrative procedures to improve the efficiency of current reporting requirements and to reduce the burden on the affected companies. These actions continue to ensure compliance with Title VI of the CAA in a manner consistent with the United States' obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer, as amended.

Specifically, EPA changes the requirements for the post-phaseout period for transformation and destruction of ozone-depleting substances; establishes the framework for the post-phaseout production of exempted essential uses; revises the controls for imports of controlled substances that are used or recycled; eases the requirements for exporting substances to Article 5 countries; changes the allowance requirements for exports of ozone-depleting substances; clarifies the requirements for heels remaining in containers that are returning to the U.S.; provides a period of reconciliation in which allowance balances may be adjusted; and simplifies the recordkeeping and reporting requirements.

The changes made in this rule ease the burden on industry, and will therefore limit the negative economic impact associated with the regulations previously promulgated under Sections 604 and 606, while maintaining the environmental benefits of the accelerated phaseout.

DATES: This rule is effective on May 10, 1995. Amendments to the requirements specifically addressing 1995 apply to the entire 1995 control period.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Protection Hotline at 1–800–296–1996, or Tom Land, U.S. Environmental Protection Agency, Stratospheric Protection Division, Office of Atmospheric Programs, 6205J, 401 M Street, SW., Washington, DC 20460 (202) 233–9185.

SUPPLEMENTARY INFORMATION:

Table of Contents

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) in the **Federal Register** on December 10, 1993 (58 FR 65018), and on December 30, 1993 (58 FR 69235). The requirements contained in these rules set out an Allowance Program (the Program) that was described in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on November 10, 1994 (59 FR 56275). The preamble to the November 10, 1994 proposed rulemaking describes the history of the Program, the current requirements and the proposed amendments.

The Allowance Program was designed to ensure that the U.S. meets its obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer, as amended, (the Protocol) and to ensure compliance with Title VI of the Clean Air Act Amendments of 1990 (CAA). The Protocol and the CAA require the control and phaseout of production and consumption of ozone-depleting substances. In the Program, companies expend ''allowances'' when they produce or import ozone-depleting substances. With certain restrictions, the allowances can be traded among companies both domestically and internationally (between countries that are Parties to the Protocol). To control production, the Agency allocated baseline production allowances to producers of specific ozone-depleting chemicals. To control consumption, the Agency allocated baseline consumption allowances to producers and importers of specific ozone-depleting chemicals. Allowances for class I substances are currently provided to companies on an annual basis, except for halons whose production was phased out on January 1, 1994. The allowances are assigned to companies according to production and importation during base years.

In the context of the Program, the use of the term consumption may be misleading. It is not the ''use'' of these substances that is controlled through regulation but rather the amount of the substance available for U.S. domestic consumption, defined as production plus imports minus exports of bulk virgin chemicals. Controlled substances produced or imported through the use of allowances prior to 1996 (1994 for halons) can continue to be used by industry and the public after the phaseout.

II. Administrative Changes in the Stratospheric Protection Program

The administrative changes in today's action modify the current regulation to ensure an orderly phaseout in 1996, so that companies may continue to produce for specified exempted uses permitted under the Protocol and the CAA. In addition, the Agency is seeking to improve the efficiency of the requirements and to reduce the burden on the affected companies while ensuring continued compliance with Title VI of the CAA and the Montreal

Protocol. In light of these objectives, the Agency is promulgating the following administrative changes to improve the Program.

The NPRM published in the **Federal Register** on November 10, 1994, proposed changes to begin on January 1, 1996 for the post-phaseout period and also proposed changes for the 1995 control period.

Under the current regulation, the phaseout of the production and consumption of the class I controlled substances (except Group VI, methyl bromide) will be complete by January 1, 1996. A list of the specific class I ozone-depleting chemicals in each Group can be found in appendices A and F to subpart A. The schedule for the phaseout of hydrochlorofluorocarbons was published in the **Federal Register** on December 10, 1993, and is unchanged in this final rule.

Due to the phaseout, beginning January 1, 1996, production and consumption allowances for all class I controlled substances, except Group VI, methyl bromide, will no longer be used. Despite the discontinuation of such production and consumption allowances for class I controlled substances (except methyl bromide), the Agency envisions that the manufacture of class I controlled substances may continue after January 1, 1996, provided the substances are:

- Either transformed or destroyed,
- Produced for export to Article 5 countries,
- Produced for essential uses as authorized by the Protocol and CAA and consistent with essential-use allowances, or
- Produced with destruction and transformation credits.

In addition, EPA envisions that the import of class I controlled substances (except methyl bromide) may continue after January 1, 1996, without the need for consumption allowances, if the substances are:

- Either transformed or destroyed,
- Previously used (including recycled or reclaimed),
- Imported for essential uses as authorized by the Protocol and CAA and consistent with essential-use allowances,
- Transhipped through the United States to another Party to the Protocol, or
- Imported using destruction and transformation credits.

Through today's final rule the Agency will:

(1) Maintain a category of Article 5 allowances (previously called potential production allowances),

(2) Create a new category of essential-use allowances, and

(3) Create narrow procedures for granting destruction and transformation credits.

EPA received twenty-two comments on the proposed rulemaking published in the **Federal Register** on November 10, 1994, as well as several additional submissions following the close of the comment period. All comments were reviewed and considered. Comments most relevant to today's action are responded to in the preamble and additional responses to comments are available in the Air Docket No. A–92–13.

A. Program Requirements for Continued Post-Phaseout Production and Importation After January 1, 1996

1. Post-Phaseout Requirements for Transformation and Destruction of Controlled Substances

The following paragraphs discuss requirements for the destruction and transformation of controlled substances after the January 1, 1996 phaseout date. EPA would like to be informed of new technologies for destruction of controlled substances that have been developed or are being developed since the Parties to the Protocol first approved the current list of destruction technologies. EPA would like to anticipate the future review of new technologies for destruction by the Parties to the Protocol.

Definition of Emissive Use. In the preamble of the proposal (59 FR 56278), EPA discussed a definition of ''emissive use'' that the Agency decided was unnecessary for today's action and provided no additional clarity to the regulation.

a. Production or Importation of Controlled Substances Explicitly for Uses that Result in Transformation or Destruction after January 1, 1996. In today's action, EPA permits companies to produce or import controlled substances if explicitly produced or imported for uses that will result in transformation or destruction in the United States or in a Party, after January 1, 1996.

In the 1995 control period, controlled substances may continue to be produced explicitly for uses that result in transformation or destruction in the U.S. without the expenditure of allowances, as under the current regulation. Section C.3., ''Administrative Changes to Production Allowance Requirements for Exports that are Transformed or Destroyed,'' of this preamble discusses controlled substances produced in 1995 explicitly for export that results in transformation or destruction.

Response to Comments: EPA received one comment that did not entirely support EPA's proposal to permit a company to produce or import after January 1, 1996, if explicitly for transformation or destruction. The commenter objected to maintaining procedures, after January 1, 1996, for companies that produce or import controlled substances explicitly for destruction in the U.S. (59 FR 56278). The commenter questioned the need for production, and especially importation, of controlled substances for destruction in the United States after the 1996 phaseout. This same commenter, however, did support the proposal to permit production and importation, after January 1, 1996, for transformation in the U.S.

EPA is permitting production and importation explicitly for destruction after January 1, 1996, because industry commonly uses carbon tetrachloride and other controlled substances in chemical reactions until they lose their effectiveness and must be destroyed. In many chemical reactions, carbon tetrachloride is used as a catalyst or stabilizer. Once the reaction is complete, the carbon tetrachloride is withdrawn from the chemical being produced and used in the reaction of the next batch. Through these reactions, carbon tetrachloride loses its effectiveness as a catalyst or stabilizer and must eventually be destroyed. Many manufacturing processes rely on the unique characteristics of carbon tetrachloride, and other controlled substances, as catalysts or stabilizers but these chemical eventually need to be destroyed. EPA wishes to allow these manufacturing uses of controlled substances to continue after January 1, 1996, because they are not emissive uses, pose no significant threat to the environment and are vital to the U.S. economy.

EPA received three comments seeking clarification of the requirements for production for export resulting in transformation after January 1, 1996. The proposal included a discussion, in section C.3.d. ''Administrative Changes to Production Allowance Requirements for Exports that are Transformed or Destroyed,'' (59 FR 56289) of requirements for the 1995 control period. However, the proposal did not explicitly define export requirements for the post-phaseout period.

With this action, EPA permits production of class I controlled substances (except methyl bromide) after January 1, 1996, if the substance is explicitly produced for export or domestic uses resulting in transformation or destruction. As a

result, EPA requires producers and importers to receive an IRS certification of intent to transform or a destruction verification from all second- or third-party transformers or destroyers, whether the transformer or destroyer is domestic or foreign. Several U.S. companies commented that they currently use the IRS certificate of intent to transform in transactions with foreign transformers. For the sake of simplicity, these commenters suggested that the IRS certificate be required for all production and importation explicitly for uses resulting in transformation, whether they be foreign or domestic.

Today's rule maintains the current requirement that producers and importers submit to EPA the IRS certificates of intent to transform, or the destruction verifications, with the quarterly reports (see Section C.7., Recordkeeping and Reporting). In response to comments and to ease the reporting burden on industry, EPA permits producers and importers to submit a one-time-per-control period IRS certificate for each customer. Quarterly reports may reference the original IRS certificate submitted for each transformer and simply list the quantity of subsequent sales.

With today's rule, EPA maintains the current requirement published in the **Federal Register** on December 10, 1993, that quantities of class II controlled substances transformed or destroyed must be reported on a quarterly basis. EPA maintains the requirement to meet U.S. obligations under the Protocol to accurately monitor production of class II controlled substances.

b. Production or Importation of Controlled Substances for Emissive Uses that are Subsequently Transformed or Destroyed. With today's action, EPA eliminates the specific provisions that grant additional production and consumption allowances, beginning January 1, 1996, for all class I controlled substances, except methyl bromide, produced for emissive uses but later transformed or destroyed. After January 1, 1996, there will no longer be production or consumption allowances for class I controlled substances, except methyl bromide. After January 1, 1996, a producer or importer of methyl bromide who expends production or consumption allowances and subsequently transforms or destroys the methyl bromide will still be able to petition the Agency for additional production and consumption allowances until the phaseout on January 1, 2001.

EPA maintains, for the 1995 control period, the provisions allowing producers and importers to petition the Agency for production and consumption allowances if the controlled substance was produced or imported with expended allowances and subsequently transformed or destroyed.

Response to Comments: EPA received no comments regarding the proposal to eliminate procedures after January 1, 1996, that grant additional production and consumption allowances for class I controlled substances that are transformed or destroyed (except methyl bromide) (59 FR 56278). After January 1, 1996, additional production and consumption allowances may be sought for methyl bromide that is transformed or destroyed if it was originally produced with expended allowances.

c. The Post-Phaseout Procedures for Granting Destruction and Transformation Credits. In today's action, EPA creates limited destruction and transformation credits to be granted after January 1, 1996, for the destruction or the transformation in the United States of class I controlled substances (except methyl bromide) taken from a use system in the United States under certain circumstances. Destruction and transformation credits can only be obtained by entities whose applications are nominated by the U.S. government to the Protocol Secretariat for essential-use exemptions. The transformation and destruction credits are granted for the calculated amount of controlled substance transformed or destroyed minus a 15 percent offset.

With today's action, an eligible person granted destruction and transformation credits by EPA for the destruction or transformation of an amount of a controlled substance taken from a U.S. use system may use the credits to newly produce or import the class I controlled substance for which they were nominated for an essential-use exemption. Today's action requires reporting on the source of material imported with credits. The reporting requirement is designed to deter abuse of credits as a means of illegally importing material as discussed in section B., ''Imports of Used Controlled Substances.''

Response to Comments: EPA received six adverse comments, and three supportive comments to the proposal. EPA proposed (59 FR 56279) to grant destruction and transformation credits after January 1, 1996 to anyone who documents destruction or transformation of class I controlled substances (except methyl bromide) taken from a use system in the U.S.

The comments challenging EPA's proposal expressed concern that granting destruction and transformation credits which can be used to produce or import virgin class I controlled substances (except methyl bromide) contradicts EPA's message of phasing out ozone-depleting substances and making the transition to alternatives. Four of the comments not supporting credits were from industry and the other two were from environmental groups.

The comments challenged the proposed credits as violating U.S. obligations under the Protocol because they encourage production and importation of class I substances beyond the phaseout dates agreed to by Protocol Parties. The commenters challenged EPA's claim that environmental benefits would result from a scheme allowing continued production and importation beyond the phaseout, even if more than an equivalent amount of controlled substance were destroyed or transformed. EPA believes the Protocol allows production beyond the phaseout if the amount produced is equivalent to the amount destroyed by technologies approved by the Parties, as explained in the proposal's discussion (59 FR 56280) of the Protocol's definition of production. The proposal also discusses the environmental benefits of preventing release to the atmosphere of material by encouraging destruction or transformation of unwanted material in exchange for the production of material that will be used (59 FR 56281).

A commenter cited Congressional legislative history from the drafting of the CAA that was unfavorable regarding destruction. Congressional debate included a statement that ''the Protocol's exclusion for manufactured substances that are subsequently destroyed is too broad and does not include adequate safeguards to preclude abuse.'' EPA recognizes the concerns expressed in the legislative history for the CAA and intends to offer these credits to a very limited universe of people.

A commenter also pointed out that substances produced or imported with credits would be subject to the excise tax, eliminating the incentive to destroy or transform a material. A person would be paying a double tax. The tax would be paid on the original material and there would be a tax on the new material produced or imported with the credits. A commenter suggested that a tax credit or tax deduction would provide a greater financial incentive than the proposed credits. EPA acknowledges concerns about taxes and will therefore only grant credits when they are absolutely necessary.

In response to comments on destruction and transformation credits, EPA is significantly limiting the

circumstances under which a person can obtain credits. With today's action, only a person that has exhibited an essential need for controlled substances beyond the phaseout date will be able to obtain destruction and transformation credits. EPA believes that only a person who has an essential need for a controlled substance should be eligible for credits that allow an exchange of destroyed or transformed existing material for the production or importation of new material.

EPA today defines a person who has demonstrated the essential need for controlled substances beyond the phaseout, and can, therefore, obtain credits, as a person whose application was nominated by the U.S. government to the Protocol for an essential-use exemption. The nomination by the U.S. government defines eligibility for the credits, not the acceptance of the nomination by the Parties to the Protocol. For example, the U.S. Air Force's Titan Rocket has been nominated by the U.S. government for an essential use exemption and is therefore eligible for credits. A person who has been nominated to the Protocol for an essential-use exemption is eligible to be granted destruction and transformation credits after January 1, 1996, upon the destruction or transformation of a controlled substance taken from a use system in the U.S. Only for the control period(s) for which the U.S. government made nominations to the Protocol is a person eligible for the credits. If for some reason the nomination is revoked, the person's eligibility for credits is also revoked.

EPA received three comments that suggested a larger offset than the 15 percent proposed for destruction and transformation credits. The commenters challenged the 15 percent as being too small to provide an environmental benefit in a system that permits production or importation of new controlled substances after the phaseout. All three commenters suggested a 50 percent offset to ensure environmental benefits from the use of credits in the production or importation of new ozone-depleting substances. EPA justified the use of a 15 percent offset in the proposal citing environmental benefits (59 FR 56280) and basing the offset on current destruction capacity in the U.S (59 FR 56281). EPA believes that today's action significantly limits the universe of people who can obtain credits. The limitation of who can obtain credits to those with a critical need, as defined by their essential-use nomination to the Protocol, significantly reduces the amount of production or importation of new material that will occur after the phaseout. EPA anticipates credits will only be sought and used in situations when one of the small number of people with critical needs encounters unforeseen circumstances or a catastrophic loss of material produced with essential-use allowances. With today's action, EPA will allocate credits equal to the calculated level of controlled substance destroyed or transformed minus the 15 percent offset. The destruction must occur in an approved destruction technology. An eligible person may request credits equal to 85 percent of the calculated level of controlled substance destroyed or transformed.

EPA believes a person with an essential need for a controlled substance, as defined by a U.S. nomination to the Protocol, will view today's system of credits as an opportunity to satisfy critical needs, especially if material produced with essential-use allowances is lost to a catastrophe. EPA views today's action as a method to encourage the destruction or transformation of unwanted controlled substances that were taken from a use system in the U.S. that might otherwise be released to the atmosphere.

EPA received many comments, from both industry and Federal agencies, challenging the use of credits for importing controlled substances after the phaseout as yet another opportunity for illegal imports. As discussed in the proposal (59 FR 56285), and below in this rulemaking, EPA is working to confront the illegal import of controlled substances. In 1994, EPA formed an inter-government task force with the Internal Revenue Service and the Customs Service to investigate illegal imports. An industry coalition formed a special committee to assist Federal agencies in investigating illegal imports. The efforts of government and industry have focused on the mislabelling of controlled substances and the submission of fraudulent documents that allow the illegal entry of imported controlled substances into U.S. commerce. In commenting on the proposed rule, both government and industry expressed concern that the use of credits for imports would be another chance for the submission of fraudulent documents. In response to these comments, EPA is requiring documentation of the source of imported material as required in § 82.13(g)(2), where applicable.

Clean Air Act Restrictions on the Use of Credits: With today's action, EPA limits the total amount of transformation credits and destruction credits that can be used in a control period to the production caps in the phaseout schedule of section 604 of the CAA, outlined in Table I.

TABLE I.—TITLE VI OF THE CLEAN AIR ACT AMENDMENTS OF 1990

[Pre-Accelerated Phaseout Schedule for Production of Ozone-Depleting Substance]

Date	Carbon Tetrachloride (percent)	Methyl Chloroform (percent)	Other class I substances (percent)
1996	15	50	40
1997	15	50	15
1998	15	50	15
1999	15	50	15
2000	.....	20	.....
2001	.....	20	.....

Response to Comments—Clean Air Act Restrictions on the Use of Credits to Produce or Import: EPA received no comments challenging the CAA limits on the use of destruction and transformation credits. EPA explained in the proposal (59 FR 56276) that the provisions of the CAA are more stringent than the Protocol in defining limits on production after January 1, 1996. The proposal also explained the interaction of authorities under the Protocol and the CAA that allow credits to be granted for transformation or destruction of controlled substances that could be used for subsequent production or importation, within the CAA phaseout caps. EPA believes that these limits represent legally binding ceilings, but that actual production or importation under the category of credits and allowances will be substantially below the limitations established by today's rule.

Procedures for Requesting Credits: With today's action, EPA creates a system for granting destruction and transformation credits as an incentive to destroy and transform controlled substances recovered from U.S. use systems and to provide critical supplies to those who have been nominated for essential use exemptions. In today's rule, a person may submit a request to the Agency after January 1, 1996, for credits based on the destruction or transformation of a quantity of controlled substances taken from a use system in the United States. The destruction must have occurred in an approved destruction technology as under § 82.3. The eligible person must present a sales receipt demonstrating the material was purchased from the owner of a use system in the U.S. or documenting that the material produced or imported with essential-use allowances became unusable due to an

unforeseen event. The person requesting the credits needs to identify the amount of controlled substance that was destroyed or transformed and the previous use of the controlled substance. In addition, the person needs to submit to EPA a copy of the destruction efficiency certification as under § 82.13(k) or the IRS certificate of intent to transform. Upon approval, EPA would grant the person credits equal to the amount of the specific controlled substance they destroyed or transformed minus a 15 percent offset. Approval will be based upon a review of the completeness and accuracy of the documentation. The credits may be used for the production or importation of an equivalent calculated level of the controlled substance for which the eligible person was nominated to the Protocol. For example, the U.S. Air Force's Titan Rocket was nominated by the U.S. Government for an essential use exemption for methyl chloroform and could therefore use credits to produce or import methyl chloroform. Consistent with the Protocol limits on net production for control periods, EPA restricts the use of credits to the control period in which the transformation or destruction occurred. Credits can not be carried over from one control period to the next. The recordkeeping and reporting requirements associated with the credits described in these paragraphs are outlined below in section C.7., ''Reporting and Recordkeeping for Destruction and Transformation Credits.''

The Agency will create a balance of credits for the person upon approval of a request for credits. The holder of the credits may write a letter to a producer or importer conferring the right to produce or import an amount of the class I controlled substance for which they were nominated to the Protocol for an essential-use exemption. Producers and importers will submit the letters from credit holders conferring rights to produce or import with their quarterly producer's report. Deductions will be made from the credit holder's balance, when the quarterly production and importation reports are submitted to EPA. Inter-pollutant transfers of credits, as currently defined in § 82.12, will be permitted within the Groups of class I substances listed in appendices A and F to subpart A, subtracting the one percent offset. Inter-company transfers of credits will also be permitted, as currently defined in § 82.12, subtracting the one percent offset. The preamble of the proposal misstated that inter-Party trades of credits would be permitted (this was not included in the proposed regulatory language). EPA is not permitting inter-Party trades of destruction and transformation credits under today's rule because the credits are designed to meet the essential needs of U.S. companies for controlled substances and these needs can be met through U.S. production or imports.

2. Post-Phaseout Requirements for Essential-Uses

The **Federal Register** NPRM published on November 10, 1994, discussed Protocol decisions regarding essential uses and the U.S. process for accepting requests and making nominations to the Protocol Secretariat. The NPRM also proposed a U.S. program for implementing essential-use exemptions domestically after the phaseout on January 1, 1996 (59 FR 56282).

The November 10, 1994 proposal distinguished between essential-use nominations for specific entities for specific uses and the global essential-use exemption for laboratory and analytical applications. All the nominations and the quantities presented in the proposed rulemaking (59 FR 56284), both specific and global, were adopted at the Sixth Meeting of the Parties to the Protocol in October 1994.

EPA would like to note that information required by today's action to monitor the production and consumption of essential-use controlled substances will be treated in accordance the provisions of 40 CFR Part 2, Subpart B governing confidential business information if so claimed by the company in a letter or on the submitted documents.

Creation of Essential Use Allowances: With today's action, EPA creates a new class of allowances called ''essential-use allowances,'' to be allocated for designated control periods beginning January 1, 1996. EPA received no comments that challenged the proposed creation of essential-use allowances during the post-phaseout period. To effectively implement a program of essential-use allowances, EPA is including a definition of ''unexpended essential use allowances''.

Allocation of Essential Use Allowances: EPA allocates essential-use allowances and exemptions based on the nominations agreed to by the Parties to the Protocol at the Sixth Meeting in October 1994. As indicated on the table below, EPA allocates essential use allowances for specified controlled substances for the years 1996 and 1997. Although the Technology and Economic Assessment Panel received nominations for essential-use exemptions beyond 1997, today's action only includes those exemptions for 1996 and 1997 agreed to by the Parties at the October 1994 meeting. A manufacturer of metered dose inhalers (MDIs) who was listed in the proposal (59 FR 56284), and whose nomination for an essential-use exemption was agreed to by the Parties, was sold to two other companies late in 1994. The essential-use allowances for this company are today allocated to the two purchasing companies according to the proportionate need for the controlled substances to manufacture specific products. EPA reserves the right to revise the allocation of essential-use allowances and other essential-use exemptions based on future decisions of the Parties to the Protocol.

ESSENTIAL USES AGREED TO BY THE PARTIES TO THE PROTOCOL AT THE SIXTH MEETING IN OCTOBER 1994

Company	Year	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers—Aerosols			
Members of the International Pharmaceutical & Aerosol Consortium (IPAC)*.	1996	CFC–11	749.8.
Abbot Laboratories		CFC–12	2353.2.
Armstrong 1997		CFC–114	314.1.
Boehringer Ingelheim	1997	CFC–11	658.3.
Glaxo		CFC–12	2166.5.
3M		CFC–114	311.4.
Rhone Poulenc Rorer			
Schering Corporation			
Miles Inc	1996	CFC–12	5.1.
		CFC–114	10.2.

ESSENTIAL USES AGREED TO BY THE PARTIES TO THE PROTOCOL AT THE SIXTH MEETING IN OCTOBER 1994—Continued

Company	Year	Chemical	Quantity (metric tons)
	1997	CFC–12	5.2.
		CFC–114	10.5.
Sankofi Winthrop, Inc.	1996	CFC–12	5.0.
		CFC–114	19.4.
	1997	CFC–12	5.3.
		CFC–114	21.2.
(ii) Space Shuttle—Solvent			
NASA/Thiokol	1996	Methyl Chloroform	56.8.
	1997	Methyl Chloroform	56.8.
(iii) Laboratory and Analytical Applications			
Global Exemption	1996	Class I (except Group IV)	No quantity specified.
	1997	.....do	Do.

*IPAC consolidated requests for an essential use exemption to be nominated to the Protocol as an agent of its member companies for administrative convenience. By means of a confidential letter to each of the companies listed above, EPA will allocate essential-use allowances separately to each company in the amount requested by it for the nomination.

Response to Comments—Allocation of Essential Use Allowances: EPA received one comment from a manufacturer of generic MDIs that challenged the specific allocation of essential-use allowances for MDIs. The commenter claimed that EPA is unwittingly excluding companies that produce generic-brand MDIs from competing in the market because they are not included in today's allocation. EPA did not exclude companies that produce MDIs but only included those companies/entities that did apply for essential-use exemptions. EPA did not receive an application for essential-use exemptions for class I controlled substances from the commenter or any other manufacturer of generic MDIs in response to the initial call for applications, published in the **Federal Register** on May 20, 1993. The commenter did apply for an essential-use exemption in response to EPA's notice in the **Federal Register** on October 18, 1994. EPA believes the procedures followed in publishing **Federal Register** notices for essential-use exemptions provides an open forum for the participation of any interested person. Therefore, the fact that the commenter did not submit an application for an essential-use exemption in response to the May 20, 1993 request is not a deficiency on the part of the Agency. Fortunately, in accordance with the provisions of the Protocol, EPA may adjust the U.S. allocation of essential-use exemptions and essential-use allowances in the future based on future actions by the Parties to the Protocol. In reviewing the responses to the October 18, 1994 **Federal Register** notice, the U.S. government nominated the commenter's application for an MDI essential-use exemption to the Montreal Protocol Secretariat. As stated above, EPA reserves the right to adjust the allocation of essential-use allowances and exemptions based on future decisions of the Parties.

A consortium of MDI manufacturers that received essential-use allowances requested that EPA give the consortium discretion to allocate essential-use allowances among the member companies of the consortium based on their confidential estimates of market need. EPA requires the consortium to submit a listing of the percentage allocation of essential-use allowances to each member company so the Agency can monitor compliance with today's requirements. EPA understands the consortium will take responsibility for coordinating recordkeeping and reporting on behalf of its members. EPA retains the right to review and alter the consortium's discretion to allocate essential-use allowances among its members through a formal notice.

A commenter suggested EPA create a system for supplemental allowances in cases when a quantity of material, produced or imported with essential-use allowances, becomes unusable due to unforeseen events. Citing the potential risks of fire, earthquake and flood, the commenter suggested that a recipient of essential-use allowances would document the event that made the controlled substance unusable in order to obtain the ''supplemental'' allowances. EPA believes that a provision for supplemental allowances is unnecessary given today's creation of transformation credits and destruction credits in A.1.c., ''The Post-Phaseout Procedures for Granting Destruction and Transformation Credits.'' In the event of some unforeseen event that makes the substance produced or imported with essential-use allowances unusable for the essential application, the eligible company could obtain transformation credits or destruction credits in order to replace the lost material. The procedures for obtaining the credits are the same as those described above in A.1.c. The credits would be granted for the destruction (in an approved destruction technology) or the transformation of the specific controlled substance that became unusable due to the unforeseen event, or for the destruction or transformation of a quantity of recovered class I controlled substance that was purchased from the owner/operator of a U.S. use system. Only companies that the U.S. government nominated to the Protocol Secretariat for essential-use exemptions, will be able to obtain destruction and transformation credits after the January 1, 1996 phaseout.

EPA received no comments on the allocation of essential-use allowances to NASA/Thiokol. The comments on the global exemption for laboratory and analytical applications is discussed below.

CAA Limits on Essential Use Allowances: In today's action, EPA authorizes continued production or importation after the phaseout for the essential uses and exemptions permitted under the Montreal Protocol and allocated in today's action, but not to exceed the maximum allowable limits set forth in section 604(a) of the CAA. A more detailed discussion of the

authorization for production and importation after the phaseout for essential uses under the Protocol and CAA, with limits set by section 604 of the CAA, is contained in the proposed rulemaking published November 10, 1994. Specific references to the authorization and limits are found in the sections on destruction and transformation credits (59 FR 56479) and essential-use allowances (59 FR 56283). The Section 604(a) phaseout schedule in the CAA that limits production and importation of class I controlled substances is shown in TABLE I of today's preamble.

Response to Comments—CAA Limits on Essential Use Allowances: A commenter noted that the proposal's discussion of CAA essential-use exceptions failed to include the exemptions for production of halon-1211, halon-1301 and halon-2404 for fire suppression or explosion prevention under section 604(g)(1) and for fire suppression or explosion prevention in association with domestic production of crude oil and natural gas energy on the North Slope of Alaska under section 604(g)(3). EPA wishes to acknowledge all exceptions for essential uses that are cited in section 604 of the CAA, including uses for fire suppression or explosion prevention, and for fire suppression or explosion prevention in association with domestic production of crude oil and natural gas energy on the North Slope of Alaska. The exceptions for essential uses cited in the CAA can be authorized by EPA, after due consideration specified in the CAA, beyond the phaseout schedule originally set forth in section 604(a), which for class I substances (except methyl bromide) is 2000 (2002 for methyl chloroform) but can only be done consistent with actions permitted under the Montreal Protocol. With today's action, EPA is initiating the domestic essential-use program as authorized under the accelerated phaseout schedule of the Protocol, within the limits placed on total production and importation as under the phaseout schedule in section 604(a) of the CAA.

A commenter stated their belief that EPA has discretion, under the CAA, to allow production and importation beyond the phaseout for essential uses without imposing the percentage limitations of the phaseout schedule in section 604. According to the commenter's interpretation, the CAA is ''ambiguous regarding whether the schedule in section 604 remains in force after the phaseout has been accelerated pursuant to section 606.'' Given the ambiguity, the commenter suggested that EPA's acceleration of the schedule under section 606 would supplant the 604 limitations and the 604 schedule would no longer have legal effect. EPA does not believe that the CAA is ambiguous. EPA believes that section 606 authorizes EPA to accelerate the phaseout schedule to be ''more stringent than set forth in section 604'' but that exercise of this authority does not diminish the legal relevance of section 604. In addition, EPA does not believe that section 604(d) is ambiguous about the granting of essential use exceptions. Section 604(d) specifically refers to ''the termination of production required by subsection (b),'' which is the phaseout date of January 1, 2000, for class I controlled substances (2002 for methyl chloroform). EPA is legally compelled by the CAA to apply the percentage limitations in 604 on production and importation for essential-uses.

A commenter pointed out that the regulatory language in the proposal (59 FR 56297), under § 82.4, did not reflect the preamble discussion of a national limit on production based on the phaseout schedule under section 604(a) of the CAA. Although § 82.4 in the proposal refers to individual levels, when aggregated they would reflect a national production limit as set in the CAA. With today's action, EPA clarifies the regulatory language to reflect a national limit, not a limit for each producer, based on the percentage limitation as defined in section 604(a) of the CAA.

A commenter pointed out that the regulatory language in the proposal (59 FR 56297) did not correspond with the preamble discussion of using essential-use allowances for the import of controlled substances. With today's action EPA corrects the inadvertent omission of regulatory text language permitting the use of essential-use allowances to import controlled substances.

A commenter suggested that the proposal's (59 FR 56297) discussion of limits on total production and importation based on a combination of essential use allowances, transformation credits and destruction credits should give a priority to essential use allowances. As discussed above, EPA allocates transformation and destruction credits only to those entities that have been nominated by the U.S. to the Protocol. Therefore, EPA believes entities allocated essential-use allowances will have preference, by virtue of their demonstrated need for controlled substances beyond the phaseout as acknowledged in nominations to the Protocol. In today's action, only those essential uses nominated by the U.S. to the Protocol will be able to destroy or transform to obtain credits. Given the small size of these essential use nominations, EPA believes it is unnecessary to grant a priority to essential uses allowances within the limits established by the CAA in the section 604(a) phaseout schedule (see TABLE 1).

Procedures for Specific Essential-Use Allowances: With today's action, EPA creates a system in which entities receiving essential-use allowances for specific essential uses, i.e., metered dose inhalers and NASA/Thiokol, confer to a producer or importer the right to produce or import a specific quantity of the specific controlled substance. The company conferring the essential-use allowances must certify to the producer or importer that the controlled substance will only be used for the specified essential use and not resold. The producer or importer will include with their quarterly report the quantity produced or imported for essential uses and submit the letters from recipients of essential-use allowances that confer the right to produce or import.

With today's action, EPA limits the use of essential-use allowances to production and importation. EPA prohibits essential-use allowances from inter-pollutant and inter-company transfers and inter-Party trades. EPA received no unfavorable comments on these limitations during the comment period. However, EPA received one comment after the comment period requesting permission for inter-pollutant transfers of essential-use allowances. The commenter requested inter-pollutant transfers to meet shifts in market demand for MDIs that cannot be predicted. EPA believes that quantities requested for MDIs by the consortium are large enough to meet market demand and contingencies can be addressed through destruction and transformation credits.

Global Essential Use Exemption for Laboratory Applications: With today's action, EPA creates a global exemption for laboratory and analytical essential uses of CFCs, methyl chloroform and carbon tetrachloride for the 1996 and 1997 control periods. The global exemption neither defines specific quantities, nor does it identify specific companies or entities. A list of possible analytical and laboratory procedures for which controlled substances might be used is found in appendix G to subpart A, but this list is neither exhaustive, nor restrictive. With today's action, EPA creates a system for implementing the global laboratory essential-use exemption agreed to by the Parties to the Protocol at the 1994 meeting. The

system is designed to ensure that the United States meets its obligations under the Montreal Protocol to monitor and report the quantities produced and imported for laboratories, as well as to collect information on the types of laboratory applications that use the specified class I controlled substances.

Restrictions on the Global Essential Use Exemption for Laboratory Applications: With this action, EPA adopts the restrictions for the implementation of the global exemption for laboratory essential-uses agreed to by the Parties to the Protocol and described in appendix G to subpart A of 40 CFR part 82. Class I controlled substances can only be sold for laboratory or analytical applications under the global essential-use exemption for 1996 and 1997, at or above the specified purities and within the size restrictions listed in appendix G, (the size restriction differs if for sale by a producer or importer to a distributor or packager of laboratory supplies).

With today's action, EPA adopts the size and purity restrictions agreed to by the Parties for the global laboratory essential-use exemptions as defined in appendix G. Class I controlled substances (except methyl bromide) for ultimate sale for laboratory or analytical applications during 1996 and 1997 can only be supplied in reclosable containers or high pressure cylinders smaller than three litres, or in 10 millilitre or smaller glass ampoules at the purity levels listed in appendix G.

Response to Comments—Restrictions on the Global Essential Use Exemption for Laboratory Applications: EPA received one comment suggesting alternative size restrictions for the sale of controlled substances under the global laboratory essential-use exemption. With today's action, EPA adopts the size restrictions for ultimate sale, agreed to by the Parties to the Protocol at the Sixth Meeting in October 1994, as listed in appendix G.

EPA received one comment that pointed out a common industry practice of re-distilling newly produced material to achieve higher purities. After January 1, 1996, a person re-distilling must purchase newly produced or imported material that meets the purity standards as outlined in appendix G, but may receive the substance in containers larger than the size restrictions in appendix G. Thus, a producer or importer can only sell newly produced controlled substances during 1996 or 1997 that meet the purity standards. If sold to a re-distiller for laboratory applications, or to a distributor of laboratory supplies, the producer or importer may sell the controlled substance in containers larger than the appendix G size restrictions.

Procedures for Monitoring the Global Essential Use Exemption for Laboratory Applications: With today's action, EPA authorizes producers and importers to sell controlled substances that meet the prescribed purity standards in appendix G to: (1) Laboratory customers that certify the controlled substance will only be used for laboratory applications and not resold or used in manufacturing; or (2) distributors that certify they will only sell the substance to customers who in turn certify it will only be used for laboratory applications and not resold or used in manufacturing. Producers and importers must sell the controlled substances under the global laboratory essential-use exemption for 1996 and 1997 to laboratory customers in the prescribed size containers at the prescribed purities, as defined in appendix G. However, producers and importers may sell the controlled substances under the global laboratory essential-use exemption for 1996 and 1997 in larger sized containers and at the prescribed purities in appendix G to distributors of laboratory supplies (or re-distillers of materials for laboratories). The producer and importer will report to EPA each quarter the quantity of each controlled substance sold under the global exemption, including the name of the laboratory customer or the distributor that purchased the material and the amount they purchased.

Response to Comments—Procedures for Monitoring the Global Essential Use Exemption for Laboratory Applications: EPA received five comments on the proposed procedures for the global essential-use exemptions for laboratory and analytical applications. The commenters agreed with the procedures outlined in the proposed rulemaking (59 FR 56284) for producers and importers. However, the commenters suggested that distributors and/or marketers of laboratory products be added to the list of entities from whom labs can purchase controlled substances during 1996 and 1997 under the global laboratory essential-use exemption. The commenters pointed out that laboratories generally purchase controlled substances from distributors, and not directly from the producers or importers. As a result of the comments, EPA is including distributors of laboratory supplies in the procedures for monitoring the sale of the controlled substances for the global laboratory essential-use exemption during 1996 and 1997.

Distributors can repackage the substance in prescribed size containers to be sold to laboratory customers. Distributors must certify to producers or importers that they will only sell the substance to laboratory customers that certify that they will use the substance for laboratory and analytical uses and will not resell the substance nor will they use it for manufacturing.

With the addition of distributors to the chain of entities under the global laboratory essential-use exemption, EPA revised the reporting requirements accordingly. In addition, EPA received comments suggesting improvements in the proposed reporting procedures to reduce the overall administrative burden and to clarify the reporting of information proposed in § 82.13(u). To reduce reporting burden, a laboratory purchasing the same controlled substances routinely under the global laboratory essential-use exemption will certify once-per-year to the producer or importer, or to the distributor, that the substance is being purchased for laboratory uses and will not be resold or used for manufacturing. The once-per-year reporting by laboratories will reduce the administrative burden for the labs and the supplier of the controlled substance. On the form certifying a purchase for laboratory use, the laboratory customer will estimate the percent of the amount purchased that will be used for each type of laboratory application on the form's printed list.

Each quarter of 1996 and 1997, the distributor of laboratory supplies will submit to EPA a summary of the amounts of controlled substances purchased from producers or importers under the global laboratory essential-use exemption. In addition, distributors will submit each quarter a copy of the once-per-year certificate from each laboratory making its first purchase during that quarter. Distributors will also submit quarterly a summary of the quantities of each controlled substance purchased by each laboratory for whom certificate forms were already filed in previous quarters. EPA will use the quantity of material purchased by each laboratory and their estimate of the percent used for each type of laboratory application to generate the United States report for the Protocol Secretariat on the global laboratory essential-use exemption.

B. Imports of Used Controlled Substances

Proposal

In the proposal (59 FR 56285), EPA described the provisions of the Montreal Protocol governing previously used and recycled materials. The proposal also described the requirements promulgated in the **Federal Register** on December 10,

1993, that allowed the importation of used or recycled controlled substances without allowances (§ 82.4 (a) and (b)). As stated in the proposal (59 FR 56285), EPA is investigating many cases of potential fraud and illegal importation of material claimed to be used or recycled. Today's action is designed to mitigate the illegal import of controlled substances by amending the regulatory Program.

Definition of Used Controlled Substance: EPA changes the definition of used and recycled controlled substances to include only the term ''used.'' A controlled substance is considered used if it was recovered from a use system, regardless of whether it was subsequently recycled or reclaimed. The change in the definition simplifies references to used substances without introducing confusion about their subsequent treatment. As stated in the proposal (59 FR 56285), EPA intends for recycled and reclaimed substances to be considered used controlled substances.

Response to Comments—Definition of Used Controlled Substance: EPA received only supportive comments for the change in the definition of used controlled substances. However, two commenters suggested additional language to further specify the need for reclamation. They suggested that the definition of used controlled substances include a phrase such as, ''cannot be reused without reclamation.'' EPA believes the commenters assumed all controlled substances are used as refrigerants. The section 608 recycling regulation requires reclamation of refrigerants before they can be resold but there is no similar requirement for halons, foam blowing agents, solvents or other uses of controlled substances. EPA believes requiring reclamation of all used controlled substances is unnecessarily restrictive because not all controlled substances are used as refrigerants.

Two commenters suggested that EPA treat reclaimed material as newly produced material and require that consumption allowances be expended for importation. The comments were made to further deter fraudulent imports. With today's action, EPA requires importers of reclaimed material to document the foreign site of reclamation. EPA knows which Parties have reclamation facilities and can verify reclamation of a controlled substance. In addition, there will be no consumption allowances available to import controlled substances after January 1, 1996, and EPA believes only a small quantity of reclaimed material is entering the U.S. Therefore, EPA is maintaining the exemption from the allowance requirements for imported reclaimed materials.

Information Requirements: With today's action, EPA requires the following additional information from persons importing used controlled substances:

- The name and quantity of the used controlled substance to be imported (including material that has been recycled or reclaimed),
- The name and address of the importer, the importer I.D. number, the contact person, and the phone and fax numbers,
- Name and address of the source facility (facilities) of the used controlled substance, including a description of the previous use(s), when possible;
- Name and address of the exporter and/or foreign owner of the material,
- The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the chemical,
- The intended future use of the used controlled substance,
- The name, address and contact person of the U.S. reclamation facility, where applicable,
- A certification that the purchaser of the used controlled substance being imported is liable for payment of the tax.

EPA requires that the information listed above be submitted as part of a petition to import used controlled substances as described below. The petition with the information listed above must be submitted to EPA 15 working days before leaving the country of export and must accompany the used controlled substance. If EPA does not respond to the petition within 15 working days, the import is automatically allowed as described below. The petition must also accompany the import through U.S. Customs. EPA determined that requiring the petition 15 days before the shipment is exported, rather than 15 days before it is imported, as proposed, will prevent the material from being stranded if the petition to import is denied.

If the imported controlled substance was reclaimed in a Party country, the importer must provide the name and address of the foreign reclamation facility, as well as the contact person at the facility and their phone and fax number. The name of the foreign reclamation facility should be included with the information listed above, accompanying the import through U.S. Customs, and with a petition to import as described below.

If the imported used controlled substance is intended to be sold as a refrigerant, and has not been reclaimed upon entry into the U.S., EPA also requires that the importer identify the name and address of the U.S. reclaimer to whom the refrigerant will be sent to comply with the standard specified in § 82.152(g). An EPA regulation published in the **Federal Register** on Friday August 19, 1994, (59 FR 42949) states that, ''no person may sell or offer for sale for use as a refrigerant any class I or class II controlled substance consisting wholly or in part of used refrigerant unless * * * it has been reclaimed as defined in § 82.152(g).''

Response to Comments—Information Requirements: EPA received many comments supporting new information requirements as the means of discouraging fraudulent activities and actively monitoring imports of used controlled substances. EPA received comments that some of the information requirements listed in the proposed rulemaking (59 FR 56285) would be difficult to obtain and/or provide to EPA. In some cases, the commenters claimed an inability to obtain the information from foreign sources. In other cases, the commenters indicated difficulty in obtaining the information because the company from whom the information should be received would claim it as confidential business information. In today's action, EPA chose the particular information requirements listed above because commenters who suggested them said they would be fairly easy to obtain. Many commenters stated a willingness to provide the information listed above in order to deter illegal imports, although they would be subject to the requirements themselves.

EPA believes the information noted above will provide an opportunity for independent verification of substances being imported. Since the goal is to accurately determine whether the imported substance is in fact ''used,'' EPA considered the practicality of obtaining the information required and the usefulness of this information in verifying the nature of the imported material.

EPA received comments from the halon sector requesting an exemption from the information requirements for imports. These commenters suggested the halon sector should be exempted because: (1) There are so few countries still producing halons, (2) the halon sector in the U.S. is so well organized, and (3) the requirements would be a burden. EPA believes the information requirements will not pose a great burden for the halon sector because the information is commonly known by importers and often incorporated in sales transactions. In addition, U.S.

Customs needs to have import documents that will make a clear distinction between used halons (including recycled and reclaimed), and newly produced halons because of the prohibition on importing newly produced halons. In 1994, halon importers had difficulty providing documents when EPA requested verification that shipments were reclaimed material. EPA is also receiving information that Article 5 producers of halons are exporting newly produced halons to developed countries, and some of this may be entering U.S. commerce. EPA hopes that a shipment-by-shipment information requirement will improve the ability of halon importers to supply documents so that EPA can monitor and ensure the legitimacy of all imports.

Creation of a Petition Program for Imports of Used Controlled Substances: With today's action, EPA establishes a process for petitioning the Agency to import a shipment of used controlled substance into the United States. A person must submit a petition to EPA to import each shipment of used controlled substance (recovered, recycled or reclaimed material) at least 15 working days prior to the date the ship is to leave the foreign country. The petition submitted to EPA must include the information listed above in Section B, ''Imports of Used Controlled Substances.'' EPA will review each petition on a shipment-by-shipment basis and determine whether or not to object before the date the ship is to leave the foreign country, within the 15 working days from the time of submission. If EPA objects to a petition, the person submitting the information will be notified prior to the time the shipment is to leave the country of export. If EPA needs additional information, an objection notice will be sent and the importer may re-submit the petition with the requested information. The person may proceed with the import if EPA does not object to the particular import of used controlled substance within the 15 working days. EPA will send the person a non-objection notice, and notify U.S. Customs Service and the IRS of the shipment.

With this rule, EPA also creates a petition process for a person who imports the same used controlled substances from one source many times during a year. EPA will accept an annual petition, at least 15 working days before the first day of the year, that includes all the applicable information required in petitions for individual shipments. In place of exact quantities and particular use systems from which the material is taken, the annual petition must include an estimate of the number of shipments and quantity of specific used controlled substances that will be imported during the year and the likely sources (previous uses) of the used material. Following the importation of each shipment during the quarter, the importer must submit to EPA, referencing the annual petition, the invoice, the bill of lading, and a detailed description of the use system(s) from which the material(s) was taken. The annual petition procedure is designed for a company that frequently imports the same used controlled substances from the same source (foreign supplier).

Response to Comments—Creation of a Petition Program for the Importation of Used Controlled Substances: EPA received seven comments supporting the creation of a permit/petition system for the import of used controlled substances as proposed (59 FR 56285). Two of the comments supported an annual permitting system. Four comments supported some sort of shipment-by-shipment permitting system. Two commenters suggested an alternative system in which importers petition EPA on a shipment-by-shipment basis. All the companies supporting a permit or a petition process agree that it will involve additional paperwork on their part but they would rather have the process in place to ensure all imports are legitimate. A petition process was recommended because it would be less onerous than a permit but accomplish the same goal of maintaining the integrity of the market-based program that encourages the transition from class I controlled substances. To reduce the administrative burden of petitioning for the import of very small amounts, EPA received comments that suggested adoption of a *de minimus* amount for which companies would not need to petition. The commenters pointed out that laboratories and reclaimers in the U.S. often receive small samples of used controlled substances for analysis. Due to these suggestions and common industry practices, EPA exempts imports of 150 pounds or less from the petition requirements. However, all importers, regardless of quantity, are still required to report quarterly. The exemption from the petition requirement for 150 pounds or less applies to individual shipments which cannot be aggregated. EPA believes this *de minimus* amount reduces burdens on industry while still deterring the illegal entry of controlled substances.

EPA believes a process of requiring petitions for imports will deter the fraudulent importation of mislabeled controlled substances, and will provide greater control over the entry of used substances into the United States. The European Union (EU) currently requires permits of all importers. The EU uses the permits to monitor shipments and investigate suspected mislabeled ozone-depleting substances. EPA believes that adoption of a similar system will increase the effectiveness of enforcement actions against illegal imports. With today's action, a person can import used controlled substances unless EPA issues an objection notice to a petition.

EPA will forward the non-objection notices to U.S. Customs and the IRS to alert them of expected shipments of used class I controlled substances at U.S. ports. Because EPA will receive the petitions prior to the date the material is shipped from a foreign port, U.S. Federal Agencies will have time to investigate the veracity of the claimed origin of the material, and anticipate its arrival.

Currently, EPA receives a monthly list of importers of controlled substances from U.S. Customs. A petition system will allow EPA to match the information from importers' petitions for used class I controlled substances with the monthly imports on the U.S. Customs list. A person appearing on the U.S. Customs list of imports, who never submitted a petition, or who obtained an objection notice in response to a petition, would be in potential violation of the regulation for that shipment.

EPA would like to clarify that for ships that are on- or off-loading controlled substances for on-board use or that was used on-board, ship owners/operators are exempted from requirements for imports and exports as in the current regulation. Since these controlled substances are not being sold, but only used on-board or recovered from on-board use and sold only for reclamation, these substances cannot be considered exports or imports. EPA will rely on the records kept by shipping companies and vessels to verify on-board use of controlled substances.

Certification by the Country of Export: Many commenters supported the proposed requirement (59 FR 56285) that all imports of used substances be accompanied by a certification from the country of export. EPA proposed this particular requirement in anticipation of a discussion of illegal trade in controlled substances during the 1995 meeting of the Parties to the Protocol. EPA anticipates that certification by the country of export will be one of the options considered by the Parties to confront illegal trade of controlled substances. At this time, however, EPA

cannot incorporate this procedure into the regulation until the Parties make a decision to adopt it. Without an international agreement, EPA cannot compel government agencies of another Party to provide the information.

If the Parties agree to adopt the certification of exports of used controlled substances during the 1995 Meeting, EPA would be required to establish a program to certify U.S. exports of used controlled substances. EPA already has a limited certification program for certain reclamation facilities. Under this program, reclamation facilities must be able to ensure that previously used refrigerant will be reclaimed to a level of purity specified in § 82.152(g). With regard to exports of used substances, if the Parties adopt a certification procedure, U.S. exporters would be required to certify that the ''used'' substance was taken from a use system. The exporter might also be required to keep records on selected items from the list of information requirements above, to facilitate future verification.

C. Program Adjustments and Clarifications to Become Effective in the 1995 Control Period

1. Changes in Requirements for Exports to Article 5 Countries

Beginning with the 1995 control period, EPA changes the name of potential production allowances to Article 5 allowances. In today's rule, EPA also eliminates the process of converting potential production allowances to production allowances for all control periods, beginning with the 1995 control period. EPA assigns Article 5 allowances for the 1995 control period, and subsequent control periods, to companies that have allocated baseline production allowances for class I controlled substances, including methyl bromide. A description of provisions in Article 2 of the Montreal Protocol permitting additional production for Article 5 countries was included in the proposed rulemaking published on November 10, 1994 (59 FR 56286).

With this rule, EPA creates a system in which a company notifies the Agency at the end of each quarter of their exports to Article 5 countries. EPA will deduct Article 5 allowances equal to the amount of controlled substance exported to Article 5 countries from the company's balance of Article 5 allowances. 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.

Response to Comments: EPA received five comments supporting the up-front allocation of Article 5 allowances and the change in the system for deducting Article 5 allowances from a company's balance on a quarterly basis. EPA received two comments that did not support the allocation of Article 5 allowances.

A commenter suggested that allocating Article 5 allowances after January 1, 1996, would be unnecessary because Article 5 countries have sufficient production capacity to supply their own needs. EPA received letters from four producers of controlled substances in Article 5 countries (two are subsidiaries of the commenter) asking that EPA not authorize additional production for export to Article 5 countries. These Article 5 producers claimed that they could provide material for all the Article 5 countries in their region, i.e., South America, Southeast Asia.

The Parties included provisions in the Protocol to assure a continued supply of controlled substances for Article 5 countries beyond the phaseout in Article 2 (developed) countries. EPA recognizes that certain facilities in Article 5 countries have the production capacity for production of specific, but not all, ozone-depleting substances. However, the Montreal Protocol limits any increases in production of controlled substances in Article 5 countries to that needed to meet their own basic domestic needs.

A commenter did not support the proposed allocation of Article 5 allowances because they believe Article 5 allowances would create opportunities for controlled substances to be produced for export to Article 5 countries and illegally be imported back into the U.S. or be diverted to U.S. commerce and never actually be exported. The current regulation, in accordance with the Protocol, requires exporters to obtain a signed certification from an Article 5 importer that the controlled substances cannot be re-exported, and if re-exported the importer is in violation and subject to a financial penalty. In addition, with today's action, EPA prohibits the sale of material in the U.S. that was produced with Article 5 allowances. This does not change any legal requirements for Parties under Article 5. EPA believes that today's requirement addresses the concern about Article 5 allowances and illegal imports.

The Parties to the Protocol adopted provisions allowing additional production for export to Article 5 countries for sound environmental reasons as explained in the proposal (59 FR 56287). In today's action, EPA implements the provisions of the Protocol in accordance with desire of the Parties to deter the construction of new, or expansion of existing, manufacturing facilities in Article 5 countries.

CAA Limits on U.S. Post-Phaseout Production: With today's action, the Agency corrects the date from which, and until which, companies may produce 15 percent of baseline allowances for export to Article 5 countries. CAA section 604(e)(2)(C) permits production for developing countries to exceed baseline allowances by up to 15 percent beginning January 1, 2000, and to continue until January 1, 2010 (2012 in the case of methyl chloroform). However, the Protocol permits production for export to Article 5 countries at 15 percent of baseline allowances beginning with the phaseout date (January 1, 1994, for halons, and January 1, 1996, for CFCs, methyl chloroform and carbon tetrachloride) and continuing for ten years after the Protocol phaseout.

With today's action, and subsequent to the U.S. accelerating its phaseout dates, EPA permits each producer 15 percent of their baseline production allowances for export to Article 5 countries as under the Protocol, but in accordance with the restrictions on the U.S.'s overall production as imposed by the CAA. EPA believes the overall limit the CAA imposes on U.S. production will never be reached but must acknowledge this legal upper limit.

Because the CAA only allows 10 percent additional production for Article 5 countries up until 2000, EPA will count 5 percent of United States' total production for Article 5 countries against the annual percent limitations in the phaseout schedule of section 604 of the CAA as shown in TABLE I, (i.e., 40 percent for CFCs in 1996). The remaining 10 percent of production for Article 5 countries will be added to the annual percent limitation in the CAA phaseout schedule (i.e., 10 percent + 40 percent = 50 percent for CFCs in 1996). As an example, EPA will allocate producers 15 percent of their baseline production allowances in 1996 which is expended when producing for Article 5 countries. Continuing with the example, in EPA's tracking system, EPA will subtract 5 percent of the 15 percent allocated for export to Article 5

countries from the CAA annual percentage limitation of 40 percent for CFCs in 1996, yielding a national production limit of 35 percent for all other post-phaseout production exemptions: Essential-uses, transformation credits and destruction credits. EPA believes it is highly unlikely that U.S. production will ever approach the pre-accelerated phaseout cap set forth in section 604(a) of the CAA through the combination of the exceptions allowed in today's rule; however, it is important that EPA explicitly outline how it intends to ensure that the caps of the CAA are met.

Response to Comments—CAA Limits on U.S. Post-Phaseout Production: EPA received no comments on the proposed (59 FR 56287) limits on production imposed by the CAA for the use of Article 5 allowances in combination with essential use allowances, destruction credits and transformation credits after January 1, 1996. Therefore, with today's action, EPA permits production based on limits imposed under section 604(e)(2) and 604(a) of the CAA plus ten percent of the baseline for export to Article 5 countries. EPA believes this overall limit imposed by the CAA will never be reached.

2. Administrative Changes to the Consumption Allowance Requirements for Exports

In the proposal (59 FR 56288), EPA considered various methods of streamlining the administrative procedures for refunding consumption allowances when controlled substances are exported to a Party. Based on comments and further consideration, EPA is maintaining the system in which producers expend both production and consumption allowances to produce class I controlled substances for the 1995 control period (and for methyl bromide until 2001). EPA also maintains the procedure in which companies request a ''refund'' from EPA of consumption allowances expended to produce controlled substances exported to a Party during the 1995 control period.

Response to Comments: EPA received two comments that supported the proposed system (59 FR 56288) for expediting the refund of consumption allowances when controlled substances are exported to a Party to the Protocol. Four comments were received that preferred the proposed option to eliminate the requirement that producers expend consumption allowances when producing for export. EPA also received two comments challenging the proposed system to expedite the refund of consumption allowances, stating that the double submission of documents would be unnecessarily burdensome.

With today's action, EPA chooses to maintain the current procedure for refunding consumption allowances once a company exports a controlled substance to a Party. EPA maintains the procedure in order to closely monitor exports in the final year before the phaseout. EPA wishes to continue receiving documentation of exports as part of the campaign against illegal imports. Since the proposal was written (59 FR 56275), EPA has become increasingly concerned about illegal imports entering the U.S. as a result of fraudulent claims that they are subsequently exported. Many deceptive activities are being taken to avoid the IRS tax on ozone-depleting substances. The IRS tax code exempts a percentage of exported controlled substances from the tax. EPA believes that people are importing controlled substances and fraudulently claiming their subsequent export to avoid the tax. EPA is concerned that people are submitting fraudulent documents about either non-existent exports or about exported shipping containers filled with some material other than the controlled substances claimed in the export documents. The receipt of documents is a component of EPA's compliance and enforcement program against illegal imports. EPA wishes to maintain the current refund procedure for consumption allowances in 1995 to monitor exports and deter illegal activities.

With today's action, EPA chooses not to expedite the process of refunding consumption allowances in response to industry comments. EPA initially proposed the expedited refund of consumption allowances believing it would assist industry in the final year before the phaseout. However, industry comments expressed legitimate concern that the proposed procedure, with the double reporting to expedite the refund, would actually be an increased burden. Many industry comments pointed out the complexity of the proposed procedures and the undesired potential for miscalculations and double-counting. In addition, a commenter noted the difficulty EPA would face in designing a new tracking system for only one year to accommodate the double reporting of contingent consumption allowances followed by a confirmation of the consumption allowances. EPA now recognizes that the proposed procedures for expediting refunded allowances would create a significant reporting and administrative burden for both industry and the Agency. Therefore, EPA will maintain the existing procedure in which companies submit documents only once to obtain the refund of consumption allowances.

EPA received a comment challenging the proposed elimination of consumption allowances from inter-Party trades (59 FR 56288). The comment points out that eliminating the consumption allowances from an inter-Party trade would not be a problem, if, as under the December 10, 1993 final rule, § 82.9(b)(1)(vi), the controlled substance produced in the U.S. were exported to the Party from whom the allowances were received. If EPA were to eliminate the need for consumption allowances in inter-Party trades, and the controlled substance returned to the Party from whom the allowances were received, the global limit on production of controlled substances would be maintained. The requirement that material be exported to the country from whom allowances were traded is a vestige of the original Montreal Protocol and was eliminated by the London Amendments.

During the 1994 control period, several U.S. companies asked to rationalize global production through inter-Party trades with a waiver that material not be required to return to the country from whom the allowances were received. The U.S. companies wanted to receive trades from foreign companies and produce the controlled substances for U.S. customers of those foreign firms. The benefit of these less restricted inter-Party trades would be more geographically rational production of controlled substances on a global basis with lower transport costs and energy use. Unfortunately, the requirement in § 82.9(b)(1)(vi), that material must be exported to the country from whom the allowances were received blocked these inter-Party trades in 1994. EPA proposed eliminating this requirement in the November 10, 1994, notice of proposed rulemaking (59 FR 56290).

With today's action, EPA creates a dual system for inter-Party trades in order to allow U.S. companies greater flexibility in meeting market demand in the U.S. and other countries while maintaining the global limit on production and consumption of controlled substances. The dual system for inter-Party trades allows industrial rationalization, and maintains U.S. obligations under the Protocol. The two-tier system for inter-Party trades distinguishes between: U.S. companies wishing to receive production allowances in order to produce and subsequently export to the country from

whom the allowances were received, and U.S. companies wishing to receive production allowances and produce for the U.S. domestic market or for sale to another Party to the Protocol. In order to maintain United States obligations under the Protocol, EPA would require companies to expend their consumption allowances as allocated under § 82.6 and § 82.7 if receiving production allowances from an inter-Party trade for production of controlled substances to be sold in the U.S., or to be sold to a third country (Party to the Protocol). To produce for sale in the U.S. or to another Party, the company would expend production allowances from the inter-Party trade and expend consumption allowances that were allocated as part of the Allowance Program in section § 82.6 and § 82.7. Although counterintuitive, the expenditure of production allowances received from a Party and the expenditure of consumption allowances allocated under the Allowance Program would maintain the global balance of production and consumption of ozone-depleting substances as restricted by the Montreal Protocol. The regulatory language under § 82.10(c) that states, ''a request for production allowances shall also be considered a request for consumption allowances,'' will not apply to inter-Party trades of production allowances for the production of controlled substances to be sold in the U.S. or to be sold to another Party to the Protocol.

The dual-tier system for inter-Party trades of production allowances applies to methyl bromide beginning in the 1995 control period and extends until January 1, 2001.

Under the current regulation, a person in the United States may receive production allowances from a Party to the Protocol in an inter-Party trade (under the Protocol this is called industrial rationalization). The request for an increase in production allowances through an inter-Party trade is considered, under the current regulation, a request for consumption allowances. The U.S. company that receives the allowances from the other Party expends the production and consumption allowances to produce a controlled substance. The controlled substances produced with the traded allowances are exported to the Party from whom the allowances were traded. The U.S. company expends consumption allowances in the production of the controlled substance for an inter-Party trade and then asks EPA for a ''refund'' of these consumption allowances because the controlled substance was exported.

3. Administrative Changes to Production Allowance Requirements for Exports That Are Transformed or Destroyed

With today's action, EPA is creating procedures for the refund of production allowances when a person expends production allowances in the manufacture of a controlled substance for export to a Party for uses that result in transformation or destruction. EPA proposed (59 FR 56289) expediting the ''refund'' of production allowances, but is not adopting this proposal, because it is too great a reporting and administrative burden as discussed above for the refund of consumption allowances.

The refund procedure pertains to the production of class I controlled substances for only the 1995 control period, except for methyl bromide. For methyl bromide, the refund of expended production allowances for quantities exported to Parties that are certified to be transformed or destroyed would also begin January 1, 1995, but extend until January 1, 2001. As with the procedures for refunding consumption allowances, a person in the U.S. producing or purchasing a class I controlled substance may, upon export to a Party for certified subsequent transformation or destruction, request from EPA a ''refund'' of production allowances with a certification that the production allowances were expended in the production of the substance. To ensure that the controlled substance is in fact transformed or destroyed by the recipient in a Party country, the Agency requires the U.S. exporter to obtain a signed IRS certificate of intent to transform or a destruction verification (as under § 82.13(k)) from the foreign transformer or destroyer.

Response to Comments: EPA received five comments supporting the elimination of requirements to expend allowances if the controlled substance is explicitly produced for export to be transformed or destroyed. The commenters suggested that all controlled substances that are transformed, both domestically and overseas, be treated similarly. A commenter stated that the Protocol does not make a distinction between transformation (or destruction), whether it occurs domestically or overseas.

The prior regulation, published in the **Federal Register** on December 10, 1993, required that allowances be expended for the production of controlled substances that are exported and transformed or destroyed. Under this prior regulation, production allowances were expended and not refunded. With today's action, EPA is refunding the expended production and consumption allowances if the substance is explicitly exported for transformation or destruction. EPA considers the refund of production allowances to be a significant benefit for producers of class I controlled substances during the final control period before the phaseout.

EPA received two comments that requested an explicit waiver of liability for a producer or importer who sells a controlled substance for transformation or destruction in the event the controlled substance is not transformed or destroyed. Given EPA's requirements for transformers or destroyers of controlled substances, the producer or importer who sells the substance is not liable as long as they receive an IRS certificate of intent to transform or a destruction verification.

Additional Actions: With today's action, EPA is standardizing the reporting requirements for controlled substances that are transformed or destroyed both domestically and overseas. Each quarterly producer's or importer's report must be accompanied by the IRS certificates of intent to transform or destruction verifications (as under § 82.13(k)) from the transformers or destroyers to whom controlled substances were sold. EPA is unwilling to further relax requirements for production during the last control period (1995 calendar year), in part due to difficulties companies had during 1994 in complying with the reporting requirements for transformation. The regulation requires that companies submit IRS certificates of intent to transform with quarterly production reports. In 1994, few companies submitted the IRS certification of intent to transform or the destruction verification with their quarterly reports. By standardizing the reporting requirement for controlled substances transformed or destroyed both domestically and overseas, EPA hopes to improve compliance by companies during the 1995 control period. The procedures for submitting the IRS certification and the destruction verification change slightly with today's rule and are described in H., ''Clarification of Reporting and Recordkeeping Requirements.''

After the January 1, 1996 phaseout, production and consumption allowances will not be required to produce class I controlled substances for domestic or foreign transformation or destruction. After January 1, 1996, EPA will permit production for transformation or destruction domestically or overseas as long as companies comply with strict reporting

requirements, including the submission of IRS certificates of intent to transform and destruction verifications (see H., ''Clarification of Reporting and Recordkeeping Requirements'').

4. Treatment of Controlled Substances Remaining in Emptied Containers, i.e.''Heels''

With today's action, EPA exempts heels from the consumption allowance requirements for imports beginning in the 1995 control period if certain conditions are met. Heels were described in detail in the proposed rulemaking and are now defined in the regulation (59 FR 56289). Heels are exempted from the consumption allowance requirements for imports if the company bringing the heel into the United States certifies that the residual amount is less than 10 percent of the volume of the container and will remain in the container and be included in a future shipment, or recovered for transformation, destruction or a non-emissive use.

The industry rule-of-thumb is that a heel is up to ten percent of the volume of the container. Therefore, EPA is requiring that containers returning to the United States with more than ten percent of their volume in controlled substance, even if labelled as a heel, be required to expend consumption allowances to import the substance until January 1, 1996.

With today's action, EPA requires a person who brings heels back to the United States to report quarterly the quantity of their returned heels. In addition, the person must report at the end of the control period on the final disposition of each shipment of heels. The Agency will review this information to determine if returned heels are cause for concern due to the volume and frequency of occurrence.

Response to Comments: Most comments EPA received supported the proposed requirements for heels (59 FR 56289) as long as the reporting requirements were stringent enough to prevent illegal import abuses. Only one company objected to the proposed exemption for heels from the import requirements, suggesting that it would provide another opportunity for illegal imports. The commenter claimed that under the proposal, heels would be under-reported and people would fraudulently label their imports as heels to avoid the tax.

EPA believes the stringent reporting requirements for heels, the *de minimis* provision (no greater than 10 percent of the volume of a container is considered a heel), and the requirement for non-emissive disposition of heels eliminates the incentives to fraudulently import controlled substances as heels.

5. Clarification of the Definition of Transhipment

EPA received comments on the proposed clarification of transhipment (59 FR 56289) that strongly recommended action to deter the abuse of transhipment in illegally importing controlled substances. The proposal only clarified the definition of transhipment and did not address the abuse of the transhipment provision for illegal imports. In response to the comments, EPA is issuing a separate, parallel notice of proposed rulemaking to address the abuse of the current transhipment provision to illegally divert transhipped material into U.S. commerce.

EPA received a comment suggesting the use of the phrase, U.S. interstate commerce, in place of the phrase, U.S. jurisdiction. With today's action, EPA maintains the word jurisdiction in accordance with the definition of import in the CAA. EPA received no other adverse comment on the clarification of transhipment.

6. Provision for an Account Reconciliation Period Through Inter-Pollutant Transfers

With today's action, EPA is creating a 45-day period for reconciliation of allowances after the last day of the 1995 control period. During the 45-day reconciliation period, a person may make inter-pollutant transfers of allowances from the previous control period for class I controlled substances as defined in § 82.12 of the current regulation. Inter-pollutant transfers of controlled substances can only be made between controlled substances in the same Group as listed in appendices A and F of subpart A. In addition, the inter-pollutant transfer must be authorized by EPA and will include a one percent offset.

Response to Comments: EPA received many comments supporting the creation of a period for reconciliation of allowances after the last day of a control period. In addition to their support for the proposed 45-day period for inter-pollutant transfers, EPA received five comments suggesting inter-company transfers be permitted. Two additional comments suggested inter-Party trades be allowed during the reconciliation period.

EPA believes that changes in today's action to permit either inter-company transfers or inter-Party trades in the reconciliation period would undermine the integrity of the prohibitions in § 82.4 that require a person to have, at any time, the allowances to produce or import controlled substances. Allowing inter-company transfers or inter-Party trades during the reconciliation period would effectively eliminate the requirement that a company have allowances to produce or import, thereby eliminating the basis for EPA enforcement of the regulation. Today's action permits inter-pollutant transfers at the end of the control period, which are intra-company adjustments to the balance of allowances for that control period, through paper accounting rather than an extension of the control period for trades, exports or transfers between companies.

7. Additional Clarifications

a. Unintended By-Products of Research and Development. EPA adds to the list of inadvertent or coincidental creations of insignificant quantities of the listed substances, in the definition of controlled substance, the production of unintended by-products of research and development applications.

Response to Comments: EPA received only supportive comments on the proposal to add the unintended by-products of research and development applications to the list of inadvertent or coincidental creations of insignificant quantities so that these unintended by-products be exempted from the definition of controlled substances. The Agency continues to reserve the right to require a person to destroy the unintended by-products of research and development applications if they are determined to be greater than insignificant quantities.

b. Carbon Tetrachloride Baseline Consumption Allowances. With today's action, EPA corrects a typographical error made in the proposal (59 FR 56300). In § 82.6, the apportionment of baseline consumption allowances shifted the order of consumption allowances allocated to the various companies. Today's action maintains the baseline consumption allowances apportioned under the current regulation published on December 10, 1993 in the **Federal Register**.

8. Clarification of Reporting and Recordkeeping Requirements

a. Reporting and Recordkeeping for Destruction and Transformation Credits. With today's action, an eligible person, if they wish to obtain destruction and transformation credits as defined above in A.1., ''Post-Phaseout Requirements for Transformation and Destruction of Controlled Substances,'' must submit to EPA a request for credits when they have had a quantity of controlled substance taken from a U.S. use system

destroyed or transformed. The request for credits should include:

- The identity and address of the person;
- The name, quantity and volume of controlled substance destroyed or transformed;
- A copy of the invoice or receipt documenting the sale or transfer of the controlled substance to the person;
- A certification of the previous use of the controlled substance;
- For destruction credits, a certification that the controlled substance was destroyed and a certification of the efficiency of the destruction process; and
- For transformation credits, an IRS certificate of feedstock use or transformation of the controlled substance.

EPA will review the information submitted in a request for destruction and transformation credits and determine whether or not to issue credits equal to the calculated level of material destroyed or transformed minus the 15 percent offset. EPA received no comments on the reporting requirements for granting destruction and transformation credits.

b. Reporting and Recordkeeping for Importers. With today's action, EPA requires that importers of used, recycled or reclaimed controlled substances maintain records on the items included in Section B, ''Imports of Used Controlled Substances,'' of this preamble. In addition, EPA continues to require that all importers submit quarterly reports. EPA requires that all importers differentiate, in their quarterly reports, between quantities of imported controlled substances that are newly produced, and quantities of imported controlled substances that are used, recycled or reclaimed in accordance with the reporting requirements of the prior regulation published in the **Federal Register** on December 10, 1993.

Under the current rule, EPA requires that importers be prepared to verify that the company has consumption allowances when entering a newly produced class I controlled substance into the United States. EPA also requires importers be prepared to provide the documentation as listed in Section B of this preamble, to verify the previous owner and the previous use when entering a controlled substance claimed to be used, recycled or reclaimed into the United States. After January 1, 1995, an importer must provide to EPA, as part of the petition to import used, recycled or reclaimed controlled substances, the following information as listed in section B., ''Imports of Used Controlled Substances:

- The name and quantity of the used controlled substance to be imported (including material that has been recycled or reclaimed),
- The name and address of the importer, the importer I.D. number, the contact person, and the phone and fax numbers,
- Name and address of the source(s) of the used controlled substance, including a description of the previous use(s), when possible;
- Name and address of the exporter and/or foreign owner of the material,
- The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the chemical, where available,
- The intended future use of the used controlled substance,
- The name, address and contact person of the U.S. reclamation facility, where applicable,
- A certification that the purchaser of the used controlled substance being imported is liable for payment of the tax.

A petition to import a class I controlled substance that was reclaimed overseas must also include the name and address of the foreign reclamation facility, as well as the contact person at the facility and their phone and fax number. The name of the foreign reclamation facility should be included with the information listed above accompanying the import through U.S. Customs.

If the imported used controlled substance is intended to be sold as a refrigerant, EPA also requires that the importer identify the name and address of the reclaimer to whom the refrigerant will be sent to comply with the standard required in § 82.152(g). EPA regulation published in the **Federal Register** on Friday August 19, 1994, (59 FR 42949) states that, ''no person may sell or offer for sale for use as a refrigerant any class I or class II controlled substance consisting wholly or in part of used refrigerant unless * * * it has been reclaimed as defined in § 82.152(g).''

Response to Comments: EPA received many comments on the proposed actions to address illegal imports of controlled substances. The commenters stated a willingness to accept new reporting requirements in order to stem the flow of illegally imported controlled substances.

One commenter stated that chemical testing of imported materials would not provide EPA with reliable evidence that the controlled substance had been taken from a use system. A lab test would not be able to distinguish between a contaminated newly produced controlled substance, a contaminated ''off-spec'' newly produced substance, or a substance taken from a use system. Therefore, the commenters stated that this reporting requirement would be an unnecessary expense and burden. EPA agrees with these arguments and has not included lab testing of imported used controlled substance in today's action.

Another commenter claimed it would be difficult to obtain the proposed information requirement on the type of machine utilized to recover the controlled substance. EPA recognizes the difficulty in identifying and describing recovery machinery and has not included it in the reporting requirement for used imported controlled substances.

c. Reporting and Recordkeeping for Article 5 Exports. Today's Action: EPA requires companies to submit with their producer's quarterly report the amount of controlled substance produced with expended Article 5 allowances and exported to Article 5 countries during the quarter. Today's change of name from potential production allowances to Article 5 allowances does not change the quarterly reporting requirements. However, today's action does eliminate the need to convert allowances.

Today's amendment to the recordkeeping and reporting requirement anticipates the phaseout of class I controlled substances (except methyl bromide) in January 1, 1996. In 1995, all class I controlled substances produced for export to Article 5 countries will be reported in the producer's quarterly report. Beginning January 1, 1996, EPA will simplify the quarterly reporting, so that producers indicate which of the production exceptions apply (i.e., essential-use allowances, Article 5 allowances, destruction and transformation credits, transformation or destruction) for a given quantity of controlled substance, with relevant information to explain the justification for the exception.

Response to Comments: EPA received five comments supporting the changes in the reporting requirements for Article 5 allowances that eliminate the need to convert potential production allowances to production allowances. The commenters also indicated a need to clarify in the regulatory language how Article 5 allowances will be used in the production of controlled substances. The commenters pointed out that the regulatory language should be consistent with the preamble. With today's action EPA makes the changes to the regulatory language to ensure correspondence with today's preamble.

d. Reporting and Recordkeeping for the Production Allowance Requirements for Exports that are Transformed or Destroyed. Today's Action: EPA requires the submission of an IRS certificate of intent to transform or a destruction verification (as outlined in § 82.13(k)), during the 1995 control period, if a person is requesting the refund of production allowances for material exported to be transformed or destroyed. If requesting a refund of production allowances, the producer must submit the IRS certificate or destruction verification for each shipment.

Starting in the 1995 control period, EPA requires all producers and importers to submit with quarterly reports an IRS certificate of intent to transform or a destruction verification (as in § 82.13(k)) from transformers or destroyers, both domestic and of a foreign Party, who purchase controlled substances.

Response to Comments: EPA received comments that claimed the reporting requirements for submission of IRS certificates to transform and destruction verifications were burdensome. In response to the comments, EPA is permitting a one-time-per-year submission of an IRS certificate of intent to transform or a one-time-per-year submission of a destruction verification from each individual transformer or destroyer that purchases the same controlled substances throughout the year that will be transformed or destroyed during that year. After the first submission of an IRS certificate for a particular transformer, or the first submission of a destruction verification for a particular destroyer, whether the transformer or destroyer is domestic or foreign, the U.S. producer or importer may list the quantities of subsequent shipments sold to the transformer or destroyer, referencing the original certificate or verification.

e. Reporting and Recordkeeping for Heels. Today's Action: With today's action, EPA requires a person who brings heels back to the United States to report quarterly a list of the quantity of their returned heels, shipment-by-shipment. The quarterly submission must list the quantity of the heel in each shipment and the volume of the container in which the heel returned to the United States. The submission of the list of heels must also include a certificate that the residual amount will remain in the container and be included in a future shipment, or be recovered for transformation, destruction or a non-emissive use. Due to concerns about illegal imports of controlled substances, the Agency determined that quarterly reporting on heels is necessary to closely monitor for possible abuses of today's provision.

EPA requires all companies that brought heels into the United States to report, at the end of the control period, on the final disposition of each shipment of heels. The Agency will review this information to determine if returned heels are cause for concern due to the volume and frequency of occurrence and potential abuse.

f. Reporting Requirements for Class II Controlled Substances (HCFCs). With today's action, EPA includes class II controlled substances that are transformed or destroyed in the reporting requirement of § 82.13(n). In the proposal, EPA inadvertently excluded class II material that is transformed or destroyed from the reporting requirement.

III. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect 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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

It has been determined by OMB and EPA that this amendment to the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency originally published an RFA to accompany the August 12, 1998 final rule (53 FR 30566) that placed the initial limits on the production and consumption of CFCs and halons. That RFA was also updated as appendix G of the Regulatory Impact Analysis for the regulations implementing the phaseout schedule of section 604 of the Clean Air Act Amendments of 1990. The Addendum to the Regulatory Impact Analysis was further updated in 1993 to examine the impact of the acceleration of the phaseout and the phaseout of HCFCs on small businesses. The analysis in the Addendum indicated that the actions were not expected to have a substantial impact on small entities.

EPA believes that any impact that today's amendment will have on the regulated community will serve only to provide relief from otherwise applicable regulations, and will therefore limit the negative economic impact associated with the regulations previously promulgated under Sections 604 and 606. Although almost all business participants in the phaseout program for ozone-depleting substances are large businesses, today's amendment reduces reporting or recordkeeping burdens that might possibly impact small businesses. Therefore, the amendment is expected to have minimal if any impact on small entities.

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, I certify that the regulation promulgated in this notice will not have any additional negative economic impacts on any small entities.

C. Paperwork Reduction Act

The information collection requirements in this final rule were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* and assigned control number, OMB No. 2060–0170. An Information Collection Request document has been prepared by EPA (ICR No. 1432.15) and a copy may be obtained from Sandy Farmer, Information Policy Branch, U.S. EPA, 401 M St., SW., (2136), Washington, DC 20460 or by calling (202) 260–2740.

The information collection requirements for this final rule has 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.

Send comments regarding the burden estimate of any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, U.S. EPA, 401 M St., SW., (2136), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875 we have involved state, local, and tribal governments in the development of this rule to the extent they are affected by these requirements. EPA is conducting an outreach program to facilitate the transition for state, local and tribal governments to ozone-friendly alternatives.

E. Unfunded Mandate Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing any small governments that may be significantly or uniquely affected by the rule. Section 205 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not selected or this alternative is inconsistent with law.

This rule amends the accelerated phaseout rule with the net effect of reducing the regulatory burden for regulated entities. Because this amendment to the rule is estimated to result in the expenditure of less than $100 million in any one year by state, local, and tribal governments, or the private sector, the Agency has neither prepared a budgetary impact statement nor addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

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, Stratospheric ozone layer.

Dated: April 19, 1995.

Carol 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, 7671–7671q.

2. Subpart A is revised to read as follows:

Subpart A—Production and Consumption Controls

Subpart A—Production and Consumption Controls

§ 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 603, 604, 605, 606, 607 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 a controlled product.

§ 82.2 Effective date.

(a) The regulations under this subpart take effect May 10, 1995. Amendments to the requirements specifically addressing 1995 apply to the entire control period.

(b) The regulations under this subpart that were effective prior to May 10, 1995, continue to apply for purposes of enforcing the provisions that were applicable prior to January 1, 1995.

§ 82.3 Definitions.

As used in this subpart, the term:

Administrator means the Administrator of the Environmental Protection Agency or his authorized representative.

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

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

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

Calculated level means the weighted amount of a controlled substance

determined by multiplying the amount (in kilograms) of the controlled substance by that substance's ozone depletion potential (ODP) weight listed in appendix A or appendix B to this subpart.

Class I refers to the controlled substances listed in appendix A to this subpart.

Class II refers to the controlled substances listed in appendix B to this subpart.

Completely destroy means to cause the expiration of a controlled substance at a destruction efficiency of 98 percent or greater, using one of the destruction technologies approved by the Parties.

Complying with the Protocol, when referring to a foreign state not Party to the 1987 Montreal Protocol, the London Amendments, or the Copenhagen Amendments, means that the non-Party has been determined as complying with the Protocol, as indicated in appendix C to this subpart, by a meeting of the Parties as noted in the records of the directorate of the United Nations Secretariat.

Consumption means the production plus imports minus exports of a controlled substance (other than transhipments, or used controlled substances).

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

Control period means the period from January 1, 1992 through December 31, 1992, and each twelve-month period from January 1 through December 31, thereafter.

Controlled product means a product that contains a controlled substance listed as a Class I, Group I or II substance in appendix A to this subpart. Controlled products include, but are not limited to, those products listed in appendix D to this subpart.

Controlled products belong to one or more of the following six categories of products:

(1) Automobile and truck air conditioning units (whether incorporated in vehicles or not);

(2) Domestic and commercial refrigeration and air-conditioning/heat pump equipment (whether containing controlled substances as a refrigerant and/or in insulating material of the product), e.g. Refrigerators, Freezers, Dehumidifiers, Water coolers, Ice machines, Air-conditioning and heat pump units;

(3) Aerosol products, except medical aerosols;

(4) Portable fire extinguishers;

(5) Insulation boards, panels and pipe covers;

(6) Pre-polymers.

Controlled substance means any substance listed in appendix A or appendix B to this subpart, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Thus, any amount of a listed substance in appendix A or appendix B to this subpart that is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a ''controlled substance.'' The inadvertent or coincidental creation of insignificant quantities of a listed substance in appendix A or appendix B to this subpart; during a chemical manufacturing process, resulting from unreacted feedstock, from the listed substance's use as a process agent present as a trace quantity in the chemical substance being manufactured, or as an unintended byproduct of research and development applications, is not deemed a controlled substance. Controlled substances are divided into two classes, Class I in appendix A to this subpart, and Class II listed in appendix B to this subpart. Class I substances are further divided into seven groups, Group I, Group II, Group III, Group IV, Group V, Group VI, and Group VII, as set forth in appendix A to this subpart.

Copenhagen Amendments means the Montreal Protocol on Substances That Deplete the Ozone Layer, as amended at the Fourth Meeting of the Parties to the Montreal Protocol in Copenhagen in 1992.

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; or

(5) Cement kiln.

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

Essential-Uses means those uses of controlled substances designated by the Parties to the Protocol to be necessary for the health and safety of, or critical for the functioning of, society; and for which there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health. Beginning January 1, 2000 (January 1, 2002 for methyl chloroform) the essential use designations for class I substances must be made in accordance with the provisions of the Clean Air Act Amendments of 1990.

Essential-Use Allowances means the privileges granted by § 82.4(r) to produce class I substances, effective January 1, 1996 until January 1, 2000, as determined by allocation decisions made by the Parties to the Montreal Protocol and in accordance with the restrictions delineated in the Clean Air Act Amendments of 1990.

Export means the transport of virgin or used controlled substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use.

Exporter means the person who contracts to sell controlled substances for export or transfers controlled substances to his affiliate in another country.

Facility means any process equipment (e.g., reactor, distillation column) used to convert raw materials or feedstock chemicals into controlled substances or consume controlled substances in the production of other chemicals.

Foreign state means an entity which is recognized as a sovereign nation or country other than the United States of America.[1]

Foreign state not Party to or *Non-Party* means a foreign state that has not deposited instruments of ratification, acceptance, or other form of approval with the Directorate of the United Nations Secretariat, evidencing the foreign state's ratification of the provisions of the 1987 Montreal Protocol, the London Amendments, or of the Copenhagen Amendments, as specified.

Heel means the amount of a controlled substance that remains in a container after it is discharged or off-loaded (that is no more than ten percent of the volume of the container) and that the person owning or operating the container certifies the residual amount

[1] Taiwan is not considered a foreign state.

will remain in the container and be included in a future shipment, or be recovered for transformation, destruction or a non-emissive purpose.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with the following exemptions:

(1) Off-loading used or excess controlled substances or controlled products from a ship during servicing,

(2) Bringing controlled substances into the U.S. from Mexico where the controlled substance had been admitted into Mexico in bond and was of U.S. origin, and

(3) Bringing a controlled product into the U.S. when transported in a consignment of personal or household effects or in a similar non-commercial situation normally exempted from U.S. Customs attention.

Importer means any person who imports a controlled substance or a controlled product into the United States. ''Importer'' includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes, as appropriate:

(1) The consignee;

(2) The importer of record;

(3) The actual owner; or

(4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

London Amendments means the Montreal Protocol, as amended at the Second Meeting of the Parties to the Montreal Protocol in London in 1990.

Montreal Protocol means the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by the Parties thereto and amendments that have entered into force.

1987 Montreal Protocol means the Montreal Protocol, as originally adopted by the Parties in 1987.

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

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

Person means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

Plant means one or more facilities at the same location owned by or under common control of the same person.

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

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

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

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

(4) Amounts that are spilled or vented unintentionally.

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

Transform means to use and entirely consume (except for trace quantities) a controlled substance in the manufacture of other chemicals for commercial purposes.

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

Transhipment means the continuous shipment of a controlled substance from a foreign state of origin through the United States, its territories, to a second foreign state of final destination, as long as the shipment does not enter into United States jurisdiction.

Unexpended Article 5 allowances means Article 5 allowances that have not been used. At any time in any control period a person's unexpended Article 5 allowances are the total of the level of Article 5 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 produced in that control period until that time.

Unexpended consumption allowances means consumption allowances that have not been used. At any time in any control period a person's unexpended consumption allowances are the total of the level of consumption 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 produced or imported (not including transhipments and used controlled substances) in that control period until that time.

Unexpended destruction and transformation credits means destruction and transformation credits that have not been used. At any time in any control period a person's unexpended destruction and transformation credits are the total of the level of destruction and transformation credits 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 produced or imported (not including transhipments and used controlled substances) in that control period until that time.

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 produced or imported (not including transhipments and used controlled substances) in that control period until that time.

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

Used controlled substances means controlled substances that have been recovered from their intended use systems (may include controlled substances that have been, or may be subsequently, recycled or reclaimed).

§ 82.4 Prohibitions.

(a) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2001, for class I, Group VI controlled substances, no person may produce, at any time in any control period, (except that are

transformed or destroyed domestically or by a person of another Party) in excess of the amount of unexpended production allowances or unexpended Article 5 allowances for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production constitutes a separate violation of this subpart.

(b) 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 produce, at any time in any control period, (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of conferred unexpended essential-use allowances or exemptions under this section, the amount of unexpended Article 5 allowances as allocated under § 82.9, or the amount of conferred unexpended destruction and transformation credits as obtained under § 82.9 for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production constitutes a separate violation of this subpart.

(c) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2001, for class I, Group VI controlled substances, no person may produce or (except for transhipments, heels, or used controlled substances) import, at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended consumption allowances held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production or importation (other than transhipments, heels or used controlled substances) constitutes a separate violation of this subpart.

(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, heels, or used controlled substances), 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 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, heels or used controlled substances) constitutes a separate violation of this subpart.

(e) Effective January 1, 1996, no person may place an order for the production or importation of the class I controlled substance, at any time in any control period, in excess of the amount of unexpended essential-use allowances, or unexpended destruction and transformation credits, held by that person under the authority of this subpart at that time for that control period. No person may place an order for the production or importation of a class I controlled substance with essential-use allowances or destruction and transformation credits, at any time in any control period, other than for the class I controlled substance(s) for which they received essential-use allowances as under paragraph (r) of this section, or for which they were nominated for that control period by the U.S. Government to the Protocol for an essential-use exemption. Every kilogram of excess production or importation ordered constitutes a separate violation of this subpart.

(f) Effective January 1, 1996, the U.S. total production and importation of a class I controlled substance (except Group VI) as allocated under this section for essential-use allowances and exemptions, and as obtained under § 82.9 for destruction and transformation credits, may not, at any time, in any control period until January 1, 2000, exceed the percent limitation of baseline production in Appendix H of this subpart, as set forth in the Clean Air Act Amendments of 1990. No person shall cause or contribute to the U.S. exceedance of the national limit for that control period.

(g) In addition to total production permitted under paragraph (f) of this section, effective January 1, 1996, for class I, Group I, Group III, Group IV and Group V controlled substances, and effective January 1, 1995, for class I, Group II, a person may, at any time, in any control period until January 1, 2000, produce 10 percent of baseline production as apportioned under § 82.5 for export to Article 5 countries. No person may, at any time, in any control period until January 1, 2000, produce class I, Group I, Group II, Group III, Group IV, and Group V controlled substances for export to Article 5 countries in excess of the Article 5 allowances allocated under § 82.9(a). No person may sell in the U.S. any class I controlled substance produced explicitly for export to an Article 5 country.

(h) Effective January 1, 1995, no person may import, at any time in any control period, a heel of any class I controlled substance that is greater than 10 percent of the volume of the container in excess of the amount of unexpended consumption allowances, or unexpended destruction and transformation credits held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess importation constitutes a separate violation of this subpart.

(i) Effective January 1, 1995, no person may import, at any time in any control period, a used class I controlled substance, without complying with the petition procedures as under § 82.13(g)(2) and (3).

(j) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2001, for class I, Group VI controlled substances, a person may not use production allowances to produce a quantity of a class I controlled substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, prior to January 1, 1996, for all class I controlled substances, and prior to January 1, 2001, for class I, Group VI controlled substances, only consumption allowances are required to import, with the exception of transhipments, heels and used controlled substances. Effective January 1, 1996, for all Groups of class I controlled substances, except Group VI, only essential-use allowances or exemptions are required to import class I controlled substances, with the exception of transhipments, heels and used controlled substances.

(k) Every kilogram of a controlled substance, and every controlled product, imported or exported in contravention of this subpart constitutes a separate violation of this subpart, thus no person may:

(l) Import or export any quantity of a controlled substance listed in Class I, Group I or Group II, in Appendix A to this subpart from or to any foreign state not listed as a Party to the 1987 Montreal Protocol unless that foreign state is complying with the 1987 Montreal Protocol (See Appendix C, Annex 2 of this subpart);

(2) Import or export any quantity of a controlled substance listed in Class I, Group III, Group IV or Group V, in Appendix A to this subpart, from or to any foreign state not Party to the London Amendments (as noted in appendix C, Annex l, to this subpart), unless that foreign state is complying

with the London Amendments (as noted in appendix C, Annex 2, to this subpart); or

(3) Import a controlled product, as noted in appendix D, Annex 1 to this subpart, from any foreign state not Party to the 1987 Montreal Protocol (as noted in appendix C, Annex 1, to this subpart), unless that foreign state is complying with the Protocol (as noted in appendix C, Annex 2, to this subpart).

(l) Effective January 1, 2003, no person may produce HCFC–141b except in a process resulting in its transformation, use in a process resulting in destruction, or for exceptions stated in paragraph (s) of this section.

(m) Effective January 1, 2003, no person may import HCFC–141b except for use in a process resulting in its transformation, use in a process resulting in destruction, or for exceptions stated in paragraph (s) of this section.

(n) Effective January 1, 2010, no person may produce or consume (as defined under § 82.3 HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation, use in a process resulting in their destruction, for use in equipment manufactured prior to January 1, 2010, or for exceptions stated in paragraph (s) of this section in excess of baseline allowances allocated in § 82.5(h) and § 82.6(h).

(o) Effective January 1, 2020, no person may produce or consume (as defined under § 82.3 of this subpart) HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation, use in a process resulting in their destruction or for exceptions stated in paragraph (s) of this section.

(p) Effective January 1, 2015, no person may produce or consume (as under defined under § 82.3) class II substances not previously controlled, for any purpose other than for use in a process resulting in its transformation, use in a process resulting in their destruction, as a refrigerant in equipment manufactured before January 1, 2020, or for exceptions stated in paragraph (s) of this section, in excess of baseline production and consumption levels defined in §§ 82.5(h) and 82.6(h).

(q) Effective January 1, 2030, no person may produce or consume class II substances, for any purpose other than for use in a process resulting in their transformation, use in a process resulting in their destruction, or for exceptions stated in paragraph (s) of this section.

(r) Effective January 1, 1996, essential-use allowances are apportioned to a person for the exempted production or importation of specified class I (except class I, Group VI) controlled substances.

(1) Essential-uses for the production or importation of controlled substances as agreed to by the Parties to the Protocol and subject to the periodic revision of the Parties are:

(i) Metered Dose Inhalers—aerosols.

(ii) Space Shuttle—solvents.

(iii) Laboratory and Analytical Applications (see Appendix G of this subpart).

(2) Persons in the following list are allocated essential-use allowances or exemptions for quantities of a specific class I controlled substance for a specific essential-use (the Administrator reserves the right to revise the allocations based on future decisions of the Parties).

Company	Year	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers—Aerosols			
Members of the International Pharmaceutical & Aerosol Consortium (IPAC) [1].	1996	CFC–11	749.8.
Abbot Laboratories		CFC–12	2353.2.
Armstrong		CFC–114	314.1.
Boehringer Ingelheim	1997	CFC–11	658.3.
Glaxo		CFC–12	2166.5.
3M		CFC–114	311.4.
Rhone Poulenc Rorer			
Schering Corporation			
Miles Inc.	1996	CFC–12	5.1.
		CFC–114	10.2.
	1997	CFC–12	5.2.
		CFC–114	10.5.
Sankofi Winthrop, Inc.	1996	CFC–12	5.0.
		CFC–114	19.4.
	1997	CFC–12	5.3.
		CFC–114	21.2.
(ii) Space Shuttle—Solvent			
NASA/Thiokol	1996	Methyl Chloroform	56.8.
	1997	Methyl Chloroform	56.8.
(iii) Laboratory and Analytical Applications			
Global Exemption	1996	Class I (except Group IV)	No quantity specified.
	1997	.....do	Do.

[1] IPAC consolidated requests for an essential use exemption to be nominated to the Protocol as an agent of its member companies for administrative convenience. By means of a confidential letter to each of the companies listed above, EPA will allocate essential-use allowances separately to each company in the amount requested by it for the nomination.

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

(1) Medical Devices [Reserved]

(2) Exports to developing countries [Reserved]

§ 82.5 Apportionment of baseline production allowances.

Persons who produced controlled substances in Group I or Group II in 1986 are apportioned baseline production allowances as set forth in paragraphs (a) and (b) of this section. Persons who produced controlled substances in Group III, IV, or V in 1989 are apportioned baseline production allowances as set forth in paragraphs (c), (d), and (e) of this section. Persons who produced controlled substances in Group VI and VII in 1991 are apportioned baseline allowances as set forth in paragraphs (f) and (g) of this section.

Controlled substance	*Person*	*Allowances (kg)*
(a) For Group I controlled substances:		
CFC–11	Allied-Signal, Inc	23,082,358
	E.I. DuPont de Nemours & Co	33,830,000
	Elf Atochem, N.A	21,821,500
CFC–12	Laroche Chemicals	12,856,364
	Allied-Signal, Inc	35,699,776
	E.I. DuPont de Nemours & Co	64,849,000
	Elf Atochem, N.A	31,089,807
CFC–113	Laroche Chemicals	15,330,909
	Allied-Signal, Inc	21,788,896
CFC–114	E.I. DuPont de Nemours & Co	58,553,000
	Allied-Signal, Inc	1,488,569
CFC–115	E.I. DuPont de Nemours & Co	4,194,000
	E.I. DuPont de Nemours & Co	4,176,000
(b) For Group II controlled substances:		
Halon-1211	Great Lakes Chemical Corp	826,487
	ICI Americas, Inc	2,135,484
Halon-1301	E.I. DuPont de Nemours & Co	3,220,000
	Great Lakes Chemical Corp	1,766,850
Halon-2402		
(c) For Group III controlled substances:		
CFC–13	Allied-Signal, Inc	127,125
	E.I. DuPont de Nemours & Co	187,831
	Elf Atochem, N.A	3,992
	Great Lakes Chemical Corp	56,381
	Laroche Chemicals	29,025
CFC–111		
CFC–112		
CFC–211	E.I. DuPont de Nemours & Co	11
CFC–212	E.I. DuPont de Nemours & Co	11
CFC–213	E.I. DuPont de Nemours & Co	11
CFC–214	E.I. DuPont de Nemours & Co	11
CFC–215	E.I. DuPont de Nemours & Co	511
	Halocarbon Products Corp	1,270
CFC–216	E.I. DuPont de Nemours & Co	170,574
CFC–217	E.I. DuPont de Nemours & Co	511
(d) For Group IV controlled substances:		
CCl_4	Akzo Chemicals, Inc	7,873,615
	Degussa Corporation	26,546
	Dow Chemical Company, USA	18,987,747
	E.I. DuPont de Nemours & Co	9,099
	Hanlin Chemicals-WV, Inc	219,616
	ICI Americas, Inc	853,714
	Occidental Chemical Corp	1,059,358
	Vulcan Chemicals	21,931,987
(e) For Group V controlled substances:		
Methyl Chloroform	Dow Chemical Company, USA	168,030,117
	E.I. DuPont de Nemours & Co	2
	PPG Industries, Inc	57,450,719
	Vulcan Chemicals	89,689,064
(f) For Group VI controlled substances:		
Methyl Bromide	Great Lakes Chemical Corporation	19,945,788
	Ethyl Corporation	8,233,894
(g) For Group VII controlled substances:		
HBFC 22B1–1	Great Lakes Chemical Corporation	46,211
(h) For class II controlled substances: [Reserved]		

§ 82.6 Apportionment of baseline consumption allowances.

Persons who produced, imported, or produced and imported controlled substances in Group I or Group II in 1986 are apportioned chemical-specific baseline consumption allowances as set forth in paragraphs (a) and (b) of this section. Persons who produced, imported, or produced and imported controlled substances in Group III, Group IV, or Group V in 1989 are apportioned chemical-specific baseline consumption allowances as set forth in paragraphs (c), (d) and (e) of this section. Persons who produced, imported, or produced and imported controlled substances in Group VI or VII in 1991 are apportioned chemical specific baseline consumption allowances as set forth in paragraphs (f) and (g) of this section.

Controlled substance	*Person*	*Allowances (kg)*
(a) For Group I controlled substances:		
CFC–11	Allied-Signal, Inc	22,683,833
	E.I. DuPont de Nemours & Co	32,054,283
	Elf Atochem, N.A	21,740,194
	Hoechst Celanese Corporation	185,396
	ICI Americas, Inc	1,673,436
	Kali-Chemie Corporation	82,500
	Laroche Chemicals	12,695,726
	National Refrigerants, Inc	693,707
	Refricentro, Inc	160,697
	Sumitomo Corporation of America	5,800
CFC–12	Allied-Signal, Inc	35,236,397
	E.I. DuPont de Nemours & Co	61,098,726
	Elf Atochem, N.A	32,403,869
	Hoechst Celanese Corporation	138,865
	ICI Americas, Inc	1,264,980
	Kali-Chemie Corporation	355,440
	Laroche Chemicals	15,281,553
	National Refrigerants, Inc	2,375,384
	Refricentro, Inc	242,526
CFC–113	Allied-Signal, Inc	18,241,928
	E.I. DuPont de Nemours & Co	49,602,858
	Elf Atochem, N.A	244,908
	Holchem	265,199
	ICI Americas, Inc	2,399,700
	Refricentro, Inc	37,385
	Sumitomo Corp. of America	280,163
CFC–114	Allied-Signal, Inc	1,429,582
	E.I. DuPont de Nemours & Co	3,686,103
	Elf Atochem, N.A	22,880
	ICI Americas, Inc	32,930
CFC–115	E.I. DuPont de Nemours & Co	2,764,109
	Elf Atochem, N.A	633,007
	Hoechst Celanese Corporation	8,893
	ICI Americas, Inc	2,366,351
	Laroche Chemicals	135,520
	Refricentro, Inc	27,337
(b) For Group II controlled substances:		
Halon-1211	Elf Atochem, N.A	411,292
	Great Lakes Chemical Corp	772,775
	ICI Americas, Inc	2,116,641
	Kali-Chemie Corporation	330,000
Halon-1301	E.I. DuPont de Nemours & Co	2,772,917
	Elf Atochem, N.A	89,255
	Great Lakes Chemical Corp	1,744,132
	Kali-Chemie Corporation	54,380
Halon-2402	Ausimont	34,400
	Great Lakes Chemical Corp	15,900
(c) For Group III controlled substances:		
CFC–13	Allied-Signal, Inc	127,124
	E.I. DuPont de Nemours & Co	158,508
	Elf Atochem, N.A	3,992
	Great Lakes Chemical Corp	56,239
	ICI Americas, Inc	5,855
	Laroche Chemicals	29,025

Controlled substance	*Person*	*Allowances (kg)*
	National Refrigerants, Inc	16,665
CFC–111		
CFC–112	Sumitomo Corp of America	5,912
	TG (USA) Corporation	9,253
CFC–211	E.I. DuPont de Nemours & Co	11
CFC–212	E.I. DuPont de Nemours & Co	11
CFC–213	E.I. DuPont de Nemours & Co	11
CFC–214	E.I. DuPont de Nemours & Co	11
CFC–215	E.I. DuPont de Nemours & Co	511
	Halocarbon Products Corp	1,270
CFC–216	E.I. DuPont de Nemours & Co	170,574
CFC–217	E.I. DuPont de Nemours & Co	511
(d) For Group IV controlled substances:		
CCl_4	Crescent Chemical Co	56
	Degussa Corporation	12,466
	Dow Chemical Company, USA	8,170,561
	E.I. DuPont de Nemours & Co	26,537
	Elf Atochem, N.A	41
	Hanlin Chemicals-WV, Inc	103,133
	Hoechst Celanese Corporation	3
	ICC Chemical Corp	1,173,723
	ICI Americas, Inc	855,466
	Occidental Chemical Corp	497,478
	Sumitomo Corporation of America	9
(e) For Group V controlled substances:		
Methyl Chloroform	3V Chemical Corp	3,528
	Actex, Inc	50,171
	Atochem North America	74,355
	Dow Chemical Company, USA	125,200,200
	E.I. DuPont de Nemours & Co	2
	IBM	2,026
	ICI Americas, Inc	14,179,850
	Laidlaw	420,207
	PPG Industries	45,254,115
	Sumitomo	1,954
	TG (USA) Corporation	7,073
	Unitor Ships Service, Inc	14,746
	Vulcan Chemicals	70,765,072
(f) For Group VI controlled substances:		
Methyl Bromide	Great Lakes Chemical Corporation	15,514,746
	Ethyl Corporation	6,379,906
	AmeriBrom, Inc	3,524,393
	TriCal, Inc	109,225
(g) For Group VII controlled substances:		
HBFC 22B1–1	Great Lakes Chemical Corporation	40,110
(h) For class II controlled substances: [Reserved]		

§ 82.7 Grant and phased reduction of baseline production and consumption allowances for class I controlled substances.

For each control period specified in the following table, each person is granted the specified percentage of the baseline production and consumption allowances apportioned to him under §§ 82.5 and 82.6.

[In percent]

Control period	Class I substances in groups I and III	Class I substances in group II	Class I substances in group IV	Class I substances in group V	Class I substances in group VI	Class I substances in group VII
1994	25	0	50	50	100	100
1995	25	0	15	30	100	100
1996	0	0	0	0	100	0
1997	0	0	0	0	100	0
1998	0	0	0	0	100	0
1999	0	0	0	0	100	0

[In percent]—Continued

Control period	Class I substances in groups I and III	Class I substances in group II	Class I substances in group IV	Class I substances in group V	Class I substances in group VI	Class I substances in group VII
2000	0	0	0	0	100	0
2001	0	0	0	0	0	0

§ 82.8 Grant and phased reduction of baseline production and consumption allowances for class II controlled substances. [Reserved]

§ 82.9 Availability of production 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) is also granted Article 5 allowances equal to:

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

(2) 10 percent of their baseline production allowance listed for class I, Group I, Group III, Group IV, and Group V controlled substances listed under § 82.5 for each control period ending before January 1, 1996;

(3) 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 for each control period beginning January 1, 1996 until January 1, 2006.

(b) Effective January 1, 1995, a person allocated Article 5 allowances may produce class I controlled substances for export to Article 5 countries as under § 82.11 and transfer Article 5 allowances as under § 82.12.

(c) Until January 1, 1996, a company may also increase or decrease its production allowances by trading with another Party to the Protocol according to the provision under this paragraph (c) of this section. 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 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 allowances 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 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 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 held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production 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 held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production 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 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 will be effective on the date that the notice is issued.

(d) Effective January 1, 1996, there will be no trade in production or consumption allowances with other Parties to the Protocol for class I controlled substances, except for class I, Group VI, methyl bromide.

(e) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, a person may obtain production allowances for that controlled substance equal to the amount of that controlled substance produced in the United States that was transformed or destroyed within the United States, or transformed or destroyed by a person of another Party, in the cases where production allowances were expended to produce such substance in the U.S. in accordance with the provisions of this paragraph. A request for production allowances under this section will be considered a request for consumption allowances under § 82.10(b).

(1) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, a person must submit a request for production allowances that includes the following:

(i) The name, address, and telephone number of the person requesting the allowances, and the Employer Identification Number if the controlled substance is being exported;

(ii) The name, quantity, and level of controlled substance transformed or the name, quantity and volume destroyed, and the commodity code if the substance was exported;

(iii) A copy of the invoice or receipt documenting the sale of the controlled substance, including the name, address, contact person and telephone number of the transformer or destroyer;

(iv) A certification that production allowances were expended for the production of the controlled substance, and the date of purchase, if applicable;

(v) If the controlled substance is transformed, the name, quantity, and verification of the commercial use of the resulting chemical and a copy of the IRS certificate of intent to use the controlled substance as a feedstock; and,

(vi) If the controlled substance is destroyed, the verification of the destruction efficiency.

(2) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, the Administrator will review the information and documentation submitted under paragraph (e)(1) of this section and will assess the quantity of class I controlled substance that the documentation and information verifies was transformed or destroyed. The Administrator will issue the person production allowances equivalent to the controlled substances that the Administrator determines were transformed or destroyed. For controlled substances completely destroyed under this rule, the Agency will grant allowances equal to 100 percent of volume intended for destruction. For those controlled substances destroyed at less than a 98 percent destruction efficiency, the Agency will grant allowances commensurate with that percentage of destruction efficiency that is actually achieved. The grant of allowances will be effective on the date that the notice is issued.

(3) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, if the Administrator determines that the request for production allowances does not satisfactorily substantiate that the person transformed or destroyed controlled substances as claimed, or that modified allowances were not expended, the Administrator will issue a notice disallowing the request for additional production allowances. Within ten working days after receipt of notification, the person may file a notice 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 notification, the disallowance will be final on that day.

(f) Effective January 1, 1996, and until January 1, 2000, a person who was nominated by the United States to the Secretariat of the Montreal Protocol for an essential use exemption may obtain destruction and transformation credits for a class I controlled substance (except class I, Group VI) equal to the amount of that controlled substance produced in the United States that was destroyed or transformed within the United States in cases where the controlled substance was produced for other than destruction or transformation in accordance with the provisions of this subpart, subtracting an offset of 15 percent.

(1) Effective January 1, 1996, and until January 1, 2000, a person must submit a request for destruction and transformation credits that includes the following:

(i) The identity and address of the person and the essential-use exemption and years for which the person was nominated to the Secretariat of the Montreal Protocol;

(ii) The name, quantity and volume of controlled substance destroyed or transformed;

(iii) A copy of the invoice or receipt documenting the sale or transfer of the controlled substance to the person;

(iv) A certification of the previous use of the controlled substance;

(v) For destruction credits, a certification that the controlled substance was destroyed and a certification of the efficiency of the destruction process; and

(vi) For transformation credits, an IRS certificate of feedstock use or transformation of the controlled substance.

(2) Effective January 1, 1996, and until January 1, 2000, the Administrator will issue the person destruction and transformation credits equivalent to the class I controlled substance (except class I, Group VI) recovered from a use system in the United States, that the Administrator determines were destroyed or transformed, subtracting the offset of 15 percent. For controlled substances completely destroyed under

this rule, the Agency will grant destruction credits equal to 100 percent of volume destroyed minus the offset. For those controlled substances destroyed at less than a 98 percent destruction efficiency, the Agency will grant destruction credits commensurate with that percentage of destruction efficiency that is actually achieved minus the offset. The grant of credits will be effective on the date that the notice is issued.

(3) Effective January 1, 1996, and until January 1, 2000, if the Administrator determines that the request for destruction and transformation credits does not satisfactorily substantiate that the person was nominated for an essential-use exemption by the United States to the Secretariat for the Montreal Protocol for the control period, or that the person destroyed or transformed a class I controlled substance as claimed, or that the controlled substance was not recovered from a U.S. use system the Administrator will issue a notice disallowing the request for additional destruction and transformation credits. Within ten working days after receipt of notification, the person may file a notice 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 notification, the disallowance will be final on that day.

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances.

(a) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001 for class I, Group VI, any person may obtain, in accordance with the provisions of this subsection, consumption allowances equivalent to the level of class I controlled substances (other than used controlled substances or transhipments) that the person has exported from the United States and its territories to a Party (as listed in appendix C to this subpart).

(1) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001 for class I, Group VI, to receive consumption allowances in addition to baseline consumption allowances, the exporter of the class I controlled substances must submit to the Administrator a request for consumption allowances setting forth the following:

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

(ii) The exporter's Employer Identification Number;

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

(iv) The quantity and type of controlled substances exported;

(v) The source of the controlled substance and the date purchased;

(vi) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

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

(viii) A copy of the bill of lading and the invoice indicating the net quantity of controlled substances shipped and documenting the sale of the controlled substances to the purchaser.

(ix) The commodity code of the controlled substance exported; and

(x) Written statement from the producer that the controlled substance was produced with expended allowances.

(2) The Administrator will review the information and documentation submitted under paragraph (a)(1) of this section and will assess the quantity of controlled substances that the documentation verifies was exported. The Administrator will issue the exporter consumption allowances equivalent to the level of controlled substances that the Administrator determined were exported. The grant of the consumption allowances will be effective on the date the notice is issued. If the Administrator determines that the information and documentation does not satisfactorily substantiate that the person exported controlled substances as claimed the Administrator will issue a notice that the consumption allowances are not granted.

(b) Until January 1, 1996, a person may obtain consumption allowances for a class I controlled substance (and until January 1, 2001 for class I, Group VI) equal to the amount of a controlled substance either produced in, or imported into, the United States that was transformed or destroyed in the case where consumption allowances were expended to produce or import such substance in accordance with the provisions of this paragraph. However, a person producing or importing a controlled substance (except class I, Group VI) that was transformed or destroyed must submit to the Administrator the information described under § 82.13 (f)(3)(i) and (ii).

(c) A company may also increase its consumption allowances by receiving production from another Party to the Protocol for class I, Group I through Group V and Group VII controlled substances until January 1, 1996, and for class I, Group VI controlled substances until January 1, 2001. A nation listed in appendix C to this subpart (Parties to the Montreal Protocol) must agree to transfer to the person for the current control period some amount of production that the nation is permitted under the Montreal Protocol. If the controlled substance is to be returned to the Party from whom allowances are received, the request for consumption allowances shall also be considered a request for production allowances under § 82.9(c). 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 allowances 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:

(1) The identity and address of the person;

(2) The identity of the Party;

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

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

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

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

(d) On the first day of each control period, until January 1, 1996, the Agency will grant consumption allowances to any person that produced and exported a Group IV controlled substance in the baseline year and that was not granted baseline consumption allowances under § 82.5.

(1) The number of consumption allowances any such person will be granted for each control period will be equal to the number of production allowances granted to that person under § 82.7 for that control period.

(2) Any person granted allowances under this paragraph must hold the same number of unexpended consumption allowances for the control

period for which the allowances were granted by February 15 of the following control period. Every kilogram by which the person's unexpended consumption allowances fall short of the amount the person was granted under this paragraph constitutes a separate violation.

§ 82.11 Exports to Article 5 Parties.

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

(1) A person must submit a notice to the Administrator of exports to Article 5 countries (except exports resulting in transformation or destruction, or used controlled substances) at the end of the quarter that includes the following:

(i) The identities and addresses of the exporter and the Article 5 country recipient of the exports;

(ii) The exporter's Employee Identification Number;

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

(iv) The quantity and the type of controlled substances exported, its source and date purchased;

(v) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(vi) The Article 5 country to which the controlled substances were exported;

(vii) A copy of the bill of lading and invoice indicating the net quantity shipped and documenting the sale of the controlled substances to the Article 5 purchaser;

(viii) The commodity code of the controlled substance exported; and

(ix) A copy of the invoice or sales agreement covering the sale of the controlled substances to the recipient Article 5 country that contains provisions forbidding the reexport of the controlled substance in bulk form and subjecting the recipient or any transferee of the recipient to liquidated damages equal to the resale price of the controlled substances if they are reexported in bulk form.

(2) [Reserved]

(b) [Reserved]

§ 82.12 Transfers.

(a) Inter-company transfers.

(1) Until January 1, 1996, for all class I controlled substances, except for Group VI, and until January 1, 2001, for Group VI, any person (''transferor'') may transfer to any other person (''transferee'') any amount of the transferor's consumption allowances or production allowances, and effective January 1, 1995, for all class I controlled substances any person (''transferor'') may transfer to any other person (''transferee'') any amount of the transferor's Article 5 allowances, as follows:

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

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

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

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

(D) The group of controlled substances to which the allowances being transferred pertains;

(E) The amount of allowances being transferred;

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

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

(H) The amount of the one percent offset applied to the unweighted amount traded that will be deducted from the transferor's allowance balance (except for trades from transformers and destroyers to producers or importers for the purpose of allowance reimbursement).

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

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

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

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

(2) Effective January 1, 1996, any person (''transferor'') may transfer to an eligible person (''transferee'') as defined in § 82.9 any amount of the transferor's destruction and transformation credits. The transfer proceeds as follows:

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

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

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

(C) The type of credits being transferred, including the names of the

controlled substances for which credits are to be transferred;

(D) The group of controlled substances to which the credits being transferred pertains;

(E) The amount of destruction and transformation credits being transferred;

(F) The control period(s) for which the destruction and transformation credits are being transferred;

(G) The amount of unexpended destruction and transformation credits for the control period being transferred that the transferor holds under authority of this subpart as of the date the claim is submitted to EPA; and

(H) The amount of the one-percent offset applied to the unweighted amount traded that will be deducted from the transferor's balance.

(ii) The Administrator will determine whether the records maintained by EPA, taking into account any previous transfers and any production of controlled substances reported by the transferor, indicate that the transferor possesses, as of the date the transfer claim is processed, unexpended destruction and transformation credits sufficient to cover the transfer claim (i.e., the amount to be transferred plus one percent of that amount). Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(A) If EPA's records show that the transferor has sufficient unexpended destruction and transformation credits to cover the transfer claim, the Administrator will issue a notice indicating that EPA does not object to the transfer and will reduce the transferor's balance of unexpended or credits by the amount to be transferred plus one percent of that amount. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended credits to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

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

(iii) In the event that the Administrator does not respond to a transfer claim within the three working days specified in paragraph (a)(2)(ii) of this section, the transferor and transferee may proceed with the transfer. EPA will reduce the transferor's balance of unexpended destruction and transformation credits by the amount to be transferred plus one percent of that amount. However, if EPA ultimately finds that the transferor did not have sufficient unexpended credits to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(b) Inter-pollutant conversions.

(1) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001 for Group VI, any person (''convertor'') may convert consumption allowances or production allowances for one class I controlled substance to the same type of allowance for another class I controlled substance within the same Group as the first as listed in appendix A of this subpart, following the procedures described in paragraph (b)(4) of this section.

(2) Effective January 1, 1995, any person (''convertor'') may convert Article 5 allowances for one class I controlled substance to the same type of allowance for another class I controlled substance within the same Group of controlled substances as the first as listed in appendix A of this subpart, following the procedures described in paragraph (b)(4) of this section.

(3) Effective January 1, 1996, any person (''convertor'') may convert destruction and/or transformation credits for one class I controlled substance to the same type of credits for another class I controlled substance within the same Group of controlled substances as the first as listed in appendix A of this subpart, following the procedures in paragraph (b)(4) of this section.

(4) The convertor must submit to the Administrator a conversion claim.

(i) The conversion claim would include the following:

(A) The identity and address of the convertor;

(B) The name and telephone number of a contact person for the convertor;

(C) The type of allowances or credits being converted, including the names of the controlled substances for which allowances or credits are to be converted;

(D) The group of controlled substances to which the allowances or credits being converted pertains;

(E) The amount and type of allowances or credits to be converted;

(F) The amount of allowances or credits to be subtracted from the convertor's unexpended allowances or credits for the first controlled substance, to be equal to 101 percent of the amount of allowances or credits converted;

(G) The amount of allowances or credits to be added to the convertor's unexpended allowances or credits for the second controlled substance, to be equal to the amount of allowances or credits for the first controlled substance being converted multiplied by the quotient of the ozone depletion factor of the first controlled substance divided by the ozone depletion factor of the second controlled substance, as listed in Appendix A to this subpart;

(H) The control period(s) for which the allowances or credits are being converted; and

(I) The amount of unexpended allowances or credits of the type and for the control period being converted that the convertor holds under authority of this subpart as of the date the claim is submitted to EPA.

(ii) The Administrator will determine whether the records maintained by EPA, taking into account any previous conversions, any transfers, any credits, and any production, imports (not including transhipments or used controlled substances), or exports (not including transhipments or used controlled substances) of controlled substances reported by the convertor, indicate that the convertor possesses, as of the date the conversion claim is processed, unexpended allowances or credits sufficient to cover the conversion claim (i.e., the amount to be converted plus one percent of that amount). Within three working days of receiving a complete conversion claim, the Administrator will take action to notify the convertor as follows:

(A) If EPA's records show that the convertor has sufficient unexpended allowances or credits to cover the conversion claim, the Administrator will issue a notice indicating that EPA does not object to the conversion and will reduce the convertor's balance of unexpended allowances or credits by the amount to be converted plus one percent of that amount. When EPA issues a no objection notice, the convertor may proceed with the conversion. However, if EPA ultimately finds that the convertor did not have sufficient unexpended allowances or

credits to cover the claim, the convertor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper conversion.

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

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

(5) Effective January 1, 1995, and for every control period thereafter, inter-pollutant trades will be permitted during the 45 days after the end of a control period.

(c) Inter-company transfers and Inter-pollutant conversions.

(1) Until January 1, 1996, for production and consumption allowances; effective January 1, 1995, for Article 5 allowances; and effective January 1, 1996, for destruction and/or transformation credits; if a person requests an inter-company transfer and an inter-pollutant conversion simultaneously, the amount subtracted from the convertor-transferor's unexpended allowances or unexpended credits for the first controlled substance will be equal to 101 percent of the amount of allowances or credits that are being converted and transferred.

(2) [Reserved]

§ 82.13 Recordkeeping and reporting requirements.

(a) Unless otherwise specified, the recordkeeping and reporting requirements set forth in this section take effect on January 1, 1995.

(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 and records required by this section, and to certify the accuracy of the information in the reports and records required by this section, will be considered a violation of this subpart.

(c) Unless otherwise specified, reports required by this section must be mailed to the Administrator within 45 days of the end of the applicable reporting period.

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

(e) In reports required by this section, quantities of controlled substances must be stated in terms of kilograms.

(f) Every person (''producer'') who produces class I controlled substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) Within 120 days of May 10, 1995, or within 120 days of the date that a producer first produces a class I controlled substance, whichever is later, every producer who has not already done so must submit to the Administrator a report describing:

(i) The method by which the producer in practice measures daily quantities of controlled substances produced;

(ii) Conversion factors by which the daily records as currently maintained can be converted into kilograms of controlled substances produced, including any constants or assumptions used in making those calculations (e.g., tank specifications, ambient temperature or pressure, density of the controlled substance);

(iii) Internal accounting procedures for determining plant-wide production;

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

(v) The estimated percent efficiency of the production process for the controlled substance. Within 60 days of any change in the measurement procedures or the information specified in the above report, the producer must submit a report specifying the revised data or procedures to the Administrator.

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

(i) Dated records of the quantity of each controlled substance produced at each facility;

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

(iii) Dated records of the quantity of controlled substances produced for an essential-use and quantity sold for use in an essential-use process;

(iv) Dated records of the quantity of controlled substances produced with expended destruction and/or transformation credits;

(v) Dated records of the quantity of controlled substances produced with Article 5 allowances;

(vi) Copies of invoices or receipts documenting sale of controlled substance for use in processes resulting in their transformation or for use in processes resulting in destruction;

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

(viii) Dated records identifying the quantity of each chemical not a controlled substance produced within each facility also producing one or more controlled substances;

(ix) Dated records of the quantity of raw materials and feedstock chemicals used at each facility for the production of controlled substances;

(x) Dated records of the shipments of each controlled substance produced at each plant;

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

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

(xiii) Internal Revenue Service Certificates in the case of transformation, or the destruction verification in the case of destruction (as in § 82.13(k)), showing that the purchaser or recipient of a controlled substance, in the United States or in another country that is a Party, certifies the intent to either transform or destroy the controlled substance, or sell the controlled substance for transformation or destruction in cases when production

and consumption allowances were not expended;

(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;

(xv) Written certifications that quantities of controlled substances, meeting the purity criteria in Appendix G of this subpart, were purchased by distributors of laboratory supplies or by laboratory customers to be used only for an essential-use laboratory application, and not to be resold or used in manufacturing.

(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.

(3) For each quarter, each producer of a class I controlled substance must provide the Administrator with a report containing the following information:

(i) The production by company in that quarter of each controlled substance, specifying the quantity of any controlled substance used in processing, resulting in its transformation by the producer;

(ii) The amount of production for use in processes resulting in destruction of controlled substances by the producer;

(iii) The levels of production (expended allowances and credits) for each controlled substance;

(iv) The producer's total of expended and unexpended production allowances, consumption allowances, Article 5 allowances, and amount of essential-use allowances and destruction and transformation credits conferred at the end of that quarter;

(v) The quantity of used material received containing controlled substances that are recycled or reclaimed;

(vi) The amount of controlled substance sold or transferred during the quarter to a person other than the producer for use in processes resulting in its transformation or eventual destruction;

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

(viii) For transformation in the United States or by a person of another Party, one copy of an IRS certification of intent to transform the same controlled substance for a particular transformer and a list of additional quantities shipped to that same transformer for the quarter;

(ix) For destruction in the United States or by a person of another Party, one copy of a destruction verification (as under § 82.13(k)) for a particular destroyer, destroying the same controlled substance, and a list of additional quantities shipped to that same destroyer for the quarter;

(x) A list of U.S. purchasers of controlled substances that exported to an Article 5 country in cases when Article 5 allowances were expended during production;

(xi) A list of the essential-use allowance holders, distributors of laboratory supplies and laboratory customers from whom orders were placed and the quantity of specific essential-use controlled substances requested and produced;

(xii) 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; and

(xiii) 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.

(4) For any person who fails to maintain the records required by this paragraph, or to submit the report required by this paragraph, the Administrator may assume that the person has produced at full capacity during the period for which records were not kept, for purposes of determining whether the person has violated the prohibitions at § 82.4.

(g) Importers of class I controlled substances during a control period must comply with record-keeping and reporting requirements specified in this paragraph (g).

(1) Recordkeeping—Importers. Any importer of a class I controlled substance (including used, recycled and reclaimed controlled substances) must maintain the following records:

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

(ii) The quantity of those controlled substances imported that are used (including recycled or reclaimed) and the information provided with the petition as under § 82.13(g)(2);

(iii) The quantity of controlled substances other than transhipments or used, recycled or reclaimed substances imported for use in processes resulting in their transformation or destruction and quantity sold for use in processes that result in their destruction or transformation;

(iv) The date on which the controlled substances were imported;

(v) The port of entry through which the controlled substances passed;

(vi) The country from which the imported controlled substances were imported;

(vii) The commodity code for the controlled substances shipped;

(viii) The importer number for the shipment;

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

(x) The invoice for the import;

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

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

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

(xiv) Copies of IRS certifications that the controlled substance will be transformed or destruction verifications that it will be destroyed (as in § 82.13(k));

(xv) Dated records of the quantity of controlled substances imported for an essential-use or imported with destruction and transformation credits; and

(xvi) Copies of documents conveying the right to import controlled substances for specific essential uses, or 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.

(2) Petitioning—Importers of Used, Recycled or Reclaimed Controlled Substances and Transhipments.

For each individual shipment (not to be aggregated) over 150 pounds of a used, recycled or reclaimed controlled substance as defined in § 82.3, an importer must submit to the Administrator, at least 15 working days before the shipment is to leave the foreign port of export, the following information in a petition:

(i) The name and quantity of the used, recycled or reclaimed controlled substance to be imported (including material that has been recycled or reclaimed);

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

(iii) Name and address of the source(s) of the used, recycled or reclaimed controlled substance, including a description of the previous use(s), when possible;

(iv) Name and address of the exporter and/or foreign owner of the material,

(v) The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the chemical;

(vi) The intended use of the used, recycled or reclaimed controlled substance;

(vii) The name, address and contact person of the U.S. reclamation facility, where applicable;

(viii) A certification that the purchaser of the used, recycled or reclaimed controlled substance being imported is liable for payment of the tax;

(ix) If the imported controlled substance was reclaimed in a foreign Party, the name and address of the foreign reclamation facility, the contact person at the facility, and the phone and fax number;

(x) 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.

(3) The Administrator will review the information submitted under paragraph (g)(2) of this section and assess the completeness and accuracy of the petition for the import of the used, recycled or reclaimed controlled substance. If the Administrator determines that the information is insufficient, or there is reason to disallow the import, the Administrator will issue an objection notice before the shipment is to leave the foreign port of export (the end of the 15 working days). In the event that the Administrator does not respond to the petition within the 15 working days, the importer may proceed with the import. The importer may re-petition the Agency, if the Administrator indicated insufficient information to make a determination.

(3) Reporting Requirements—Importers. For each quarter, every importer of a class I controlled substance (including importers of used, recycled or reclaimed controlled substances) must submit to the Administrator a report containing the following information:

(i) Summaries of the records required in paragraphs (g)(1) (i) through (xvi) of this section for the previous quarter;

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

(iii) The quantity of those controlled substances imported that are used, recycled or reclaimed;

(iv) The levels of import (expended consumption allowances before January 1, 1996) of controlled substances for that quarter and totaled by chemical for the control-period-to-date;

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

(viii) The amount of controlled substances imported for use in processes resulting in their transformation or destruction;

(ix) The amount of controlled substances sold or transferred during the quarter to each person for use in processes resulting in their transformation or eventual destruction;

(x) The amount of controlled substances sold or transferred during the quarter to each person for an essential use;

(xi) The amount of controlled substances imported with destruction and transformation credits;

(xii) Internal Revenue Service Certificates showing that the purchaser or recipient of imported controlled substances intends to transform those substances or destruction verifications (as in § 82.13(k)) showing that purchaser or recipient intends to destroy the controlled substances; and

(xiii) A list of the essential-use allowance holder and/or laboratory from whom orders were placed and the quantity of specific essential-use controlled substances requested and imported.

(h) Reporting Requirements—Exporters. For any exports of class I controlled substances not reported under § 82.10 (additional consumption allowances), or under § 82.13(f)(3) (reporting for producers of controlled substances), the exporter who exported a class I controlled substances must submit to the Administrator the following information within 45 days after the end of the control period in which the unreported exports left the United States:

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

(2) The exporter's Employee Identification Number;

(3) The type and quantity of each controlled substance exported and what percentage, if any, of the controlled substance is used, recycled or reclaimed;

(4) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(5) The country to which the controlled substances were exported;

(6) The amount exported to each Article 5 country;

(7) The commodity code of the controlled substance shipped; and

(8) The sales contract certifying that the controlled substance that was exported to a Party to the Protocol will be transformed or destroyed.

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

(1) Dated records of the quantity and level of each controlled substance transformed or destroyed;

(2) Copies of the invoices or receipts documenting the sale or transfer of the controlled substance to the person;

(3) In the case where those controlled substances are transformed, dated records of the names, commercial use, and quantities of the resulting chemical(s);

(4) In the case where those controlled substances are transformed, dated records of shipments to purchasers of the resulting chemical(s);

(5) Dated records of all shipments of controlled substances received by the person, and the identity of the producer or importer of the controlled substances;

(6) Dated records of inventories of controlled substances at each plant on the first day of each quarter; and

(7) A copy of the person's IRS certification of intent to transform or the purchaser's or recipient's destruction verification of intent to destroy (as under § 82.13(k)), in the case where substances were purchased or transferred for transformation or destruction purposes.

(j) Persons who destroy class I controlled substances shall, following promulgation of this rule, provide EPA with a one-time report stating the destruction unit's destruction efficiency and the methods used to record the volume destroyed and those used to determine destruction efficiency and the name of other relevant federal or state regulations that may apply to the destruction process. Any changes to the unit's destruction efficiency or methods used to record volume destroyed and to determine destruction efficiency must be reflected in a revision to this report

to be submitted to EPA within 60 days of the change.

(k) Persons who purchase or receive and subsequently destroy controlled class I substances that were originally produced without expending allowances shall provide the producer or importer from whom they purchased or received the controlled substances with a verification that controlled substances will be used in processes that result in their destruction.

(1) The destruction verification shall include the following:

(i) Identity and address of the person intending to destroy controlled substances;

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

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

(iv) Signature of the verifying person.

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

(l) Persons who purchase class I controlled substances and who subsequently transform such controlled substances shall provide the producer or importer with the IRS certification that the controlled substances are to be used in processes resulting in their transformation.

(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 § 82.13(k)) to the producer 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.

(n) Every person who produces, imports, or exports class II chemicals must report its quarterly level of production, imports, and exports of these chemicals within 45 days of the end of each quarter (including those substances transformed or destroyed).

(o) Every person who imports or exports used class II controlled substances must report its annual level within 45 days of the end of the control period.

(p) Persons who import or export used controlled substances (including recycled or reclaimed) must label their bill of lading or invoice indicating that the controlled substance is used, recycled or reclaimed.

(q) Persons who import heels of controlled substances must label their bill of lading or invoice indicating that the controlled substance in the container is a heel.

(r) Every person who brings back a container with a heel to the United States, as defined in § 82.3, must report quarterly the amount brought into the United States certifying that the residual amount in each shipment is less than 10 percent of the volume of the container and will either:

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

(2) Be recovered and transformed;

(3) Be recovered and destroyed; or

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

(s) Every person who brings a container with a heel into the United States must report on the final disposition of each shipment within 45 days of the end of the control period.

(t) Every person who transships a controlled substance must maintain records that indicate that the controlled substance shipment originated in a foreign country destined for another foreign country, and does not enter interstate commerce with the United States.

(u) Any person allocated essential-use allowances who submits an order to a producer or importer for a controlled substance must report the quarterly quantity received from each producer or importer. Any distributor of laboratory supplies receiving controlled substances under the global laboratory essential-use exemption for sale to laboratory customers must report quarterly the quantity received of each controlled substance from each producer or importer.

(v) Any distributor of laboratory supplies who purchased controlled substances under the global laboratory essential-use exemption must submit quarterly copies of certifications received in that quarter from laboratory customers, as under § 82.13(w), and the quantity of each controlled substance purchased by each laboratory customer whose certification was previously filed.

(w) A laboratory customer purchasing a controlled substance under the global laboratory essential-use exemption must provide the producer, importer or distributor with a one-time-per-year certification for each controlled substance that the substance will only be used for laboratory applications and not be resold or used in manufacturing. The certification must also include:

(1) The identity and address of the laboratory customer;

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

(3) The name and quantity of each controlled substance purchased, and the estimated percent of the controlled substance that will be used for each listed type of laboratory application.

Appendix A to Subpart A—Class I Controlled Substances

Class 1 controlled substances	ODP
A. Group I:	
$CFCl_3$-Trichlorofluoromethane (CFC–ll)	1.0
CF_2Cl_2-Dichlorofifluoromethane (CFC–12)	1.0
$C_2F_3Cl_3$-Trichlorotrifluoroethane (CFC–113)	0.8
$C_2F_4Cl_2$-Dichlorotetrafluoroethane (CFC–114)	1.0
C_2F_5Cl-Monochloropentafluoroethane (CFC–115)	0.6
All isomers of the above chemicals	
B. Group II:	
CF_2ClBr-Bromochlorodifluoromethane (Halon-1211)	3.0
CF_3Br-Bromotrifluoromethane (Halon-1301)	10.0
$C_2F_4Br_2$-Dibromotetrafluoroethane (Halon-2402)	6.0
All isomers of the above chemicals	
C. Group III:	
CF_3Cl-Chlorotrifluoromethane (CFC–13)	1.0
C_2FCl_5-(CFC–111)	1.0
$C_2F_2Cl_4$-(CFC–112)	1.0
C_3FCl_7-(CFC–211)	1.0
$C_3F_2Cl_6$-(CFC–212)	1.0
$C_3F_3Cl_5$-(CFC–213)	1.0
$C_3F_4Cl_4$-(CFC–214)	1.0
$C_3F_5Cl_3$-(CFC–215)	1.0
$C_3F_6Cl_2$-(CFC–216)	1.0
C_3F_7Cl-(CFC–217)	1.0
All isomers of the above chemicals	
D. Group IV: CCl_4-Carbon Tetrachloride	1.1
E. Group V:	
$C_2H_3Cl_3$-1,1,1 Trichloroethane (Methyl chloroform)	0.1
All isomers of the above chemical except 1,1,2-trichloroethane	
F. Group VI: CH_3Br—Bromomethane (Methyl Bromide)	0.7
G. Group VII:	
$CHFBR_2$	1.00
CHF_2Br (HBFC–2201)	0.74
CH_2FBr	0.73
C_2HFBr_4	0.3–0.8
$C_2HF_2Br_3$	0.5–1.8
$C_2HF_3Br_2$	0.4–1.6
C_2HF_4Br	0.7–1.2

Class 1 controlled substances	ODP
$C_2H_2FBr_3$	0.1–1.1
$C_2H_2F_2Br_2$	0.2–1.5
$C_2H_2F_3Br$	0.7–1.6
$C_2H_2FBr_2$	0.1–1.7
$C_2H_3F_2Br$	0.2–1.1
C_2H_4FBr	0.07–0.1
C_3HFBr_6	0.3–1.5
$C_3HF_2Br_5$	0.2–1.9
$C_3HF_3Br_4$	0.3–1.8
$C_3HF_4Br_3$	0.5–2.2
$C_3HF_5Br_2$	0.9–2.0
C_3HF_6Br	0.7–3.3
$C_3H_2FBR_5$	0.1–1.9
$C_3H_2F_2BR_4$	0.2–2.1
$C_3H_2F_3Br_3$	0.2–5.6
$C_3H_2F_4Br_2$	0.3–7.5
$C_3H_2F_5BR$	0.9–14
$C_3H_3FBR_4$	0.08–1.9
$C_3H_3F_2Br_3$	0.1–3.1
$C_3H_3F_3Br_2$	0.1–2.5
$C_3H_3F_4Br$	0.3–4.4
$C_3H_4FBr_3$	0.03–0.3
$C_3H_4F_2Br_2$	0.1–1.0
$C_3H_4F_3Br$	0.07–0.8
$C_3H_5FBr_2$	0.04–0.4
$C_3H_5F_2Br$	0.07–0.8
C_3H_6FB	0.02–0.7

Appendix B to Subpart A—Class II Controlled Substances

Controlled substance	ODP
$CHFCl_2$-Dichlorofluoromethane (HCFC–21).	[Reserved].
CHF_2Cl-Chlorodifluoromethane (HCFC–22).	0.05
CH_2FCl-Chlorofluoromethane (HCFC–31).	[Reserved].
C_2HFCl_4-(HCFC–121)	[Reserved].
$C_2HF_2Cl_3$-(HCFC–122)	[Reserved].
$C_2HF_3Cl_2$-(HCFC–123)	0.02
C_2HF_4Cl-(HCFC–124)	0.02
$C_2H_2FCl_3$-(HCFC–131)	[Reserved].
$C_2H_2F_2Cl_2$-(HCFC–132b)	[Reserved].
$C_2H_2F_3Cl$-(HCFC–133a)	[Reserved].
$C_2H_3FCl_2$-(HCFC–141b)	0.12
$C_2H_3F_2Cl$-(HCFC–142b)	0.06
C_3HCFCl_6-(HCFC–221)	[Reserved].
C_3HF2Cl_5-(HCFC–222)	[Reserved].
$C_3HF_3Cl_4$-(HCFC–223)	[Reserved].
$C_3HF_4Cl_3$-(HCFC–224)	[Reserved].
$C_3HF_5Cl_2$-(HCFC–225ca)	[Reserved].
C_3HF_5Cl-(HCFC–225cb)	[Reserved].
C_3HF_6Cl-(HCFC–226)	[Reserved].
$C_3H_2FCl_5$-(HCFC–231)	[Reserved].
$C_3H_2F_2Cl_4$-(HCFC–232)	[Reserved].
$C_3H_2F_3Cl_3$-(HCFC–233)	[Reserved].
$C_3H_2F_4Cl_2$-(HCFC–234)	[Reserved].
$C_3H_2F_5Cl$-(HCFC–235)	[Reserved].
$C_3H_3FCl_4$-(HCFC–241)	[Reserved].
$C_3H_3F_2Cl_3$-(HCFC–242)	[Reserved].
$C_3H_3F_3Cl_2$-(HCFC–243)	[Reserved].
$C_3H_3F_4Cl$-(HCFC–244)	[Reserved].
$C_3H_4FCl_3$-(HCFC–251)	[Reserved].
$C_3H_4F_2Cl_2$-(HCFC–252)	[Reserved].
$C_3H_4F_3Cl$-(HCFC–253)	[Reserved].
$C_3H_5FCl_2$-(HCFC–261)	[Reserved].
$C_3H_5F_2Cl$-(HCFC–262)	[Reserved].
C_3H_6FCl-(HCFC–271)	[Reserved].
All isomers of the above chemicals	

Appendix C to Subpart A—Parties to the Montreal Protocol: Annex 1—All Parties

Foreign state	Montreal protocol	London amendments	Copenhagen amendments
Algeria	√	√	
Antigua and Barbuda	√	√	√
Argentina	√	√	
Australia	√	√	√
Austria	√	√	
Bahamas	√	√	√
Bahrain	√	√	
Bangladesh	√	√	
Barbados	√	√	√
Belarus	√		
Belgium	√	√	
Benin	√		
Bolivia	√	√	√
Bosnia and Hertsegovina	√		
Botswana	√		
Brazil	√	√	
Brunei Darussalam	√		
Bulgaria	√		
Burkina Faso	√	√	
Cameroon	√	√	
Canada	√	√	√
Central African Republic	√		
Chad	√		√
Chile	√	√	√
China	√	√	
Colombia	√	√	
Comoros	√	√	
Congo	√	√	
Costa Rica	√		
Cote Ivoire	√	√	
Croatia	√	√	
Cuba	√		√
Cyprus	√	√	
Czech Republic	√		
Denmark	√	√	√
Dominica	√	√	
Dominican Republic	√		
Ecuador	√	√	√
Egypt	√	√	√
El Salvador	√		
Ethiopia	√		
European Community	√	√	
Fiji	√	√	
Finland	√	√	√
France	√	√	
Gabon	√		
Gambia	√		
Germany	√	√	√
Ghana	√	√	
Greece	√	√	√
Grenada	√	√	
Guatemala	√		
Guinea	√	√	
Guyana	√	√	
Honduras	√		
Hungary	√	√	√
Iceland	√	√	√
India	√	√	
Indonesia	√	√	
Iran	√		
Ireland	√	√	
Israel	√	√	

Appendix C to Subpart A—Parties to the Montreal Protocol: Annex 1—All Parties—Continued

Foreign state	Montreal protocol	London amendments	Copenhagen amendments
Italy	√	√	√
Jamaica	√	√	
Japan	√	√	√
Jordan	√	√	
Kenya	√	√	√
Kiribati	√		
Korea, Democratic People's Republic of	√		
Korea, Republic of	√	√	√
Kuwait	√	√	√
Lebanon	√	√	
Lesotho	√		
Libya	√		
Liechtenstein	√	√	
Lithuania	√		
Luxembourg	√	√	√
Macedonia	√		
Malawi	√	√	√
Malaysia	√	√	√
Maldives	√	√	
Mali	√	√	
Malta	√	√	
Marshall Islands	√	√	√
Mauritania	√		
Mauritius	√	√	√
Mexico	√	√	√
Monaco	√	√	
Morocco	√		
Mozambique	√	√	√
Myranmar	√	√	
Namibia	√		
Nepal	√	√	
Netherlands	√	√	√
New Zealand	√	√	√
Nicaragua	√		
Niger	√		
Nigeria	√		
Norway	√	√	√
Pakistan	√	√	√
Panama	√	√	
Papua New Guinea	√	√	
Paraguay	√	√	
Peru	√	√	
Philippines	√	√	
Poland	√		
Portugal	√	√	
Romania	√	√	
Russian Federation	√	√	
Saint Kitts and Nevis	√		√
Saint Lucia	√		
Samoa	√		
Saudi Arabia	√	√	√
Senegal	√	√	
Seychelles	√	√	√
Singapore	√	√	
Slovakia	√	√	
Slovenia	√	√	
Solomon Islands	√	√	
South Africa	√	√	
Spain	√	√	
Sri Lanka	√	√	
Sudan	√		
Swaziland	√		
Sweden	√	√	√
Switzerland	√	√	

APPENDIX C TO SUBPART A—PARTIES TO THE MONTREAL PROTOCOL: ANNEX 1—ALL PARTIES—Continued

Foreign state	Montreal protocol	London amendments	Copenhagen amendments
Syrian Arab Republic	√		
Tanzania, United Republic of	√	√	
Thailand	√	√	
Togo	√		
Trinidad and Tobago	√		
Tunisia	√	√	√
Turkey	√		
Turkminstan	√	√	
Tuvalu	√		
Uganda	√	√	
Ukranian SSR	√		
United Arab Emirates	√		
United Kingdom	√	√	√
Uruguay	√	√	
United States	√	√	√
Uruguay	√	√	
Uzbekistan	√		
Vanuatu	√	√	√
Venezuela	√	√	
Viet Nam	√	√	√

APPENDIX C TO SUBPART A—PARTIES TO THE MONTREAL PROTOCOL: ANNEX 1—ALL PARTIES—Continued

Foreign state	Montreal protocol	London amendments	Copenhagen amendments
Yugoslavia	√		
Zaire	√	√	√
Zambia	√	√	
Zimbabwe	√	√	√

Annex 2—Nations Complying With, But Not Parties to, the Protocol—[Reserved]

Appendix D to Subpart A—Harmonized Tariff Schedule Description of Products That May Contain Controlled Substances in Appendix A, Class I, Groups I and II

This Appendix is based on information provided by the Ozone Secretariat of the United Nations Ozone Environment Programme.** The Appendix lists available U.S. harmonized tariff schedule codes identifying headings and subheadings for Annex D products that may contain controlled substances.

The Harmonized Tariff Schedule of the United States uses a enumeration system to identify products imported and exported to and from the U.S. This system relies on a four digit heading, a four digit subheading and additional two digit statistical suffix to characterize products. The United States uses the suffix for its own statistical records and analyses. This Appendix lists only headings and subheadings.

While some can be readily associated with harmonized system codes, many products cannot be tied to HS classifications unless their exact composition and the presentation are known. It should be noted that the specified HS classifications represent the most likely headings and subheadings which may contain substances controlled by the Montreal Protocol. The codes given should only be used as a starting point; further verfication is needed to ascertain whether or not the products actually contain controlled substances.

Category 1. Automobile and Truck Air Conditioning Units (whether incorporated in vehicles or not)

There are no separate code numbers for air conditioning units specially used in automobiles and trucks. Although a code has been proposed for car air conditioners, it is not yet officially listed in the Harmonized Tariff Schedule (see category 2). The following codes apply to the vehicles potentially containing air conditioning units.

Heading/Subheading	*Article Description*
8701.(10, 20, 30, 90)***	Tractors.
8702	Public-transport type passenger motor vehicles.
8702.10	With compression-ignition internal-combustion piston engine (diesel or semi-diesel).
8702.90	Other.
8703	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars.
8703.10	Vehicles specially designed for traveling on snow; golf carts and similar vehicles; includes subheading 10.10 and 10.50.
8703.(21, 22, 23, 24)	Other vehicles, with spark-ignition internal combustion reciprocating engines.
8703.(31, 32, 33, 90)	Other vehicles, with compression-ignition internal combustion piston engine (diesel or semi-diesel).
8704	Motor vehicles for the transport of goods.
8704.10.(10, 50)	Dumpers designed for off-highway use.
8704.(21, 22, 23)	Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel).
8704.(31, 32, 90)	Other, with compression-ignition internal combustion piston engine.
8705	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wreckers, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units).
8705.10	Crane lorries.
8705.20	Mobile drilling derricks.
8705.30	Fire fighting vehicles.
8705.90	Other.

***At this time vehicle air conditioning units are considered components of vehicles or are classified under the general category for air conditioning and refrigeration equipment. Vehicles containing air conditioners are therefore considered products containing controlled substances.

Category 2. Domestic and Commercial Refrigeration and Air Conditioning/Heat Pump Equipment

Domestic and commercial air conditioning and refrigeration equipment fall primarily under headings 8415 and 8418.

Heading/Subheading	*Article Description*
8415	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated.
8415.20	Proposed code for air conditioning of a kind used for persons, in motor vehicles.
8415.10.00	A/C window or wall types, self-contained.
8415.81.00	Other, except parts, incorporating a refrigerating unit and a valve for reversal of the cooling/heat cycle.
8415.82.00	Other, incorporating a refrigerating unit—

** ''A Note Regarding the Harmonized System Code Numbers for the Products Listed in Annex D.'' Adopted by Decision IV/15 paragraph 3, of the Fourth Meeting of the Parties in Copenhagen, 23–25 November, 1992.

Heading/Subheading	*Article Description*
	Self-contained machines and remote condenser type air conditioners (not for year-round use).
	Year-round units (for heating and cooling).
	Air Conditioning evaporator coils.
	Dehumidifiers.
	Other air conditioning machines incorporating a refrigerating unit.
8415.83	Automotive air conditioners.
8418	Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than air conditioning machines of heading 8415; parts thereof.
8418.10.00	Combined refrigerator-freezers, fitted with separate external doors.
8418.21.00	Refrigerators, household type, Compression type.
8418.22.00	Absorption type, electrical.
8418.29.00	Other.
8418.30.00	Freezers of the chest type.
8418.40	Freezers of the upright type.
8418.50.0040	Other refrigerating or freezing chests, cabinets, display counters, showcases and similar refrigerating or freezing furniture.
8418.61.00	Other refrigerating or freezing equipment; heat pumps.
8418.69	Other—
	Icemaking machines.
	Drinking water coolers, self-contained.
	Soda fountain and beer dispensing equipment.
	Centrifugal liquid chilling refrigerating units.
	Absorption liquid chilling units.
	Reciprocating liquid chilling units.
	Other refrigerating or freezing equipment (household or other).
8479.89.10	Dehumidifiers (other than those under 8415 or 8424 classified as ''machines and mechanical appliances having individual functions, not specified or included elsewhere'').

Category 3. Aerosol Products

An array of different products use controlled substances as aerosols and in aerosol applications. Not all aerosol applications use controlled substances, however. The codes given below represent the most likely classifications for products containing controlled substances. The product codes listed include ****:

- varnishes
- perfumes
- preparations for use on hair
- preparations for oral and dental hygiene
- shaving preparations
- personal deodorants, bath preparations
- prepared room deodorizers
- soaps
- lubricants
- polishes and creams
- explosives
- insecticides, fungicides, herbicides, disinfectants
- arms and ammunition
- household products such as footwear or leather polishes
- other miscellaneous products

Heading/Subheading	*Article Description*
3208	Paints and varnishes ***** (including enamels and lacquers) based on synthetic polymers of chemically modified natural polymers, dispersed or dissolved in a non-aqueous medium.
3208.10	Based on polyesters.
3208.20	Based on acrylic or vinyl polymers.
3208.90	Other.
3209	Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in an aqueous medium.
3209.10	Based on acrylic or vinyl polymers.
3209.90	Other.
3210.00	Other paints and varnishes (including enamels, lacquers and distempers) and prepared water pigments of a kind used for finishing leather.
3212.90	Dyes and other coloring matter put up in forms or packings for retail sale.
3303.00	Perfumes and toilet waters.
3304.30	Manicure or pedicure preparations.
3305.10	Shampoos.
3305.20	Preparations for permanent waving or straightening.
3305.30	Hair lacquers.
3305.90	Other hair preparations.
3306.10	Dentrifices.
3306.90	Other dental (this may include breath sprays).
3307.10	Pre-shave, shaving or after-shave preparations.
3307.20	Personal deodorants and antiperspirants.
3307.30	Perfumed bath salts and other bath preparations.
3307.49	Other (this may include preparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites, whether or not perfumed or having disinfectant properties).

**** Other categories of products that may contain controlled substances are listed below. EPA is currently working to match them with appropriate codes. They include: coatings and electronic equipment (e.g., electrical motors), coatings or cleaning fluids for aircraft maintenance, mold release agents (e.g. for production of plastic or elastomeric materials), water and oil repellant (potentially under HS 3402), spray undercoats (potentially under ''paints and varnishes''), spot removers, brake cleaners, safety sprays (e.g., mace cans), animal repellant, noise horns (e.g., for use on boats), weld inspection developers, freezants, gum removers, intruder alarms, tire inflators, dusters (for electronic and non-electronic applications), spray shoe polish, and suede protectors.

Heading/Subheading	*Article Description*
3307.90	Other (this may include depilatory products and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included)
3403	Lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparations and mould release preparations, based on lubricants), and preparations of a kind used for the oil or grease treatment of textile materials, leather, fur skins or other materials, but excluding preparations containing, as basic constituents, 70 percent or more by weight of petroleum oils or of oils obtained from bituminous minerals.
3402	Organic surface-active agents (other than soap); surface-active preparations, washing preparations and cleaning operations, whether or not containing soap, other than those of 3401.
3402.20	Preparations put up for retail sale.
3402.19	Other preparations containing petroleum oils or oils obtained from bituminous minerals.
3403	Lubricating preparations consisting of mixtures containing silicone greases or oils, as the case may be.
2710.00	Preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations.
3403.11	Lubricants containing petroleum oils or oils obtained from bituminous minerals used for preparations from the treatment of textile materials, leather, fur skins or other materials.
3403.19	Other preparations containing petroleum oils or oils obtained from bituminous minerals.
3405	Polishes and creams, for footwear, furniture, floors, coachwork, glass or metal, scouring pastes and powders and similar preparations excluding waxes of heading 3404.
3405.10	Polishes and creams for footwear or leather.
3405.20	Polishes for wooden furniture, floors or other woodwork.
36	Explosives.
3808	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly papers).
3808.10	Insecticides.
3808.20	Fungicides.
3808.30	Herbicides, anti-sprouting products and plant growth regulators.
3808.40	Disinfectants.
3808.90	Other insecticides, fungicides.
3809.10	Finishing agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs and other products and preparations (for example, dressings and mordants) of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included, with a basis of amylaceous substances.
3814	Organic composite solvents and thinners (not elsewhere specified or included) and the prepared paint or varnish removers.
3910	Silicones in primary forms.
9304	Other arms (for example, spring, air or gas guns and pistols, truncheons), excluding those of heading No. 93.07. Thus, aerosol spray cans containing tear gas may be classified under this subheading.
0404.90	Products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included.
1517.90	Edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading No. 15.16.
2106.90	Food preparations not elsewhere specified or included.

***** Although paints do not generally use contain controlled substances, some varnishes use CFC 113 and 1,1,1,trichlorethane as solvents.

Category 4. Portable Fire Extinguishers

Heading/Subheading	*Article Description*
8424	Mechanical appliances (whether or not hand operated) for projecting, dispersing, or spraying liquids or powders; fire extinguishers whether or not charged, spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines.
8424.10	Fire extinguishers, whether or not charged.

Category 5. Insulation Boards, Panels and Pipe Covers

These goods have to be classified according to their composition and presentation. For example, if the insulation materials are made of polyurethane, polystyrene, polyolefin and phenolic plastics, then they may be classified Chapter 39, for ''Plastics and articles thereof''. The exact description of the products at issue is necessary before a classification can be given.******

Heading/Subheading	*Article Description*
3917.21 to 3917.39	Tubes, pipes and hoses of plastics.
3920.10 to 3920.99	Plates, sheets, film, foil and strip made of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials.
3921.11 to 3921.90	Other plates, sheets, film, foil and strip, made of plastics.
3925.90	Builders' ware made of plastics, not elsewhere specified or included.
3926.90	Articles made of plastics, not elsewhere specified or included.

****** This category may include insulating board for building panels and windows and doors. It also includes rigid appliance insulation for pipes, tanks, trucks, trailers, containers, train cars & ships, refrigerators, freezers, beverage vending machines, bulk beverage dispensers, water coolers and heaters and ice machines.

Category 6. Pre-Polymers

According to the Explanatory Notes to the Harmonized Commodity Description and Coding System, ''prepolymers are products which are characterized by some repetition of monomer units although they may contain unreacted monomers. Prepolymers are not normally used as such but are intended to be transformed into higher molecular weight polymers by further polymerization. Therefore the term does not cover finished products, such as di-isobutylenes or mixed polyethylene glycols with very low molecular weight. Examples are epoxides based with epichlorohydrin, and polymeric isocyanates.''

Heading/Subheading	*Article Description*
3901	Pre-polymers based on ethylene (in primary forms).
3902	Pre-polymers based on propylene or other olefins (in primary forms).
3903, 3907, 3909	Pre-polymers based on styrene (in primary forms), epoxide and phenols.

Appendix E to Subpart A–Article 5 Parties

Algeria, Antigua and Barbuda, Argentina, Bahamas, Bahrain, Bangladesh, Barbados, Benin, Bolivia, Bosnia and Hersegovina, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Gabon, Gambia, Ghana, Grenada, Guatemala, Guinea, Guyana, Honduras, India, Indonesia, Iran, Jamaica, Jordan, Kenya, Kiribati, Lebanon, Lesotho, Libyan Arab Jamahiriya, Macadonia, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mozambique, Myranmar, Namibia, Nepal, Nicaragua, Niger, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Republic of Korea, Romania, Saint Kitts and Nevis, Saint Lucia, Saudi Arabia, Senegal, Seychelles, Singapore, Solomon Islands, Somoa, Sri Lanka, Sudan, Swaziland, Syrian Arab Republic, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Uruguay, Vanuatu, Venezuela, Viet Nam, Yugoslavia, Zaire, Zambia, Zimbabwe.

Appendix F to Subpart A—Listing of Ozone–Depleting Chemicals

Controlled substance	ODP	AT L	CLP	BLP
A. Class I:				
1. Group I:				
$CFCl_3$-Trichlorofluoromethane (CFC–11)	1.0	60.0	1.0	0.00
CF_2Cl_2-Dichlorodifluoromethane (CFC–12)	1.0	120.0	1.5	0.00
$C_2F_3Cl_3$-Trichlorotrifluoroethane (CFC–113)	0.8	90.0	1.11	0.00
$C_2F_4Cl_2$-Dichlorotetrafluoroethane (CFC–114)	1.0	200.00	1.8	0.00
C_2F_5Cl-Monochloropentafluoroethane (CFC–115)	0.6	400.0	2.0	0.00
All isomers of the above chemicals		[Reserved]		
2. Group II:				
CF_2ClBr-Bromochlorodifluoromethane (Halon-1211)	3.0	12	0.06	0.13
	.....	−18	−.08	−.03
CF_3Br-Bromotrifluoromethane (Halon-1301)	10.0	72	0.00	1.00
	.....	−107	.....	.....
$C_2F_4Br_2$-Dibromotetrafluoroethane (Halon-2402)	6.0	23	0.00	0.30
	.....	−28	.....	−.37
All isomers of the above chemicals		[Reserved]		
3. Group III:				
CF_3Cl-Chlorotrifluoromethane (CFC–13)	1.0	120	0.88	0.00
	−250	−1.83		
C_2FCl_5- (CFC–111)	1.0	60	1.04	0.00
	−90	−1.56		
$C_2F_2Cl_4$- (CFC–112)	1.0	60	0.90	0.00
	−90	−1.35		
C_3FCl_7- (CFC–211)	1.0	100	1.76	0.00
	−500	−8.81		
$C_3F_2Cl_6$- (CFC–212)	1.0	100	1.60	0.00
	−500	−7.98		
$C_3F_3Cl_5$- (CFC–213)	1.0	100	1.41	0.00
	−500	−7.06		
$C_3F_4Cl_4$- (CFC–214)	1.0	100	1.20	0.00
	−500	−6.01		
$C_3F_5Cl_3$ -(CFC–215)	1.0	100	0.96	0.00
	−500	−4.82		
$C_3F_6Cl_2$- (CFC–216)	1.0	100	0.69	0.00
	−500	−3.45		
C_3F_7Cl- (CFC–217)	1.0	100	0.37	0.00
	−500	−1.87		
All isomers of the above chemicals		[Reserved]		
4. Group IV:				
CCl_4 -Carbon Tetrachloride	1.1	50.0	1.0	0.00
5. Group V:				
$C_2H_3Cl_3$-1,1,1 Trichloroethane (Methyl chloroform)	0.1	6.3	0.11	0.00
All isomers of the above chemical except 1,1,2-trichloroethane		[Reserved]		
F. Group VI:				
CH3Br-Bromomethane (Methyl Bromide)	0.7	.....	[Reserved]	.....
G. Group VII:				
$CHFBR_2$-	1.00	.....	[Reserved]	

Controlled substance	ODP	AT L	CLP	BLP
CHF_2Br- (HBFC–22B1)	0.74	.....	[Reserved]	.....
CH_2FBr	0.73	.....	[Reserved]	
C_2HFBr_4	0.3—0.8	.....	[Reserved]	
$C_2HF_2Br_3$	0.5—1.8	.....	[Reserved]	
$C_2HF_3Br_2$	0.4—1.6	.....	[Reserved]	
C_2HF_4Br	0.7—1.2	.....	[Reserved]	
$C_2H_2FBr_3$	0.1—1.1	.....	[Reserved]	
$C_2H_2F_2Br_2$	0.2—1.5	.....	[Reserved]	
$C_2H_2F_3Br$	0.7—1.6	.....	[Reserved]	
$C_2H_3FBr_2$	0.1—1.7	.....	[Reserved]	
$C_2H_3F_2Br$	0.2—1.1	.....	[Reserved]	
C_2H_4FBr	0.07—0.1	.....	[Reserved]	
C_3HFBr_6	0.3—1.5	.....	[Reserved]	
$C_3HF_2Br_5$	0.2—1.9	.....	[Reserved]	
$C_3HF_3BR_4$	0.3—1.8	.....	[Reserved]	
$C_3HF_4Br_3$	0.5—2.2	.....	[Reserved]	
$C_3HF_5Br_2$	0.9—2.0	.....	[Reserved]	
C_3HF_6Br	0.7—3.3	.....	[Reserved]	
$C_3H_2FBR_5$	0.1—1.9	.....	[Reserved]	
$C_3H_2F_2BR_4$	0.2—2.1	.....	[Reserved]	
$C_3H_2F_3Br_3$	0.2—5.6	.....	[Reserved]	
$C_3H_2F_4Br_2$	0.3—7.5	.....	[Reserved]	
$C_3H_2F_5BR$	0.9—1.4	.....	[Reserved]	
$C_3H_3FBR_4$	0.08—1.9	.....	[Reserved]	
$C_3H_3F_2Br_3$	0.1—3.1	.....	[Reserved]	
$C_3H_3F_3Br_2$	0.1—2.5	.....	[Reserved]	
$C_3H_3F_4Br$	0.3—4.4	.....	[Reserved]	
$C_3H_4FBr_3$	0.03—0.3	.....	[Reserved]	
$C_3H_4F_2Br_2$	0.1—1.0	.....	[Reserved]	
$C_3H_4F_3Br$	0.07—0.8	.....	[Reserved]	
$C_3H_5FBr_2$	0.04—0.4	.....	[Reserved]	
$C_3H_5F_2Br$	0.07—0.8	.....	[Reserved]	
C_3H_6FB	0.02—0.7	.....	[Reserved]	
B. Class II:				
$CHFCl_2$-Dichlorofluoromethane (HCFC–21)	[Reserved]	2.1	0.03	0.00
CHF_2Cl-Chlorodifluoromethane (HCFC–22)	0.05	15.3	0.14	0.00
CH_2FCl-Chlorofluoromethane (HCFC–31)	[Reserved]	1.44	0.02	0.00
C_2HFCl_4- (HCFC–121)	[Reserved]	0.6	0.01	0.00
$C_2HF_2Cl_3$- (HCFC–122)	[Reserved]	1.4	0.02	0.00
$C_2HF_3Cl_2$- (HCFC–123)	0.02	1.6	0.016	0.00
C_2HF_4Cl- (HCFC–124)	0.02	6.6	0.04	0.00
$C_2H_2FCl_3$- (HCFC–131)	[Reserved]	4.0	0.06	0.00
$C_2H_2F_2Cl_2$- (HCFC–132b)	[Reserved]	4.2	0.05	0.00
$C_2H_2F_3Cl$- (HCFC–133a)	[Reserved]	4.8	0.03	0.00
$C_2H_3FCl_2$- (HCFC–141b)	0.12	7.8	0.10	0.00
$C_2H_3F_2Cl$- (HCFC–142b)	0.06	19.1	0.14	0.00
C_3HFCl_6- (HCFC–221)	[Reserved]	.....	.....	0.00
$C_3HF_2Cl_5$- (HCFC–222)	[Reserved]	.....	.....	0.00
$C_3HF_3Cl_4$- (HCFC–223)	[Reserved]	.....	.....	0.00
$C_3HF_4Cl_3$- (HCFC–224)	[Reserved]	.....	.....	0.00
$C_3HF_5Cl_2$- (HCFC–225ca)	[Reserved]	1.5	0.01	0.00
	.....	−1.7		
(HCFC–225cb)	[Reserved]	5.1	0.04	0.00
C_3HF_6Cl- (HCFC–226)	[Reserved]	.....	.....	0.00
$C_3H_2FCl_5$- (HCFC–231)	[Reserved]	.....	.....	0.00
$C_3H_2F_{24}$- (HCFC–232)	[Reserved]	.....	.....	0.00
$C_3H_2F_3Cl_3$- (HCFC–233)	[Reserved]	.....	.....	0.00
$C_3H_2F_4Cl_2$- (HCFC–234)	[Reserved]	.....	.....	0.00
$C_3H_2F_5Cl$- (HCFC–235)	[Reserved]	.....	.....	0.00
$C_3H_3FCl_4$- (HCFC–241)	[Reserved]	.....	.....	0.00
$C_3H_3F_2Cl_3$- (HCFC–242)	[Reserved]	.....	.....	0.00
$C_3H_3F_3Cl_2$- (HCFC–243)	[Reserved]	.....	.....	0.00
$C_3H_3F_4Cl$- (HCFC–244)	[Reserved]	.....	.....	0.00
$C_3H_4FCl_3$- (HCFC–251)	[Reserved]	.....	.....	0.00
$C_3H_4F_2Cl_2$- (HCFC–252)	[Reserved]	.....	.....	0.00
$C_3H_4F_3Cl$- (HCFC–253)	[Reserved]	.....	.....	0.00
$C_3H_5FCl_2$- (HCFC–261)	[Reserved]	.....	.....	0.00
$C_2H_5F_2Cl$- (HCFC–262)	[Reserved]	.....	.....	0.00
C_3H_6FCl- (HCFC–271)	[Reserved]	.....	.....	0.00
All isomers of the above chemicals	[Reserved]			

Appendix G to Subpart A—UNEP Recommendations for Conditions Applied to Exemption for Laboratory and Analytical Uses

1. Laboratory purposes are identified at this time to include equipment calibration; use as extraction solvents, diluents, or carriers for chemical analysis; biochemical research; inert solvents for chemical reactions, as a carrier or laboratory chemical and other critical analytical and laboratory purposes. Production for laboratory and analytical purposes is authorized provided that these laboratory and analytical chemicals shall contain only controlled substances manufactured to the following purities:

CTC (reagent grade)	99.5	
1,1,1- trichloroethane	99.0	
CFC–11	.....	99.5
CFC–13	.....	99.5
CFC–12	.....	99.5
CFC–113	.....	99.5
CFC–114	.....	99.5
Other w/ Boiling P>20°	C99.5	
Other w/ Boiling P<20°	C99.0	

2. These pure, controlled substances can be subsequently mixed by manufacturers, agents or distributors with other chemicals controlled or not controlled by the Montreal Protocol as is customary for laboratory and analytical uses.

3. These high purity substances and mixtures containing controlled substances shall be supplied only in re-closable containers or high pressure cylinders smaller than three litres or in 10 millilitre or smaller glass ampoules, marked clearly as substances that deplete the ozone layer, restricted to laboratory use and analytical purposes and specifying that used or surplus substances should be collected and recycled, if practical. The material should be destroyed if recycling is not practical.

4. Parties shall annually report for each controlled substance produced: the purity; the quantity; the application, specific test standard, or procedure requiring its uses; and the status of efforts to eliminate its use in each application. Parties shall also submit copies of published instructions, standards, specifications, and regulations requiring the use of the controlled substance.

Appendix H to Subpart A—Clean Air Act Amendments of 1990 Phaseout Schedule for Production of Ozone-Depleting Substances

Date	Carbon tetra-chloride (percent)	Methyl chloro-form (per-cent)	Other class sub-stances (percent)
1994	70	85	65
1995	15	70	50
1996	15	50	40
1997	15	50	15
1998	15	50	15
1999	15	50	15
2000	.....	20	
2001	.....	20	

[FR Doc. 95–10616 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–P