The EPA Administrator, Andrew R. Wheeler, signed the following final rule on December 19, 2019, and the agency is submitting it for publication in the Federal Register (FR). Portions of this rule are effective immediately, while other portions will be effective 30 days after publication in the FR. The forthcoming FR version will appear on the Government Printing Office's FDsys website (http://www.gpo.gov/fdsys/search/home.action) and on Regulations.gov (http://www.regulations.gov) in Docket No. **EPA-HQ-OAR-2016-0271**. Once the version of this document published in the FR is available, this version will be removed from the Internet and replaced with a link to the FR version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2016-0271; FRL-XXXX-X]

RIN: 2060-AU26

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency is allocating production and consumption allowances for specific hydrochlorofluorocarbons, a type of ozone-depleting substance, for the years 2020 through 2029. These hydrochlorofluorocarbons may be used to service certain equipment manufactured before 2020. The EPA is also updating other requirements under the program for controlling production and consumption of ozone-depleting substances, as well as making edits to the regulatory text for improved readability and clarity. These updates include revising the labeling requirements for containers of specific hydrochlorofluorocarbons; prohibiting the transfer of hydrochlorofluorocarbon allowances allocated through this rulemaking into allowances for hydrochlorofluorocarbons that have already been phased out; requiring the use of an electronic reporting system for producers, importers, exporters, transformers, and destroyers of controlled ozone-depleting substances; revising and removing recordkeeping and reporting requirements; improving the process for petitioning to import used ozone-depleting substances for reuse, including by creating more flexibility for imports of used halon from certain halon banks and exempting imports of aircraft bottles containing halon 1211 for hydrostatic testing from the petition process; creating a

certification process for importing both used and virgin ozone-depleting substances for destruction; and restricting the sale of known illegally imported substances. This rule includes clarifications to the certification requirements for methyl bromide quarantine and preshipment uses. The EPA is also adding polyurethane foam systems containing ozone-depleting chlorofluorocarbons to the list of nonessential products. Lastly, the Agency is updating the definition of "destruction" as used in the context of the production and consumption phaseout and removing obsolete provisions.

DATES: Amendatory instructions 9 and 11 are effective on **[insert date of publication in the Federal Register]**. Amendatory instructions 2 through 8, 10 and 12 through 20 are effective **[insert date 30 days from date of publication in the Federal Register.]**

Operational Dates: For operational purposes under the Clean Air Act, the amendments to 40 CFR §§82.15(g)(5)-(7) and 82.16 are effective as of **[insert date of signature]** and the amendments to 40 CFR §§82.3, 82.4, 82.9, 82.10, 82.12, 82.13, 82.14 , 82.15(b), 82.15(g)(8), 82.23, 82.24, Appendix K to Subpart A of Part 82, 82.62, 82.64, 82.66, 82.104, 82.106, and 82.270 are effective as of **[insert date 30 days from date of publication in the Federal Register.]**

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2016-0271. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. All other publicly available docket materials are available electronically through www.regulations.gov.

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

SUPPLEMENTARY INFORMATION:

Effective Dates. Portions of this rule are effective less than 30 days from publication in the Federal **Register**. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. This rule constitutes "the promulgation or revision of regulations under subchapter VI of [the CAA] (relating to stratosphere and ozone protection)" and as such it is covered by the rulemaking procedures in section 307(d) of the Clean Air Act (CAA). See CAA section 307(d)(1)(I). Section 307(d)(1) of the CAA states that: "The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies." Thus, section 553(d) of the APA does not apply to this rule. The EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making a portion of the revisions finalized in this rule effective immediately, while the remainder of the rule will be effective 30 days after publication. APA section 553(d) allows an effective date less than 30 days after publication for any rule that "grants or recognizes an exemption or relieves a restriction" (see 5 U.S.C. 553(d)(1)). The purpose of the general rule in Section 553(d) of the CAA that 30 days must be provided between publication and the effective

date is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. Fed. Commc'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the Agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse.

The EPA has determined that portions of this rule that are effective fewer than 30 days from publication in the **Federal Register** relieve a restriction because those revisions allocate allowances for the production and consumption of HCFC-123 and HCFC-124 for the years 2020 through 2029, giving affected entities greater flexibility to produce and consume these HCFCs, and, because the allowances being allocated include allowances for calendar year 2020, ensure the allowances will be available to producers and consumers of these HCFCs to allow for continued production and import of these HCFCs in 2020.

The EPA has also determined that certain other portions of this rule that are effective fewer than 30 days from publication in the **Federal Register** grant or recognize an exemption or relieve a restriction because these revisions would allow for the import and use of HCFC-123 for servicing fire suppression equipment manufactured before January 1, 2020, as well as allow the use of HCFC-123 as a refrigerant in equipment manufactured on or after January 1, 2020 but before January 1, 2021 under certain conditions. These revisions also remove an obsolete requirement and thus relieve the restrictions associated with that requirement.

Accordingly, it is in keeping with the policy underlying the APA for the regulatory amendments to 40 CFR 82.15(g)(5)-(7) and 82.16 to take effect immediately. Finally, this CAA section 307(d) rule is promulgated upon signature and widespread dissemination. For operational purposes under the CAA, the EPA is making the amendments to 40 CFR 82.15(g)(5)-(7) and

82.16 and the corresponding portions of the preamble effective as of **[insert date of signature]** which is the date of signature.

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

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

ARFF – Aircraft Rescue and Fire Fighting

CAA – Clean Air Act

CBP – Customs and Border Protection

CDC – Centers for Disease Control and Prevention

CDX – Central Data Exchange

CFC – Chlorofluorocarbon

CFR – Code of Federal Regulations

CROMERR – Cross-Media Electronic Reporting Regulation

DOT – Department of Transportation

EIA – Environmental Investigation Agency

EPA – Environmental Protection Agency

FAA – Federal Aviation Administration

FR – Federal Register

GPEA – Government Paperwork Elimination Act

HARC – Halon Alternatives Research Corporation

HCFC – Hydrochlorofluorocarbon

HRC – Halon Recycling Corporation

HTSA – Harmonized Tariff Schedule of the United States Annotated

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

MOP – Meeting of the Parties

MT – Metric Ton

NFPA – National Fire Protection Association

ODP – Ozone Depletion Potential

ODS – Ozone-Depleting Substance

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

QPS – Quarantine and Preshipment

RACA – Request for Additional Consumption Allowances

SNAP – Significant New Alternatives Policy

TEAP – Technology and Economic Assessment Panel

UNEP – United Nations Environment Programme

Table of Contents

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this final action if you manufacture, process, import, or distribute into commerce certain ozone-depleting substances (ODS) and mixtures. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. Potentially affected entities may include but are not limited to:

- Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (NAICS 333415)
- Air-Conditioning Equipment and Supplies Merchant Wholesalers (NAICS 423620)
- Basic Chemical Manufacturing (NAICS 3251)
- Chlorofluorocarbon Gas Manufacturing and Import (NAICS 325120)

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

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this section could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Action Is the Agency Finalizing?

The EPA is finalizing a number of revisions to the production and consumption control program for ODS[1] in 40 CFR part 82, subpart A, which are divided into "class I" and "class II"

[1] Generally speaking, when the EPA refers to ODS in this preamble, it is referring to class I and/or class II controlled substances. The terms "controlled substance" and "ODS" are used interchangeably, as are the terms "HCFC" and "class II substance." Section 602 of the CAA contains initial lists of class I and class II substances and

substances. The EPA is finalizing, as proposed (see 84 FR 41510, August 14, 2019), the allocations of annual allowances for hydrochlorofluorocarbon (HCFC)-123 and HCFC-124 for the years 2020 through 2029 to be used for servicing certain equipment manufactured before January 1, 2020.

Table 1 – Final HCFC-123 and HCFC-124 Allowance Allocation, 2020 through 2030 (MT)

		2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
HCFC-123	Consumption	650	650	650	570	490	410	330	250	170	90	0
	Production	0	0	0	0	0	0	0	0	0	0	0
HCFC-124	Consumption	200	200	200	175	150	125	100	75	50	25	0
	Production	200	200	200	175	150	125	100	75	50	25	0

For HCFC-123 and HCFC-124 allowances, the EPA identified a total number of allowances to be allocated and then determined calendar-year allowances equal to a percentage of each company's baseline.[2]

The EPA is revising subpart A, as proposed, to add servicing of existing "fire suppression equipment" to the authorized uses of newly produced or imported (i.e., virgin) quantities of HCFC-123 and HCFC-124 during the years 2020 through 2029. To facilitate compliance, the EPA is finalizing, with minor modifications from the proposal, the labeling requirements for containers of fire suppression agent containing HCFC-123 in subpart E. To align with existing regulations[3] that prohibit the production and import of phased-out HCFCs, in particular HCFC-22, the Agency is finalizing its proposal to modify the inter-pollutant allowance transfer

addresses additions to those lists. The current lists appear in appendices A and B in subpart A. The EPA did not propose, nor is it finalizing, any changes to these lists in this rulemaking. The list of class I substances includes chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, and methyl bromide. The list of class II substances consists entirely of HCFCs.

[2] The percentage of baseline allowances to be allocated for each HCFC is determined as follows: All the company-specific consumption baselines (listed in the table at 40 CFR §82.19) are added to determine the aggregate amount of consumption baseline. The total number of consumption allowances to be allocated in a given year are then divided by the aggregate amount of baseline consumption allowances. The same process is followed to determine the percentage for production allowances using the company-specific baselines listed in the table at 40 CFR §82.17.

[3] The EPA is using the term "existing regulations" to describe those regulations that were in place prior to this final rule.

provisions authorized by section 607 of the CAA to prohibit transfers into ODS that are already phased out. The Agency is also finalizing as proposed the *de minimis* exemption from the use prohibition in section 605(a) of the CAA to allow virgin HCFC-123 to be used for the manufacture, through December 31, 2020, of chillers that meet specific criteria.

For changes to the import of ODS, the EPA is finalizing changes to the process for petitions to import used ODS for reuse that will meet the Agency's goals of reducing the burden on importers while ensuring the Agency has adequate information to verify that the material being imported is used, as well as making other modifications to this process as proposed. Such changes require collection of additional information when the EPA needs additional verification to make a determination whether the material has been previously used in considering petitions to import used ODS for reuse. Other changes remove data elements that are no longer necessary. Of particular note, the Agency is: 1) reducing the information requirements when importing halon from a "halon bank" so long as the EPA receives an official letter from the appropriate government agency in the country where the material is stored that indicates that the halon is used and that the halon bank is authorized to collect used halon; 2) allowing submission of an application for an export license or an official government communication from the appropriate government agency in the country of export in lieu of the license itself; 3) clarifying that the Agency will request additional information when additional verification is needed before issuing a non-objection notice, and 4) providing flexibility for the timing of import.

The Agency is also finalizing changes, with limited modification from the proposal, to establish a new certification process for the import of ODS (used and virgin) for destruction in the United States. This new process requires importers of ODS to provide less information on the source of the material than when petitioning to import for reuse, but requires more information

on the chain of custody and submission of verification that the imported material is destroyed after destruction has occurred.

The EPA is exempting imports of aircraft bottles containing halon 1211, a potent ODS used as a fire suppression streaming agent, for hydrostatic testing from the import petition process to make it easier for companies to service fire suppression equipment, which promotes proper maintenance of these bottles and prevents the emission of halon 1211.

The Agency is prohibiting the sale or offer for sale or distribution of any ODS that the seller knows, or has reason to know, has been imported into the United States without consumption allowances or is otherwise not subject to an exemption.

The EPA is also finalizing as proposed other updates to the production and consumption control program, including requiring the use of an electronic reporting system for producers, importers, exporters, transformers, and destroyers of ODS in 40 CFR §§82.3, 82.13, 82.14, 82.23, and 82.24 and clarifying the certification requirements for methyl bromide quarantine and Preshipment (QPS) uses in 40 CFR §§82.4 and 82.13. The EPA is also finalizing the addition of polyurethane foam systems containing chlorofluorocarbons (CFCs) to the list of nonessential products. This rule also updates provisions in 40 CFR §§82.3, 82.104, and 82.270 related to destruction technologies and the definition of "destruction" as used in the context of the production and consumption phaseout. Lastly, the EPA is removing outdated and obsolete provisions related to the allocation and transfer of class I ODS credits and allowances, and the associated recordkeeping and reporting requirements, that are no longer in use in subpart A.

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

Several sections of the CAA[4] provide authority for the actions finalized by the EPA in this rulemaking. Section 603 provides authority to establish monitoring and reporting requirements for ODS. Sections 604 and 605 provide authority to phase out production and consumption of class I and class II substances, respectively, and to restrict the use of class II ODS. Section 606 provides the EPA authority to establish a more stringent phaseout schedule[5] than that set out in sections 604 and 605 based on (1) current scientific information that a more stringent schedule may be necessary to protect human health and the environment, (2) the availability of substitutes, or (3) to conform to any acceleration under the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). Section 607 provides the EPA with authority to issue production and consumption allowances and to authorize allowance transfers, including inter-pollutant and inter-company transfers. Section 610 directs the EPA to issue regulations that identify nonessential products that release class I substances into the environment (including any release during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such product, or offering any such products for sale or distribution, in interstate commerce. Section 611 requires the EPA to establish and implement labeling requirements for containers of, and products containing or manufactured with, class I or class II ODS.

The EPA's authority for this rulemaking is supplemented by section 114, which authorizes the EPA Administrator to require recordkeeping and reporting in carrying out any provision of the CAA (with certain exceptions that do not apply here). Section 301 further provides authority for the EPA to "prescribe such regulations as are necessary to carry out [the

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

EPA Administrator's] functions" under the CAA. Additional authority for electronic reporting comes from the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504), which provides: "(1) for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) for the use and acceptance of electronic signatures, when practicable."

Additional information on the EPA's authority to establish and manage an allocation system for the phaseout of class I and class II substances is provided in prior EPA actions (see 58 FR 65018, December 10, 1993 and 68 FR 2820, January 21, 2003).

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

The EPA considered the incremental costs and benefits associated with this rulemaking, which primarily stem from changes to reporting and recordkeeping requirements. This action requires electronic submissions through the Agency's Central Data Exchange (CDX), creates a streamlined Certification of Intent to Import ODS for Destruction, exempts halon 1211 in aircraft bottles from the import petitions process, and adds a recordkeeping requirement for certain distributors of methyl bromide for QPS applications. The EPA estimates the overall annual cost savings to reporters as a result of reductions in reporting elements, streamlining forms, and added efficiencies to be approximately $13,000 per year. The EPA also estimates a one-time cost of approximately $4,000 to redesign labels on containers of fire suppression agents. In addition, the EPA performed a screening analysis of the impact on small businesses and found that there will be no additional costs imposed on them. See the docket for the screening analysis on small business. A more detailed discussion is included in Section IV.

II. Background

The United States was one of the original signatories to the Montreal Protocol and ratified it on April 12, 1988. After ratification, Congress enacted, and President George H.W. Bush signed into law, the CAA Amendments of 1990, which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Montreal Protocol, in addition to establishing complementary measures such as the national recycling and emission reduction programs under section 608 and the labeling requirements under section 611, among others.

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

The United States has chosen to implement the Montreal Protocol phaseout schedule of HCFCs on a chemical-by-chemical basis that employs a "worst-first" approach focusing on the earlier phaseout of certain chemicals with higher ozone depletion potential (ODP). In 1993, the EPA established a phaseout schedule to eliminate HCFC-141b first, to greatly restrict HCFC-

[6] Further information on the Copenhagen Amendment is available at https://ozone.unep.org/treaties/montreal-protocol/amendments/copenhagen-amendment-1992-amendment-montreal-protocol-agreed.
[7] Consumption is defined in 40 CFR §82.3 as production plus imports minus exports of a controlled substance (other than transshipments or used controlled substances). Production is defined in 40 CFR §82.3 as the manufacture of a controlled substance from any raw material or feedstock chemical, but does not include: (1) the manufacture of a controlled substance that is subsequently transformed; (2) the reuse or recycling of a controlled substance; (3) amounts that are destroyed by the approved technologies; or (4) amounts that are spilled or vented unintentionally.
[8] See Montreal Protocol Article 2F, paragraph 6.

142b and HCFC-22 next, and to subsequently place restrictions on all other HCFCs ultimately leading to a complete phaseout of all HCFCs by 2030 (see 58 FR 15014, March 18, 1993 and 58 FR 65018, December 10, 1993).

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

Since the EPA is implementing the HCFC phaseout on a chemical-by-chemical basis, it allocates and tracks production and consumption allowances on an absolute kilogram basis for each chemical. An allowance is the unit of measure that controls production and consumption of ODS. The EPA allocates allowances for specific years; they are valid between January 1 and December 31 of a given control period (i.e., calendar year). In previous rulemakings, the EPA has allocated calendar-year allowances equal to a percentage of the baseline for the controlled substance for a given control period. A calendar-year allowance represents the privilege granted to a company to produce or import one kilogram (not ODP-weighted) of the specific controlled

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

substance. The EPA allocates two types of calendar-year allowances—production allowances and consumption allowances. To produce an HCFC, an allowance holder must expend both production and consumption allowances. To import an HCFC, an allowance holder must expend only consumption allowances. An allowance holder exporting HCFCs for which it has expended consumption allowances may obtain a refund of those consumption allowances upon submittal of proper documentation to the EPA. Production and import of virgin HCFCs without allowances are prohibited except for transformation, destruction, transshipments, or heels (40 CFR §82.15(a) and (b)).

Under the chemical-by-chemical phaseout schedule for HCFCs established by EPA regulations, as discussed above, the EPA stopped allocating production and consumption allowances for HCFC-141b as of 2003; for HCFC-225ca/cb as of 2015; and for HCFC-22 and HCFC-142b as of 2020. The Montreal Protocol, the CAA, and the EPA regulations under 40 CFR 82 subpart A limit the permissible uses of newly produced or imported quantities of the remaining HCFCs (HCFC-123 and HCFC-124). Section 605(a) of the CAA makes it unlawful, starting January 1, 2015 to introduce into interstate commerce or use any virgin HCFCs unless they are used as a refrigerant in appliances manufactured prior to January 1, 2020, or are listed as acceptable for use as a fire suppression agent for nonresidential applications in accordance with section 612 of the CAA. In addition, prior to November 2018, Article 2F of the Montreal Protocol provided that the only permissible uses of HCFCs after January 1, 2020 were for the servicing of refrigeration and air-conditioning equipment existing on January 1, 2020. In a November 2018 adjustment to Article 2F, servicing of fire suppression and fire protection equipment existing on January 1, 2020 was added as an additional permissible use. Section 614(b) of the CAA also provides that in the case of a conflict between any provision of the CAA

and any provision of the Montreal Protocol, the more stringent provision shall govern. In sum, the combination of the CAA and the Montreal Protocol establish that the permissible uses of HCFCs after January 1, 2020 will be limited to servicing refrigeration, air-conditioning, and fire suppression equipment existing on January 1, 2020.

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

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

The EPA's most recent action related to the phaseout of HCFCs was a 2014 rule that allocated production and consumption allowances for HCFC-22, HCFC-142b, HCFC-123, and HCFC-124 for 2015-2019 (see 79 FR 64254, October 28, 2014). In that action, the EPA further implemented the provisions in section 605(a) of the CAA that limit production and consumption

[11] CAA § 612, 42 U.S.C. § 7671(k).

to servicing refrigeration and air-conditioning appliances and for use in fire suppression applications. That notice provides additional discussion of the history of the phaseout of HCFCs.

III. Final Rule and Response to Comments

This section describes the rationale for the final actions taken in this rulemaking, summarizes and responds to the comments received on the proposal, and explains differences between the proposed rule and this final action.

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

This section describes the factors that the EPA considered in developing its approach for issuing HCFC allowances for the next regulatory period that extends from 2020 through 2029. Additional relevant discussion is included in other portions of section III. Specifically, section III.B. provides more information on allowance allocations for HCFC-123 and section III.C. provides more information on allowance allocations for HCFC-124. As explained below, the EPA's allocation methodologies are consistent with the CAA, EPA regulations, and the obligations of the United States under the Montreal Protocol, and were supported by most commenters.

HCFC-123 and HCFC-124 are the two HCFCs not already slated for phaseout in the United States by 2020 under the "worst-first approach" described in the previous section. These HCFCs are currently used in the refrigeration, air-conditioning, and fire suppression sectors. The use of newly produced or imported quantities of these HCFCs is limited under the Montreal Protocol, the CAA, and the EPA's regulations. The EPA is relying on its authority under section 605(c) of the CAA to promulgate regulations phasing out the production and restricting the use of class II substances, subject to previous accelerations under section 606 (see 58 FR 65018, December 19, 1993 and 74 FR 66411, December 15, 2009). The EPA is making limited

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

As stated in the proposal, the EPA considered a number of factors when developing an approach to allocating allowances for HCFC-123 and HCFC-124 for the years 2020 through 2029 including existing company-specific production and consumption baselines listed in 40 CFR §§82.17 and 82.19; the Agency's worst-first approach; the remaining permissible uses of HCFCs under section 605(a) of the CAA and the availability of alternatives for those uses; the quantity needed to meet the estimated servicing demand for each permissible use; the estimated quantity of HCFCs that will be available from recycling, reclamation, and potential stockpiling in advance of the 2020 phaseout step;[12] and the transition that must occur by 2030 when HCFC production and consumption will be phased out completely. Further, the Agency has considered public comments on prior drafts of the report in the docket titled *The U.S. Phaseout of HCFCs: Projected Servicing Demand in the U.S. Air Conditioning, Refrigeration, and Fire Suppression Sectors (2020-2030)*, *December 2019*, hereafter referred to as the *2019 Final Servicing Tail Report*, and on the proposed allocation amounts and approaches, as discussed below and in other parts of section III.

For HCFC-123 and HCFC-124 allowances, the EPA identified a total number of allowances to be allocated. These amounts are presented in Table 1 in Section I.B. above and match the proposed allowance allocations. Each company's calendar-year allowances are then calculated as a percentage of each company's baseline. Tables identifying the percentage of baseline production and consumption allowances allocated appear in 40 CFR §82.16(a). As

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

noted, the EPA considered several factors when developing an approach to allocating allowances for HCFC-123 and HCFC-124. The first factor the EPA considered was the existing limitation on permissible uses of HCFCs and the availability of alternatives for those uses. Section 605(a) of the CAA limited the use of HCFCs beginning January 1, 2015. The statute provides that starting on that date, it shall be unlawful for any person to introduce into interstate commerce or use any class II substance unless such substance: (1) has been used, recovered, and recycled; (2) is used and entirely consumed (except for trace quantities) in the production of other chemicals; (3) is used as a refrigerant in appliances manufactured before January 1, 2020; or (4) is listed as acceptable under the Significant New Alternatives Policy (SNAP) program for use as a fire suppression agent for nonresidential applications. As detailed in the *2019 Final Servicing Tail Report*, the EPA considered the estimated quantity of HCFC-123 and HCFC-124 that will be available from recycling, reclamation, and potential stockpiling in advance of the 2020 phaseout step. The EPA also considered the availability of alternatives with the understanding that it is typically best to service equipment with the same refrigerant or fire suppression agent it was designed to use.

The SNAP program continues to review and list alternatives for applications that use HCFCs, including refrigeration and air-conditioning and fire suppression applications that use HCFC-123. Substitutes are listed under that regulatory program as acceptable, unacceptable, or acceptable subject to use restrictions for specific uses. Any future use of substitutes listed as acceptable subject to use restrictions must comport with any conditions of the SNAP program, if applicable. Currently, the SNAP program lists a number of acceptable substitutes for HCFCs for use as a fire suppression agent for nonresidential applications as well as in the refrigeration and

air-conditioning sector, making a variety of allocation options practicable for the years 2020 through 2029.

As noted previously, in addition to the statutory provisions in section 605 of the CAA, the EPA established a "worst-first approach" in 1993 which addressed which HCFCs may be produced and consumed and prioritized the phaseout of HCFCs based on their ODPs. These regulations can be found in 40 CFR §82.16. Consistent with that approach, the EPA is issuing allowances for production and consumption of only HCFC-123 and HCFC-124, as these are the remaining HCFCs that have not been phased out domestically.

In 2020, the consumption cap of the United States for all HCFCs is 0.5 percent of the U.S. baseline, which equates to 76.2 ODP-weighted metric tons that could be available for servicing.[13] Under section 605(c) of the CAA, the consumption of HCFCs by any person is also to be limited to the quantity consumed by that person during the baseline year. The EPA has implemented this requirement by limiting the number of annual allowances allocated for each chemical in 40 CFR §82.16. The consumption baseline is 2,014 MT (40 ODP-weighted MT) of HCFC-123 and 2,396 MT (53 ODP-weighted MT) of HCFC-124. Section 605(c) of the CAA thus prohibits the EPA from allocating allowances above that amount for each chemical. Consumption allowances are allocated to the entities listed in 40 CFR §82.19.

In finalizing this action, the EPA considered the quantities of HCFC-123 and HCFC-124 needed to service equipment manufactured before 2020. These estimates are discussed in the *2019 Final Servicing Tail Report,* which is available in the docket. The final report and

[13] 76.2 ODP-weighted metric tons is the equivalent of 3,810 MT of HCFC-123, if completely allocated to HCFC-123, and 3,464 MT of HCFC-124, if completely allocated to HCFC-124.

allocations are based on demand projections contained in the EPA's Vintaging Model,[14] recent market research, discussions with industry on current HCFC uses and trends, the expected availability of recovered, recycled/reclaimed, and reused material, and consideration of comments offered on the report during the public comment period on this rulemaking, as described below. The Agency made the April 2018 draft report available on its website and in the docket along with a Notice of Data Availability (see 83 FR 19757, May 4, 2018) and requested comment on the data and assumptions in the report. The EPA did not receive any comments on the draft report. As a result of the adjustment to Article 2F of the Montreal Protocol, the EPA revised the *2018 Draft Servicing Tail Report* to reflect the demand for servicing fire suppression equipment manufactured before January 1, 2020 and disaggregated estimated demand for fire suppression to show estimated demand for servicing compared to demand for new equipment. The EPA consulted with industry on the estimate of future market demand for HCFC-123 fire suppression applications. At the time the *2019 Draft Servicing Tail Report* was published in August 2019, total demand (the manufacture of new equipment and the servicing of existing equipment) over the past several years had varied, but the average was approximately 260 MT per year. The EPA expected the demand for fire suppression servicing to be 35 to 90 MT per year based on projections[15] from the Vintaging Model and feedback from industry.

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

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

In the notice of proposed rulemaking for this action, the EPA sought comment on all aspects of the *2019 Draft Servicing Tail Report*, including the projections for the fire suppression sector. The Agency received comments on the total demand for fire suppression during the comment period and has updated the report accordingly. The Agency also updated the reclamation and consumption values in the report to reflect the data reported for 2018.

The last factor the EPA considered is the statutory 2030 phaseout date for production and import of HCFCs, with limited exceptions, under section 605(b)(2) and (c) of the CAA. In 2030, HCFC-123 and HCFC-124 must be phased out completely. As in prior phaseout steps for other HCFCs, the Agency's intent is to accomplish the statutory 2030 phaseout in a manner that achieves a safe and smooth transition to alternatives without stranding equipment. The EPA's goal is to allow equipment owners to continue servicing their HCFC-123 and HCFC-124 equipment throughout its expected lifetime. Experience with the HCFC-22 phaseout indicates that gradually decreasing allocation levels is a better approach than an abrupt cessation of allowances at the phaseout date, as it provides time and the right market signals for equipment owners to plan investments and transition to alternatives while also fostering recovery, recycling, and reclamation of HCFCs.

B. Allocation of HCFC-123 Consumption Allowances

This section describes the EPA's proposal for annual HCFC-123 allocations, comments received on the proposal, the Agency's responses to those comments, and the final allocations for HCFC-123 in 2020 through 2029.

The Agency proposed to issue consumption allowances for HCFC-123 for years 2020 through 2022 equal to the estimated 2020 demand for servicing existing refrigeration and air-conditioning and fire suppression equipment. The EPA proposed to then decrease the number of

allowances issued in each subsequent year by an equal amount such that there would be zero allowances in 2030. The EPA explained that this allocation approach would meet the full estimated servicing demand in 2020 with newly imported HCFC-123 and the full estimated servicing demand in 2030 with reclaimed HCFC-123. The EPA also explained that allocating at the full estimated level of servicing demand in 2020 (650 MT[16]) for the years 2020 through 2022 would allow time for the reclamation market to increase sales to the fire suppression sector. Currently, the reclamation market primarily services the refrigeration and air conditioning sector. Allocating above estimated demand for the years 2021 and 2022 (see the demand estimates in the *2019 Final Servicing Tail Report*) will ensure supply for servicing existing refrigeration and air-conditioning, and fire suppression equipment while that transition occurs.

The EPA also sought comment on two alternative approaches for determining how many HCFC-123 consumption allowances to issue. The first alternative approach would have issued allowances equal to the total modeled demand each year from 2020 through 2029 (which includes servicing of existing equipment and the manufacture of new equipment using reclaimed HCFC-123) minus the low end of the projection for reclamation each year from 2020 through 2029. This contrasts with the proposed allocation amounts which, as explained above, were not directly based on demand for the manufacture of new equipment using reclaimed HCFC-123 or the availability of reclaimed HCFC-123 and did not subtract allocations based on projections for reclamation as was proposed in Alternative 1. The Agency determined that reclaimed HCFC-123 could meet the demand for new fire suppression equipment, while also eventually providing HCFC-123 for servicing existing equipment. See Table 8 of the *2019 Draft Servicing Tail Report* for more discussion of estimated reclamation.

[16] Equivalent to 13 ODP-weighted MT.

The EPA also sought comment on a second alternative approach under which the EPA would issue 2,014 MT of HCFC-123 consumption allowances for each of the years 2020 through 2029. This is equal to 100 percent of the aggregate consumption baseline for HCFC-123 and is the maximum allocation allowed under section 605(c) of the CAA. This approach would allocate approximately half of the annual U.S. consumption cap allowed under the Montreal Protocol for HCFC-123 (40.3 ODP-weighted MT per year compared to 76.2 ODP-weighted MT).

The EPA also proposed to issue zero production allowances for the years 2020 through 2029 because no companies produced HCFC-123 production in the baseline years of 2005 through 2007 (see 74 FR 66431, December 15, 2009). Under section 605(b)(1) of the CAA, it is unlawful for any person to produce any class II substance in an annual quantity greater than the quantity of such substance produced by such person during the baseline year.

(1) Summary of and Response to Comments on the HCFC-123 Allocation

The EPA received supportive comments on the proposed allocation amount from Ingersoll Rand, a stationary air-conditioning manufacturer; National Refrigerants, a refrigerant distributor; Halon Alternatives Research Corporation (HARC), a non-profit trade association; and an anonymous commenter. Several commenters state that the proposal accurately reflects the amount of HCFC-123 needed for servicing refrigeration and air-conditioning and fire suppression equipment, the availability of reclaimed HCFC-123, and the amount of market demand. Hudson suggests that the Agency should reduce the allocation below the amounts in Alternative 1 and decrease each year as opposed to staying static in the first three years. The Environmental Investigation Agency (EIA), an environmental non-profit, also supports an allocation below Alternative 1, and another comment from a private citizen does not support an allocation for any HCFC production or consumption. American Pacific, the manufacturer of

Halotron® I, a fire suppression agent blend containing HCFC-123, is supportive of allocating the maximum amount allowable under the CAA, consistent with Alternative 2 in the proposal. These comments and the Agency's responses are described in detail below.

(2) Comments in Support of a Lower Allocation

The EPA received comments that were supportive of a lower allocation. Hudson and EIA note that allocation levels could be lower considering the supply of reclaimed material. Hudson specifically notes that based on the *2019 Draft Servicing Tail Report*, total demand for HCFC-123 could be met with Alternative 1. These commenters suggest the EPA should adopt a schedule that is more aggressive than Alternative 1 because the reclamation industry can provide 300 MT of HCFC-123 annually. They note that the reclamation industry has supplied nearly 85 percent of the estimated 300 MT volume over the past two years. Furthermore, Hudson states that the reclamation industry does not need any transition time to enter the fire suppression market because the industry is already servicing that market, and an accelerated schedule will spur the growth of reclamation and ensure more than adequate supply of HCFC-123 for both the refrigeration and air-conditioning and fire suppression markets. EIA also supports a lower allocation, noting that the supply of reclaimed HCFC-123 ranging from 180 to 270 MT annually over the past several years could allow the EPA to reduce allocations by 200 MT below expected demand to 450 MT, and then reduce by 45 MT annually until reaching zero in 2030. Both commenters note an allocation at or below Alternative 1 would be beneficial to the reclamation industry and the environment.

The EPA disagrees with commenters that the Agency should finalize a lower allocation than proposed. Starting the allocation levels below the estimated level of demand for servicing both fire suppression and refrigeration and air-conditioning equipment could strand serviceable

fire suppression equipment or hinder the manufacture of new fire suppression equipment in the near term. Even though reclaimed and stockpiled HCFC-123 will be available in 2020, the primary concern is whether there is enough HCFC-123 for both near and longer term fire suppression and refrigeration and air-conditioning needs. Historically, the refrigeration and air-conditioning sector utilized the majority of that material as the historic practice of reclaimers and importers is to sell the ODS to refrigerant distributors. Based on their comment, we understand that Hudson may sell some reclaimed material to the fire suppression sector. However, that does not appear to be the norm among reclaimers. The Agency is concerned that decreasing the allocation too soon might not provide time for a broader fire suppression sector transition to reclaimed material for new systems as well as servicing. This could lead to shortages of HCFC-123 for fire suppression uses because, as discussed above, after January 1, 2020, recovered and recycled or reclaimed HCFC-123, as well as material stockpiled prior to 2020, is the only material that can be used to meet demand for new fire suppression equipment. Starting with allocation levels at the estimated level of demand for servicing both fire suppression and refrigeration and air-conditioning equipment means that imported HCFC-123 can be used to satisfy the servicing needs for existing equipment, making it more likely that reclaimed and stockpiled HCFC-123 will be available for the manufacture of new fire suppression equipment.

The EPA anticipates that the market for reclaimers and others involved in recovering used ODS for fire suppression purposes will change in the near future and may resemble the market for used halons to some extent given both halons and the blend of HCFC-123 are used in the fire suppression sector. While halon production and consumption were phased out in the United States in 1994 and globally in 2010, halon is still available for new equipment (e.g., for

new aircraft and Aircraft Rescue and Fire Fighting (ARFF) vehicles). Eventually, domestic recovery and reclamation of HCFC-123 combined with imports of used and/or recycled HCFC-123 should meet demand potentially similar to how the demand for halon in the United States is met through transition to alternatives, successful management of halon banks, and imports under the petition process for used ODS (see 40 CFR §§82.13(g)(2) and 82.24(c)(3)). Ultimately, the EPA anticipates that like other ODS sectors, alternatives will be available for all applications that currently use halons and HCFCs. However, the fire suppression sector will benefit from the proposed level of allocation which recognizes the near-term changes to the market will be underway in 2020-2022. Therefore, it would not be prudent to base the allocation on the maximum amount of estimated reclamation in the early years or to decrease the allocation to zero too quickly. The fact the 2018 reclaim amount (240 MT) was lower than the 2017 reclaim amount (270 MT) further supports the Agency's determination that it is appropriate to provide the proposed level of allocation which is higher than Alternative 1 for the years 2020 through 2022. The EPA recognizes the necessity of reclaimed HCFCs to meet demand entirely after 2030 and therefore the final allocation level for HCFC-123 is less than the estimated level of servicing demand starting in 2023. In the longer term, this allocation sends appropriate market signals for a smooth and orderly transition by reducing the allocation after 2022 and completely phasing out the import of virgin HCFC-123 in 2030.

(3) Comments in Support of a Higher Allocation and Other Comments on the Proposed Allocation

American Pacific supports a higher initial allocation of allowances and no decrease in allocation level. The commenter asks that the Agency consider the total demand for Halotron® I and notes their concern that the proposed allocation is too low and could strand existing

equipment. American Pacific suggests that the EPA allocate the maximum allowable number of consumption allowances for HCFC-123—an approach presented as Alternative 2 in the proposal. American Pacific asserts that the allocation of 2,014 MT per year during the period 2020 through 2029 is warranted because Halotron® I has gained more acceptance as a lower ODP replacement to halon 1211 in fire suppression equipment, particularly in wheeled units. American Pacific states that it will continue to manufacture new fire suppression equipment with reclaimed and stockpiled material, and asserts that the estimated total demand for fire suppression as represented in the *2019 Draft Servicing Tail Report,* at 260 MT is an underestimate. The commenter states that the total demand was over 300 MT in 2018 and that they expect demand in 2019 to be an additional 10 percent higher. American Pacific also asserts that the EPA's estimate of 90 MT of fire suppression servicing demand is low. For these reasons, they argue that annual allocation levels should start at 2,014 MT and be kept constant from 2020 through 2029.

The EPA disagrees with the comment that an allocation higher than what the Agency proposed is warranted. First, the EPA responds that the increase in demand in 2018 and 2019 does not merit allocating at the level the commenter requests. Read together, CAA sections 605 and 614 and Article 2F of the Montreal Protocol limit the permissible uses of newly-produced and newly-imported HCFCs to servicing of refrigeration and air-conditioning equipment existing on January 1, 2020, and to servicing of fire suppression and fire protection equipment existing on January 1, 2020, and listed as acceptable for use as a fire suppression agent for nonresidential applications in accordance with section 612 of the CAA. Thus, when determining allocations for HCFC-123 and HCFC-124, the EPA focused on the amount of demand for these specific uses. Since virgin material cannot be used to manufacture new fire suppression equipment, it would not be reasonable for the EPA to base

allocation amounts on demand for new equipment even if, as the commenter asserts, demand for their product is higher than historic levels. Nonetheless, based on the new information provided for 2018 sales, the EPA is revising the total demand estimate in the *2019 Final Servicing Tail Report* issued with this rule. With 2018 demand being 300 MT, the five-year average reflected in the *2019 Final Servicing Tail Report* increases to about 270 MT. A further 10 percent increase in demand in 2019 would result in a five-year average of approximately 280 MT. Furthermore, even if the EPA did consider demand for manufacturing new fire suppression equipment in addition to servicing demand, these figures, when added to servicing demand for refrigeration and air-conditioning equipment (560 MT in 2020), would remain below an allocation of 2,014 MT per year. Moreover, and as noted elsewhere in this section, consistently allocating allowances above total servicing demand would not support a smooth and orderly transition to alternatives, nor would it foster recovery, recycling and reclamation, which is needed as of January 1, 2020 for manufacturing new fire suppression equipment and in the longer term as HCFC-123 is phased out.

The EPA also disagrees with the commenter's assertion that the Agency's servicing demand estimates are too low. As part of the development of the *Servicing Tail Report*, the Agency sought and received input from a variety of key industry stakeholders. The EPA has estimated total demand for HCFC-123 for fire suppression at 260 MT per year in the two previous drafts of the *Servicing Tail Report* based on average reported consumption of HCFC-123 for this use over the last several years. In the last version of the report issued in August 2019, the Agency included a servicing demand of 35 to 90 MT per year for fire suppression. These estimates were based on the best available information and during public

review of those drafts, interested stakeholders did not provide any evidence to contradict the Agency's estimates of servicing demand. Recognizing the needs for fire suppression servicing and American Pacific's comment, the Agency's allocation for HCFC-123 is based on the high end of the range for servicing demand for Halotron® I fire extinguishers manufactured prior to 2020. The Agency's review of the data supported a number within the 35 to 90 MT range, but generally closer to the bottom half of that range. The commenter, however, provided no additional data to support increasing the estimate for servicing demand. For all of these reasons, the Agency concludes that it is appropriate to base the final allocation on the servicing demand estimate from the *Servicing Tail Report* as proposed.

The commenter states that, based on their observations of the fire suppression industry, if EPA issues allowances at 2,014 MT, it is not likely that fire suppression equipment manufacturers and distributors would wait until 2029 to transition or be unprepared for the 2030 phaseout. Similarly, the commenter states that it is not necessary to provide a gradual decrease over time to guard against consumption levels that are higher than demand. They assert that consumption will always closely track demand given the sourcing of this material outside of the United States and that there is no reason to create excess inventory. American Pacific also comments that while there are multiple unknowns, in discussion with the industry, the use of newly-imported HCFC-123 should be less expensive than reclaimed HCFC-123. The EPA responds that one of the Agency's goals when setting the allocation level is to reach the 2030 phaseout step in a manner that achieves a safe and smooth transition to alternatives while allowing equipment owners to continue servicing their equipment within its expected lifetime. Issuing allowances significantly above demand would likely suppress the reclamation market

and thus increase the likelihood of stranding equipment in 2030 and beyond. In the near term, this would adversely affect the availability of reclaimed HCFC-123 for the fire suppression sector because reclamation will be the only source of HCFC-123 for the manufacture of new fire suppression equipment once stockpiles of material imported prior to 2020 are exhausted. In the longer term, if the reclaim market is suppressed through 2029, there will be less ability to respond to the 2030 phaseout when the primary supply of HCFC-123 will be from the reclaim market. Ultimately this could result in stranded equipment after 2029. Experience with prior HCFC phaseout steps indicates that gradually decreasing allocation levels is better than an abrupt increase or decrease to foster recovery, recycling, and reclamation of HCFCs and an orderly transition to alternatives. Gradually reducing HCFC allowances fosters a safe and smooth transition and recycling/reclamation and is consistent with the EPA's approach in previous HCFC allocation rules (see 74 FR 66412, December 15, 2009; 76 FR 47451, August 5, 2011; 78 FR 20004, April 3, 2013; and 79 FR 64254, October 28, 2014).

Additionally, the commenter focuses on the fire suppression market exclusively and does not take into account the broader market for HCFC-123, including needs for servicing refrigeration and air-conditioning equipment, which will have servicing needs well beyond 2029. While the commenter asserts that it is not likely that the fire suppression industry would be unprepared for the 2030 phaseout if the EPA issues allowances at 2,014 MT, the commenter does not address the broader servicing market for HCFC-123, where refrigeration and air-conditioning account for significantly more demand. Based on other comments, the refrigeration and air-conditioning industry is supportive of a gradual reduction in allowances starting from 2020 estimated servicing demand for all allowed uses.

In response to the comment about costs, the Agency has found that the price of HCFCs is not directly correlated to the amount of allowances allocated. For example, experience with the phaseout of HCFC-22 indicates that there can be temporary price changes but the wholesale price has fallen as the allocation gradually decreased over the past five years. The phaseout of HCFC-22 may not be identical to the remaining phaseout step for HCFC-123 given the addition of the fire suppression sector. The price to import and/or produce material does not necessarily match the wholesale price for various HCFCs, so there is no guarantee of a lower price from imported product versus reclaimed product. Supporting this point, the EPA understands from its interactions with reclaimers that they tend to sell their reclaimed product at or near the market price for virgin HCFCs. The Agency cannot conclude, based on the comments received, whether there is a difference in the price of HCFC-123 when sold for fire suppression compared to when it is sold as a refrigerant. The EPA agrees with the commenter that if the Agency allocated allowances well below estimated servicing demand, it is possible that prices would increase in the near term. However, that is not what the Agency is finalizing in this rule. Instead, this rule issues allowances above estimated demand for three years specifically to allow reclaimers time to shift their market to the fire suppression sector before reducing the number of allowances.

The commenter further states that the proposed allocation would strand existing fire extinguishers including wheeled units costing between $125 to $4,000 for the telecommunications industry and for military applications. The EPA responds that the proposed allocation being finalized in this action accounts for the servicing of existing fire extinguishers. As discussed earlier in this section, the Agency estimated the demand for servicing Halotron® I fire extinguishers manufactured prior to 2020 to be between 35 to 90 MT per year. This

estimate is based on industry feedback on the two draft Servicing Tail Reports that the Agency made available for public comment. The final allocation includes 90 MT based on the servicing demand for servicing fire suppression equipment and the commenter provided no data to support increasing the Agency's estimate for servicing demand or that the proposed allocation amount would strand existing inventory. As described in the *2019 Final Servicing Tail Report* accompanying this action, the Agency estimates that the allocation finalized in this rule combined with reclaimed and recycled HCFC-123 will provide sufficient HCFC-123 to allow for servicing of refrigeration, air-conditioning, and fire suppression equipment, as well as the manufacture of new fire suppression equipment. The EPA finds no support for the assertion that the proposed allocation would strand any existing fire extinguishers.

The EPA further notes that the fire suppression sector has a long history of using recovered and recycled/reclaimed ODS for both servicing and new equipment. There has been continuing demand for halons in newly-manufactured fire suppression equipment since halons were phased out in the United States in 1994. This demand for halons has been satisfied with recycled/reclaimed halons, ensuring equipment can be serviced and investments are not stranded.

Lastly, American Pacific asks the EPA to consider an updated ODP of 0.0098 for the purposes of analysis of environmental impact and comparison with alternatives to HCFC-123 in the fire suppression sector such as halon 1211, hydrofluorocarbons (HFCs), and fluoroketone based agents. The EPA responds that the Agency did not propose and is not finalizing any changes to the listed ODP for HCFC-123. The ODP for HCFC-123 as listed in Annex C to the Montreal Protocol and in Appendix A to 40 CFR part 82, subpart A is 0.02.

C. De Minimis *Exemption for the Use of HCFC-123 in Chillers*

The EPA proposed to create a *de minimis* exemption from the use prohibition in section 605(a) of the CAA to allow virgin HCFC-123 to be used for the manufacture of chillers that meet specific criteria through December 31, 2020. The EPA received two comments on this proposal, from Ingersoll Rand and The Alliance, an industry coalition of fluorocarbon producers and users, both in support of the *de minimis* exemption. For the reasons cited in the proposal and reiterated in this notice, the Agency is finalizing the *de minimis* exemption from the use prohibition in section 605(a). This exemption aims to address a unique situation that has arisen because certain construction projects that ordered HCFC-123 chillers for installation in 2019 are behind schedule and the chillers may not be installed by the end of 2019. The EPA understands that many of the chillers and the virgin HCFC-123 to charge them are already on site at these construction projects and that companies purchased virgin HCFC-123 for charging these chillers with the expectation that they would be installed in 2019. Due to construction delays, the final steps in the manufacture of these chillers (including charging with refrigerant) may not occur until after January 1, 2020. Section 605(a) prohibits the introduction into interstate commerce or use of any class II substance with limited exemptions. Use of a virgin class II substance "as a refrigerant" is allowed only "in appliances manufactured prior to January 1, 2020." The EPA is creating a *de minimis* exemption from this prohibition to allow virgin HCFC-123 to be used for the manufacture of chillers that meet specific criteria through December 31, 2020. This exemption will only apply if the HCFC-123 chiller unit and other components were ready for shipment to a construction location and the components were specified for installation under a building permit or contract dated on or before the date of signature of the proposed rule (July 24, 2019), the HCFC-123 was imported prior to 2020 and is in the possession of the entity that will

complete the manufacture of the appliance, and all refrigerant added to that appliance after December 31, 2020 is used, recovered, or recycled/reclaimed.

(1) Background

As described in Section II of this notice, the CAA restricts introduction into interstate commerce and use of HCFCs over time with limited exceptions. The CAA prohibits the use of HCFCs to manufacture new appliances effective January 1, 2020, unless the HCFCs are used, recovered, and recycled. The CAA also phases out production and consumption of HCFCs, with an interim milestone in 2015 and the full phaseout in 2030. Additionally, the Montreal Protocol phases out the production and consumption of HCFCs as of January 1, 2020, while allowing a limited amount of new production and consumption for servicing existing refrigeration and air-conditioning appliances, servicing existing fire suppression and fire protection equipment, and other uses not relevant for the U.S. market. The EPA codified the CAA use and interstate commerce restrictions related to refrigeration and air-conditioning appliances at 40 CFR part 82, subpart A in prior rulemakings.

As defined in the regulations, the term manufactured[17] "for an appliance, means the date upon which the appliance's refrigerant circuit is complete, the appliance can function, the appliance holds a full refrigerant charge, and the appliance is ready for use for its intended purposes;..." Appliances used in commercial refrigeration, such as large chillers, and industrial process refrigeration typically involve more complex installation processes, which may require custom-built parts, and typically are manufactured on-site. Appliances, such as these, that are field charged or have the refrigerant circuit completed on-site, regardless of whether additional refrigerant is added or not, are manufactured at the point when installation of all the components

[17] The definition of "manufactured" can be found at 40 CFR §82.3. See also 74 FR 66439.

and other parts are completed, and the appliance is fully charged with refrigerant and able to operate.

The EPA learned that a limited number of HCFC-123 chillers specified for installation in 2019 may not be fully manufactured prior to January 1, 2020. The key uncharged components, in particular the chiller units themselves, were ready for shipment to the construction location in the first half of 2019. However, for some delayed projects, even though the units and refrigerant may already be on-site, the final steps to manufacture the appliance, in particular charging the chiller with refrigerant, may not occur until 2020. Thus, if no regulatory relief is provided, the virgin HCFC-123 could not be used to charge these chillers even if it has already been purchased and is on site.

(2) *De Minimis* Exemption

To provide flexibility to complete the manufacture of HCFC-123 chillers from components that are ready for shipment to a construction location, the EPA is creating a limited *de minimis* exemption to the use prohibition in 605(a). This exemption allows HCFC-123 to be used for the initial charging of certain chillers manufactured between January 1, 2020 and December 31, 2020 provided they meet specific conditions. The exemption will only apply if the HCFC-123 chiller unit and components are ready for shipment to a construction location and the components were specified for installation under a building permit or contract dated on or before the date of signature of the proposed rule (July 24, 2019), the HCFC-123 was imported prior to 2020 and is in the possession of an entity involved in the manufacture of the appliance, and all refrigerant added to that appliance after December 31, 2020 is used, recovered, or recycled/reclaimed.

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

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

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

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

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

In addition, rigid application of section 605(a) of the CAA in the unique circumstances presented here would "yield a gain of trivial or no value." *Envtl. Def. Fund Inc. v. EPA*, 82 F.3d 451, 455 (D.C. Cir. 1996) (internal quotation marks omitted). The EPA concludes that there will

be no environmental benefit associated with rigidly applying 605(a). First, because the HCFC-123 used to initially charge these chillers must have been imported prior to 2020, existing allowances will not be expended. There will therefore not be any increase in U.S. consumption compared with the current allowed level of consumption for 2019. Second, this exemption will not encourage the manufacture of additional HCFC-123 chiller units because factory operations for making them have already ceased and the exemption will not permit such operations for additional units.

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

Beyond the HCFC-123 needed for the initial charge, the EPA has analyzed whether the exemption could increase the servicing demand for HCFC-123 in the years 2020 through 2029 compared with not providing this flexibility. As an initial matter, the modeled servicing demand described in the *2019 Final Servicing Tail Report* includes the demand from the appliances affected by this exemption. The report assumes that chillers expected to be manufactured in 2019 are manufactured in that year. Because the chillers that will be affected by this exemption were anticipated to be manufactured in 2019, they will not increase expected demand. This exemption will not alter the requirement that used, recovered, or recycled/reclaimed HCFC-123 be used for

all subsequent servicing events on these chillers. Further, HCFC-123 chillers have very low leak rates, and thus the amount of replacement refrigerant will be low. Therefore, the EPA does not anticipate that future servicing demand will affect the market for reclaimed HCFC-123 in a manner that the EPA has not already considered when issuing allowance allocation amounts for 2020 through 2029.

The exemption also contains numerous constraints that limit its potential impact. The exemption from the prohibition in section 605(a) of the CAA on use in appliances manufactured before January 1, 2020 will apply only for one year and only in a limited set of circumstances. It will apply only if the refrigerant used to manufacture the appliance was in the possession of an entity involved in the manufacture of the appliance and imported prior to January 1, 2020. In addition, any servicing of the equipment after December 31, 2020 will need to be done with HCFC-123 that is used, recovered, or recycled/reclaimed. Further, the exemption will not allow for the manufacture of additional chillers beyond those for which the components had already been made ready for shipment to a construction location and the components were specified for installation under a building permit or contract dated on or before July 24, 2019, the date of signature of the proposed rule.

The *de minimis* exemption is consistent with past EPA practice in this program. The EPA, on past occasions, has provided limited flexibility in applying use restrictions and phaseout dates. The Agency has typically aimed to prevent the stranding of appliances and past investments while phasing out controlled substances. For example, a concern similar to the one at issue here came to the EPA's attention in 2009 when commenters requested a limited waiver from a regulatory prohibition on manufacturing HCFC-22 appliances that was to begin in 2010 (see 74 FR 66412, 66440-41, December 15, 2009). Commenters identified scenarios in which

HCFC-22 appliances had been scheduled for use in projects, such as construction projects, prior to January 1, 2010, but in which, for a variety of reasons, their manufacture could not be completed prior to January 1, 2010. The EPA agreed to grant flexibility by providing an exemption from the regulatory deadline to allow HCFC-22 to be used as refrigerant in appliances manufactured between January 1, 2010 and December 31, 2011, if their components were manufactured prior to January 1, 2010, and were specified in a building permit or contract dated before January 1, 2010, for use on a project. The EPA explained that providing flexibility would not result in additional consumption of HCFCs because companies had previously produced or imported the HCFCs for use in the manufacture of appliances, and that providing flexibility did not affect long-term projections of servicing needs because this equipment was already planned to be installed in the previous year (see 74 FR 66441, December 15, 2009).

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

The EPA also recognizes that for these specific circumstances, there could be negative impacts if the Agency does not provide flexibility. Without the flexibility, chiller manufacturers

would not be able to use virgin HCFC-123 to initially charge and install new equipment even though that virgin HCFC-123 is already on-site. Granting flexibility allows the installation to continue using the HCFC-123 available and prevents further delay of the installation.

For the reasons described above, the EPA is finalizing the proposal to establish a *de minimis* exemption to the use restriction in section 605(a) of the CAA and to revise 40 CFR §82.15(g)(5)(iii) to allow virgin HCFC-123 to be used for the initial charging of certain chillers manufactured between January 1, 2020 and December 31, 2020 provided they meet the conditions specified previously.

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

The EPA is finalizing the proposal to allow for the continued production, consumption, introduction into interstate commerce, and use of HCFCs for servicing fire suppression equipment manufactured before January 1, 2020 consistent with section 605 of the CAA and the November 2018 adjustment to Article 2F of the Montreal Protocol. Specifically, the EPA is modifying 40 CFR §§82.15(g) and 82.16(e) to allow for HCFC-123 to be produced and imported, as well as introduced into interstate commerce and used, during the years 2020 through 2029, to service fire suppression equipment existing on January 1, 2020,[18] so long as it is being used as a streaming agent listed as acceptable for use or acceptable subject to narrowed use limits for nonresidential applications in accordance with the §612 SNAP regulations. The EPA received four comments from American Pacific, HARC, Hudson, and The Alliance, which were all supportive of this proposal.

[18] This will expand the permitted uses under 40 CFR §§82.15 and 82.16, which also allow for use and introduction into interstate commerce, as well as production and consumption, of HCFCs for use as a refrigerant in equipment manufactured before January 1, 2020.

Under the Montreal Protocol, the United States has committed to phase out HCFC production and consumption by January 1, 2020, other than production and consumption for certain narrowly defined uses in an amount up to 0.5 percent of baseline annually.[19] Servicing refrigeration and air-conditioning equipment existing on January 1, 2020 had been the only recognized use under the Montreal Protocol. In 2018, the United States proposed adjusting the Montreal Protocol to add servicing of fire suppression equipment existing on January 1, 2020, as another allowed use. That proposal was based on extensive stakeholder consultation on HCFC needs during the years 2020 through 2029 and the EPA's analysis of available information, including the *2018 Draft Servicing Tail Report.* In November 2018, the Parties to the Montreal Protocol decided to adopt an adjustment that, among other things,[20] added to Article 2F "the servicing of fire suppression and fire protection equipment" existing on January 1, 2020, as a permissible use for newly produced or imported HCFCs.[21] While the term "fire protection" can be understood in some contexts to refer broadly to all measures taken to protect persons or property from harm, the terms "fire protection" and "fire suppression" have been used interchangeably in the Montreal Protocol context to refer to suppressing or putting out fires through the use of chemical substances. Section 605(a) of the CAA uses the term "fire suppression." In addition, the EPA views "fire suppression" as the more precise term in the

[19] As noted previously, the term production does not include the manufacture of a controlled substance that is subsequently transformed (i.e. feedstock material) and as such the production phaseout is not applicable to ODS manufactured for that purpose.

[20] The adjustment adopted at the Meeting of the Parties in November 2018 included an essential use provision as well as the addition of two niche applications under the 0.5 percent cap. In this action, the EPA is making revisions to its regulations to address the addition of fire suppression. This rule does not take any action with regard to the other elements of the adjustment.

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

context of regulating ODS. The adjustment adopted in November 2018 entered into force on June 21, 2019.[22]

The EPA is modifying 40 CFR §82.16(e)(2) to permit the import of HCFC-123 for servicing fire suppression equipment manufactured before January 1, 2020. While the modified 40 CFR §82.16(e)(2) identifies the permissible uses for which HCFC-123 may be imported, this regulatory provision does not govern the allocation of production allowances for HCFC-123. Section 82.16(e), which establishes limits on the production and import of HCFC-123 starting on January 1, 2020, provides that HCFC-123 may not be produced or imported for any purposes other than the listed permissible uses. The revision adds "use as a fire suppression streaming agent in equipment manufactured before January 1, 2020 and listed as acceptable for use or acceptable subject to narrowed use limits for nonresidential applications" to the list of permissible uses. This revision allows for this additional use in the years 2020 through 2029.

The EPA is also adding a new paragraph after 40 CFR §82.15(g)(4) to ensure consistency with the change to 40 CFR §82.16(e)(2). Section 82.15(g) establishes limits on the introduction into interstate commerce and use of certain HCFCs at certain dates in accordance with the worst-first approach discussed previously. Section 82.15(g)(4)(i) establishes limits that apply to many HCFCs including HCFC-123 and HCFC-124, effective January 1, 2015.[23] The EPA is adding a new paragraph after 40 CFR §82.15(g)(4) that repeats the limits in 40 CFR §82.15(g)(4)(i) to clarify the permissible uses of HCFC-123 and HCFC-124 produced or imported after January 1, 2020. Consistent with the restrictions on production and import in the Montreal Protocol (as modified through the adjustment adopted in 2018) and 40 CFR §82.16, with regard to fire

[22] The final meeting report from the 30th Meeting of the Parties and Decision XXX/2 adopting the adjustment are included in the docket for this rulemaking.
[23] Section 82.15(g)(4)(i) applies to all HCFCs not governed by 40 CFR §82.15(g)(1) through (g)(3).

suppression, HCFC-123 produced or imported after January 1, 2020, may only be used for servicing fire suppression equipment manufactured before January 1, 2020. Existing inventories of HCFC-123 produced or imported prior to January 1, 2020, may continue to be used to manufacture and service new fire suppression equipment after January 1, 2020. This change ensures that the regulations are clear and consistent between 40 CFR §§82.15 and 82.16, and, as a practical matter, adds no additional limitations to those in 40 CFR §82.16.

For the reasons described above, the Agency is taking final action to allow HCFC-123 to be used during the years 2020 through 2029 for servicing existing fire suppression equipment.

E. Revisions to Labeling Requirements

To support compliance with the finalized regulations at 40 CFR §82.16(e)(2), the EPA is revising the existing labeling requirements in 40 CFR part 82, subpart E to reflect the limited ability to use virgin HCFC-123 for fire suppression servicing. Labeling containers of fire suppression agent containing HCFC-123 should increase awareness among individuals servicing fire suppression equipment about the restriction on the use of virgin HCFC-123 use and support compliance. The EPA is finalizing two different labels—one for fire suppression agent composed of newly-imported HCFC-123, and one for fire suppression agent composed of reclaimed material or material imported prior to 2020. Together, these labels will ensure that users have enough information to determine which containers of fire suppression agent may be used in which equipment in order to comply with the revisions to the HCFC phaseout regulations. In response to comments from American Pacific, HARC, and The Alliance, the EPA is making minor modifications to the proposed labels.

(1) Background

As discussed previously in this section, starting January 1, 2020, virgin HCFCs may be used only for limited purposes. With respect to fire suppression equipment, HCFCs imported or produced on or after January 1, 2020, can be used only to service fire suppression equipment manufactured before January 1, 2020. HCFCs imported on or after January 1, 2020, cannot be used to manufacture new equipment or to service equipment manufactured after January 1, 2020. Only HCFCs that are reclaimed or were imported prior to 2020 may be used for those purposes.

The only HCFC used in a fire suppression agent is HCFC-123, sold as part of a blend under the name Halotron® I. Clean agents like Halotron® I do not leave a residue, and are used in applications such as data centers, clean rooms, and aircraft where it will not damage high-value or life-saving equipment, thereby minimizing economic damages from a fire (e.g., shorter equipment downtime or lower costs to repair). There are three main fire suppression streaming end uses for which clean agents are used in the United States: (1) hand-held portables; (2) 150-pound wheeled units; and (3) Aircraft Rescue and Fire Fighting (ARFF) vehicles.

As per the National Fire Protection Association (NFPA) and Department of Transportation (DOT) regulations at 49 CFR §180.250, all portable fire extinguishers must be maintained in a fully charged operable condition and undergo hydrostatic testing. NFPA is a codes and standards organization, accredited by the American National Standards Institute, that was established to minimize the risk and effects of fire by establishing criteria for building, processing, design, service, and installation around the world. According to NFPA criteria, fire extinguishers, which include portable hand-held devices and wheeled units, are recommended to undergo maintenance to ensure that an extinguisher will operate effectively and safely in the event of fire.[24] Equipment should be recharged after being used to extinguish a fire, so that it

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

may be usable again. Technicians who conduct hydrostatic testing, perform inspections, or recharge fire suppression equipment after a discharge may need additional information to aid in distinguishing between the permissible uses of specific containers of Halotron® I.

Given that section 611 of the CAA already requires the labeling of containers of ODS, including Halotron® I, the Agency proposed modifying the label to support compliance with the section 605 requirement. Congress recognized that labeling requirements may be needed to effectively implement the phaseout of ODS. In 1993, the EPA established the labeling requirements for both class I and class II substances in 40 CFR part 82, subpart E (see 58 FR 8136, February 11, 1993). Containers in which ODS are stored or transported must bear a clearly legible and conspicuous warning label that can be read by consumers before they can be introduced into interstate commerce. Section 611 of the CAA provides specific language for the label: "Warning: Contains [insert name of substance], a substance that harms public health and environment by destroying ozone in the upper atmosphere." This is reflected in the implementing regulations at 40 CFR §82.106. According to section 611, the label must be "clearly legible and conspicuous." Labels generally should be within the principal display panel, the warning statement should be in sharp contrast to any background upon which it appears, and if there is any outer package for the container (e.g., cylinder, ISO tank, or other container), labels should be on the outside packaging. Specific requirements on the size, text, and location of the label are provided in 40 CFR §§82.106-82.110. Labeling of products manufactured with or containing HCFCs has been required under section 611 since 2015, and the EPA has not seen a movement away from these fire suppression agents due to that labeling requirements. Based on this experience, the EPA does not expect additional text being added to the label to cause a movement away from HCFC-123 based fire suppression agents.

In revising the labeling requirements, the EPA is relying on authority under section 605(c) of the CAA to issue regulations phasing out the production and consumption and restricting the use of class II substances that may be needed for compliance. Since HCFC-123 may be used both to manufacture new fire suppression equipment, which can only be done with HCFC-123 imported prior to January 1, 2020 or reclaimed/recycled material, and to service existing equipment, the EPA identified modified labeling as the lowest cost option to ensure that newly-produced HCFC-123 only be used to service existing equipment.

Specifically, the EPA proposed to require the following text be added to the label for containers of fire suppression agent containing HCFC-123 imported on or after January 1, 2020: "Do not use to service equipment manufactured on or after January 1, 2020." The Agency also took comment on whether to modify the label on material containing HCFC-123 imported prior to January 1, 2020, or that is recycled/reclaimed to clarify for individuals servicing fire suppression equipment that all uses are allowed. Specifically, the EPA proposed the following second sentence could be added to the existing label for containers of Halotron® I made with recycled/reclaimed HCFC-123 or HCFC-123 imported before 2020 that reads "Not restricted to use in servicing pre-2020 equipment."

In addition to knowing whether containers contain recycled/reclaimed HCFC-123 or HCFC-123 imported before 2020 versus virgin HCFC-123, users will need to be able to know the date of manufacture of fire suppression equipment. They will need to be able to distinguish fire suppression agents that may be used only for servicing equipment manufactured before January 1, 2020 from fire suppression agents that may be used for manufacturing new equipment or servicing equipment regardless of the date of manufacture. The Agency sought comment on these points and others.

(2) Summary of and Response to Comments

American Pacific, HARC, and The Alliance support labels on all containers of Halotron® I. Both American Pacific and HARC suggest the language on the label for virgin or newly imported HCFC-123 containers should be more positive than the proposed language. American Pacific suggests the label read "Use only for recharge of equipment manufactured before January 1, 2020." American Pacific and HARC are also supportive of an additional label for reclaimed products and American Pacific suggests the additional label should read "Can be used for all Halotron® I new production and all recharge activities." Commenters confirmed that users should be able to identify the date of equipment manufacture using existing methods as is the case with refrigeration and air-conditioning equipment. However, without additional labeling of containers of fire suppression agents that contain HCFC-123, it may not be possible for users to distinguish containers that may only be used to service fire suppression equipment manufactured before January 1, 2020, from other containers.

In response to the comments received, the EPA concludes that modifications to the existing label language are necessary to ensure that users have enough information to determine which containers of fire suppression agent may be used in which equipment, in order to comply with the regulatory revisions described in this rule. Therefore, the EPA is finalizing labeling requirements for containers of fire suppression agent containing HCFC-123 with modifications to the language proposed. For containers with virgin HCFC-123 imported on or after January 1, 2020, the Agency is requiring the following label: "WARNING: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere. Use only for recharge of equipment manufactured before January 1, 2020."

For fire suppression agents that are recycled/reclaimed or imported prior to January 1, 2020, the Agency is finalizing the following label: "WARNING: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere. For use in any equipment." The statement, "For use in any equipment" conveys the same meaning as the text provided by American Pacific ("Can be used for all Halotron® I new production and all recharge activities") but is simpler, avoids mentioning a patented product, and is analogous to the label for newly-imported material. It clarifies for the user that HCFC-123 that was imported prior to January 1, 2020, or that is recycled/reclaimed can be used for either the manufacture of new equipment or for servicing existing and new equipment. The Agency is modifying the required label at 40 CFR §82.106 accordingly.

The EPA also took comment on whether the manufacturer of Halotron® I can designate specific containers for servicing existing equipment, whether multiple containers would create a burden for industry, and whether technicians would be able to locate manufacture dates on fire suppression equipment. American Pacific states it will establish a second product identification for the Halotron® I that is manufactured with newly-imported HCFC-123 imported after January 1, 2020. The name of this product will be **"**Halotron® I Recharge Only for Equipment Made Before 1-1-20**."** American Pacific states that the Halotron® I container will be labeled prominently with multiple distinctive large yellow or equivalent striping that is in contrast to the current standard Halotron® I container, which has two green stripes. American Pacific notes the standard bulk container will continue to be manufactured using newly-imported HCFC-123 imported before January 1, 2020, or with recycled/reclaimed HCFC-123. Both American Pacific and HARC assert that the maintenance of two differently labeled containers will not result in a

burden on the industry. The EPA appreciates the steps American Pacific intends to take to ensure the proper use of HCFC-123.

American Pacific and HARC provided comments on the EPA's intended approach to assist technicians with identifying which container to use for servicing fire suppression equipment and outreach. For servicing ARFF vehicles, the EPA explained how to identify that information in the proposal for this rulemaking and recommends that technicians inspect the manufactured date on the vehicle. American Pacific states that the methods for identifying the year of manufacture of ARFF vehicles is accurate and notes that manufacturers report the year of manufacture as a ten-digit VIN on the Information Data plates, which are typically located on the floor, dashboard, or door jamb on the driver's side in ARFF vehicles. American Pacific states that they plan to highlight the distinction between the two products in updated filling/maintenance guidance manuals that provide sales materials for ARFF Vehicle original equipment manufacturers and airports users.

For fire extinguishers, American Pacific states the EPA accurately described the method for identifying the date of manufacture in the proposal for this rulemaking. American Pacific notes that historically, however, some of the UL listed fire extinguishers were not approved by the DOT, which was referred to as "309 exempt," but all extinguisher labels as per the UL follow-up listing requirements will show a year of manufacture. HARC also supports the EPA's intention to develop outreach material with the final rule and is interested in working with the EPA to help develop and distribute such material. The EPA is appreciative of the outreach efforts American Pacific intends to pursue and is appreciative of the clarification for ARFF vehicles and fire extinguisher date of manufacture. The EPA intends to

work with stakeholders to develop educational materials and conduct outreach to technicians, distributors, and service providers.

F. Allocation of HCFC-124 Production and Consumption Allowances

The Agency received two supportive comments and one comment opposed to allocations for HCFCs generally. Based on comments received on the proposed allocation amount for HCFC-124 and the Agency's analysis, the EPA is finalizing HCFC-124 production and consumption allowances in the years 2020 through 2029 as proposed.

As noted in the *2019 Final Servicing Tail Report*, HCFC-124 consumption was approximately 250 MT per year between 2012 and 2017 and reclamation was minimal. More recent sales data from the California Air Resources Board, discussions with industry, and annual consumption and production data indicate that demand for HCFC-124 is between 100 and 200 MT. As explained in the previous discussion about HCFC-123 allowance allocations, providing HCFC-124 allowances significantly in excess of demand would not foster a smooth and orderly transition. Thus, the EPA proposed to allocate 200 MT for the first three years and then gradually decrease the allocation over the next seven years by an equal amount each year.

National Refrigerants and an anonymous commenter support the proposed allocation of HCFC-124. The anonymous commenter states that Alternative 2 in the proposal is inconsistent with the gradual decrease in volume over the phase out period and may prevent the establishment of sufficient volume of reclaimed material to serve remaining servicing needs post-2030, as described in the *2019 Draft Servicing Tail Report*.

The EPA responds that it agrees that reducing the allocation gradually is the appropriate choice so that equipment owners have time to transition to alternatives and/or develop relationships to rely on recycled and/or reclaimed HCFC-124.The EPA is finalizing the

allocation for consumption and production of HCFC-124 at 40 CFR §82.16(a) as proposed. As stated previously, the Agency's goal is to ensure that servicing needs can be met, while also encouraging recovery and reuse and transition to alternatives. Providing consistent allocations for the first three years will assist in establishing an inventory of HCFC-124 to be used for servicing throughout the allocation period and past the phaseout date for the expected lifetimes of all existing equipment. The EPA does not want to strand existing equipment because of an inadequate supply of HCFC-124. This allocation supports this goal because it accounts for allowed end uses of HCFC-124 that may not be captured by the Vintaging Model (e.g. use of niche refrigerant blends containing HCFC-124 to service equipment manufactured before 2020). Regarding the comment that allowances are not needed, the Agency references the previous discussion in this section under the HCFC-123 allocation, as similar considerations apply for HCFC-124. In addition, an HCFC-124 allocation is necessary because there is minimal reclamation of HCFC-124. This allocation level is within the limit established by the CAA and Montreal Protocol and will decrease over time to foster transition to alternatives prior to the January 1, 2030 phaseout date.

G. Changes to Transfers of Allowance Provisions in 40 CFR §82.23

The EPA is explicitly prohibiting calendar-year inter-pollutant transfers of HCFC-123 and HCFC-124 to phased-out HCFCs. The Alliance comment is supportive of limiting inter-pollutant transfers, and the EPA is finalizing the provision as proposed.

Under section 607 of the CAA, the EPA has issued regulations at 40 CFR §82.23 which provide for both inter-pollutant and inter-company transfers of allowances for class II ODS under certain conditions. In an inter-pollutant transfer, an allowance holder converts allowances for one class II ODS into allowances for another class II ODS (40 CFR §82.23(b)). The EPA is

finalizing changes in 40 CFR §82.23(b) to ensure clarity for the regulated community. The change is intended to minimize confusion and reduce the likelihood that an allowance holder will mistakenly seek an inter-pollutant transfer of HCFC-123 or HCFC-124 allowances to phased-out HCFCs such as HCFC-22. This change does not have a practical effect on the ability of allowance holders to legally produce or import phased-out ODS given the prohibition in 40 CFR §82.16. Inter-pollutant transfers between HCFC-123 and HCFC-124 also may continue so long as the newly produced or imported HCFC-123 and HCFC-124 are for an allowed use, such as for servicing refrigeration and air-conditioning appliances manufactured before January 1, 2020.

The Alliance commented that they support the EPA's proposal to explicitly prohibit transfers into ODS that are already phased out. Given the comment and the fact that the EPA received several inquiries prior to this rulemaking about whether inter-pollutant transfers from HCFC-123 or HCFC-124 to HCFC-22 will be allowed after the phaseout of HCFC-22, the EPA is finalizing the proposed change to make clear that calendar-year inter-pollutant transfers of HCFC-123 and HCFC-124 to phased-out HCFCs are prohibited.

H. Changes to Import Requirements

Under sections 604, 605, and 606 of the CAA, the EPA restricts the import of ODS consistent with both the CAA and the Montreal Protocol. As discussed previously in Section II of this notice, importing virgin ODS requires the importer to expend consumption allowances. By controlling the number of allowances and knowing who holds those allowances, the EPA ensures that the United States meets its phaseout obligations. Used ODS[25] can be imported without consumption allowances, and generally without use restrictions, if certain conditions are

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

satisfied. Imports of used ODS are regulated under 40 CFR §82.13(g)(2)-(3) (for imports of used class I substances) and 40 CFR §82.24(c)(3)-(4) (for imports of used class II substances).

The EPA proposed and is finalizing a number of changes to update the data collection requirements related to the import of ODS, as described in further detail below. Such changes require collection of additional information when the EPA considers petitions to import used ODS to verify whether the material has been previously used. Other changes remove data elements that the EPA no longer needs. The EPA is also finalizing a procedure for imports of both used and virgin ODS when they are imported for destruction, exempting aircraft bottles containing halon 1211 imported for hydrostatic testing from the petition process, and finalizing as proposed the prohibition on the sale of illegally imported ODS.

Because some of these regulatory revisions relate to the petitions process for imports of used ODS, some background on the petitions process under the regulations that were in place prior to this rulemaking may provide useful context. Under that process, anyone wanting to import used ODS must submit a petition to the Agency, and the EPA must provide a "non-objection notice" approving the import for it to proceed. The petition to import a used ODS must contain certain information, which the EPA uses to verify whether the ODS is used. Required information includes: a description of the previous use of the substance; the identity of source facilities from which the material was recovered; a contact person at each source facility; the name, make, and model number of the equipment from which the material was recovered at each source facility; a best estimate of when the material was removed; and an export license from the appropriate government agency from the country of export (see 40 CFR §§82.13(g)(2) and 82.24(c)(3)). After review, the EPA responds to the petition by issuing either a "non-objection notice," which allows the import to proceed, or an "objection notice," which has the effect of

prohibiting the import because a non-objection notice is required for the lawful import of such material.

The EPA established the petition process to import used class I ODS (under sections 603 and 604 of the CAA) in 1998 (see 63 FR 41626, August 4, 1998) and in 2003 (see 68 FR 2819, January 21, 2003) for class II ODS (under sections 603 and 605 of the CAA) given concern that some importers were circumventing the production and import controls by importing virgin class I and class II substances that had been intentionally mislabeled as used. Sections 604, 605, and 606 of the CAA provide statutory authority for controlling the import of ODS, including the petition process. Section 603 of the CAA requires reporting of the amount of ODS imported on a quarterly basis or on a basis determined by the Administrator. To the extent that these regulatory revisions finalized in this action involve recordkeeping and reporting of information, the EPA also relies upon its authority under section 114 of the CAA, which authorizes the EPA to require recordkeeping and reporting in carrying out any provision of the CAA (with certain exceptions that do not apply here).

The petition process has generally been effective at providing information that allows the EPA to verify that ODS are used before they are imported, and accordingly, for many aspects of the existing process, the Agency did not propose and is not finalizing any changes in this rulemaking. However, over years of implementation, the EPA has identified potential areas for improvement. These include the fact that the existing requirements for detailed source information are often difficult to satisfy if the imported material comes from a halon bank, *i.e.,* a physical facility where halon recovered from different sources is aggregated. Much of this halon was sent to the banks with limited or no records of its origins or use. Additionally, current regulations exempted only halon 1301 aircraft bottles from the petition process for hydrostatic

testing, yet aircraft bottles containing halon 1211 are also imported for such testing and importers must petition the Agency and receive a non-objection notice for those bottles under the existing process. The petition process also did not distinguish imports of used ODS that are intended to be destroyed from imports that are intended to be reclaimed for continued use, even though the Agency recognizes that the verification requirements do not need to be as rigorous when the ODS are to be destroyed. Further, the existing regulations did not provide a specific mechanism to pre-approve the import of virgin material for destruction, resulting in delays at the port of entry while the EPA verified the shipment. In addition, the EPA remains concerned about the potential for illegal import of ODS and wanted to take steps to strengthen the Agency's ability to enforce the phaseout of ODS. To address these and other issues, the EPA proposed and is now finalizing revisions to the regulations for imports, as described in the following sections.

i. Changes to the Petition Process to Import Used ODS for Reuse in 40 CFR §§82.13 and 82.24

The EPA proposed changes to the petition process that would generally reduce burden on importers while still allowing the Agency to verify that only used material is being imported. Of particular note, the Agency proposed to: 1) reduce the information requirements when importing class I ODS[26] from a "bank" so long as an official letter is provided from the appropriate government agency in that country where the material is stored that attests that a class I substance is "used"; 2) allow submission of an application for an export license in lieu of the license itself; 3) authorize the Agency to request additional information when additional verification is needed before issuing a non-objection notice, and 4) provide flexibility for the timing of import.

[26] The EPA did not propose similar changes for class II ODS given the production phaseout for these substances is still underway.

In soliciting comments on the proposal, the Agency was particularly interested in whether streamlining the petition process, including to facilitate imports of material from banks for class I ODS, in particular halon, would affect compliance with the prohibition on import of virgin ODS. The EPA welcomed suggestions from stakeholders on how the petition process could be streamlined while ensuring compliance. The Agency received comments on the definition of "banks" and whether the proposed flexibilities should be restricted to halon, the requirement to provide an export license, extending the reduced information requirements to class II substances, the possibility that the EPA might request purity information in considering a petition, the import of used HFCs containing trace quantities of ODS, and the timing of imports after a non-objection notice has been issued.

Taking into account the comments received, the EPA is finalizing changes to the petition process that will meet the Agency's goals of reducing the burden on importers while continuing to provide mechanisms to verify that the material being imported is used. As described in greater detail below and based on the comments received, the EPA is finalizing two changes to what it proposed. First, the Agency is narrowing the definition of "bank" which as proposed encompassed all ODS, though only used in reference to class I ODS, to "halon bank." Second, the Agency is allowing not only an application for an export license in lieu of the license itself, as was proposed, but also an official communication from the appropriate government agency in the country of export. For the following changes, the EPA received no adverse comments and is finalizing the proposed revisions because the Agency concludes that the revisions are warranted based on the rationale articulated in the proposal and in this notice: 1) requiring that petitions include email addresses in contact information (while removing the requirement to provide fax numbers) and commodity codes for the material, and 2) providing

one year from the date stamped on a non-objection notice for import to occur. In general, the EPA anticipates these changes will increase the availability of used ODS in the United States and thus help to provide a greater supply of used material for servicing existing equipment, which might otherwise be retired before the end of its useful life.

With respect to the proposal to remove the requirement for some source information for class I substances stored in either a national government bank or a privately-operated bank authorized by a national government with the submission of an official letter from the appropriate government agency verifying that the class I substances are in fact used, the EPA received comments from Hudson and National Refrigerants in support of the proposal. In contrast, the Halon Recovery Corporation (HRC), a non-profit trade association for halon users, and an anonymous commenter suggest narrowing the exemption to only halon banks rather than all class I ODS. HRC notes that the import petition process has been structured around the refrigeration and air-conditioning sector, and as such, these requirements have been difficult for halon recyclers to meet. Banks do not typically have the complete information required by the EPA's petition process, especially since the material may have been recovered decades ago, when records of source and use were not kept. HRC states that, unlike CFCs, there is a large installed base of fire suppression equipment that requires future servicing and retrofitting that equipment to use alternatives may not always be feasible. HRC also notes that it is aware of only a few enforcement actions taken by the Agency for the illegal importation of halons. The anonymous commenter states their concern for reducing information requirements in a petition to import used class I substances is due to the potential for misuse, which would be contrary to the Agency's effort to prohibit sale of illegally imported controlled substances. The commenter suggests a change may be needed for

halon, as there is a large installed base that may require future servicing, and since retrofitting that equipment for the use of alternative substances may not be feasible, but there is not the same need or demand for other class I substances. The commenter advises that changes should be specific to halon, and the Agency should maintain the existing requirements for other class I substances.

While a couple of commenters were supportive of finalizing the revisions as proposed, due to concerns other commenters raised about the potential for illegal imports of class I ODS, the EPA is finalizing provisions that are more limited than those proposed by finalizing the definition of "halon bank" in 40 CFR §82.3 (rather than "bank") and restricting the provisions in 40 CFR §§82.13(g)(2)(iii) and (xv) to material from a "halon bank." In light of the recently discovered unexpected emissions of CFC-11 measured in the atmosphere[27] and concern from commenters regarding potential for misuse of the petition process, the Agency is finalizing revisions that are narrower than the proposal and is only providing this flexibility for halon banks.

The EPA's decision is based in part on the need for used halons exceeding the need for other used class I ODS. The Montreal Protocol's Technology and Economic Assessment Panel (TEAP) issued a report in September 2018, available in the docket, noting continued demand for halons, in particular for servicing fire suppression equipment for civilian aviation.[28] Civil aircraft will continue to need halon to meet fire protection requirements for lavatory bottles, handheld extinguishers, engine nacelles, auxiliary power units, and cargo compartments[29] until there is a

[27] For more information, see the discussion in section III.J.
[28] UNEP. (2018) Montreal Protocol on Substances on Substances that Deplete the Ozone Layer. Report of the Technology and Economic Assessment Panel. September 2018 Volume 2 Decision XXIX/8 on the Future Availability of Halons and their Alternatives; pg. 1-32. Available at: https://ozone.unep.org/index.php
[29] FAA (2004). "FAA Halon ARC Final Report Findings & Recommendations" Halon Replacement Aviation Rulemaking Committee; pg. 1-49. Available at:

transition to alternatives for all applications on new aircraft as well as to service the civil aircraft fleet. The EPA agrees with the comment that there is a large installed base of fire suppression equipment that requires future servicing and retrofitting that equipment to use alternatives may not always be feasible, and this point supports its decision.

Since production and consumption of halons were phased out in the United States and other non-Article 5 countries in 1994, many countries, organizations, and private sector companies established halon banks, which are physical locations where previously-used and recovered halons are aggregated from different sources and stored.[30] The EPA agrees with the comment that banks do not typically have the complete information required by the EPA's petition process. When a used ODS is imported for reuse under the existing process, the import petition must contain information about the used ODS including contact information from each source facility from which the material was recovered and the name, make, and model number of the equipment from which the material was recovered. Petitioners sourcing used ODS from banks, therefore, rarely have enough records to provide all the information required in the petition process, and as a result the petitions are subject to denial. In considering these comments, the Agency recognizes that providing increased flexibility for halons, while still allowing the Agency to verify that only used material is being imported, allows for halon to be more easily sourced from overseas banks, increasing halon available to service aircraft, oil and gas facilities, and other fire suppression applications.

To provide further response to the comment expressing concern that reducing the requirements for import petitions for used ODS could lead to potential misuse of the petition

https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/committee/browse/committeeID/397

[30] Halons were phased out in Article 5 countries in 2010.

process, the Agency notes that it will continue to be able to request additional information from petitioners sourcing halon from banks. For instance, the Agency may request additional information on whether the country where the halon bank is located has production of halon for feedstock use or stockpiles of virgin halon. If petitioners fail to respond to requests from the Agency for additional information, the EPA may issue an objection notice on that basis, as clarified in revisions to 40 CFR §82.13(g)(3)(i)(A) finalized in this rulemaking.

HRC also commented that restricting this relief to government banks or banks authorized by a national government unnecessarily limits its effectiveness. HRC states that national government ODS banks are not usually a source for halons for civilian uses because they are designated for military use, and many national governments do not "authorize" privately-operated banks or reclamation facilities. HRC suggests the EPA define bank as "a facility run by a national government or privately run that collects and stores previously-recovered ozone-depleting substances for reuse at a later date."

The EPA disagrees with the comment that the Agency amend the definition of "halon bank" to include privately-run banks regardless of whether they are government authorized. While the EPA supports the notion of providing more flexibility for imports of used halon to meet ongoing demand for halon, the Agency does not have sufficient information about the nature of such banks to determine whether or not such an expansion is appropriate at this time. In particular, the Agency would need to further consider whether it is possible to provide such flexibility while ensuring that doing so does not create an avenue for illegal imports of virgin halon into the United States. This is particularly important given the existence of stockpiles of

virgin halon, for example halon 1211[31], and the ongoing production of halon for use as a feedstock.[32] The Agency may consider if there are ways to establish such flexibility while ensuring compliance with the CAA and Montreal Protocol and may decide that it is appropriate to propose additional changes in a future rulemaking.

The EPA is thus revising the regulations at 40 CFR §82.3 to add a definition for "halon bank" to mean a facility run by a national government or privately run and authorized by a national government that collects and stores previously-recovered halon for reuse at a later date. As described in 40 CFR §§82.13(g)(2)(iii) and (xv), if used halon is stored in a halon bank, the petitioner need not provide certain source information, though the petitioner should provide it if available so as to better allow the EPA to verify that the halon is used. The petitioner must indicate that the halon is from a halon bank by providing an official letter from the appropriate government agency in the country where the material is stored indicating that the halon is used and that the halon bank is authorized to collect used halon. The letter may also provide any additional information available to help demonstrate that the halon is used. Providing this official letter, does not mean that the EPA will automatically approve the petition as the EPA retains the right to request additional information and/or issue an objection notice if the information is insufficient.

With regards to the petition process for used ODS more generally (including petitions for used halons from halon banks), the EPA is finalizing as proposed a provision stating that the Agency may request other information to verify substances are used before issuing a non-

[31] UNEP (2014). TEAP Report of the Halons Technical Options Committee Vol. 3 2014 Supplementary Report #2 Global Halon 1211, 1301, and 2402 Banking. Available at https://ozone.unep.org/sites/default/files/2019-05/HTOC%202014%20Supplementary%20Report2%20-%20Global%20Halon%201211%201301%20and%202402%20Banking.pdf

[32] UNEP (2018). TEAP 2018 Assessment Report. Available at http://conf.montreal-protocol.org/meeting/oewg/oewg-41/presession/Background-Documents/TEAP_2018_Assessment_Report.pdf

objection notice. This information could include, but is not limited to: photos of each unit that contained the used ODS, with serial numbers visible; photos of a representative sample of the cylinders, with serial numbers visible; a description of the facility from which the used ODS originates, including information regarding what is produced at the facility, the location of the facility, and how long the facility has been in the location; a description of each unit from which the used ODS originates; links to websites showing brochures, photographs, and/or descriptions of each different unit from which the used ODS originates; copies of the original, signed work orders authorizing collecting of the used ODS; copies of the paperwork showing that the company completed the work; copies of payment to the company that collected the used ODS for their services, with redactions for confidential or sensitive information such as bank account numbers; copies of business licenses from the government authorizing collection companies to do this type of work; and information on how transport will occur within the exporting country and to the United States. For used ODS from Europe, the EPA could request a screenshot of the European Commission export license; the name and contact information for the European Commission official who signed the Export License; and copies of all paperwork required for movement within the European Union, such as the "Notification document for transboundary movement/shipments of waste."

The EPA is not collecting all such information for each petition and thus is not revising the regulatory text to require that it be provided in every petition. However, the Agency does wish to provide notice to petitioners that it may request additional information to confirm that the ODS is used and, as proposed, is amending the regulations in this rulemaking at 40 CFR §82.13(g)(3)(i)(A) to make clear that failure to provide such information when requested would be grounds for issuing an objection notice.

In response to a statement in the proposal that purity sampling might be among the information the Agency might request in considering a petition to import used ODS, the Agency received comments from HRC requesting that the EPA not request purity sampling of used ODS for import as a method of determining whether an ODS is new or used. The commenter states that requesting this information for halons would be ineffective and in the case of used system cylinders possibly dangerous. HRC describes how used halons are often imported in the original system cylinders (some of which can be 20 to 40 years old). These cylinders may have actuation methods that are explosive in nature as they are intended to release the contents of the cylinder in ten seconds or less. They also have pressures as high as 600 pounds per square inch and if actuated accidentally can be extremely dangerous. HRC states that there is no safe way to sample these cylinders for purity testing without completely emptying the contents of the cylinder. HRC acknowledges that halon stored in bulk tanks can be sampled and purity information could be provided but asserts that this would not be an effective method to distinguish between new and used halons because in some cases used halons are imported in bulk after being reclaimed to industry specifications, and purity sampling could result in these halons being deemed to be new when they are actually used.

The Agency has considered the comments from HRC and agrees that requiring halon purity testing in some cases could unintentionally cause the inadvertent release of halons. As a result of the comments, the Agency now understands that purity sampling of halon held in bulk containers is almost always available and could be useful in limited situations in combination with other information to help verify the material is used. Therefore, the EPA intends to limit any purity testing requests to halon that is in bulk containers or in other situations where the purity testing should not result in unintended releases of halons.

HRC also commented on the Agency's proposal to allow for an application for an export license in lieu of an actual export license. The commenter states that some national governments do not provide such licenses and requests that the EPA remove the provision in 40 CFR §82.13(g)(2)(xii). For example, as noted in the proposal Canada, the largest exporter of used ODS to the United States, requires the EPA to approve the export before they issue an export license. As such, petitioners are only able to provide the submitted application for an export license with their petition. Considering this, as noted in the proposal, the Agency has worked with Canada to accept the submitted application in lieu of the export license. However, as HRC notes, there may be other countries that also require approval prior to export from the importing country such as a non-objection notice.

The EPA recognizes that some countries, including the United States, do not require or provide export licenses. However, most governments do provide some form of acknowledgement, such as a letter from a national ozone unit noting the ability to export or even an email acknowledgement. The Agency does not find it appropriate to remove all forms of acknowledgement from the exporting government in the petition process and disagrees with the suggestion to remove 40 CFR §82.13(g)(2)(xii). An official communication from the government acknowledging the export helps ensure the petitioned amount is equal to or less than the amount that arrives at the United States port of entry. This process also allows for the government of the exporting country to evaluate the effects of the export on their own fire suppression sector and hold consultations ahead of concurring with the export. Therefore, the Agency is amending 40 CFR §§82.13(g)(2) and 82.24(c)(3) to allow importers of used class I and class II substances, respectively, to provide in lieu of an export license, as is required under the existing regulations, either an application for an export license or an official communication

from the appropriate government agency. The option of providing an official communication is a change from the proposal, resulting from the information provided by the commenter highlighting for the EPA that some governments do not require or provide export licenses. As proposed, the EPA is also finalizing a requirement for an English translation of the export license application, export license, or official communication to facilitate the Agency's review.

The Agency also received a comment from American Pacific, which states they could better meet the servicing demand for the HCFC-123-based fire suppression agent Halotron® I if the Agency establishes a streamlined petition process for importing recycled HCFC-123. American Pacific asserts that source requirements for class II substances in 40 CFR §82.24(c)(3)(iv) are disproportionally burdensome and hinder any recycled HCFC-123 import opportunity. Based on American Pacific's consultations with major recyclers and reclaimers of HCFC-123, the commenter states that many reclaimers find the source information requirements to be extremely burdensome. In response to comments supporting waiving source information for class II substances, the EPA notes that it did not propose to relax the import petition requirements for class II ODS. The Agency concludes that it would not be appropriate to extend this exemption to class II substances at this time because of continued global production of these substances and thus the greater likelihood that virgin material may be illegally imported into the United States under the guise of being used. Source information requirements help to ensure that the imported substance is used by documenting for example the name, make, and model numbers of refrigeration and air-conditioning equipment from which the class II substance was removed. The Agency has consistently taken measures to avoid illegal imports of virgin ODS and has typically only considered relaxing any import requirements for used material after production and consumption phaseouts. The EPA may consider proposing to

extend exemptions for source requirements in 40 CFR §82.24(c)(3)(iii) – (vi) for class II substances or otherwise providing flexibility for these requirements to make the process less burdensome in a subsequent rulemaking potentially closer to the global production and consumption phaseout for HCFCs.

National Refrigerants suggests that the EPA include a provision to facilitate the import and reclamation of used HFCs that contain a trace amount of class I ODS. The EPA responds that establishing a process for importing used HFCs for reclamation is not necessary as no allowances are needed to import HFCs.[33] In this circumstance, the importer would need to petition for the used ODS portion of the mixture. The EPA did not propose to establish a separate process for importing mixed gases that contain ODS.

For other aspects of the proposed changes to the import petition process for used ODS, the EPA did not receive adverse comment. The EPA is finalizing those proposed changes to the petition process to ensure accuracy, speed review, and facilitate the import of used ODS, while maintaining requirements that help assure that the material being imported is used. In particular, the EPA is updating the requested contact information by requiring email addresses and removing fax numbers. The EPA is also requiring that petitioners provide the commodity code associated with the ODS to be imported. The commodity codes are classifications for goods and services traded among countries. This will match the Agency's other import and export requirements in 40 CFR §§82.13(g) and (h) and 82.24(c) and (d) and help to ensure that the data are correctly entered in Customs and Border Protection's Automated Commercial Environment and International Trade Data System (ACE/ITDS).

[33] Reporting of HFC imports is required under other EPA regulatory requirements, see https://www.epa.gov/ghgreporting.

As proposed, the EPA is also updating the commodity codes for HCFC-123 and HCFC-124 in Appendix K. The U.S. International Trade Commission is responsible for periodically updating the Harmonized Tariff Schedule of the United States Annotated (HTSA). The HTSA provides the applicable tariff rates and statistical categories for all merchandise imported into the United States. It is based on the international Harmonized System, the global system of nomenclature that is used to describe most world trade in goods. This action conforms the commodity codes for HCFC-123 and HCFC-124 in the appendix with those currently in effect and in use by the U.S. International Trade Commission.

The existing regulations for petitions for imports of used material also require that if the imported substance is intended to be sold as a refrigerant, the petition must include contact information for the U.S. reclaimer who will bring the material to the standard required under section 608 of the CAA and 40 CFR part 82 subpart F[34], if it is not already reclaimed to those specifications. The EPA is finalizing its proposal to add "EPA-certified" to the description of reclamation facilities in the provisions containing this requirement, 40 CFR §§82.13(g)(2)(xiii) and 82.24(c)(3)(xiii). This will highlight the existing expectation for petitions to import used material to be sold as a refrigerant that the reclamation facility that will receive the material in the United States must be EPA-certified.[35]

Finally, the Agency is allowing flexibility for the timing of the import, which is particularly useful when the Agency issues non-objection notices towards the end of the year. The EPA previously required the import to occur in the same control period (i.e., calendar year) that the non-objection notice was issued. However, this can result in petitioners postponing their

[34] Clarifications to subpart F are being finalized in 40 CFR §82.13(g)(2)(xiii) to match 40 CFR §82.24(b)(2)(xiii). This was not addressed in the proposal.
[35] The EPA's reclamation program is described at https://www.epa.gov/section608/stationary-refrigeration-refrigerant-reclamation-requirements.

requests until the start of the next year. To avoid that unnecessary delay, the EPA proposed to provide importers one year from the date stamped on the non-objection notice to import that shipment. The EPA received one comment, from HRC, in support of providing flexibility on the timing of imports. The commenter states that the requirement that the import occur in the same calendar year can cause logistical challenges. To avoid such delays and logistical problems, the EPA is finalizing this change as proposed.

ii. Changes to the Exemption for the Import Petitions Process for Hydrostatic Testing

As noted above, the EPA proposed to exempt aircraft halon bottles containing halon 1211 from the import petitions process when being imported for hydrostatic testing. The proposal would allow the same exemption for aircraft halon bottles containing halon 1211 as already exists for halon 1301 aircraft halon bottles. The EPA received supportive comments on this proposal from The Alliance and HRC and no adverse comments; it also received comments suggesting that the exemption be extended to aircraft halon bottles imported for other purposes. For the reasons discussed below, the Agency is finalizing the changes as proposed.

The existing regulations at 40 CFR §82.3 defined "aircraft halon bottle"[36] as a vessel used as a component of an aircraft fire suppression system containing halon 1301. To facilitate the import and testing of more types of aircraft halon bottles for hydrostatic testing, the EPA is extending the definition of "aircraft halon bottle" in 40 CFR §82.3 to also include vessels containing halon 1211, as proposed. Because the existing regulations in 40 CFR §82.13(g)(2) exempt aircraft halon bottles that are imported for hydrostatic testing from the import petition

[36] An aircraft halon bottle is considered a "used controlled substance" as defined in 40 CFR §82.3, which is a controlled substance that has been recovered from its intended use system (and may include controlled substances that have been, or may be subsequently, recycled or reclaimed). Halon is placed into aircraft halon bottles and the bottles are then inserted into a fire suppression system. When the system is dismantled or the bottles are removed from the system, the halon contained in the bottles is considered used since it was removed from the system.

process, revising this definition would extend this exemption to such vessels containing halon 1211. This exemption facilitates proper maintenance of bottles containing halon 1211 and allows transit and testing to occur more quickly for such bottles. Promoting proper maintenance of these additional fire suppression devices helps ensure the bottles operate correctly to extinguish fires on aircraft. Proper maintenance of the storage vessels also prevents the accidental emission of this high-ODP compound. The EPA notes that the exemption of imports of aircraft halon bottles containing halon 1211 for hydrostatic testing only exempts them from the petition process. Recordkeeping and reporting are currently required, and will continue to be required, for the import and export of aircraft halon bottles. Importers of such bottles also still need to maintain import records, as set forth in 40 CFR §82.13(g)(1) and submit quarterly reports within 30 days of the end of the applicable quarter in accordance with 40 CFR §82.13(g)(4).

HRC comments that halon bottles supplied by aerospace original equipment manufacturers (OEMs) to service global aircraft fleets are sometimes imported into the United States for purposes other than hydrostatic testing (e.g., spares restocking, customer returns, etc.). HRC states that such additional purposes tend to be intermittent, involve limited quantities, and in most cases involve equipment that was originally exported from the United States by the aerospace OEM. As such, HRC states they should not be subject to the same level of scrutiny as other used ODS imports.

The EPA is not making the revisions suggested in this comment as it is beyond the scope of this rulemaking and the EPA does not have enough information about restocking or customer returns of aircraft halon bottles to support such a change. For example, the EPA currently lacks information on what type of containers would be imported for restocking or customer returns. Controlled products as defined in 40 CFR §82.3, which include fire extinguishers, are exempt

from the petitions process because they are not controlled substances, as defined in 40 CFR §82.3. Aircraft halon bottles are not considered controlled products because they do not function unless connected to the onboard fire suppression system. Rather they are components of larger fire suppression systems used on aircraft (see 74 FR 10185, March 10, 2009). The EPA also lacks information on how these vessels are currently being imported, such as whether the imports have historically been approved through the import petition process, what the quantity of aircraft halon bottles imported for this purpose might be, and the frequency of petitions by the aviation industry to determine the burden reduction opportunity. The EPA also lacks a description of restocking and customer returns and how this contributes to safety and maintenance of these aircraft halon bottles. All of this information would be useful in considering whether to consider proposing a change to the exemption for aircraft halon bottles in a future rulemaking.

iii. Imports for destruction

This portion of the notice discusses two sets of changes to the import process for ODS specifically imported for destruction, which were proposed and are being finalized.[37] First, the EPA is establishing a streamlined approach for importing used ODS for destruction called the Certification of Intent to Import ODS for Destruction. Second, the EPA is extending that approach to virgin ODS, as there was no existing mechanism defined in the regulations for the EPA to pre-approve import of virgin ODS for destruction. The EPA received three comments on its proposal to create this process for both used and virgin ODS. The Agency received supportive comments on a streamlined approach and extending the approach to virgin material, but one commenter expresses concern about the potential for illegal imports. After considering the comments, the Agency is finalizing many of these provisions as proposed and is also adding

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

requirements to obtain more information on the chain of custody after ODS is imported under this process.

ODS from decommissioned equipment, unwanted stockpiles, and mixtures that are contaminated and cannot be reclaimed are often imported into the United States for destruction. Facilitating the destruction of ODS is beneficial to the environment since it averts ODS emissions into the atmosphere and thus supports the overarching goal of Title VI to protect stratospheric ozone. The Montreal Protocol's Scientific Assessment Panel estimated that capture and destruction of CFC, halon, and HCFC banks[38] in 2015 could avoid 1.8 million ODP-weighted metric tons of future emissions through 2050 and return stratospheric chlorine levels at mid-latitudes to 1980 levels more than six years sooner than in the baseline scenario.[39] The EPA recognizes that there is ongoing commercial demand for certain substances, as discussed earlier in this notice with respect to halons and other ODS. Some ODS may, however, be unwanted and thus susceptible to release; this risk may be higher when they are stored in countries that do not have adequate capability to properly reclaim or destroy them. A process for the import of ODS for destruction helps facilitate the destruction of such ODS and reduces the risk of such releases. Destruction of unwanted ODS in the United States supports the ongoing availability of destruction options of ODS worldwide and may also generate revenue for domestic destruction facilities.[40] More information on the destruction facilities that destroy ODS and their

[38] As used here, "banks" refers to the total ODS that have already been manufactured but not yet released to the atmosphere. This can include ODS contained within closed cell foams, installed in appliances, held in original containers, etc. This definition is broader than the definition of the term "halon bank" being finalized in this action.
[39] UNEP. (2014) Scientific Assessment of Ozone Depletion: 2014 World Meteorological Organization Global Ozone Research and Monitoring Project – Report No. 55 pg. 1-416. Available at: https://www.esrl.noaa.gov/csd/assessments/ozone/2014/report.html
[40] EPA. (2018) "U.S. Destruction in the United States and Abroad" pg. 1-63. Available at: https://www.epa.gov/sites/production/files/2018-03/documents/ods-destruction-in-the-us-and-abroad_feb2018.pdf

technologies is available in the report in the docket titled "U.S. Destruction in the United States and Abroad."

As discussed above, the EPA's petition process for the import of used ODS is designed to allow the Agency to verify prior use of the material so that virgin ODS are not entering the United States under the pretense of being "used." Under the existing regulations at 40 CFR §§82.13(g)(2) and 82.24(c)(4), anyone wishing to import used class I or class II ODS, respectively, for destruction must submit a petition providing the same information as for any other petition to import used ODS. It is then the obligation of the second-party destruction facility to provide a verification report to the importer or producer that the material was destroyed (40 CFR §§82.13(k) and 82.24(e)). Importers are required to keep records on imports for destruction of ODS under 40 CFR §§82.13(g)(1) and 82.24(c)(2) and to submit quarterly reports, in accordance with 40 CFR §§82.13(g)(4) and 82.24(c)(1). The regulations contain an exception to the prohibition on import of virgin ODS without consumption allowances in the case of imports for destruction but do not provide a specific process for such imports.

To facilitate the importation of used ODS for destruction, the EPA proposed to create a new petition process for the import of used and virgin ODS for destruction, called a Certification of Intent to Import ODS for Destruction, in 40 CFR §§82.13(g)(5) and 82.24(c)(6). Under this proposed process, the importer would submit the petition at least 30 working days before the shipment's departure from the foreign port. After review, the EPA would send either a non-objection notice or an objection notice. The proposed period was shorter than the corresponding period for the import petition process, which is 40 working days from departure, because the petition would contain less information for the EPA to review and verify. The proposal was based on the expectation that 30 working days is enough for the EPA to review the petition and

that this timeframe will not impede the import. The Agency proposed to use the same objection notice conditions as in the existing petition process for importing used ODS for reuse, such as if the petition provides insufficient information or if it contains false or misleading information. The EPA also proposed to require that the petitioner submit a destruction verification 30 days after destruction under 40 CFR §§82.13(g)(6) and 82.24(c)(7). The Agency is finalizing the supporting prohibitions in 40 CFR §§82.4(j)(2) and 82.15(b)(3) to prohibit the import of ODS for destruction without having received a non-objection notice consistent with the new Certification of Intent to Import ODS for Destruction.[41]

After considering the public comments received, as described below, the EPA is finalizing this process largely as proposed. The Agency is also making some changes to what was proposed based on its consideration of public comments. In general terms, this new process omits collecting the detailed source information that is required in import petitions, as that information is not necessary if the ODS is to be destroyed. Instead, it is more important for the EPA to collect information from the petitioner about the destruction. In particular, the Certification of Intent to Import ODS for Destruction finalized in this rulemaking does not include the following elements (which are included in the existing import petition process): information about all previous source facilities from which the ODS was recovered; a detailed description of the previous use at each source facility and a best estimate or documents indicating when the specific controlled substance was put into the equipment at each source facility; a list of the name, make and model number of the equipment from which the material was recovered at each source facility; contact information of all persons to whom the material

[41] The proposed regulatory text for 40 CFR §§82.4(j)(2) and 82.15(b)(3) included different proposed effective dates. The EPA is finalizing both changes effective 30 days after publication of the rule to harmonize these requirements.

was transferred or sold after it was recovered from the source facility; or a description of the intended use of the ODS.

The EPA is omitting these information elements because they are collected for import petitions to verify that the material is used, and the Agency concludes it is not necessary to verify that ODS is used if it is being imported for destruction. Simplifying the information requirements decreases the regulatory burden on existing importers who followed the import petition process to import used ODS for destruction. In addition, the information requirements for petitions to import used ODS had the potential to hinder imports for destruction if petitioners were unable to provide all the necessary information. Certain elements, such as information about each piece of equipment or each source facility from which the controlled substance was removed, might have been particularly difficult for petitioners to provide because used controlled substances intended for disposal are often part of a mixture of chemical waste recovered from a variety of systems and detailed information pertaining to each system may not be available. Although the Certification of Intent to Import ODS for Destruction relaxes the information requirements for importing used ODS for destruction compared to the existing import petition process, the EPA concludes that this relaxation benefits the environment because companies wishing to import used ODS into the United States for destruction will be able to do so more easily, and therefore more used ODS may be destroyed. This is consistent with the overarching goal of Title VI to protect stratospheric ozone.

To better ensure that the ODS is destroyed, the EPA is adding provisions 40 CFR §§82.13(g)(9) and (g)(10) and 82.24(c)(10) and (c)(11) to require importers and intermediaries that aggregate ODS for destruction[42] to keep certain records about the destruction of the ODS. In

[42] The discussion of the requirements for intermediaries is included in the response to the comment received from ClimeCo which is discussed further below.

particular, the EPA is requiring that importers of ODS for destruction maintain: a copy of the certificate of intent to import for destruction; a copy of the non-objection notice; a copy of the export license, export license application, or official communication from the appropriate government agency; Customs and Border Protection (CBP) entry documents for the import that must include the commodity codes; records of that date, amount, and type of controlled substance sent for destruction per shipment; an invoice from the destruction facility verifying shipment was received; and a copy of the destruction verification. The EPA is requiring that intermediaries maintain: transactional records that include the name and address of the entity from whom they received the ODS and to whom they sent the ODS; records that include the date and quantity of controlled substances received and sent for destruction; and a copy of the destruction verification if they are the final aggregator.

The EPA is also extending the Certification of Intent to Import ODS for Destruction to imports of virgin ODS for destruction. While modeled in large part on the petition to import used ODS, there are also benefits to facilitating the import of virgin ODS for destruction. Virgin ODS that are to be destroyed may be imported without consumption allowances (see 40 CFR §§82.4(d) and 82.15(b)). However, under existing regulations there was no established regulatory mechanism for the EPA to review and pre-approve those imports. As such, shipments may have been held at the port while the EPA determined whether the import is in fact bound for destruction. In some instances, proactive importers have petitioned the Agency to import virgin ODS for destruction and the EPA has allowed these imports on a case-by-case basis. However, the absence of an established regulatory mechanism for such approvals has created some uncertainty for these imports. Moreover, establishing regulatory requirements for such imports creates a mechanism to ensure that imports of virgin ODS for destruction are destroyed.

Providing an established mechanism to import virgin ODS for destruction is beneficial to importers and the EPA. Having a transparent process that allows approval to occur before the shipment reaches the port facilitates such imports and reduces potential delays and costs associated with the prior approach to imports of virgin ODS for destruction, as well as providing more certainty as to which imports can proceed. In turn, this encourages imports of unwanted virgin ODS for destruction, potentially avoiding the emission of such ODS. As noted above, this is consistent with an overarching goal of Title VI, to protect stratospheric ozone. The extension also closes a gap in regulatory provisions for the import of virgin material for destruction. As discussed previously in this notice, the EPA originally established the import petition process for used ODS to verify that virgin ODS was not being imported under the pretext of being used to circumvent the regulatory requirements for expending consumption allowances. In the same way, the EPA concludes that a mechanism is needed to verify that virgin ODS imported for destruction are destroyed and that claims of importing for destruction are not used to circumvent the requirement to expend consumption allowances. In addition, the EPA has historically used the petition process as a mechanism to approve imports of used material for destruction and has applied an analogous but simpler process to imports of virgin material for destruction on a case-by-case basis. Based on this experience and these common goals for imports of used and virgin ODS for destruction, the EPA concludes that having the same process for imports for destruction of both used and virgin ODS is both feasible and appropriate. Furthermore, establishing a consistent regulatory process for used and virgin ODS simplifies the administration of this approach because the same requirements generally apply regardless of the type of ODS to be imported for destruction. Thus, the EPA is finalizing the proposal to have the same requirements for both used and virgin ODS in this new process.

The EPA is also revising the definitions of "individual shipment" and "non-objection notice" at 40 CFR §82.3, both of which previously referred only to the import of used material. As proposed, the EPA is amending these definitions by removing references to "used" controlled substances, so that "individual shipment" and a "non-objection notice" may apply to shipments of virgin ODS imported for destruction under a Certification of Intent to Import for Destruction, as well as to shipments of used ODS.

As for the import petitions process, the Agency is finalizing revisions that provide for flexibility for the timing of imports for destruction. In the previous petitions process, the EPA required the import to occur in the same control period (i.e., calendar year) that the non-objection notice was issued. The EPA is finalizing a provision that non-objection notices issued for the Certification of Intent to Import for Destruction allow a year from the date of the notice to import the material. Therefore, once a non-objection notice is issued, the person receiving the non-objection notice is permitted to import the individual shipment within a year of the date stamped on the non-objection notice. For instance, if a non-objection letter is date-stamped October 1, the import of that material could occur up to and including September 30 of the following year but not thereafter. This provides flexibility to imports for destruction that may not operate on a calendar year basis.

As noted above, the EPA received three supportive comments for the portions of the proposed rule addressing the Certification of Intent to Import for Destruction. The Agency also received one comment suggesting changes to the proposed provisions. The first commenter suggesting changes to the proposal requests that the Agency require imports for destruction be sent directly to the destruction facility, instead of allowing for it to be sent to intermediaries. Specifically, ClimeCo, a company that assists in projects that destroy class I substances, states

that several destruction facilities and offset project developers have imported ODS into the United States for destruction but have not shipped it directly to the destruction facility. They state that the ODS was shipped to intermediate facilities before being "bulked up," in other words aggregated with other ODS, and sent to a destruction facility. The commenter states this could create opportunities for bad actors to manipulate, re-direct, or re-sell the imported ODS. ClimeCo suggests that the EPA require the ODS entering the United States be shipped directly to a destruction facility without any intermediate handling, processing, or other activities.

The EPA agrees that it is important to minimize the possibility that an ODS imported for destruction is diverted and sold illegally rather than being destroyed. The EPA notes that the importer has an obligation to ensure that it identifies a destruction facility for all ODS imported for destruction, obtains a destruction verification once the destruction is complete, and submits that verification to the EPA. It is ultimately the importer's responsibility to ensure the imported ODS is destroyed in the required time frame, regardless of whether they engage an intermediate aggregator to facilitate the destruction. In light of these responsibilities, the EPA disagrees that it is necessary to prohibit intermediaries from aggregating ODS in a manner that facilitates destruction. However, after considering this comment, the EPA concludes that additional provisions are appropriate to address the concerns about the potential for material being diverted during the aggregation process. As discussed previously in this notice and in the proposal, a mechanism is needed to verify that virgin ODS imported for destruction are destroyed and that claims of importing for destruction are not used to circumvent the requirement to expend consumption allowances and it also discussed the benefits of establishing the same process for imports of used and virgin ODS for destruction. (see 84 FR 41533, August 14, 2019). EPA is therefore requiring importers to provide in the Certification of Intent to Import ODS for

Destruction the contact information of all persons who will aggregate ODS prior to it being sent to the destruction facility. Thus, the entire chain of custody from import to destruction must be known by the importer and the EPA prior to the EPA authorizing the import. Providing this information to the EPA helps the Agency track the chain of custody of imported ODS for destruction and ensure that it is destroyed. Providing this information is less burdensome to an importer than not allowing aggregation of imported ODS for destruction, as the commenter suggests. Thus, the EPA is finalizing provisions at 40 CFR §§82.13(g)(5), 82.13(g)(10), 82.24(c)(6), and 82.24(c)(11).

To ensure accountability and allow for the Agency to verify, as needed, the material that intermediaries receive is transferred for destruction, the EPA is finalizing additional requirements in 40 CFR §§82.13(g)(10) and 82.24(c)(11). Intermediaries aggregating ODS after it is imported, but prior to destruction, must keep records of the name, address, date, and amount of imported ODS bound for destruction that they receive from another entity and transfer to another entity. These records could include sales or other transactional records already generated during the normal course of business, so long as they include the required information. Additionally, the intermediary must maintain a record of the destruction verification if they are the final intermediary to receive the ODS prior to destruction. These additional provisions are intended to address the concern raised in comments on the proposal about the potential for material being diverted during the aggregation process. Further, establishing mechanisms to ensure that key information from both importers and intermediaries is available to the EPA helps meet the Agency's ability to fully track the chain of custody of imported ODS for destruction and ensure that it is destroyed, consistent with the goals described in the proposal. The EPA concludes that these provisions combined will allow for the EPA to check compliance and

determine whether ODS imported for destruction is actually destroyed, even if it is aggregated prior to destruction.

iv. Prohibiting the Sale of Illegal Imports

The EPA proposed to prohibit the sale of illegal imports. The Agency received supportive comments on this proposal and no adverse comments. However, one commenter requested that the EPA prohibit the sale of disposable cylinders. For the reasons described in below, the Agency is finalizing the prohibition as proposed.

Based on the EPA's experience with the CFC phaseout, the incentive to illegally import class II substances will continue to increase after the allocation for HCFC-22 reaches zero in 2020. HCFC-22 is the most widely used HCFC in the United States and the EPA anticipates continued demand for HCFC-22 beyond 2020. In addition, there continues to be risk of illegal imports of class I substances. To allow for better enforcement of these requirements, the EPA proposed to add to 40 CFR §§82.4(s) and 82.15(g)(8) an express prohibition against the sale or distribution, or offer for sale or distribution, of any class I or class II substance, respectively, that the seller knows, or has reason to know, was illegally imported into the United States.[43]

In finalizing this proposal, the EPA is relying primarily on its authority under sections 604(c) and 605(c) of the CAA. Section 604(c) directs the Administrator to promulgate regulations to "insure that the consumption of class I substances in the United States is phased out and terminated" in accordance with the applicable schedules for the phaseout and termination of production of class I substances under the CAA. Similarly, section 605(c) directs the

[43] The EPA has previously issued restrictions on sale as a means for implementing restrictions on consumption. See, e.g., 40 CFR §82.4(h) ("No person may sell in the U.S. any Class I controlled substance produced explicitly for export to an Article 5 country"); §82.4(n)(2) ("Any person selling unused class I controlled substances produced or imported under authority of essential-use allowances or the essential-use exemption for uses other than an essential-use is in violation of this subpart.")

Administrator to promulgate regulations to "insure that the consumption of class II substances in the United States is phased out and terminated" in accordance with the applicable schedules for the phaseout and termination of production of class II substances under the CAA. "Consumption" is defined in section 601 of the CAA as the amount of a substance produced in the United States, plus the amount of that substance imported, minus the amount exported.

The EPA remains concerned about the potential for illegal import of ODS. This concern is based largely on the risk that such illegal imports would interfere with the already-completed phaseout of consumption of class I substances and the ongoing phaseout of consumption of class II substances. ODS that is imported without allowances generally counts toward the United States' consumption cap unless additional action is taken to remove the ODS from the U.S. market (e.g., the illegally imported ODS is destroyed or re-exported in the same year). There are no allowances for class I ODS as they have all been phased out. Furthermore, following the 2020 stepdown, there is a greater risk that illegal imports of HCFC-22 not destroyed or re-exported could cause an exceedance of the cap set forth under the Montreal Protocol and CAA.

To address this concern, as proposed, the EPA is strengthening its ability to enforce the phaseout of ODS by adding at 40 CFR §§82.4(s) and 82.15(g)(8) an express prohibition against the sale or distribution, or offer for sale or distribution, of any class I or class II substance, respectively, that the seller knows, or has reason to know, was imported into the United States in violation of the import regulations.[44] These revisions to the regulations clarify that it is illegal to sell or distribute any material that the seller knows or had reason to know was imported into the United States without expending the appropriate consumption allowances or otherwise qualifying for an exemption provided for in the regulations (e.g., for transformation or

[44] The proposed regulatory text for 40 CFR §§82.4(s) and 82.15(g)(8) included different proposed effective dates. The EPA is finalizing both changes effective 30 days after publication of the rule to harmonize these requirements.

destruction, or for used ODS). The revisions also explicitly state that every kilogram of illegally imported material sold or distributed, or offered for sale or distribution, constitutes a separate violation. They also include an exception for actions that are needed to re-export the controlled substance in such a situation.

The intent of this change is to strengthen the EPA's ability to enforce against illegal trade, which in turn helps ensure that consumption remains under the Montreal Protocol and CAA caps.[45] This change also increases the EPA's compliance and enforcement options where the Agency is not able to identify the importer. For example, these provisions facilitate the EPA's ability to pursue investigations where distributors or other sellers of CFCs attempt to sell virgin CFCs in the domestic market knowing that they were imported into the United States after the phaseout of CFCs, which occurred in 1996, without qualifying for any exemption from the consumption phaseout. Actions taken against such distributors not only address their violations but could also allow the Agency to gather the necessary information to identify the smuggler who illegally imported the material in the first place and to pursue compliance and enforcement action against them under existing authorities in 40 CFR §§82.4 and 82.15, which will help deter illegal imports. Avoiding illegal imports helps to maintain the complete phaseout of class I ODS and achieve the phaseout of class II ODS, which is consistent with sections 604(c) and 605(c) of the CAA, as well as with the overarching goals of Title VI of the CAA.

This change also encourages distributors to be more cautious when purchasing ODS that seem suspiciously priced or packaged. Since the phaseout of class I ODS, the EPA has warned distributors of the risk of purchasing black market ODS and provided information on ways to

[45] The addition of these prohibitions to the regulatory text does not change any regulated entity's obligations under the existing statutory and regulatory provisions, nor does it limit the Agency's ability to enforce, or to take measures to assure compliance with, the existing provisions.

identify illegally-imported material. While the incentive to circumvent the import controls will always exist, the EPA intends for these provisions to reduce the market for smuggled ODS, which will reduce illegal imports.

The Agency received supportive comments from The Alliance and National Refrigerants. EIA submitted supportive comments also requesting that the EPA prohibit the sale of disposable cylinders. EIA states that the majority of known ODS smuggling cases are facilitated by the use of disposable cylinders, also referred to as "non-refillable containers." Disposable cylinders are containers charged with refrigerant, sold, used for servicing or commissioning equipment, and then discarded. The Agency responds that EIA's suggestion is beyond the scope of this rulemaking because it was not included in the proposed rule and that the Agency does not believe it prudent at this time to act on the suggestion without soliciting input from refrigerant distributors and other affected stakeholders. The Agency may consider in the future whether a ban on disposable cylinders could guard against illegal import of refrigerants and may consider proposing such a prohibition in a future rulemaking.

EIA also commented that the EPA should work more closely with other agencies to help prevent illegal imports. The EPA responds that the Agency has worked closely with other agencies and in particular with CBP to ensure compliance with the phaseout of ODS under sections 604, 605, and 606 of the CAA. Historically, the Agency has participated on interagency tasks forces to address potential illegal imports of ODS. Recent illegal imports have demonstrated to the Agency that additional regulatory clarity is needed to address the potential for domestic distribution of illegally imported material, as such material would generally be considered consumption. After considering all the comments on this issue, the Agency is finalizing its proposal to prohibit the sale or distribution or offer for sale or distribution of

illegally imported ODS in 40 CFR §§82.4(s) and 82.15(g)(8), for the reasons discussed above.

I. Electronic Reporting and Updates to Other Provisions of the Production and Consumption Control Program

The EPA proposed to require the use of an electronic reporting system for producers, importers, exporters, transformers, and destroyers of ODS in 40 CFR §§82.3, 82.13, 82.14, 82.23, and 82.24 and to clarify the certification requirements for methyl bromide quarantine and preshipment uses in 40 CFR §§82.4 and 82.13. The EPA did not receive any adverse comments on these proposals. For the reasons discussed below, the EPA is finalizing these provisions as proposed.

i. Electronic Reporting and Changes to Reporting Requirements in 40 CFR *§§82.3, 82.13, 82.14, 82.23, and 82.24*

The EPA proposed to require that reports, petitions, and related reports be submitted through Central Data Exchange (CDX), and the Agency proposed to consolidate and harmonize requirements for class I and II substances for ease or reporting. The Agency received supportive comments on this proposal and no adverse comments. For the reasons described below, the Agency is finalizing these requirements as proposed.

The EPA is finalizing as proposed the requirements for the use of the Agency's CDX to submit reports electronically. The compliance date for this requirement is 30 days after the publication of the final rule in the Federal Register, in part to ensure that stakeholders have adequate time to register in CDX. To achieve this, the EPA is updating the definition of "Administrator" in 40 CFR §82.3, defining "Central Data Exchange" in §82.3, adding a new section at §82.14 with instructions on the process for electronic reporting, and revising provisions at §§82.13(c) and 82.24(a)(1) to indicate that reporters must comply with the

requirement to report electronically through CDX. Thus, the EPA is amending the definition of "Administrator" to note that electronic reporting is required for the reports and petitions that are available in CDX, which includes the majority of reports under subpart A, as well as the import petitions and the Certification of Intent to Import ODS for Destruction. The EPA is also adding the definition of "Central Data Exchange" in §82.3 and providing instructions on how to register in CDX and submit information electronically in §82.14.

The Agency has provided the option of electronic reporting for most submissions since 2008, and many stakeholders have transitioned to an electronic reporting system. The regulatory changes reflect the current practices of the vast majority of reporting entities. Electronic reporting allows for faster review and transmission of submissions to the EPA. Additionally, all information submitted electronically is linked in an improved tracking system, which facilitates document management and allows companies to more easily manage past and future submissions.

The EPA monitors company compliance, in part, through the recordkeeping and reporting regulations at 40 CFR §§82.13 and 82.24. The regulatory changes in this final rule will ease the reporting burden. For example, the EPA is removing reporting elements in 40 CFR §§82.23(a)(i)(F), 82.24(b)(1)(iv), and 82.24(c)(1)(vi) that require the reporter to calculate values from data already provided. Requiring this is unnecessary because the requirement to report electronically through CDX means these values can automatically be calculated and populated. This will save reporting entities time in reporting and reduce errors in submissions. The EPA is also finalizing a change in 40 CFR §§82.13(h)(1)(iii) and 82.24(d)(1)(iii)[46] to report the quantity

[46] The preamble to the proposed rule discussed the EPA's intent to make this change at both 40 CFR §§ 82.13(h) and 82.24(d), though the regulatory text accompanying the proposal contained text for only 40 CFR §82.13(h)(1)(iii). In order to ensure that the regulatory revisions fully implement the objective described in the

(rather than the percentage) of used, recycled, or reclaimed class I and class II substances. This change improves consistency with the importer reporting requirements and corresponds with the way companies report their annual data. It also streamlines the exporter reporting forms by eliminating the need for an entity to calculate a percentage. The EPA is also removing references to expended and unexpended production and consumption allowances at 40 CFR §82.13(f)(3)(iv) and (g)(4)(vii), as they can be calculated automatically with the use of electronic reporting forms.

Other regulatory changes to the recordkeeping and reporting provisions harmonize the requirements for class I and class II substances. For example, under the existing regulations, the timeframe that submitters have to make revisions to forms for class I and class II substances is not the same. The EPA is adding a provision for reports for class I substances under 40 CFR §82.13 that revisions can be made within 180 days of the end of the applicable reporting period. This change is consistent with the previously established regulations in 40 CFR §82.24 for revisions to reports for class II substances. Likewise, the EPA is revising 40 CFR §§82.13 and 82.24 to clarify that forms for both class I and class II ODS must be submitted electronically through CDX within 45 days of the end of the control period to harmonize the reporting timeframes for the two classes of ODS.

The EPA is amending 40 CFR §82.24(d)(1) to clarify that exporters who submit a Request for Additional Consumption Allowances (RACA) must still include that export on their quarterly exporter report. Under 40 CFR §82.20, companies may submit a request for additional consumption allowances if they export class II substances that were previously produced in or imported into the United States using consumption allowances. The existing regulatory text at 40 CFR §82.24(d)(1) excluded quarterly reporting for those RACAs even though exporters do

preamble to the proposal, the EPA is revising 40 CFR § 82.24(d)(1)(iii) in this final action to include the prohibition described above.

typically include those exports in their quarterly reporting. Thus, for ease of review by the EPA, and for consistency of reporting by exporters, the Agency is finalizing a requirement that all exports be included in the quarterly export report even if the EPA had issued additional consumption allowances to the exporter for that export. The EPA is also amending the reporting requirements at 40 CFR §82.13(v) to add the contact information for the source company from which the material was purchased and the laboratories to whom the material is sold. Lastly, the EPA is revising class I reporting requirements for exporters by replacing the term "Employee Identification Number" with the correct term "Employer Identification Number" in 40 CFR §82.13(h).

ii. Changes to Methyl Bromide Provisions in 40 CFR §§82.4 and 82.13

As discussed in more detail in the preamble to the proposed rule, the EPA proposed several changes to the QPS provisions under section 604(d)(5) of the CAA. In part, these changes were proposed in response to the misuse of QPS methyl bromide by applicators and distributors in the U.S. Virgin Islands and Puerto Rico, which led to human exposures and life-altering illnesses for some of the people exposed. Methyl bromide is highly toxic. Studies in humans indicate that the lung may be severely injured by the acute (short-term) inhalation of methyl bromide. Acute and chronic (long-term) inhalation of methyl bromide can lead to neurological effects in humans. To help prevent future exposures stemming from misuse of QPS methyl bromide and protect human health, the EPA is finalizing revisions to the QPS provisions to: (1) clarify that it is a violation to sell or use methyl bromide produced under the QPS exemption for any uses other than QPS applications; (2) extend the existing certification requirement to all purchasers of QPS methyl bromide; and (3) make non-substantive changes to 40 CFR §§82.4 and 82.13 to improve readability. The Agency did not receive any comments on

these proposed provisions. For the reasons discussed below, the Agency is finalizing these revisions as proposed.

The EPA's regulations implementing section 604(h) of the CAA set January 1, 2005 as the production and import phaseout date for methyl bromide (40 CFR §82.4(b), (d)). Certain exceptions apply, including an exemption for methyl bromide produced or imported for quarantine and preshipment applications. Quarantine applications and preshipment applications are both defined at 40 CFR §82.3. Quarantine applications are treatments to prevent the introduction, establishment, and/or spread of quarantine pests (including diseases), or to ensure their official control. These can include commodities entering or leaving the United States or any State (or political subdivision thereof). Preshipment applications are those non-quarantine applications applied within 21 days before export to meet the official requirements of the importing country or existing official requirements of the exporting country. The recordkeeping and reporting regulations relating to QPS methyl bromide appear at 40 CFR §82.13 and establish specific requirements for producers, importers, distributors, and applicators, including in some instances a written certification that the methyl bromide will be used only for QPS applications in accordance with the definitions in 40 CFR §82.3.

First, the Agency is adding an express statement at 40 CFR §82.4(r) that no person may sell or use QPS methyl bromide for any purpose other than QPS applications. The existing regulations at 40 CFR §82.13(y)(1) and (z)(2) require certification statements from distributors, applicators, commodity owners, shippers or their agents that methyl bromide "will be used only for quarantine and preshipment applications." Similarly, 40 CFR §82.13(f)(2)(xviii) and (xix) describe the exempted quantities of methyl bromide as "produced solely for quarantine and preshipment applications." The EPA interprets this existing text as already prohibiting the use of

methyl bromide produced or imported under the QPS exemption for any uses other than QPS applications. However, the EPA is adding an express statement of the prohibition at 40 CFR §82.4(r) to provide clarity to this prohibition; this revision does not change the existing requirements. The revisions at 40 CFR §82.4(r) also explicitly state that every kilogram of methyl bromide produced or imported under the authority of the QPS exemption and sold or used for a use other than QPS is a separate violation.

Second, the EPA is finalizing as proposed the extension of the existing certification requirement to all purchasers of QPS methyl bromide, including purchasers who purchase for further distribution. Under the existing recordkeeping and reporting requirements at 40 CFR §82.13(f)(2)(xviii), producers of methyl bromide must maintain certifications that methyl bromide produced for QPS applications has been purchased by distributors or applicators to be used only for QPS applications. Under 40 CFR §82.13(y), distributors of QPS methyl bromide must certify when they purchase or receive QPS material from producers and importers that the controlled substances will be used only for QPS applications. Applicators of QPS methyl bromide must also certify to distributors that the controlled substance will only be used for QPS applications under the existing regulation at 40 CFR §82.13(z).

The purpose of this certification requirement when established was to ensure that anyone selling or purchasing QPS methyl bromide verified that they will comply with requirements under Title VI of the CAA (see 66 FR 37760, July 19, 2001). However, the EPA identified a gap in this certification chain when the material is sold through multiple distributors before reaching the applicator. When one distributor sells to a second distributor, neither distributor was required to certify or maintain a certification that the material will be used only for a QPS application. The sales and misapplications of QPS methyl bromide in Puerto Rico and the U.S. Virgin Islands

demonstrate that distributors may not have been aware of, or may have ignored, the limitations on the use of this material. The EPA is extending the certification requirement to all purchasers of QPS methyl bromide. This is meant to help ensure that distributors are knowledgeable about the requirements for the sale of QPS methyl bromide. Distributors are more likely to make themselves aware of those requirements, and to be mindful of the fact that QPS methyl bromide can be used only for QPS applications, if they are required to sign a certification addressing these requirements and to provide it before each purchase. This will fill the gap in the distribution chain and ensure the original intent of the regulation is implemented.

More specifically, the EPA is extending the existing requirement in 40 CFR §82.13(y) that every distributor of QPS methyl bromide certify to the producer or importer from whom the distributor purchased or received the material that quantities purchased or received will be sold only for quarantine applications or preshipment applications. The EPA is extending this requirement to also require such a certification when the material is purchased or received from a *distributor*. Likewise, the EPA is extending the existing requirement that such distributors receive from any applicator, to whom they sold or delivered the methyl bromide, a certification, prior to delivery of the quantity, stating that the quantity will be used or sold solely for quarantine or preshipment applications in accordance with definitions in subpart A. The EPA is extending this requirement to sales and deliveries to any *exporter or distributor*. The Agency is not making parallel revisions for exporters because the invoice or sales agreement required in 40 CFR §82.13(h)(2)(viii) is adequate for this purpose.

The EPA is also finalizing a revision that the distributor certify that the distributor is *selling* the material for a QPS application rather than certify that it will be *used* for a QPS application, as is required in the existing regulations. This will better align the rule text with the

distributor's role. The proper sale of the material is within the distributor's control whereas the use may not be, given that the material may be resold by another distributor and applied by an end user or third-party applicator.

Third, the EPA is finalizing as proposed non-substantive changes to 40 CFR §§82.4 and 82.13 that improve readability and clarity. The EPA is editing 40 CFR §82.13(h)(2), which contains the recordkeeping requirements for exporters of certain "types" of methyl bromide by companies that did not produce the material. The EPA is making edits to clarify what is meant by "type" of methyl bromide. The final rule more clearly states that the provision requires reporting of the quantity of methyl bromide exported for transformation, destruction, critical use, and QPS uses. These are the only exempted uses of methyl bromide, and this statement matches the information requested in the existing reporting forms. The EPA is removing the requirement in the existing provision that exporters state how much of the exports are of "used, recycled or reclaimed material." Unlike other ODS, methyl bromide is a product that is registered and controlled under FIFRA and thus is not sold "used" or "recycled" or "reclaimed." Therefore, these adjectives are not applicable to methyl bromide and this phrase is not needed.

Lastly, the EPA is replacing references to "class I, Group VI controlled substances" with "methyl bromide" where appropriate for readability throughout 40 CFR §§82.4 and 82.13. "Class I, Group VI controlled substances" is how methyl bromide is classified under the EPA's regulations in appendix A to subpart A, but methyl bromide is the only compound within this category. Using the common name will improve the readability of the QPS regulations.

J. Addition of Polyurethane Foam Systems Containing CFCs to the Nonessential Products Ban

The EPA proposed to add polyurethane foam systems containing CFCs to the list of nonessential products at 40 CFR part 82, subpart C. The Agency received supportive comments

from The Alliance and EIA and is finalizing as proposed for the reasons discussed below. This provision has the effect of prohibiting the sale or distribution, or offer for sale or distribution, of any polyurethane foam system containing CFCs in interstate commerce.

Historically, CFC-11, CFC-12, and CFC-114 were used as foam blowing agents, but CFC production has been globally phased out since 2010. Nevertheless, an unexpected increase of CFC-11 emissions has been detected in the atmosphere. Recent reports indicate that this is the result of new production of CFC-11 in China likely for use in foams.[47, 48, 49, 50, 51] Except for feedstock applications, production and import of CFCs has been prohibited in the United States and many other countries since 1996[52] and globally production and consumption of CFCs have been phased out since 2010 under the Montreal Protocol. The nonessential products ban implemented under section 610 of the CAA already prohibits sale or distribution, and the offer for sale or distribution, of certain products manufactured with or containing CFCs, including most plastic foam products. After reviewing the EPA's import restrictions and the nonessential product ban, the Agency identified the potential for sale or distribution, or offer for sale or distribution, of imported polyurethane foam systems[53] containing illegally-produced CFCs. The

[47] Montzka, S.A., Geoff S. Dutton, G.S., Yu, P., Ray, E., Portmann, R.W., Daniel, J.S., Kuijpers, L., Hall1, B.D., Mondeel, D., Siso, C., Nance, J.D., Rigby, M., Manning, A.J., Hu, L., Moore, F., Miller, B.R., and Elkins, J.W. "An unexpected and persistent increase in global emissions of ozone-depleting CFC-11" Nature 557; (2018): 413-429.
[48] WMO. (2018) Scientific Assessment of Ozone Depletion: 2014 World Meteorological Organization Global Ozone Research and Monitoring Project – Report No. 55 pg. 1-416. Available at: https://www.esrl.noaa.gov/csd/assessments/ozone/2014/report.html.
[49] Environmental Investigation Agency (EIA). (2018) Blowing It: Illegal Production and Use of Banned CFC-11 in China's Foam Blowing Industry. Available at: https://eia-global.org/reports/20180709-blowing-it-illegal-production-and-use-of-banned-cfc-11-in-chinas-foam-blowing-industry.
[50] Rigby, M. et al. "Increase in CFC-11 emissions from eastern China based on atmospheric observations." Nature 569.7757 (2019): 546-550.
[51] UNEP. (2019) Decision XXX/3 TEAP Task Force Report on Unexpected Emissions of Trichlorofluoromethane (CFC-11). Available at http://conf.montreal-protocol.org/meeting/mop/mop-31/presession/Background%20Documents/TEAP-TF-DecXXX-3-unexpected_CFC11_emissions-september2019.pdf.
[52] Historically, limited amounts of CFC production and consumption were authorized after the phaseout for essential uses.
[53] These systems are also referred to as polyols, which are defined in Montreal Protocol reports as pre-blended foam chemicals.

EPA is not currently aware of any imports of CFC-11 polyurethane systems into the United States, but the Agency is finalizing revisions to amend the list of nonessential products in 40 CFR §82.66 to address this gap and to ensure that the United States does not inadvertently contribute to demand for CFCs and prevent CFC emissions in the United States. The EPA is also adding a definition of "polyurethane foam systems" in 40 CFR §82.62 to correspond with the amendment to the list of nonessential products.

The EPA is also adding in 40 CFR §82.64(h) a prohibition on the sale or distribution, or offer for sale or distribution, of the products identified as being nonessential in §82.66(f). While the EPA did not include specific text for the prohibition at 40 CFR §82.64(h) in the proposal, the Agency discussed in the proposal that the proposed changes would prohibit the sale or distribution, or offer for sale or distribution, of polyurethane foam systems containing CFCs (see, e.g., 84 FR 41535, August 14, 2019). In order to ensure that the regulatory revisions fully implement the objective described in the preamble to the proposal, the EPA is revising 40 CFR §82.64(h) in this final action to include the prohibition described above. This revision is wholly consistent with the description of the EPA's intent for this regulation as set forth in the preamble to the proposal.

With respect to the added definition, the EPA is defining "polyurethane foam systems" in 40 CFR §82.62 as an item consisting of two transfer pumps that deliver ingredients (polyisocyanate or isocyanate from one side and a mixture including the blowing agent, catalysts, flame retardants, and/or stabilizers from the other side) to a metering/mixing device which allows the components to be delivered in the appropriate proportions. In such systems, the components are sent to a mixing gun and dispensed as foam directly to a surface such as a roof or tank, usually to provide thermal insulation. These polyurethane foam systems are packaged

and sold as complete systems, containing all the ingredients including the polyisocyanate and the blowing agent.

A polyurethane foam system is not a bulk ODS because the ODS is contained in a system and packaged as a product. Under the regulations in subpart A, bulk CFCs are a "controlled substance" and thus are subject to import controls such as the consumption allowance regime under 40 CFR §82.4. However, the definition of "controlled substance" in 40 CFR §82.3 excludes "any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture." Because the CFCs in a polyurethane foam system are contained in a system that is sold as a product, they are not subject to the same import controls as bulk CFCs. If polyurethane foam systems are imported and sold through distribution chains in the United States, they could result in emissions of CFCs during their use. These foam systems are also distinct from a plastic foam product in that the foam product has already been blown. Plastic foam products manufactured with or containing a CFC are already listed as a nonessential product at 40 CFR §82.66(c) and are banned from sale or distribution, and from being offered for sale or distribution, in interstate commerce at 40 CFR §82.64(c).

The revisions to the nonessential product ban in this rulemaking are made under section 610 of the CAA, titled "Nonessential products containing chlorofluorocarbons." That statutory section directs the EPA to issue regulations identifying nonessential products that "release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal)" and "prohibit[ing] any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce." Section 610(b)(1) and (2) specify that this prohibition shall apply to "chlorofluorocarbon-propelled

plastic party streamers and noise horns" and "chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment." Section 610(b)(3) provides that the prohibition shall apply to other consumer products determined by the EPA to release class I substances into the environment (including releases during manufacture, use, storage, or disposal) and to be nonessential.

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

As indicated above, polyurethane foam systems are products that release blowing agent to the environment during use. If CFCs are used as the blowing agent, they would be emitted during the use of such systems. In taking this final action to add polyurethane foam systems containing CFCs as a nonessential product, the EPA considered the purpose or intended use of these systems, the technological availability of substitutes, and safety and health considerations. The first criterion, the purpose or intended use, relates to the importance of the product, in terms of benefits to society, specifically whether the product is sufficiently important that the benefits of its continued production outweigh the associated danger from the continued use of a class I ODS in it, or alternatively, whether the product has little benefit, such that even a lack of

available substitutes might not prevent the product from being considered nonessential. While foam products, particularly closed-cell rigid polyurethane foams, have provided benefits to society, for more than two decades U.S. manufacturers have replaced the use of CFCs in foam production without compromising these benefits.

The intended use of polyurethane foam systems is often for insulation in buildings and residences. While insulation has benefits, such as reducing energy use and costs associated with heating and cooling, in previous rulemakings the EPA's consideration of this criterion has also been informed by consideration of whether use of the class I substance in the product is nonessential (see 58 FR 4474, January 15, 1993 and 66 FR 57514, January 14, 2002). For example, use of a class I substance in a product may be considered nonessential where substitutes are readily available, even if the product itself is important (see 58 FR 4474, January 15, 1993, and 66 FR 57514, January 14, 2002). This is reasonable because if the social benefits from a product can be provided by a similar product without use of the class I substance, that tends to support the conclusion that the product using the class I substance is nonessential. U.S. manufacturers successfully transitioned from using class I substances for foam products more than two decades ago, meaning that they were able to also replace the use of class I substances in foam blowing systems. Moreover, the same U.S. industry also replaced the use of class II substances in these plastic foam products. There are alternative foam blowing agents that can be used in foam systems as well as alternative methods and products for insulating buildings and residences that do not use class I substances. For instance, there are a variety of insulation types that can be applied throughout the building envelope to save energy and reduce leaks in buildings and homes with a similar R-value as a polyurethane foam system intended for use in insulation. The R-value refers to an insulating material's resistance to conductive heat flow and

is measured or rated in terms of its thermal resistance. Alternative non-polyurethane foam insulation products with similar R-values include fiberglass, cellulose, and rigid foam boards.

For the criterion of technological availability of substitutes, the EPA considers the existence and accessibility of alternative products or alternative chemicals for use in, or in place of, products releasing class I substances. As first explained in 1993, the EPA interprets this criterion to include both currently available substitutes and potentially available substitutes (see 58 FR 4474, January 15, 1993). There are numerous substitutes for CFCs in polyurethane foam systems that are listed as acceptable under the SNAP program and have been widely used by the foam industry since the mid-1990s.[54] As the EPA stated in the initial class I nonessential products rule, in sectors where the great majority of manufacturers have already shifted to substitutes, the use of a class I substance in that product may very well be nonessential (see 58 FR 4474, January 15, 1993). As in previous considerations of this criterion, in this rulemaking the EPA is examining sectors where the market has previously switched to substitutes. The class I nonessential products ban that included plastic foam products was promulgated more than two decades ago and there were also subsequent restrictions on the use of class II substances for polyurethane foam systems. All U.S. manufacturers have therefore switched from CFCs to non-ODS alternatives such as hydrofluorocarbons, hydrofluoroolefins, hydrocarbons, carbon dioxide, water, and other compounds listed as acceptable substitutes under SNAP in foam blowing.

For the criteria of safety and health, as in prior rules related to the nonessential product ban (see 66 FR 57514, January 14, 2002), the EPA interprets these criteria to mean the effects on human health and the environment of products releasing CFCs or their substitutes. As in past rules, in evaluating these criteria, the EPA considered the direct and indirect effects of product

[54] The current list of SNAP-approved substitutes for foam blowing is available here: https://www.epa.gov/snap/substitutes-foam-blowing-agents.

use, and the direct and indirect effects of alternatives, such as ODP, flammability, toxicity, corrosiveness, energy efficiency, ground-level air hazards, and other environmental factors (see 66 FR 57514, January 14, 2002). The ODPs of CFC-11, CFC-12, and CFC-114 are 1. For the purposes of evaluating other direct and indirect effects for foam systems, there is not a substantive difference between foam systems and plastic foam products, given that the former is a precursor for the latter. In developing the initial class I nonessential products ban, the Agency provided information in the docket concerning the known alternatives at that time. Subsequently, alternatives that were already in use, as well as additional alternatives for foam-blowing, have been evaluated and listed as acceptable under the SNAP program, such as hydrofluorocarbons, hydrofluoroolefins, hydrocarbons, carbon dioxide, and water. The current SNAP list of acceptable substitutes is more expansive than what was considered in the initial class I nonessential products ban. The range of alternatives includes those that have ODPs ranging from zero to between 0.00024 and 0.00034, significantly lower than the ODPs of CFC-11, CFC-12, and CFC-114, all of which are 1. The Montreal Protocol's TEAP also provides a quadrennial global assessment of alternatives for foam blowing, including information concerning many of the direct and indirect factors identified above.[55] The EPA considered all these sources of information when deciding whether to add to the list of banned products foam systems that contain phased-out CFCs and considered that U.S. industry has already successfully transitioned away from using CFCs.

Considering all these factors together, the EPA concludes that polyurethane foam systems containing CFCs meet the criteria in section 610 of the CAA for listing as a nonessential product

[55] UNEP. 2018 TEAP Report Available at http://conf.montreal-protocol.org/meeting/oewg/oewg-41/presession/Background-Documents/TEAP_2018_Assessment_Report.pdf

and is adding them to the list of nonessential products in 40 CFR §82.66(f) and prohibiting their sale in 40 CFR §82.64(h).

K. Updates to 40 CFR §§82.3, 82.104, and 82.270 Related to Destruction

The EPA proposed to update and harmonize definitions related to ODS destruction in 40 CFR §§82.3, 82.104, and 82.270, by adding to the list of destruction technologies and amending the definition of "destruction" to allow inclusion of destruction technologies that incidentally result in commercially useful end products. The EPA received supportive comments from The Alliance on the proposal to update the list of destruction technologies consistent with the Montreal Protocol, and no adverse comments on this aspect of the proposal. For the reasons discussed below, the EPA is finalizing these revisions as proposed.

The EPA added a definition of the term "destruction" to 40 CFR §82.3 in 1993 (see 58 FR 65047-65048, December 10, 1993). The existing regulatory definition of "destruction" includes a limited list of technologies that may be used for destruction. When the EPA established the initial list of destruction technologies, the Agency also noted that it intended to propose authorizing use of additional destruction technologies through future rulemakings, as such technologies are approved by the Parties (see 58 FR 65049, December 10, 1993). Revising the definition of destruction to include these technologies will not affect the applicability of other regulatory requirements relating to use of these technologies.

In the revisions finalized in this rulemaking, the Agency is updating the definition of "destruction" in 40 CFR §82.3, as proposed, to add destruction technologies that have been approved by the Parties to the Montreal Protocol since the issuance of the 1993 rule. The Agency is adding these destruction technologies so that industry in the United States has a greater variety of technology options for the destruction of ODS. All of these technologies are capable of

destroying ODS or converting them into byproducts and can be grouped into three broad categories: incineration, plasma, and other non-incineration technologies. The EPA is adding the following incineration technology: porous thermal reactor. Porous thermal reactors are high-temperature systems with a porous layer that facilitates the decomposition of ODS and other industrial waste gases. Destruction takes place in an oxidizing atmosphere with a continuous supply of an auxiliary gas. For plasma, the EPA is adding nitrogen plasma arc, portable plasma arc, argon plasma arc, microwave plasma, and inductively coupled radio frequency plasma to allow for greater industry flexibility for using plasma destruction technologies. Although they reach higher temperatures than incineration technologies, plasma technologies are considered to be non-incineration technologies because they involve the thermo-chemical decomposition of organic material in a limited oxygen environment. Lastly, the EPA is also adding four non-incineration technologies: chemical reaction with hydrogen and carbon dioxide, gas phase catalytic de-halogenation, superheated steam reactor, and thermal reaction with methane.

The EPA is also amending the definition of "destruction" to modify the statement that the process must not result in a commercially useful end product. The EPA is finalizing revisions to harmonize the definitions of the term "destruction" at 40 CFR §§82.3, 82.104, and 82.270. These two existing definitions are intended to convey the same meaning but are slightly different. For instance, the definition in 40 CFR §82.104 refers to a code of good housekeeping contained in a United Nations Environment Programme report while the definition in 40 CFR §82.3 does not. In addition, both provide a list of destruction technologies approved under decisions of the Parties to the Montreal Protocol. The list at 40 CFR §82.3 contains seven technologies while the list at 40 CFR §82.104 contains five.[56] Both lists are out of date in that they fail to include

[56] Similarly, the definition of "completely destroy" at 40 CFR §82.104 refers to using "one of the five" destruction processes approved by the Parties. The EPA is also removing this outdated language.

certain technologies that can destroy ODS or convert them into byproducts and have been approved under more recent decisions of the Parties. Similarly, the existing prohibition on disposing of halons in 40 CFR §82.270 includes an exception for destruction that also provides an outdated list of destruction technologies. The EPA is therefore harmonizing these three definitions of destruction and updating the list of destruction technologies to allow the use of more destruction technologies in the United States. An explanation of these technologies appears in the EPA's report on destruction "ODS Destruction in the United States and Abroad," which is available in the docket.

The EPA is also revising the definition of "destruction" in 40 CFR §82.104 and the prohibition in 40 CFR §82.270 by removing the outdated lists found in those provisions and adding a cross reference to the list of destruction technologies in 40 CFR §82.3. This conforms the list of destruction technologies that can be used across subparts A, E, and H of 40 CFR part 82. The destruction technologies finalized through this action in §82.3 are also applicable to these other subparts, although the EPA notes that the listing of municipal waste incinerators in the existing regulations at 40 CFR §82.3 is limited to the destruction of foams, and thus the added cross reference to 40 CFR §82.3 in §82.270 does not make that technology available for the exception for the destruction of halons at 40 CFR §82.270.

As noted above, the EPA is also amending the definitions of "destruction" at 40 CFR §§82.3 and 82.104 to modify language regarding commercially useful end products. The EPA is also editing provisions in 40 CFR §82.104 (Subpart E "The Labeling of Products Using Ozone-Depleting Substances") and 40 CFR §82.270 (Subpart H "Halon Emissions Reduction") to conform with the changes in this definition. The previously existing definition contained a restriction that a destruction technology cannot result in a commercially useful product. The EPA

is revising that restriction in part because one of the destruction technologies that this action adds to the definition of destruction breaks down ODS into substances that have commercial viability. The process "Chemical Reaction with hydrogen and carbon dioxide" converts fluorinated compounds to hydrofluoric acid, hydrochloric acid, carbon dioxide, chlorine, and water. The reaction technology separates and collects the byproducts at a high purity allowing for them to be sold, potentially improving the economics of using this technology. Because the EPA has concluded that a process that would otherwise qualify as "destruction" should not fail to qualify simply because one of the outputs is a commercially useful end product, it is revising the definition of "destruction" so that the mere existence of such an end product does not bar the technology from being used. The revisions further clarify that for destruction processes, the commercial usefulness of the end product is secondary to the act of the ODS destruction. Thus, the changes to the definition of destruction recognize that while production of a commercially useful end product is not the primary purpose of a destruction process, the destruction process may nevertheless result in a commercially useful product.

The clarification that the usefulness of an end product should be secondary to ODS destruction is intended to maintain a distinction between the terms "destruction" and "transformation." The EPA established the definitions of "destruction," "production," and "transformation" in the 1993 rule (see 58 FR 65048-65049, December 10, 1993). Among other things, the Agency excluded from the definition of "production": (1) amounts of controlled substances that are destroyed using approved destruction technologies and (2) the manufacture of a controlled substance that is subsequently transformed. Similarly, the regulatory import prohibitions excluded both amounts destroyed, and amounts transformed. The definition of "destruction" noted that it does not result in a commercially useful end product whereas the

definition of "transformation" noted that it occurs in a process specifically for the manufacture of other chemicals for commercial purposes. Thus, the original distinction in the definitions of these two terms related to whether the process was undertaken to intentionally result in a commercially useful end product or not. The distinction mattered (and is still relevant) because as explained in the 1993 rule, if a portion of the ODS remained after destruction, the destroyed portion could be excluded from production under the destruction exclusion, but the material had to be entirely consumed in the process (except for trace quantities) to qualify for the transformation exclusion (see 58 FR 65048, December 10, 1993).

Intent has been an important aspect of the distinction between "destruction" and "transformation" since the EPA first promulgated these definitions. For example, in the 1993 rule establishing the definition of "destruction," in a discussion of whether heat or energy are commercially useful end products, the Agency said "[t]he intent of the destruction process is to destroy the substance, for which a byproduct in the way of heat or energy may be produced, rather than production of an end product being the goal of the destruction activity." (see 58 FR 65049, December 10, 1993). This discussion recognizes that something useful may incidentally result from destruction. Similarly, the 1993 rule recognized the possibility of a destruction technology converting ODS into other useful substances. In explaining the inclusion of reactor cracking as a destruction technology, the EPA stated "[s]ince 1983, this process has treated waste gases resulting from the production of CFCs. The gases are converted to hydrofluoric acid, hydrochloric acid, carbon dioxide, chlorine, and water. The two acids are usable in-house and/or marketable, and the chlorine is scrubbed, leaving only water vapor, oxygen, and carbon dioxide as waste gases." (see 58 FR 65047, December 10, 1993).

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

Accordingly, to update the regulatory text but preserve a distinction between transformation and destruction, the EPA is amending the definitions of "destruction" at 40 CFR §§82.3 and 82.104 by removing the previously existing restriction that a destruction technology cannot result in a commercially useful product and by also adding a clarification that, while destruction might result in a commercially useful end product, such usefulness would be secondary to the act of destruction.

L. Removal of Obsolete Provisions in 40 CFR §§82.3, 82.4, 82.9, 82.10, 82.12, 82.13, 82.16, and 82.24

The EPA proposed to remove obsolete provisions from several sections of Part 82. The Agency received supportive comments from The Alliance on this proposal and no adverse comments. For the reasons described below, the EPA is finalizing the removal of outdated provisions for class I ODS related to Article 5 allowances, transformation and destruction credits, and transfers of allowances issued prior to the phaseout as proposed for ease of reading

and to reduce confusion. The EPA is also removing definitions and reporting provisions for HCFC-141b exemption allowances and export production allowances.

i. Class I Article 5 Allowances

Before the global phaseout of CFCs and other class I ODS, the EPA historically had provided additional production allowances, known as "Article 5 allowances," for production of certain class I ODS for export to and use by Article 5 countries consistent with the Montreal Protocol.[57] These are countries that were subject to a later production and consumption phaseout schedule than non-Article 5 countries such as the United States. Section 82.9(a) of the existing regulations granted Article 5 allowances until 2010, when the phaseout of these substances was completed in Article 5 countries. Because these provisions no longer have any purpose or effect, the EPA is removing the schedule for issuing Article 5 allowances found at 40 CFR §82.9(a) and the corresponding recordkeeping and reporting requirements in 40 CFR §82.13(f)(2)(v) and (f)(3)(ix). Section 82.9(b) of the existing regulations provides that holders of Article 5 allowances may produce class I controlled substances for export to Article 5 countries and transfer Article 5 allowances. Because there are no more holders of Article 5 allowances, the EPA is removing these provisions as well.

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

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

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

Section 82.9(e) of the existing rules contains the provisions related to such allowances, including detailing the information needed in a request for allowances based on having destroyed or transformed a specified quantity of class I ODS. The EPA stopped issuing such allowances in 1996 for all class I controlled substances (except methyl bromide) and in 2005 for methyl bromide. The EPA is removing 40 CFR §82.9(e) and related obsolete reporting and recordkeeping requirements in 40 CFR §82.13(f)(2)(iv), (g)(1)(xv), (g)(4)(xi), and (i).

Section 82.9(f) authorized persons who were nominated for an essential use exemption to obtain destruction and transformation credits between 1996 and 2000. The EPA established these provisions because of the difference between the phaseout date for class I substances under the CAA and the phaseout date for the same substances under the Montreal Protocol. These provisions include a description of the information needed and the grounds for which the EPA can disallow the request. Section 82.4(f) addresses production and import with destruction and transformation credits. The EPA stopped issuing such credits in 2000. Because these provisions no longer have any purpose or effect, the EPA is removing 40 CFR §§82.4(f) and 82.9(f).

iii. Class I Consumption Allowances

Before the phaseout of class I ODS, the EPA historically had provided additional consumption allowances where class I ODS were exported, transformed or destroyed, or where an amount of production was transferred from another Party to the Montreal Protocol. Section 82.10 contains provisions related to these additional consumption allowances, including detailing the information needed in a request for them. The EPA stopped issuing those allowances in 1996 for all class I controlled substances (except methyl bromide) and in 2005 for methyl bromide. Because these provisions no longer have any purpose or effect, the EPA is

removing 40 CFR §82.10 in its entirety. The EPA is also finalizing the removal of references to 40 CFR §82.10 from the definition of "consumption allowance" in 40 CFR §82.3, as well as from the provisions in 40 CFR §82.9(c) and §82.13(h)(1) and (2) as those references are no longer applicable. As discussed earlier in this notice, the EPA is entirely removing 40 CFR §82.9(e) and (f) in this action, and it is also removing §82.13(i), as its provisions are no longer needed. Accordingly, the references to §82.10 in those provisions will also be removed.

iv. Transfer of Class I Allowances

The EPA historically had allowed for the transfer of production and consumption allowances for class I substances in various ways. Under section 607 of the CAA, the EPA was required to issue regulations providing for inter-pollutant allowance transfers and allowance transfers between companies. For class I substances, those regulations appear at 40 CFR §82.12. Due to the class I phaseout, the EPA no longer allocates production or consumption allowances for class I substances. Because these provisions no longer have any purpose or effect, the EPA is removing provisions related to pre-1996 allowance transfers for class I ODS (and pre-2005 for methyl bromide) found at 40 CFR §82.12, by revising 40 CFR §82.12(a)(1) and removing (b)(1), as any such transfers occurred years ago and these provisions no longer have any purpose or effect.

As discussed earlier in this section, the EPA is removing certain provisions governing class I Article 5 allowances and destruction and transformation credits. The EPA is therefore also removing provisions allowing for the transfer of class I Article 5 allowances and destruction and transformation credits found at 40 CFR §82.12(a)(2), (b)(2)-(5), and (c) as those provisions are longer needed.

v. HCFC-141b Allowances

In 2003, the EPA issued regulations (see 68 FR 2820, January 21, 2003) to ensure compliance with the first reduction milestone in the HCFC phaseout. In that rule, the EPA established chemical-specific consumption and production baselines for HCFC-141b, HCFC-22, and HCFC-142b for the initial regulatory period ending December 31, 2009. The rule phased out the production and import of HCFC-141b effective January 1, 2003 (see 40 CFR §82.16(b)). The EPA created a petition process at 40 CFR §82.16(h) to allow applicants to request "HCFC-141b exemption allowances" to produce or import small amounts of HCFC-141b beyond the phaseout. The Agency removed 40 CFR §82.16(h) from the regulations and terminated the HCFC-141b exemption allowance program, effective January 1, 2015 (79 FR 64267, October 28, 2014). At that time, the EPA did not remove definitions and reporting and recordkeeping requirements that pertain only to HCFC-141b exemption allowances. In the current rulemaking, the EPA proposed to remove those provisions, and is now finalizing those revisions as proposed, as described in the following paragraphs.

In this action, the EPA is removing the definitions in 40 CFR §82.3 specific to HCFC-141b production or import after the 2003 phaseout, in particular, the definitions of "Formulator," "HCFC-141b exemption allowances," and "Unexpended HCFC-141b exemption allowances." The definitions for HCFC-141b exemption allowances are no longer relevant since the EPA has removed the substantive regulations that these definitions support. For the same reasons, the EPA is removing references to HCFC-141b in the definition of "Confer," but is retaining the remainder of that definition. The EPA is also removing references and recordkeeping and reporting requirements specifically relating to HCFC-141b exemption allowances. These edits are made by removing 40 CFR §82.24(b)(1)(ix) and (xi); §82.24(b)(2)(xiv); §82.24(c)(1)(xi); §82.24(c)(2)(xvi); and §82.24(g).

The EPA also created provisions at 40 CFR §82.18(b) to allow producers to use "export production allowances" to produce HCFC-141b for export beyond the phaseout. These allowances ended in 2010 and therefore these provisions have no further purpose or effect. The EPA is retaining the definition of export production allowances and certain references where appropriate to provide context to the reader but is removing the recordkeeping and reporting provisions. These edits are made in 40 CFR §§82.16(e)(1) and (2) and §82.24(b)(2)(iv), and by removing §82.24(b)(1)(iv) and (ix); §82.24(b)(2)(xii); and §82.24(d)(2).

M. Other Comments Not Related to the Proposal

The EPA received a comment that is unrelated to the proposed rule on the management and destruction of ODS held in banks in relation to the venting prohibition in section 608 of the CAA. In this comment, EIA notes that a substantial bank of ODS persists in the United States, including of CFC-11 contained in foams as well as other class I and class II ODS substances contained in existing refrigeration and air-conditioning equipment or stockpiles. They state that despite a growing bank of ODS found to be available for recovery from retired equipment, the rate of proper disposal of these substances through either reclamation or destruction has declined. The commenter suggests that the low rates of reclamation and destruction in the United States, particularly of class II ODS, indicates that significant quantities of these substances are likely being vented in violation of section 608 of the CAA. They argue that in order to enforce the venting prohibition and encourage responsible management and disposal of the remaining bank of ODS, the EPA should propose additional measures on lifecycle ODS management. The EPA notes that this comment pertains to section 608 of the CAA and the regulations under 40 CFR part 82 subpart F and is beyond the scope of this rulemaking, which did not propose and is not

finalizing any changes to the subpart F requirements. As the comment is not relevant to this final action, no response is required.

IV. Economic Analysis

The EPA considered the incremental costs and benefits associated with this rulemaking, which primarily stem from changes to reporting and recordkeeping requirements. In total, the EPA estimates that the quantified costs and benefits of this rule results in a net savings of $13,000 per year. The Agency analyzed the quantitative costs and benefits associated with transitioning to electronic reporting, the streamlined import petition process for used halons, exempting halon 1211 in aircraft bottles from the import petitions process, establishing the Certification of Intent to Import ODS for Destruction, adding a recordkeeping requirement for certain distributors of methyl bromide QPS applications, and labeling containers of Halotron® I. The quantifiable costs and benefits of this rule primarily result from the revisions to the reporting and recordkeeping requirements and the requirement to use electronic reporting. For the phaseout of ODS, the EPA previously considered the domestic costs and benefits of the United States' phaseout.[58] Many of the regulatory revisions finalized in this action, such as the removal of obsolete requirements, will not result in any new costs or benefits. The EPA has provided in the docket technical support documents that consider the costs and the benefits commensurate with changes to the ODS phaseout regulations.

Electronic reporting allows for faster review and transmission of submissions to the EPA. Additionally, all information submitted electronically is linked in an improved tracking system, which facilitates document management and allows companies to more easily manage past and

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

future submissions. The estimated burden hours and labor costs will decrease as a result of the complete transition from paper to electronic reporting, including removing unnecessary data elements and auto-populating others. Similarly, the estimated Agency burden hours and labor costs decreases. The streamlined petitions process for importing used halons and the new Certification of Intent to Import ODS for Destruction both decrease the estimated respondent burden. Specifically, the number of reporting elements for importers for destruction is reduced from 13 to 9, reducing burden hours per response by four hours. The EPA also estimates that exempting halon 1211 used in aircraft bottles from the petition process reduces the number of responses per respondent by one. These changes are detailed in the supporting statement for the Information Collection Request available in the docket to this rule.

The EPA estimates that redesigning the existing labels on containers of Halotron® I will result in a one-time cost of approximately $4,000. Administrative and graphic design labor costs are estimated based on the total amount of hours required to redesign existing labels as well as hourly labor costs. Hourly costs include wages, overhead rates, and fringe rates. Additional information on this analysis is available in the docket titled "Estimated costs of Regulatory Changes to Labeling of Containers of HCFC Fire Suppression Agent, 2020-2029."

There are also unquantifiable effects of this rule. Prohibiting both the sale of QPS methyl bromide for non-QPS purposes and the sale of illegally imported ODS is designed to improve compliance with the existing provisions. These costs are unquantifiable as the scale of these sales is not known but are anticipated to be small due to the illegality of such sales. The prohibition on sales and distribution of polyurethane foam systems containing CFCs will have no cost because there is no evidence to suggest this practice is occurring in the United States. Updating the definition of destruction allows for the use of new destruction technologies that are currently not

in use in the United States but can now be employed with the additional technologies. Additional destruction of unwanted ODS in the United States may generate revenue for domestic destruction facilities. Lastly, the removal of obsolete provisions is not anticipated to have any material cost or benefit.

Previous analyses provide information on the costs and benefits of the United States' ODS phaseout, and specifically the phaseout of all HCFCs through 2030, but do not quantify the costs and benefits of each individual phaseout step for each individual chemical. A memorandum summarizing these analyses, including the original regulatory impact analysis for the full phaseout of ODS, is available in the docket.[59] This rule allows for the production and consumption of HCFC-123 and HCFC-124 that will otherwise not be allowed in the absence of this rulemaking. These HCFCs will then be used to service existing fire suppression, refrigeration, and air-conditioning equipment, as modeled in the *2019 Final Servicing Tail Report*. This rule relieves a regulatory prohibition on production and consumption of HCFC-123 and HCFC-124 and results in greater benefits than taking no action.

In finalizing the level of allocation for HCFC-123, the EPA considered the quantities needed to satisfy estimated demand for HCFC-123 to service equipment manufactured before 2020 and the amount of HCFC-123 that will likely be reclaimed annually, and thus be available to meet part of the demand for HCFC-123. The Agency is issuing consumption allowances equal to the 2020 estimated HCFC-123 demand for servicing existing refrigeration and air-conditioning and fire suppression equipment for years 2020 through 2022 and then decreasing the number of allowances issued in each subsequent year by an equal amount each year such that there are zero allowances issued in 2030. This allocation will avoid stranding existing equipment

[59] EPA 2008, "HCFC Cost Analysis" and EPA 2018, "Overview of CFC and HCFC Phaseout."

due to an inadequate supply of HCFCs while achieving a complete phaseout of production and consumption by 2030. As discussed in Section III of this notice, a viable reclamation market is a necessary element in achieving those two goals. Issuing allowances in excess of demand would suppress the reclamation market and result in less supply to service equipment after the 2030 phaseout. In the near term, the final allocation provides sufficient allowances to meet the near-term needs of the market while also fostering reclamation and transition. A final allocation that is significantly too high or too low could adversely affect the availability of reclaimed HCFC-123 for the fire suppression sector because reclamation is the only source of HCFC-123 for the manufacture of new fire suppression equipment once stockpiles of previously-imported material is exhausted. Thus, if the reclaim market is suppressed from 2020 through 2029, there will be less supply and higher costs for HCFC-123 for the manufacture of new fire suppression equipment and less supply and higher costs as the phaseout progresses since the supply of HCFC-123 will eventually only be from the recycling or reclamation market.

The EPA finds there is no significant impact on a substantial number of small entities (SISNOSE). The EPA performed a sales test to assess the economic impact of a regulatory option on small businesses and compared the results of the sales test. This analysis is available in the docket. Based on the screening analysis of allowance holders of HCFC-123 and HCFC-124, this rulemaking has no SISNOSE because it is expected to result in a small net benefit to small businesses through the ability to continue producing, importing and/or selling HCFC-123 and HCFC-124. The EPA notes that there are only eight companies total that hold consumption allowances for HCFC-123 and HCFC-124, only three of which are small businesses.

V. Statutory and Executive Order Reviews

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

Improving Regulation and Regulatory Review

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

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

This action is not subject to Executive Order 13771, because this final rule is expected to result in no more than *de minimis* costs.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned the EPA ICR number 1432.34. You can find a copy of the ICR and supporting statement in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

This ICR covers provisions under the Montreal Protocol and Title VI of the CAA that establish limits on total U.S. production, import, and export of ODS. The EPA monitors compliance with the CAA and commitments under the Montreal Protocol through the recordkeeping and reporting requirements established in the regulations at 40 CFR part 82, Subpart A. The EPA informs the respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed as confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, subpart B, and will be disclosed to the extent, and by means of procedures, set forth in subpart B. If no claim of confidentiality is asserted when the information is received

by the EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

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

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

Estimated number of respondents: 98

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

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

Total estimated cost: $363,683, includes $7,400 annualized capital or operation & maintenance costs.

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the Federal Register and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities potentially subject to increased costs from this action include allowance holders, distributors, applicators, and end users of methyl

bromide and importers of ODS. The EPA estimates that the total incremental savings associated with this final rule is $13,000 per year in 2019 dollars.

E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. The Agency nonetheless has reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's surface. The following studies describe the effects of

excessive exposure to UV radiation on children: (1) Westerdahl J, Olsson H, Ingvar C. "At what age do sunburn episodes play a crucial role for the development of malignant melanoma," Eur J Cancer 1994: 30A: 1647-54; (2) Elwood JM Japson J. "Melanoma and sun exposure: an overview of published studies," Int J Cancer 1997; 73:198-203; (3) Armstrong BK, "Melanoma: childhood or lifelong sun exposure," In: Grobb JJ, Stern RS Mackie RM, Weinstock WA, eds. "Epidemiology, causes and prevention of skin diseases," 1st ed. London, England: Blackwell Science, 1997: 63-6; (4) Whiteman D., Green A. "Melanoma and Sunburn," Cancer Causes Control, 1994: 5:564-72; (5) Heenan, PJ. "Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia," Int J Cancer 1995; 60: 489-94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, et. al. "Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma," Arch Dermatol 1995; 131: 157-63; (7) Armstrong, DK. "How sun exposure causes skin cancer: an epidemiological perspective," Prevention of Skin Cancer. 2004. 89-116.

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that it is not feasible to quantify any disproportionately high and adverse effects from this action on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 82

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

Dated: DEC 19 2019

Andrew R. Wheeler,
Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR Part 82 as follows:

PART 82 – PROTECTION OF STRATOSPHERIC OZONE

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

Authority: 42 U.S.C. 7414, 7601, 7671-767q.

2. Effective **[insert date 30 days from date of publication in the Federal Register]**, amend §82.3 by:

a. Adding definitions in alphabetical order for "Central Data Exchange" and "Halon bank"

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

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

The revisions and additions read as follows:

§82.3 Definitions.

* * * * *

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative. Starting **[insert date 60 days from date of publication in the Federal Register]**, reports and petitions that are available to be submitted through the Central Data Exchange, as well as any related supporting documents, must be submitted through that tool. Any other reports and communications shall be submitted to Stratospheric Protection Manager, 1200 Pennsylvania Ave., NW., Mail Code: 6205T, Washington, DC 20460.

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

* * * * *

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

* * * * *

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

* * * * *

Consumption allowances means the privileges granted by this subpart to produce and import controlled substances; however, consumption allowances may be used to produce controlled substances only in conjunction with production allowances. A person's consumption allowances for class I substances are the total of the allowances obtained under §§82.6 and 82.7 as may be modified under §82.12 (transfer of allowances). A person's consumption allowances for class II controlled substances are the total of the allowances obtained under §§82.19 and 82.20, as may be modified under §82.23.

* * * * *

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

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

(1) Liquid injection incineration;

(2) Reactor cracking;

(3) Gaseous/fume oxidation;

(4) Rotary kiln incineration;

(5) Cement kiln;

(6) Radio frequency plasma;

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

(8) Nitrogen plasma arc;

(9) Portable plasma arc;

(10) Argon plasma arc;

(11) Chemical reaction with hydrogen and carbon dioxide;

(12) Inductively coupled radio frequency plasma;

(13) Microwave plasma;

(14) Porous thermal reactor;

(15) Gas phase catalytic de-halogenation;

(16) Superheated steam reactor; or

(17) Thermal reaction with methane.

* * * * *

Halon bank means a facility run by a national government or privately run and authorized by a national government that collects and stores previously-recovered halon for reuse at a later date.

* * * * *

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

* * * * *

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

* * * * *

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

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

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

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

(4) Amounts that are spilled or vented unintentionally.

* * * * *

3. Effective **[insert date 30 days from date of publication in the Federal Register]**, amend §82.4 by:

a. Removing and reserving paragraph (f);

b. Revising paragraph (j); and

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

Revisions read as follows:

§82.4 Prohibitions for class I controlled substances.

* * * * *

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

(2) No person may import for purposes of destruction, at any time in any control period, a class I controlled substance for which EPA has apportioned baseline production and consumption allowances, without having submitted a certification of intent to import for destruction to the Administrator and received a non-objection notice in accordance with §82.13(g)(5). A person issued a non-objection notice for the import of an individual shipment of class I controlled substances for destruction may not transfer or confer the right to import and may not import any more than the exact quantity (in kilograms) of the class I controlled substance stated in the non-objection notice. For imports intended to be destroyed in the United States, a person issued a non-objection notice must destroy the controlled substance within one year of the date stamped on the non-objection letter, may not transfer or confer the right to import, and may not import any more than the exact quantity (in kilograms) of the class I

controlled substance stated in the non-objection notice. Every kilogram of import of class I controlled substance in excess of the quantity stated in the non-objection notice issued by the Administrator in accordance with §82.13(g)(5) constitutes a separate violation of this subpart.

* * * * *

(r) *Quarantine and preshipment exemption.* No person may sell or use methyl bromide produced or imported under the quarantine and preshipment exemption for any purpose other than for quarantine applications or preshipment applications as defined in §82.3. Each kilogram of methyl bromide produced or imported under the authority of the quarantine and preshipment exemption and sold or used for a use other than quarantine or preshipment is a separate violation of this subpart.

(s) No person may sell or distribute, or offer for sale or distribution, any class I substance that they know, or have reason to know, was imported in violation of this section, except for such actions needed to re-export the controlled substance. Every kilogram of a controlled substance imported in contravention of this paragraph that is sold or distributed, or offered for sale or distribution, constitutes a separate violation of this subpart.

* * * * *

4. Effective **[insert date 30 days from date of publication in the Federal Register]**, amend §82.9 by:

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

b. Revising paragraph (c) introductory text.

The revision reads as follows:

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

* * * * *

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

* * * * *

5. Effective **[insert date 30 days from date of publication in the Federal Register]**, remove and reserve §82.10.

§82.10 [Removed and reserved]

* * * * *

6. Effective **[insert date 30 days from date of publication in the Federal Register]**, amend §82.12 by:

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

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

The revision reads as follows:

§82.12 Transfers of allowances for class I controlled substances.

(a) ***

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

* * * * *

7. Effective **[insert date 30 days from date of publication in the Federal Register]**, amend §82.13 by:

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

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

c. Adding paragraphs (g)(2)(xv) and (g)(5)-(10).

The revisions and additions read as follows:

§82.13 Recordkeeping and reporting requirements for class I controlled substances

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

* * * * *

(c) Unless otherwise specified, reports required by this section must be submitted to the Administrator within 45 days of the end of the applicable reporting period. Revisions of reports that are required by this section must be submitted to the Administrator within 180 days of the end of the applicable reporting period, unless otherwise specified. Starting **[insert date 60 days from date of publication in the Federal Register]**, reports that are available for submission through the Central Data Exchange must be submitted electronically through that tool.

* * * * *

(f) * * *

(2) * * *

* * * * *

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

(xviii) Written certifications that quantities of methyl bromide produced solely for quarantine and preshipment applications were purchased by distributors or applicators to be used

only for quarantine applications and preshipment applications in accordance with the definitions in this subpart; and

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

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

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

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

(3) * * *

* * * * *

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

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

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

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

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

* * * * *

(g) * * *

(1) * * *

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

* * * * *

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

* * * * *

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

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

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

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

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

(2) Petitioning—Importers of Used, Recycled or Reclaimed Controlled Substances. For each individual shipment over 5 pounds of a used controlled substance as defined in §82.3, except for Group II used controlled substances shipped in aircraft halon bottles for hydrostatic

testing and imports intended for destruction, an importer must submit directly to the Administrator, at least 40 working days before the shipment is to leave the foreign port of export, the following information in a petition:

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

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

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

* * * * *

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

* * * * *

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

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

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

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

(xii) The export license, application for an export license, or official communication acknowledging the export from the appropriate government agency in the country of export and, if recovered in another country, the export license or official communication from the appropriate government agency in that country, and quantity authorized for export in kilograms on the export license, and an English translation of these documents;

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

* * * * *

(xv) If the used controlled substance is stored in a halon bank, in lieu of the information required in subparagraphs (iv) through (vi) of this paragraph, the petitioner may provide an official letter from the appropriate government agency in the country where the material is stored indicating that the halon is used and that the halon bank is authorized to collect used halon. If source information in subparagraphs (iv) through (vi) is available, it should also be provided in addition to the letter.

(3) * * *

(i) * * *

(A) If the Administrator determines that the information is insufficient, that is, if the petition lacks or appears to lack any of the information required under §82.13(g)(2) or other

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

* * * * *

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

* * * * *

(4) * * *

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

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

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

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

quantities dedicated for post-harvest use along with the name of the entity on whose behalf the material is held.

* * * * *

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

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

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

(iii) Name and address of any intermediary who will aggregate controlled substances imported for destruction, and the contact person's name, email address, and phone number;

(iv) The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the material. If at the time of submitting the certification of intent to import for destruction the importer does not know the U.S. port of entry, the expected date of shipment and the vessel transporting the material, and the importer receives a non-objection notice for the individual shipment in the petition, the importer is required to notify the Administrator of this information prior to the entry of the individual shipment into the United States;

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

(vi) The export license, application for an export license, or official communication acknowledging the export from the appropriate government agency in the country of export and,

if recovered in another country, the export license or official communication from the appropriate government agency in that country, and quantity authorized for export in kilograms on the export license, and an English translation of these documents; and

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

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

(7) (i) Starting on the first working day following receipt by the Administrator of a certification of intent to import a class I controlled substance for destruction, the Administrator will initiate a review of the information submitted under paragraph (g)(5) of this section and take action within 30 working days to issue either an objection-notice or a non-objection notice for the individual shipment to the person who submitted the certification of intent to import the class I controlled substance for destruction.

(ii) The Administrator may issue an objection notice if the petition lacks or appears to lack any of the information required under paragraph (g)(5) of this section or for the reasons listed in §82.13(g)(3)(i)(B)-(F).

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

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

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

(A) Revoke the non-objection notice;

(B) Pursue all means to ensure that the class I controlled substance is not imported into the United States; and

(C) Take appropriate enforcement actions.

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

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

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

(ii) The EPA non-objection notice;

(iii) A copy of the export license, export license application, or official communication from the appropriate government agency in the country of export;

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

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

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

(vii) A copy of the destruction verification from the destruction facility; and

(viii) An English translation of the document in paragraph (iii).

(10) A person identified in §82.13(g)(5)(iii) as aggregating a controlled substance prior to destruction must:

(i) Maintain transactional records that include the name and address of the entity from whom they received the controlled substance imported for destruction;

(ii) Maintain transactional records that include the name and address of the entity to whom they sent the controlled substance imported for destruction;

(iii) Maintain records that include the date and quantity of the imported controlled substance received for destruction;

(iv) Maintain records that include the date and quantity of the imported controlled substance sent for destruction; and

(v) If the person is the final aggregator of such a controlled substance before the material is destroyed, maintain a copy of the destruction verification.

(h) * * *

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

(i) * * *

(ii) The exporter's Employer Identification Number;

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

* * * * *

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

(i) * * *

(ii) The exporter's Employer Identification Number;

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

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

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

* * * * *

(viii) The invoice or sales agreement containing language similar to the Internal Revenue Service Certificate that the purchaser or recipient of imported methyl bromide intends to transform those substances, the destruction verifications (as in paragraph (k) of this section) showing that the purchaser or recipient intends to destroy the controlled substances, or the certification that the purchaser or recipient and the eventual applicator will only use the material for quarantine and preshipment applications in accordance with the definitions in this subpart.

* * * * *

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

(w) * * *

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

* * * * *

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

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

(2) Every distributor of quarantine and preshipment methyl bromide must receive from an applicator, exporter, or distributor to whom they sell or deliver the controlled substance a certification, prior to delivery, stating that the quantity will be used or sold solely for quarantine applications or preshipment applications in accordance with definitions in this subpart.

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

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

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

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

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

(aa) Every commodity owner, shipper or their agent requesting an applicator to use methyl bromide that was produced or imported solely for quarantine and preshipment applications under the exemptions of this subpart must maintain a record for 3 years, for each request, certifying knowledge of the requirements associated with the exemption for quarantine and preshipment applications in this subpart and citing the requirement that justifies its use. The record must include the following statement: "I certify knowledge of the requirements associated with the exempted quarantine and preshipment applications published in 40 CFR part 82, including the requirement that this letter cite the treatments or official controls for quarantine applications or the official requirements for preshipment requirements."

* * * * *

8. Effective **[insert date 30 days from date of publication in the Federal Register]**, add §82.14 to read as follows:

§82.14 Process for electronic reporting.

(a) Starting **[insert date 60 days from date of publication in the Federal Register]**, reports and petitions that are available to be submitted through the Central Data Exchange, as well as any related supporting documents, must be submitted through that tool.

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

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

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

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

* * * * *

9. Amend §82.15 by:

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

b. Adding paragraph (g)(5).

The additions read as follows:

§82.15 Prohibitions for class II controlled substances.

* * * * *

(g) * * *

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

applications in accordance with the regulations at subpart G of this part and only to the extent permitted under paragraph (ii) of this subsection; for export to Article 5 Parties under §82.18(a); as a transhipment or heel; or for exemptions permitted under paragraph (f) of this section.

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

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

* * * * *

10. Effective **[insert date 30 days from date of publication in the Federal Register]**, amend §82.15 by:

a. Adding paragraphs (b)(3) and (g)(8).

The additions read as follows:

* * * * *

(b) * * *

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

* * * * *

(g) * * *

(8) No person may sell or distribute, or offer for sale or distribution, any class II substance that they know, or have reason to know, was imported in violation of this section, except for such actions needed to re-export the controlled substance. Every kilogram of a controlled substance imported in contravention of this paragraph that is sold or distributed, or offered for sale or distribution, constitutes a separate violation of this subpart.

* * * * *

11. Amend §82.16 by:

a. Revising the tables in paragraph (a); and

b. Revising paragraph (e).

The revisions read as follows:

§ 82.16 Phaseout schedule of class II controlled substances.

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

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

Control Period	Percent of HCFC-141b	Percent of HCFC-22	Percent of HCFC-142b	Percent of HCFC-123	Percent of HCFC-124	Percent of HCFC-225ca	Percent of HCFC-225cb
2003	0	100	100	-	-	-	-
2004	0	100	100	-	-	-	-
2005	0	100	100	-	-	-	-
2006	0	100	100	-	-	-	-
2007	0	100	100	-	-	-	-
2008	0	100	100	-	-	-	-
2009	0	100	100	-	-	-	-
2010	0	41.9	0.47	0	125	125	125
2011	0	32	4.9	0	125	125	125
2012	0	17.7	4.9	0	125	125	125
2013	0	30.1	4.9	0	125	125	125
2014	0	26.1	4.9	0	125	125	125
2015	0	21.7	0.37	0	5	0	0
2016	0	21.7	0.32	0	5	0	0
2017	0	21.7	0.26	0	5	0	0
2018	0	21.7	0.21	0	5	0	0
2019	0	21.7	0.16	0	5	0	0
2020	0	0	0	0	5.0	0	0
2021	0	0	0	0	5.0	0	0

2022	0	0	0	0	5.0	0	0
2023	0	0	0	0	4.4	0	0
2024	0	0	0	0	3.8	0	0
2025	0	0	0	0	3.2	0	0
2026	0	0	0	0	2.5	0	0
2027	0	0	0	0	1.9	0	0
2028	0	0	0	0	1.3	0	0
2029	0	0	0	0	0.7	0	0
2030	0	0	0	0	0	0	0

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

Control Period	Percent of HCFC-141b	Percent of HCFC-22	Percent of HCFC-142b	Percent of HCFC-123	Percent of HCFC-124	Percent of HCFC-225ca	Percent of HCFC-225cb
2003	0	100	100	-	-	-	-
2004	0	100	100	-	-	-	-
2005	0	100	100	-	-	-	-
2006	0	100	100	-	-	-	-
2007	0	100	100	-	-	-	-
2008	0	100	100	-	-	-	-
2009	0	100	100	-	-	-	-
2010	0	41.9	0.47	125	125	125	125
2011	0	32	4.9	125	125	125	125
2012	0	17.7	4.9	125	125	125	125
2013	0	18	4.9	125	125	125	125
2014	0	14.2	4.9	125	125	125	125
2015	0	7	1.7	100	8.3	0	0
2016	0	5.6	1.5	100	8.3	0	0
2017	0	4.2	1.2	100	8.3	0	0
2018	0	2.8	1	100	8.3	0	0
2019	0	1.4	0.7	100	8.3	0	0
2020	0	0	0	32.3	8.3	0	0
2021	0	0	0	32.3	8.3	0	0
2022	0	0	0	32.3	8.3	0	0
2023	0	0	0	28.4	7.3	0	0
2024	0	0	0	24.4	6.3	0	0
2025	0	0	0	20.4	5.3	0	0
2026	0	0	0	16.4	4.2	0	0
2027	0	0	0	12.5	3.2	0	0

2028	0	0	0	8.5	2.2	0	0
2029	0	0	0	4.5	1.1	0	0
2030	0	0	0	0	0	0	0

* * * * *

(e)(1) Effective January 1, 2020, no person may produce HCFC-22 or HCFC-142b for any purpose other than for use in a process resulting in their transformation or their destruction, for export under §82.18(a) using unexpended Article 5 allowances, or for exemptions permitted in §82.15(f). Effective January 1, 2020, no person may import HCFC-22 or HCFC-142b for any purpose other than for use in a process resulting in their transformation or their destruction, or for exemptions permitted in §82.15(f).

(2) Effective January 1, 2020, no person may produce HCFC-123 for any purpose other than for use in a process resulting in its transformation or its destruction, for use as a refrigerant in equipment manufactured before January 1, 2020, for export under §82.18(a) using unexpended Article 5 allowances, or for exemptions permitted in §82.15(f). Effective January 1, 2020, no person may import HCFC-123 for any purpose other than for use in a process resulting in its transformation or its destruction, for use as a refrigerant in equipment manufactured before January 1, 2020, for use as a fire suppression streaming agent in equipment manufactured before January 1, 2020 and listed as acceptable for use or acceptable subject to narrowed use limits for nonresidential applications, or for exemptions permitted in §82.15(f).

* * * * *

12. Effective **[insert date 30 days from date of publication in the Federal Register]**, amend §82.23 by

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

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

The addition reads as follows:

§82.23 Transfers of allowances of class II controlled substances.

* * * * *

(b) * * *

(1) * * *

(i) A person (transferor) may only convert allowances for one class II controlled substance for which EPA has issued allowances under §82.16 to another class II controlled substance for which EPA has issued allowances under §82.16.

(ii) [Reserved].

* * * * *

13. Effective **[insert date 30 days from date of publication in the Federal Register]**, amend §82.24 by:

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

b. Removing and reserving paragraphs (b)(1)(iv), (ix), and (xi), (b)(2)(xii) and (xiv), (c)(1)(vi) and (xi), (c)(2)(xvi), (c)(4)(v), (c)(4)(vii), (d)(2), and (g); and

c. Adding paragraphs (c)(6)-(11).

The revisions and addition read as follows:

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

(a) * * *

(1) Reports required by this section must be submitted to the Administrator within 45 days of the end of the applicable reporting period, unless otherwise specified. Starting **[insert date 60 days from date of publication in the Federal Register]**, reports that are available for submission through the Central Data Exchange must be submitted electronically through that tool.

* * * * *

(b) * * *

(2) * * *

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

* * * * *

(c) * * *

(3) * * *

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

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

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

* * * * *

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

* * * * *

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

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

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

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

(xii) The export license, application for an export license, or official communication acknowledging the export from the appropriate government agency in the country of export and, if recovered in another country, the export license or official communication from the appropriate government agency in that country, and quantity authorized for export in kilograms on the export license, and an English translation of these documents;

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

* * * * *

(4) * * *

(i) * * *

(A) If the Administrator determines that the information is insufficient, that is, if the petition lacks or appears to lack any of the information required under paragraph (c)(3) of this section or other information that may be requested during the review of the petition necessary to verify that the controlled substance is used;

* * * * *

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

* * * * *

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

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

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

(iii) Name and address of any intermediary who aggregates controlled substances imported for destruction, and the contact person's name, email address, and phone number;

(iv) The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the material. If at the time of submitting the certification of intent to import for destruction the importer does not know the U.S. port of entry, the expected date of shipment and the vessel transporting the material, and the importer receives a non-objection notice for the

individual shipment in the petition, the importer is required to notify the Administrator of this information prior to the entry of the individual shipment into the United States;

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

(vi) The export license, application for an export license, or official communication acknowledging the export from the appropriate government agency in the country of export and, if recovered in another country, the export license or official communication from the appropriate government agency in that country, and quantity authorized for export in kilograms on the export license, and an English translation of these documents; and

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

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

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

(ii) The Administrator may issue an objection notice if the petition lacks or appears to lack any of the information required under paragraph (c)(6) or for the reasons listed in §82.24(c)(4)(i)(B)-(E).

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

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

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

(A) Revoke the non-objection notice;

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

(C) Take appropriate enforcement actions.

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

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

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

(ii) The EPA non-objection notice;

(iii) A copy of the export license, export license application, or official communication from the appropriate government agency in the country of export;

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

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

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

(vii) A copy of the destruction verification from the destruction facility; and

(viii) An English translation of the document in paragraph (iii).

(11) A person identified in §82.24(c)(6)(iii) as aggregating a controlled substance prior to destruction must:

(i) Maintain transactional records that include the name and address of the entity from whom they received the controlled substance imported for destruction;

(ii) Maintain transactional records that include the name and address of the entity to whom they sent the controlled substance imported for destruction;

(iii) Maintain records that include the date and quantity of the imported controlled substance received for destruction;

(iv) Maintain records that include the date and quantity of the imported controlled substance sent for destruction; and

(v) If the person is the final aggregator of such a controlled substance before the material is destroyed, maintain a copy of the destruction verification.

(d) * * *

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

* * *

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

* * * * *

14. Effective **[insert date 30 days from date of publication in the Federal Register]**, revise Appendix K to read as follows:

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

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

15. Effective **[insert date 30 days from date of publication in the Federal Register]**, amend §82.62 by adding, in alphabetical order, the definition for "Polyurethane Foam System" to read as follows:

§82.62 Definitions.

* * * * *

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

* * * * *

16. Effective **[insert date 30 days from date of publication in the Federal Register]**, amend 82.64 by adding paragraph (h):

§82.64 Prohibitions.

* * * * *

(h)No person may sell or distribute, or offer to sell or distribute, in interstate commerce any of the products identified as being nonessential in §82.66(f).

* * * * *

17. Effective **[insert date 30 days from date of publication in the Federal Register]**, amend §82.66 by:

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

b. Adding paragraph (f).

The revisions and addition read as follows:

§82.66 Nonessential Class I products and exceptions.

* * * * *

(d)***

(2) ***

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

(e) Any air-conditioning or refrigeration appliance as defined in CAA 601(1) that contains a Class I substance used as a refrigerant; and

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

* * * * *

18. Effective **[insert date 30 days from date of publication in the Federal Register]**, amend §82.104 by revising paragraphs (c) and (h) to read as follows:

§82.104 Definitions.

* * * * *

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

* * * * *

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

* * * * *

19. Effective **[insert date 30 days from date of publication in the Federal Register]**, amend §82.106 by revising paragraph (a) to read as follows:

§82.106 Warning statement requirements.

* * * * *

(a) *Required warning statements.* (1) Unless otherwise exempted by this subpart, each container or product identified in §82.102 (a) or (b) shall bear the following warning statement, meeting the requirements of this subpart for placement and form:

WARNING: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

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

WARNING: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere. Use Only for Recharge of Equipment Manufactured before January 1, 2020.

(3) Each container of fire suppression agent containing reclaimed HCFC-123 or HCFC-123 that was imported prior to January 1, 2020, shall bear the following warning statement, meeting the requirements of this subpart for placement and form:

WARNING: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere. For use in any equipment.

* * * * *

20. Effective **[insert date 30 days from date of publication in the Federal Register]**, amend §82.270 by revising paragraph (e) to read as follows:

§82.270 Prohibitions.

* * * * *

(e) No person shall dispose of halon except by sending it for recycling to a recycler operating in accordance with NFPA 10 and NFPA 12A standards, or by arranging for its destruction using one of the controlled processes approved by the Parties and listed in the definition of *destruction* in §82.3 of subpart A of this part.

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