

1. Is not a "significant regulatory action" under Executive Order 12866,
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

**McDonnell Douglas:** Docket No. FAA-2008-1324; Directorate Identifier 2008-NM-101-AD.

#### Comments Due Date

- (a) We must receive comments by February 6, 2009.

#### Affected ADs

- (b) None.

#### Applicability

- (c) This AD applies to all McDonnell Douglas airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1—APPLICABILITY

Model
(1) DC-8-51, DC-8-52, DC-8-53, and DC-8-55 airplanes.
(2) DC-8F-54 and DC-8F-55 airplanes.
(3) DC-8-61, DC-8-62, and DC-8-63 airplanes.
(4) DC-8-61F, DC-8-62F, and DC-8-63F airplanes.
(5) DC-8-71, DC-8-72, and DC-8-73 airplanes.
(6) DC-8-71F, DC-8-72F, and DC-8-73F airplanes.

#### Unsafe Condition

- (d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent pump inlet friction (i.e., overheating or sparking) when the fuel pumps are continually run as the

center wing fuel tank becomes empty, and/or electrical arc burnthrough, which could result in a fuel tank fire or explosion.

#### Compliance

- (e) Comply with this AD within the compliance times specified, unless already done.

#### Airplane Flight Manual (AFM) Revision

- (f) Within 14 days after the effective date of this AD, revise the Certificate Limitations Section of the DC-8 AFM to include the following procedures that preclude dry running of fuel pumps and/or electrical arc burnthrough (This may be done by inserting a copy of this AD into the AFM):

"During level flight, the applicable alternate or center wing auxiliary tank boost pump switch must be placed in the OFF position no more than 5 minutes after the auto fill light is continuously illuminated. DO NOT reset any tripped fuel pump circuit breakers."

#### Alternative Methods of Compliance (AMOCs)

- (g)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, ATTN: William Bond, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5253; fax (562) 627-5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

- (2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on December 12, 2008.

**Michael J. Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8-30521 Filed 12-22-08; 8:45 am]

BILLING CODE 4910-13-P

#### FOR FURTHER INFORMATION CONTACT:

Philip A. Selleck, Regulations Program Manager, 1849 C St., NW., Washington, DC 20240 (202) 208-4206; e-mail [philip\\_selleck@nps.gov](mailto:philip_selleck@nps.gov).

#### Correction

In proposed rule FR Doc. E8-29892, beginning on page 76987 in the issue of December 18, 2008, make the following correction to the text of the proposed rule. On page 76990, in the 2nd column, add at the end of § 4.30 the following paragraphs (f) and (g):

#### § 4.30 Bicycles.

\* \* \* \* \*

- (f) A person operating a bicycle is subject to all sections of this part that apply to an operator of a motor vehicle, except §§ 4.4, 4.10, 4.11 and 4.14.

- (g) The following are prohibited:

(1) Possessing a bicycle in a wilderness area established by Federal statute.

(2) Operating a bicycle during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light or reflector that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(3) Operating a bicycle abreast of another bicycle except where authorized by the superintendent.

(4) Operating a bicycle while consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage.

Dated: December 18, 2008.

**Lyle Lavery,**

*Assistant Secretary, Fish and Wildlife and Parks.*

[FR Doc. E8-30649 Filed 12-22-08; 8:45 am]

BILLING CODE 4312-52-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 4

#### RIN 1024-AD72

#### Vehicles and Traffic Safety

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The National Park Service published a proposed rule revising 36 CFR 4.30 in the **Federal Register** on December 18, 2008, 73 FR 76987, inadvertently leaving out the last two paragraphs. This correction restores that text.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

[EPA-HQ-OAR-2008-0496; FRL-8752-7]

#### RIN 2060-A076

#### Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to adjust the allowance system for control of U.S. consumption and production of

hydrochlorofluorocarbons (HCFCs) by apportioning baselines and allocating production and consumption allowances for several HCFCs for which the Agency previously allocated allowances and other HCFCs that were not allocated allowances previously, for the control periods 2010–2014. The HCFC allowance system is part of EPA's Clean Air Act program to phase out ozone-depleting substances (ODSs) to protect the stratospheric ozone layer. Protection of the stratospheric ozone layer helps reduce rates of skin cancer and cataracts, as well as other health and ecological effects. The U.S. is obligated under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) to limit HCFC consumption and production to a specific level and, using stepwise reductions, to decrease the specific level culminating in a complete HCFC phaseout in 2030. The next major milestone, to occur on January 1, 2010, is a 75 percent reduction from the aggregate U.S. HCFC baseline for production and consumption. In this action EPA proposes to allocate the allowances for 2010–2014 that will ensure compliance with the international stepwise reduction, consistent with the 1990 Clean Air Act Amendments. In addition, EPA proposes to amend the regulatory provisions concerning allowances for HCFC production for developing countries' basic domestic needs to be consistent with the September 2007 adjustments to the Montreal Protocol. Also, the Agency is providing its interpretation of a self-effectuating ban on introduction into interstate commerce and use of HCFCs contained in section 605(a) of the Clean Air Act and proposes to amend existing regulatory provisions to facilitate implementation of the statutory requirements.

**DATES:** Comments must be received on or before February 23, 2009, unless a public hearing is requested. If a public hearing is requested, comments must then be received on or before March 9, 2009. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Daylight Time on January 2, 2009. If a hearing is held, it will take place on January 7, 2009 and the comment period will then close on March 9, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0496, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov).

- *Fax:* 202–566–1741.

- *Mail:* Docket #, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* Docket # EPA–HQ–OAR–2008–0496 Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0496. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**FOR FURTHER INFORMATION CONTACT:** Cindy Axinn Newberg, EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 1200

Pennsylvania Avenue, NW., Washington, DC 20460, (202) 343–9729, [newberg.cindy@epa.gov](mailto:newberg.cindy@epa.gov).

**SUPPLEMENTARY INFORMATION:** Under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol), as amended, the U.S. and other industrialized countries that are Parties to the Protocol have agreed to limit production and consumption of hydrochlorofluorocarbons (HCFCs), and to phase out production and consumption in a step-wise fashion over time, culminating in a general phaseout by 2020 while permitting a small amount of HCFC production to continue solely for servicing existing appliances until 2030. Title VI of the Clean Air Act Amendments of 1990 (CAAA of 1990) also mandates restrictions on HCFCs, culminating in a complete production and consumption phaseout in 2030. For purposes of both the Montreal Protocol and the Clean Air Act, "consumption" is defined as production plus imports minus exports. Sections 605 and 606 of the Clean Air Act authorize EPA to promulgate regulations to manage the consumption and production of HCFCs until the terminal phaseout. In 1993 EPA established a chemical-by-chemical, "worst-first," approach to implement the Montreal Protocol's graduated phaseout in overall HCFC levels (58 FR 65018). Key concepts in the "worst-first" approach included "distinguishing among HCFCs based on their [ozone depletion potential (ODP)] and phasing out use in new equipment prior to use for servicing existing equipment" (58 FR 65026). The consumption cap became effective in 1996, and HCFC consumption in the U.S. remained about 15 percent below the cap for the first two years. In 1998 and 1999, consumption rose to levels that approached the cap. On January 21, 2003, EPA established an allowance tracking system for HCFCs (68 FR 2820), noting at that time that EPA would again pursue a notice-and-comment rulemaking to implement a 2010 stepwise reduction. EPA promulgated minor amendments to these regulations on June 17, 2004 (69 FR 34024), and July 20, 2006 (71 FR 41163).

In this action, EPA proposes the next step in the chemical-by-chemical phaseout the United States uses to meet its international obligations. Specifically, EPA proposes for HCFC–141b, HCFC–22, and HCFC–142b, to grant specified percentages of the consumption and production baselines for the control periods 2010–2014; and for other HCFCs to apportion company-by-company consumption and production baselines as well as grant

specified percentages of the consumption and production baselines for the control periods 2010–2014. EPA is also proposing to amend the provisions for HCFC production allowances to meet the basic domestic needs of developing countries. In addition, EPA is proposing regulatory changes to complete the implementation of the section 605(a) ban on introduction into interstate commerce or use of HCFCs and clarifies its interpretation of this Clean Air Act provision.

#### Abbreviations and Acronyms Used in this Document

CAA—Clean Air Act

CAAA—Clean Air Act Amendments of 1990

CFC—chlorofluorocarbon

EPA—Environmental Protection Agency

HCFC—hydrochlorofluorocarbon

Montreal Protocol—*Montreal Protocol on Substances that Deplete the Ozone Layer*

NPRM—Notice of Proposed Rulemaking

ODP—ozone depletion potential

ODS—ozone-depleting substance

Party—States and regional economic integration organizations that have consented to be bound by the *Montreal Protocol on Substances that Deplete the Ozone Layer*

SNAP—Significant New Alternatives Policy

UNEP—United Nations Environment Programme

#### Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

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#### I. Regulated Entities

These proposed amendments will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing.	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers.
Chlorofluorocarbon gas importers ...	325120	2869	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas exporters ...	325120	2869	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters.
Manufacturers of air conditioners and refrigerators.	333415	.....	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment manufacturers.
Importers of air conditioners and refrigerators.	333415	3585	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment importers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware potentially could be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your

facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### II. Background

##### A. How Do the Montreal Protocol and Clean Air Act Phase Out HCFCs?

The *Montreal Protocol on Substances that Deplete the Ozone Layer* is the international agreement aimed at reducing and eventually eliminating the production and consumption of

stratospheric ozone-depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA 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. Title VI includes restrictions on production, consumption, and use of ozone-depleting substances that are subject to acceleration if “the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use \* \* \* more rapidly than the applicable schedule” prescribed by the statute. Both the Montreal Protocol and the Clean Air Act define consumption as production plus imports minus exports.

In 1990, as part of the London Amendment to the Montreal Protocol, the Parties identified HCFCs as “transitional substances” to serve as temporary, lower-ODP substitutes for CFCs and other ODSs. EPA similarly viewed HCFCs as “important interim substitutes that will allow for the earliest possible phaseout of CFCs and other Class I substances”<sup>1</sup> (58 FR 65026). In 1992, through the Copenhagen Amendment to the Montreal Protocol, the Parties created a detailed phaseout schedule for HCFCs beginning with a cap on consumption for industrialized (Article 2) Parties, a schedule to which the United States adheres. The consumption cap for each Article 2 Party was set at 3.1 percent (later tightened to 2.8 percent) of a Party’s CFC consumption in 1989, plus a Party’s consumption of HCFCs in 1989 (weighted on an ODP basis). Based on this formula, the HCFC consumption cap for the U.S. was 15,240 ODP-weighted metric tons, effective January 1, 1996. This became the U.S. consumption baseline for HCFCs.

The 1992 Copenhagen Amendment created a schedule with graduated reductions and the eventual phaseout of HCFC consumption (Copenhagen, 23–25 November, 1992, Decision IV/4). Prior to the 2007 adjustment, the schedule called for a 35 percent reduction of the consumption cap in 2004, followed by a 65 percent reduction in 2010, a 90 percent reduction in 2015, a 99.5

percent reduction in 2020 (restricting the remaining 0.5 percent of baseline to the servicing of existing refrigeration and air-conditioning equipment), with a total phaseout in 2030.

The Copenhagen Amendment did not cap HCFC production. In 1999, however, the Parties created a cap on production for Article 2 Parties through an amendment to the Montreal Protocol agreed by the Eleventh Meeting of the Parties (Beijing, 29 November—3 December 1999, Decision XI/5). The cap on production was set at the average of: (a) 1989 HCFC production plus 2.8 percent of 1989 CFC production, and (b) 1989 HCFC consumption plus 2.8 percent of 1989 CFC consumption. Based on this formula, the HCFC production cap for the U.S. was 15,537 ODP-weighted metric tons, effective January 1, 2004. This became the U.S. production baseline for HCFCs.

The U.S. has chosen to implement the Montreal Protocol phaseout schedule on a chemical-by-chemical basis. In 1992, environmental and industry groups petitioned EPA to implement the required phaseout by eliminating the most ozone-depleting HCFCs first. Based on the available data at that time, EPA believed that the U.S. could meet, and possibly exceed, the required Montreal Protocol reductions through a chemical-by-chemical phaseout that employed a “worst-first” approach focusing on certain chemicals earlier than others. In 1993, as authorized by section 606 of the CAA, the U.S. established a phaseout schedule that eliminated HCFC–141b first and would greatly restrict HCFC–142b and HCFC–22 next, followed by restrictions on all other HCFCs and ultimately a complete phaseout. (58 FR 15014, March 18, 1993; 58 FR 65018, December 10, 1993). EPA explained that its action modified the schedule contained in paragraphs (a) and (b) of section 605 (58 FR 65025). Paragraph (a) addresses use and introduction into interstate commerce, while paragraph (b) addresses production.

On January 21, 2003 (68 FR 2820), EPA promulgated regulations to ensure compliance with the first milestone in the HCFC phaseout: the requirement that, by January 1, 2004, the U.S. reduce HCFC consumption by 35 percent and freeze HCFC production. In that rule EPA established chemical-specific consumption and production baselines for HCFC–141b, HCFC–22, and HCFC–142b. To further carry out the 1993 phaseout schedule, EPA issued calendar-year allowances equal to 100 percent of baseline for HCFC–22 and

HCFC–142b for each control period<sup>2</sup> from 2003 through 2009. For those same control periods EPA issued calendar-year allowances equal to zero for HCFC–141b; under the 1993 rule HCFC–141b was subject to a complete phaseout on January 1, 2003, which allowed the United States to meet and exceed the 2004 stepwise reduction of 35 percent below the baseline for all HCFCs. EPA did, however, create a petition process to allow applicants to request very small amounts of HCFC–141b beyond the phaseout. EPA considered establishing baselines for all HCFCs in that rule but deferred such action for all but HCFC–141b, HCFC–142b, and HCFC–22. These regulations were amended with a technical correction on July 16, 2003 (68 FR 41925), and with direct final rules adopting minor amendments on June 17, 2004 (69 FR 34024) and July 20, 2006 (71 FR 41163).

To further protect human health and the environment, the Parties to the Montreal Protocol adjusted the Montreal Protocol’s phaseout schedule for HCFCs at the 19th Meeting of the Parties in September 2007. In accordance with Article 2(9)(d) of the Montreal Protocol, the adjustment to the phaseout schedule was effective on May 14, 2008.<sup>3</sup>

As a result of the 2007 Montreal Adjustment (reflected in Decision XIX/6), the United States and other industrialized countries are obligated to reduce HCFC production and consumption 75 percent below the established baseline by 2010, rather than 65 percent as was the previous requirement. The other milestones remain the same: 90 percent below the baseline by 2015, and 99.5 percent below the baseline by 2020—allowing, during 2020 to 2030, production and consumption at only 0.5 percent of baseline solely for servicing existing air-conditioning and refrigeration equipment. The adjustment also resulted in a phaseout schedule for HCFC production that parallels the consumption phaseout schedule. All production and consumption for Article 2 Parties is phased out by 2030.

Decision XIX/6 also adjusted the provisions for Parties operating under

<sup>2</sup> A control period, as defined at 40 CFR 82.3, is a twelve-month period from January 1 through December 31.

<sup>3</sup> Under Article 2(9)(d) of the Montreal Protocol, an adjustment enters into force six months from the date the depositary (the Ozone Secretariat) circulates it to the Parties. The depositary accepts all notifications and documents related to the Protocol and examines whether all formal requirements are met. In accordance with the procedure in Article 2(9)(d), the depositary communicated the adjustment to all Parties on November 14, 2007. The adjustment entered into force and became binding for all Parties on May 14, 2008.

<sup>1</sup> Class I refers to the controlled substances listed in appendix A to 40 CFR part 82 subpart A. Class II refers to the controlled substances listed in appendix B to 40 CFR part 82 subpart A.

paragraph 1 of Article 5 (developing countries): (1) To set production and consumption baselines based on the average 2009–2010 production and consumption, respectively; (2) to freeze production and consumption at those baselines in 2013; and (3) to add stepwise reductions of 10 percent below baselines by 2015, 35 percent by 2020, 67.5 percent by 2025, and 97.5 percent by 2030—allowing, between 2030 and 2040, an annual average of no more than 2.5 percent to be produced or imported solely for servicing existing air-conditioning and refrigeration equipment. All production and consumption for Article 5 Parties is phased out by 2040.

In addition, Decision XIX/6 adjusted Article 2F to allow industrialized countries to produce “up to 10 percent of baseline levels” for export to Article 5 countries “in order to satisfy basic domestic needs” until 2020.<sup>4</sup> Paragraph

<sup>4</sup> Paragraphs 4–6 of adjusted Article 2F read as follows:

“4. Each Party shall ensure that for the twelve-month period commencing on 1 January 2010, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, twenty-five per cent of the sum referred to in paragraph 1 of this Article. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the controlled substances in Group I of Annex C does not exceed, annually, twenty-five per cent of the calculated level referred to in paragraph 2 of this Article. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production of the controlled substances in Group I of Annex C as referred to in paragraph 2.

5. Each Party shall ensure that for the twelve-month period commencing on 1 January 2015, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, ten per cent of the sum referred to in paragraph 1 of this Article. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the controlled substances in Group I of Annex C does not exceed, annually, ten per cent of the calculated level referred to in paragraph 2 of this Article. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production of the controlled substances in Group I of Annex C as referred to in paragraph 2.

6. Each Party shall ensure that for the twelve-month period commencing on 1 January 2020, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed zero. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the controlled substances in Group I of Annex C does not exceed zero. However:

i. Each Party may exceed that limit on consumption by up to zero point five per cent of the sum referred to in paragraph 1 of this Article in any such twelve-month period ending before 1

14 of Decision XIX/6 notes that no later than 2015 the Parties would consider “further reduction of production for basic domestic needs” in 2020 and beyond. Under paragraph 13 of Decision XIX/6, the Parties will review in 2015 and 2025, respectively, the need for the “servicing tails” for industrialized and developing countries. The term “servicing tail” refers to an amount of HCFCs used to service existing equipment, such as certain types of air-conditioning and refrigeration appliances.

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

Several sections of the Clean Air Act apply to this proposed rulemaking. Section 605 of the Clean Air Act phases out production and consumption and restricts the use of HCFCs in accordance with the schedule set forth in that section. Section 606 provides for acceleration of the schedule in section 605 based on a determination by EPA regarding current scientific information or the availability of substitutes, or to conform to any acceleration under the Montreal Protocol. EPA has previously accelerated the section 605 schedule through a rulemaking published December 10, 1993 (58 FR 65018). Though this action, EPA is further accelerating the section 605 HCFC production and consumption phaseouts.

Section 606 provides authority for EPA to promulgate regulations that establish a schedule for production and consumption that is more stringent than what is set forth in section 605 if: “(1) Based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with a Class I or Class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment against such effects, (2) based on the availability of substitutes for listed substances, the Administrator determines that such more stringent schedule is practicable, taking into account technological achievability, safety, and other relevant factors, or (3) the Montreal Protocol is modified to

January 2030, provided that such consumption shall be restricted to the servicing of refrigeration and air conditioning equipment existing on 1 January 2020;

ii. Each Party may exceed that limit on production by up to zero point five per cent of the average referred to in paragraph 2 of this Article in any such twelve-month period ending before 1 January 2030, provided that such production shall be restricted to the servicing of refrigeration and air conditioning equipment existing on 1 January 2020.”

include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this title.” It is only necessary to meet one of the three criteria. EPA believes that in this instance, all three criteria have been met.

The first criterion allows the Administrator, based on an assessment of credible current scientific information, to determine that a more stringent schedule may be necessary to protect human health. The recent scientific findings by the Montreal Protocol’s Science Assessment Panel, *Science Assessment of Ozone Depletion: 2006*, available in the docket for this rulemaking, were initially presented to the Parties to the Montreal Protocol in October 2006 at the 18th Meeting of the Parties in New Delhi, India. The Assessment was published in March 2007, and hard copies were available to the Parties in advance of the 26th Open-Ended Working Group Meeting held in June 2007 in Nairobi, Kenya. The assessment report shows that notwithstanding the evidence of a healing of the ozone layer, there continue to be human health and environmental effects associated with ozone depletion and that recovery continues to rely on a successful total global phaseout of ODSs. The report includes scenarios where additional actions taken by the Parties would result in a faster recovery. While these specific scenarios (including complete phaseout by the end of that calendar year) were not all necessarily deemed to be practical, they demonstrated to the Parties what could be achieved with additional actions and contributed in part to the willingness of many Parties, including the United States, to consider the adjustments to the Montreal Protocol’s HCFC phaseout schedule that were successfully negotiated in September 2007. EPA published a notice of data availability (72 FR 35230) concerning the potential changes in HCFC consumption from proposed adjustments to the Montreal Protocol submitted by the United States for consideration at the 19th Meeting of the Parties held in Montreal September 2007. The data made available through that notice were specific to the United States’ proposal but had general applicability to the other five proposals submitted by various Parties to the Protocol and to what was ultimately agreed to by the Parties at the 19th Meeting.

Reductions in stratospheric ozone levels lead to higher levels of ultraviolet radiation reaching the Earth’s surface, and a higher risk of negative health

effects. According to the American Cancer Society, one in five Americans will develop skin cancer in their lifetime, and one American dies every hour from this disease. While medical research continues to improve the understanding of the causes and effects of skin cancer, many health and education groups are working to reduce the incidence of this disease. EPA believes the recent scientific findings on stratospheric ozone depletion, together with the well-established relationship between ozone depletion and increased risk of human health effects, support a determination that a more stringent HCFC phaseout schedule may be necessary to protect against such effects.

The second criterion allows the Administrator to determine a more stringent schedule is practicable based on the availability of substitutes for ODS, taking into account technological achievability, safety, and other relevant factors. Since the establishment of the domestic chemical-by-chemical phaseout in the United States, advances by industry have resulted in the availability of substitutes for a large variety of end-use applications. Under section 612 of the CAA, EPA's Significant New Alternatives Policy (SNAP) program evaluates and lists alternatives for ODSs that reduce overall risk to human health and the environment and are currently or potentially available. Alternatives include chemical replacements, product substitutes, and alternative technologies. The SNAP program has reviewed approximately 450 combinations of alternatives and end uses to date. EPA makes information available concerning potential alternatives for various end-use applications. Suitable alternatives—in many cases, multiple suitable alternatives—are available for all end-use applications for the HCFCs considered in this action. The SNAP program has reviewed substitutes for the following industrial sectors:

- Refrigeration & Air Conditioning.
- Foam Blowing Agents.
- Cleaning Solvents.
- Fire Suppression and Explosion Protection.
- Aerosols.
- Sterilants.
- Tobacco Expansion.
- Adhesives, Coatings & Inks.

HCFCs have been used in almost all of these industrial sectors. For example, within the air conditioning and refrigeration industrial sector, end uses where HCFCs have been used include chillers, industrial process refrigeration systems, ice skating rinks, cold storage warehouses, refrigerated transport, retail

food refrigeration, household appliances, and residential and light commercial air conditioning and heat pumps. The SNAP program lists substitutes for each of the end uses. (For a complete list of substitutes the reader is directed to: <http://www.epa.gov/ozone/snap/lists/index.html>.) EPA believes that given the availability of substitutes, a more stringent HCFC phaseout schedule now is practicable.

The last criterion is that the Montreal Protocol be modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than section 605 would dictate. The United States submitted a proposal to adjust the Montreal Protocol in March 2007 to accelerate the phaseout of HCFCs. This was one of six proposals considered by the Parties at their 19th Meeting. Due to the efforts of the United States and others, the Parties agreed to adjustments that result in a more aggressive phaseout schedule for both developed and developing countries. Therefore, this third criterion has been met. Through this action, EPA is proposing to incorporate a schedule that reflects the 2007 Montreal Adjustment in its regulations. In order to meet the 2010 stepdown, EPA is proposing to allocate HCFC allowances for the years 2010 through 2014 at a level that will ensure the aggregate HCFC production and consumption will not exceed 25 percent of the U.S. baselines.

While section 606 is sufficient authority for this acceleration of the section 605 phaseout schedule, EPA also notes that section 614(b) of the Clean Air Act provides that in the case of a conflict between the Act and the Protocol, the more stringent provision shall govern. Thus, section 614(b) requires the Agency to establish phaseout schedules at least as stringent as the schedules contained in the Protocol.

In addition to implementing the 2007 Montreal Adjustment, today's proposed rule would also address provisions in section 605 of the Clean Air Act that relate to use and introduction into interstate commerce of class II substances. In today's action, EPA is proposing to complete its implementation (begun in 1993) of the section 605 provisions on use of class II substances. EPA is also proposing regulatory language to reflect the section 605 provisions on introduction into interstate commerce of class II substances. EPA previously addressed the provisions concerning use of class II substances in a 1993 rulemaking that accelerated the phaseout schedule for HCFC-22 and HCFC-142b (58 FR

15014, 58 FR 65018). The intent of the 1993 rulemaking was to accelerate not only the production and consumption schedule, but also the use restrictions for those two substances. In the March 18, 1993 notice of proposed rulemaking, EPA stated that the effect of this acceleration was “to prohibit the use of the chemicals (virgin material only) for any use except as a feedstock or as a refrigerant in existing equipment as of January 1, 2010” (58 FR 15028). EPA noted in the December 10, 1993 notice of final rulemaking that “HCFC restrictions and the approach included in today's final rule have not changed from those proposed by the Agency in March” (58 FR 65028). The regulatory prohibitions included with that notice, however, did not control use directly, but instead banned production and import for most uses. In today's action, EPA is proposing to add the direct use prohibitions contemplated in the 1993 rule as well as the corresponding prohibitions on introduction into interstate commerce. EPA is also clarifying its interpretation of section 605(a).

### III. This Proposal

EPA is proposing to adjust existing regulations to address the next major milestone in the HCFC phaseout. As a Party to the Montreal Protocol, and having ratified the Montreal Protocol and all of its amendments, the United States is required to decrease its amount of HCFC consumption and production to 25 percent of the U.S. baseline by 2010. Our domestic chemical-by-chemical approach results in differing schedules for the phaseout of individual HCFC compounds. EPA believes that the chemical-by-chemical HCFC allocation of allowances proposed in this notice of proposed rulemaking (NPRM) will ensure that the United States continues to maintain an overall HCFC production and consumption level that is below the 2010 cap specified by the September 2007 Montreal Adjustment, while at the same time ensuring that servicing needs consistent with Section 605(a) of the Clean Air Act and EPA's implementing regulations continue to be met. Thus the aggregate allowances for all U.S. HCFC consumption in the years 2010–2014 will not exceed 3,810 ODP-weighted metric tons (25 percent of the aggregate U.S. consumption baseline) annually and the aggregate allowances for all U.S. HCFC production in the years 2010–2014 will not exceed 3,884.25 ODP-weighted metric tons (25 percent of the aggregate U.S. production baseline) annually.

To meet the 2010 cap for the 2010–2014 control periods, EPA is proposing to continue its past practice of apportioning company-specific production and consumption baselines for individual HCFCs, and granting a certain percent of that baseline as necessary to achieve compliance with the cap. For HCFC–141b, HCFC–22, and HCFC–142b, EPA is proposing to apportion company-specific baselines in amounts that are equivalent to those currently published at § 82.17 (for production) and § 82.19 (for consumption), adjusted as necessary to reflect permanent transfers of baseline allowances and changes to the names of entities identified in the tables at § 82.17 and § 82.19. Companies are currently granted, in § 82.16, 0 percent of baseline for HCFC–141b and 100 percent of baseline for HCFC–22 and HCFC–142b. For 2010–2014, given the previous phaseout of HCFC–141b, EPA will continue to allocate zero percent for HCFC–141b, continuing to allow only limited amounts of production via an EPA petition process.<sup>5</sup> EPA is proposing to allocate less than 100 percent of baseline for HCFC–22 and HCFC–142b to meet our obligations under the Montreal Protocol and reflecting the use restrictions under section 605(a) that are discussed later in this proposal while providing for servicing needs consistent with those restrictions.

EPA is proposing a similar approach for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb, which currently do not have baselines. EPA is proposing to apportion company-specific baselines for these HCFCs based on production and import data available to the Agency. For control periods 2010–2014, EPA is proposing to grant 125 percent of baseline for these HCFCs.

The allocations described above for HCFC–22, HCFC–142b, HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb reflect EPA's analysis of market data for these chemicals. The proposed allocations were developed to allow the need for virgin material to be met and to avoid shortages during the affected control periods, as well as to accommodate some market growth for HCFCs–123, –124, –225ca, and –225cb, for which baselines were not developed in the 2003 allocation rule. The total proposed allocation of HCFC allowances to meet the U.S. need for virgin material is less than the 3,810 ODP-ton cap. The differential between the cap and the total proposed allocation will have the effect of accommodating minor

adjustments in the market, particularly to allow potential market growth for HCFCs that have not been produced or imported since 2003 (and which are therefore not reflected here). In summary, of the 3,810 ODP tons of consumption and 3,884.25 ODP tons of production allowable for the 2010–2014 control periods as established by the Montreal Protocol, EPA is proposing to allocate allowances, in aggregate, for 2,920 ODP tons of consumption and 2,646 ODP tons of production.

These proposed allocations represent 77 percent of the consumption cap and 68 percent of the production cap established by the Montreal Protocol for 2010. EPA seeks comment on whether the proposed allocations, together with the amounts assumed to be available from reclaimed refrigerant, will suffice to meet HCFC needs for the existing uses (primarily refrigerant servicing) that will still be permitted in 2010, as well as potential adjustments in the HCFC market. Please provide information and documentation on newly emerging uses of HCFCs and other uses of HCFCs, if any, that are not accounted for by EPA currently. EPA is especially interested in information pertaining to the years 2010 through 2014.

EPA is proposing two other changes in this proposed rule. First, to reflect the September 2007 Montreal Adjustments, EPA is proposing to adjust the amount of Article 5 allowances for control periods 2010–2019. Second, EPA is completing its implementation of the provisions in section 605 of the Clean Air Act that relate to use and introduction into interstate commerce of class II substances.

EPA is not proposing changes to other provisions of 40 CFR part 82 subpart A, such as the recordkeeping and reporting obligations, the essential use and critical use provisions, and the HCFC–141b petition process. EPA is only seeking comments on the portions of 40 CFR part 82 subpart A that are specifically addressed by this proposal.

#### *A. How Does EPA Propose to Issue Production and Consumption Allowances for 2010–2014?*

In the United States, an allowance is the unit of measure that controls production and consumption of ozone-depleting substances. An allowance represents the privilege granted to a company to produce or import one kilogram (not ODP-weighted) of the specific substance. EPA establishes company-by-company baselines (also known as “baseline allowances”) and allocates calendar-year allowances equal to a percentage of the baseline for

specified control periods. EPA has allocated two types of calendar-year allowances—production allowances and consumption allowances—for HCFC–22 and HCFC–142b. “Production allowance” and “consumption allowance” are defined at 40 CFR 82.3. To produce an HCFC for which allowances have been allocated, an allowance holder must expend both production and consumption allowances. To import an HCFC for which allowances have been allocated, an allowance holder must expend 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 EPA.

Since EPA is implementing the phaseout on a chemical-by-chemical basis, it allocates and tracks production and consumption allowances on an absolute kilogram basis for each chemical. Upon EPA approval, an allowance holder may trade allowances for one type of HCFC for allowances of another type of HCFC, with transactions weighted according to the ozone depletion potential of the chemicals involved. Pursuant to section 607 of the Clean Air Act, EPA applies an offset to each HCFC trade by deducting 0.1 percent from the transferor's allowance balance. The offset is viewed as a benefit to the ozone layer since it “results in greater total reductions in the production in each year of \* \* \* class II substances than would occur in that year in the absence of such transactions” (42 U.S.C. 7671f).

Under current regulations at 40 CFR 82.15(a) and (b), HCFC–22 and HCFC–142b may not be produced or imported in excess of the calendar-year allowances held by the producer or importer. EPA has not yet allocated any calendar-year allowances for HCFC–142b or HCFC–22 to cover the 2010 control period and beyond. Absent a grant of calendar-year allowances for these HCFCs, § 82.15 would prohibit their production and import after December 31, 2009. EPA intends to avoid that result by issuing a final rule in advance of that date that will allocate calendar-year allowances for 2010–2014.

#### *1. What Actions Did EPA Take in the 2003 Allocation Rule?*

In the January 21, 2003, allocation rule, EPA established baselines for HCFC–141b, HCFC–22, and HCFC–142b. Section 601(2) states that EPA may select “a representative calendar year” to serve as the baseline for HCFCs. In the 2003 allocation rule, however,

<sup>5</sup> EPA is not proposing any changes and thus is not seeking comment with regard to the HCFC–141b petition process for the 2010–2014 control periods.

EPA concluded that because the entities eligible for allowances had differing production and import histories, no one year was representative for all companies. Therefore, in the 2003 allocation rule EPA assigned an individual consumption baseline year to each company by selecting its highest ODP-weighted consumption year from among the years 1994 through 1997. EPA assigned individual production baseline years in the same manner. EPA did not consider years after 1997 to avoid creating an uneven playing field that would skew allocations to those companies with ample resources and good access to information regarding the impending phaseout. EPA is not proposing to revisit decisions made in the 2003 allocation rule, such as the Agency's discretion to consider data from multiple years in establishing a baseline.

The 2003 allocation rule apportioned production and consumption baselines to each company in amounts equal to the amounts in the company's highest "production year" or "consumption year," as described above. It completely phased out the production and import of HCFC-141b, with the limited exception described above, by granting 0 percent of that chemical's baseline for production and consumption in the table at § 82.16. The rule granted 100 percent of baseline for production and consumption of HCFC-22 and HCFC-142b. EPA was able to allocate allowances for HCFC-22 and HCFC-142b at 100 percent of baseline because, in light of the concurrent complete phaseout of HCFC-141b, the allocations for HCFC-22 and HCFC-142b, combined with projections for consumption of all other HCFCs, remained below the 2004 cap of 65 percent of the baseline.

Because EPA has allocated the same amount of allowances every year from 2004 to 2009—with minor changes reflecting permanent trades of baseline allowances—and because EPA tracks the production and consumption of all HCFCs (including those for which baselines are not allocated), the Agency can ascertain that the U.S. will remain comfortably below the cap through 2009. The January 2003 allocation rule announced that EPA would allocate allowances for 2010–2014 in a subsequent action and that those allowances would be lower in aggregate than for 2003–2009, consistent with the next stepwise reduction for HCFCs under the Montreal Protocol. EPA stated its intention to determine the exact amount of allowances that would be needed for HCFC-22 and HCFC-142b, bearing in mind that other HCFCs

would also contribute to total HCFC consumption. EPA stated that it would likely achieve the 2010 reduction step by applying a percentage reduction to the HCFC-22 and HCFC-142b baseline allowances. EPA has monitored the market to ascertain servicing needs and market adjustments in the use of HCFCs, including HCFCs for which EPA did not establish baselines in the 2003 allocation rule.

## 2. How Will EPA Allocate 2010–2014 Allowances for HCFC-22 and HCFC-142b?

This proposal identifies five primary options for allocating HCFC-22 and HCFC-142b allowances for the control periods 2010–2014: (1) Allocating a percentage of the baseline allowances (§§ 82.17 and 82.19) for each HCFC respectively with or without considering any permanent baseline transfers and/or inter-pollutant transfers that resulted in a different amount of production or consumption for a specific HCFC; (2) allocating allowances based on evaluation of the most recent three years of production, import, and/or export data as reported to EPA; (3) allocating allowances based on evaluation of past sales of HCFCs by allowance holders by considering how the HCFCs were ultimately used (*e.g.*, servicing refrigeration or air-conditioning, original manufacture of refrigeration or air-conditioning equipment, foam blowing); (4) allocating allowances based on aggregated ODP tons; or (5) allocating a total amount of allowances and allowing for purchase by establishing an auction system. These options are described in more detail in section III.A.9 of this preamble. Each of these five methods offers advantages and disadvantages for potential allowance holders which vary according to whether a particular entity is predominantly a producer or importer; whether it currently sells HCFC-22 and HCFC-142b to original equipment manufacturers, wholesalers, retailers, or companies that service appliances; whether the portion of its business that is ODS-based is expanding or contracting as the next major milestone in the phaseout approaches; its liquidity; whether it holds both HCFC-142b and HCFC-22 allowances and/or engages in inter-pollutant transfers; and whether it sold HCFCs for applications that do not lend themselves to servicing. Without regard to the practices of individual entities, each of the potential allocation schemes also offers advantages and disadvantages associated with the ease of implementation and other administrative burdens. EPA has placed

in the docket to this NPRM a memorandum titled "Draft Regulatory Options for Allocating HCFC Allowances after 2009" that explores the advantages and disadvantages of the various options. In addition to the memorandum, EPA has also placed in the docket written correspondence by entities that also discusses various options for allocating HCFC allowances.

EPA provided notice of the leading option for implementing the 2010 milestone in the preamble to the 2003 allocation rule by indicating that EPA "intends to achieve this reduction step through notice and comment prior to 2010 and will likely implement the reduction by simply listing a percent of baseline allowances to be granted in § 82.16 for the years after 2009" (68 FR 2823). The Agency said that it would allocate allowances for HCFC-22 and HCFC-142b at less than 100 percent of the respective baselines during the control periods 2010–2014. EPA continues to believe that this option is the most appropriate, but seeks comment on other options. This approach offers a transparent design and provides stability in that it uses a well-vetted baseline. EPA believes this option also is the least burdensome because it would not require additional one-time or periodic reporting obligations that may be necessary if EPA were to adopt a different option. Producers and importers have adapted to the current HCFC allocation method and aligned their business activities around the baselines set forth in the 2003 allocation rule. Currently, EPA manages a tracking system and issues calendar-year allowances per control period to specific entities listed in § 82.17 and § 82.19. An option that utilizes this system would limit administrative burdens for the Agency and allowance holders.

In the 2003 allocation rule, EPA did not forecast the amount of reduction for HCFC-22 and HCFC-142b that would be needed to ensure that the United States stayed sufficiently below the 2010 stepwise reduction, which at the time was a reduction of 65 percent from the Montreal Protocol baseline. EPA did not determine whether it would reduce the allocations for the two substances by the same percentage or by different percentages. Several factors affect determination of the appropriate percentage of the HCFC-22 and HCFC-142b production and consumption baselines to allocate for 2010–2014. Factors include the percentage of the aggregate U.S. production and consumption caps that other HCFCs comprise as well as provisions in the Clean Air Act and implementing

regulations that include use restrictions (discussed in section III.C of this NPRM).

EPA uses information from quarterly, annual, and other periodic reporting requirements to monitor consumption, production, imports, and exports of all HCFCs. EPA uses this information to ensure companies' compliance with regulatory requirements and to develop reports that are requested by the Parties to the Montreal Protocol, including reports ascertaining U.S. compliance with the phaseout caps. The information enables EPA to monitor production and consumption for all HCFCs, including HCFCs for which baselines have not yet been established and for which allowances have not yet been allocated.

Although EPA's July 20, 2001, proposed HCFC allocation rulemaking would have allocated production and consumption allowances for all HCFCs, the January 2003 final rule apportioned company-specific baselines, and allocated a specific percentage of baseline allowances for the 2003–2009 control periods, only for HCFC–141b, HCFC–22, and HCFC–142b. EPA applied a “worst-first” approach to these HCFCs since they are the most damaging to the stratospheric ozone layer. The 2003 final rule noted that the HCFC market was continuing to evolve. At that time, the market for HCFCs with lower ODPs did not reflect rapid expansion and thus it was not necessary to establish specific baselines by chemical and issue allowances to ensure that the United States remained below its cap. Later in this proposal, EPA further discusses establishing and apportioning baselines as well as allocating calendar-year allowances for these lower-ODP HCFCs for the control periods 2010–2014.

### 3. How Should EPA Consider Servicing Needs for Existing Equipment?

EPA is proposing to use projected servicing needs in its determination of the amounts of HCFC–22 and HCFC–142b allowances to be allocated for the 2010–2014 control periods. EPA is focusing on servicing needs because under section 605(a) of the Clean Air Act and EPA's implementing regulations, nearly all other uses of these two HCFCs will be banned effective January 1, 2010. EPA has previously issued a draft analysis of servicing demand for the HCFC appliances in the U.S. refrigeration and air-conditioning sector projected to be in service from 2010–2019. The report is titled *The U.S. Phaseout of HCFCs: Projected Servicing Needs in the U.S. Air-Conditioning and Refrigeration Sector* (the “Servicing Tail” report). On

November 4, 2005, EPA published a notice of data availability (70 FR 67172) making a draft of the report available for public review and comment. On September 29, 2006, EPA held a stakeholder meeting presenting the findings of a revision to the Servicing Tail report along with other important information regarding the next major milestones in the HCFC phaseout. EPA solicited comments on the findings presented at the meeting. Some stakeholders, including representatives of manufacturers, chemical producers, importers, reclaimers, industry associations, and environmental organizations, commented on the projected amount of HCFCs needed to service this installed base of equipment and on the amounts expected to be available from reclamation.

EPA focused the analysis on air-conditioning and refrigeration appliances because such equipment will represent the bulk of the servicing need. In addition, the servicing exception to the use ban for HCFC–22 and HCFC–142b pertains only to use as a refrigerant in such equipment. EPA also focused the analysis on HCFC–22 because HCFC–22 is the predominant HCFC in the installed base of air-conditioning and refrigerant equipment for which servicing in the U.S. will likely continue. The findings in the Servicing Tail report have helped to shape EPA's views regarding the allocation for the control periods 2010–2014.

The majority of HCFC–22 equipment that is projected to be in use from 2010 onward will be air-conditioning applications, including window units, packaged terminal units, residential and commercial unitary air-conditioning, chillers, dehumidifiers, water and ground source heat pumps, and non-light duty mobile air-conditioning in buses and trains. Approximately 147.5 million units of all such types of HCFC–22 air-conditioning equipment will be in use in 2010, decreasing from 2010 levels by about 41 percent by 2015 and 76 percent by 2020. In 2010, approximately 2.2 million units of HCFC–22 refrigeration equipment will be in use, including retail food, industrial process refrigeration, and transport refrigeration equipment (but not including cold storage warehouses). The installed base of HCFC–22 refrigeration equipment is projected to decrease from 2010 levels by about 29 percent by 2015 and 51 percent by 2020. EPA developed these estimates using its Vintaging Model, a tool for estimating the annual chemical emissions from industrial sectors that have historically used ozone-depleting substances in their products. Additional information

on the Vintaging Model is available in the docket for this rulemaking.

As a result of the September 2007 Montreal Adjustment, in which the Parties agreed to adjust the stepwise reduction in 2010 from 65 percent of baseline to 75 percent of baseline for non-Article 5 Parties, and recognizing the overall advances by industry in transitioning to non-ODS substitutes, EPA has prepared a draft revised Servicing Tail report to: (1) Reflect the 75 percent reduction in 2010; (2) consider more recent production and consumption data in the United States; and (3) consider more recent trends in the air-conditioning and refrigeration sectors. This revised draft report is available in the docket for this rulemaking. EPA is accepting comments on the analysis and the draft findings until February 23, 2009 or March 9, 2009 if a hearing regarding this rulemaking is held.

The Servicing Tail report utilizes production, import, and export data reported to the Agency on a quarterly, annual, and transactional basis, as required by § 82.24. EPA's analysis of the reported data confirms that the United States is satisfying its obligations as it phases out ODSs and enables EPA to consider trends in the HCFC markets on a chemical-by-chemical basis. EPA also uses this information to submit an annual report to the Ozone Secretariat as requested by the Parties to the Montreal Protocol.

Using the reported data, the draft revised Servicing Tail report, and the comments provided at the September 2006 stakeholder meeting and submitted in subsequent correspondence (available in the docket), EPA believes it has sufficient information to propose through this action to allocate a percentage of baseline allowances for HCFC–22 and for HCFC–142b for production and consumption for the control periods 2010–2014 that will address servicing needs. The specific percentage of baseline for each of the affected compounds is discussed below. EPA requests comments regarding whether it should consider other sources of information in addition to the required reports, the Servicing Tail report, and stakeholder comments. In particular, EPA is interested in whether these sources provide sufficient information to allow EPA to reasonably estimate servicing needs for 2010–2014, especially for HCFC–22, which accounts for the majority of the market.

### 4. How Will the Allocated Allowances Appear in the Regulations?

EPA is proposing to revise two types of tables in 40 CFR part 82 that together

specify the production and consumption allowances available to allowance holders during specified control periods. Tables at § 82.17 and § 82.19 apportion baseline production and consumption amounts (also referred to as baseline production allowances and baseline consumption allowances), respectively, to individual companies for individual HCFCs. Complementing these tables, the table at § 82.16 lists the percentage of baseline allocated to allowance holders for specific control periods. EPA is proposing to retain this framework of complementary tables, revising them to reflect adjustments to baselines, and to grant percentages of baselines in a manner that achieves the 2010 phasedown goal.

Currently the table at § 82.16 allocates zero percent of baseline to HCFC-141b and 100 percent of baseline to HCFC-22 and HCFC-142b (combined in a single column) for each control period spanning 2003–2009. EPA is proposing to amend the table by including control periods 2010–2014, by continuing to allocate zero percent to HCFC-141b, and by allocating specified percentages (in separate columns) to HCFC-22, HCFC-142b, and—as will be discussed later—other HCFCs.

The proposed percentages for HCFC-22 and HCFC-142b differ because EPA projects that the needs will differ for servicing air-conditioning and refrigeration appliances during the 2010–2014 control periods. EPA's analysis shows that there will be a significantly greater need for HCFC-22 than for HCFC-142b during the control periods 2010–2014. Based on the Servicing Tail report and reporting information already required by EPA (which includes inter-pollutant transfers), the needs for individual HCFCs are not uniform.

EPA believes that allocating the same percentage of baseline for HCFC-22 and HCFC-142b would result in too few allowances for HCFC-22 and too many allowances for HCFC-142b.<sup>6</sup> While inter-pollutant transfers in accordance with § 82.23(b) could continue to be used as a means to trade allowances for one HCFC for another, EPA is not planning to rely on such transfers as a mechanism for large-scale corrections. Instead, EPA anticipates that the continued availability of inter-pollutant transfers will permit the market to self-correct for unforeseen changes in demand and allow individuals to consider a range of options for their

allowances. EPA seeks to avoid unnecessary disruptions in the marketplace. EPA's goal is to promote a smooth transition for industry.

EPA requests comments on allocating different percentages of baseline production allowances and baseline consumption allowances for HCFC-22 and HCFC-142b.

#### 5. What Other Methods Could Be Used to Determine the Allocation for HCFC-22 and HCFC-142b Allowances?

EPA is proposing to allocate HCFC-22 and HCFC-142b allowances based on the projected servicing needs for those compounds, taking into account the amount of those needs that can be met through recycling and reclamation. However, EPA can envision other methods for determining how many allowances to allocate for the control periods 2010–2014 for these two compounds, including allocating the maximum amount that ensures compliance under the Montreal Protocol aggregate 2010 cap without room for other HCFCs. EPA notes above that HCFCs other than HCFC-22 and HCFC-142b are likely to be needed during the control periods 2010–2014. Thus EPA favors an approach that includes other HCFCs, recognizing that for such HCFCs baselines must be established and apportioned for each substance, and a percentage of the baseline must be allocated for these control periods. EPA believes it would not be appropriate to allocate the full 3,810 ODP-weighted metric tons of consumption and 3,884.25 ODP-weighted metric tons of production solely to HCFC-22 and HCFC-142b, given the projected needs for other HCFCs as discussed in section III.B.11 of this preamble.

Approaches that do not consider servicing needs could result in shortages of HCFC-22. EPA considered, but is not proposing, allocating a percentage of the 2010 aggregate HCFC consumption and production caps for HCFC-22 and HCFC-142b respectively equal to the same overall percentage of the aggregate HCFC consumption and production caps allocated for each substance in the 2003 allocation rule. Under this approach, EPA would start with the percentage of the total allowable HCFC consumption and production level attributable to each HCFC in the 2003 rule. For example, beginning in 2004, the total allowable HCFC consumption level was 9,906 ODP-weighted metric tons. Using the consumption data for each company's highest ODP-weighted consumption year, EPA allocated HCFC-22 allowances equal to 66 percent of 9,906 ODP tons and HCFC-142b allowances equal to 13 percent of

9,906 ODP tons. We could apply the same percentages to the total allowable HCFC consumption level for 2010–2014 of 3,810 ODP-weighted metric tons. This would provide congruence for the overall “pie.” EPA is concerned, however, that such an approach would provide significantly fewer HCFC-22 allowances in 2010 than would be needed for servicing. Sixty-six percent of the aggregate HCFC cap for the control periods 2010–2014 equals 2,515 ODP-weighted metric tons, which is approximately equal to 46,000 metric tons of HCFC-22. The Servicing Tail report, however, estimates that approximately 62,500 metric tons of HCFC-22 will be needed for servicing in 2010. EPA is concerned that if large quantities of recycled or reclaimed<sup>7</sup> HCFC-22 are not available, the need to make up the almost 20,000-metric-ton shortfall could trigger illegal activities such as imports of HCFC-22 by those that do not hold consumption allowances. As noted elsewhere in this NPRM, EPA does not believe it should rely on inter-pollutant transfers to secure such a significant amount of HCFC-22 allowances.

While EPA regulations aim at maximizing refrigerant reuse, EPA believes that reclamation rates in 2010–2014 would not be sufficient to avert a shortfall if EPA were to issue 46,000 metric tons of consumption allowances to HCFC-22 using this option. This shortfall would equal approximately 30 percent of the total projected servicing need for 2010–2014. As explained in the next section, amounts reported to EPA of reclaimed refrigerant coupled with estimates for available recycled refrigerants indicate that currently less than 30 percent of the servicing need can be met through refrigerant recovery and reuse during these control periods. Thus, EPA has rejected this method as a basis for deciding the relative amounts

<sup>7</sup> EPA has defined Reclaim, Recover and Recycle at § 82.152 as follows: (1) *Reclaim* refrigerant means to reprocess refrigerant to all of the specifications in appendix A to 40 CFR part 82, subpart F (based on ARI Standard 700–1995, Specification for Fluorocarbons and other Refrigerants) that are applicable to that refrigerant and to verify that the refrigerant meets these specifications using the analytical methodology prescribed in section 5 of appendix A of 40 CFR part 82, subpart F; (2) *recover* refrigerant means to remove refrigerant in any condition from an appliance and to store it in a external container without necessarily testing or reprocessing it in any way; (3) *recycle* refrigerant means to extract refrigerant from an appliance and clean refrigerant for reuse without meeting all of the requirements for reclamation. In general, recycled refrigerant is refrigerant that is cleaned using oil separation and sieve or multiple passes through devices, such as replaceable core filter-driers, which reduce moisture, acidity, and particulate matter. These procedures are usually implemented at the field job site.

<sup>6</sup> EPA estimates that to stay below the aggregate cap while reducing HCFC-22 and HCFC-142b by equal percentages, the resulting HCFC-22 allowances would equal less than two-thirds of the projected demand for HCFC-22.

of HCFC-22 and HCFC-142b allowances to issue for the 2010–2014 control periods. A memorandum to the docket entitled “Summary: EPA Analysis of U.S. Reclamation Practices and Trends” provides additional information on reclamation practices underlying the assumptions in EPA’s analysis.

EPA’s primary objective is to ensure compliance with the obligation under the Montreal Protocol to reduce the ODP-weighted “basket” of HCFCs to 75 percent below the baseline for production and consumption beginning January 1, 2010. Various options, alone or in combination, could be used to meet this objective. EPA believes, however, that the proposed option provides the best assurance that allocations will be available to meet the projected needs for all HCFCs during the 2010–2014 control periods.

#### 6. How Important Is HCFC-22 in Determining the Allocation of Allowances?

HCFC-22 is the HCFC most widely produced and used in applications for which servicing of existing equipment will occur during 2010–2019. The Servicing Tail analysis focused on HCFC-22, which represents a majority of the market, but also includes information on other refrigerants and components of blends including HCFC-142b and HCFC-123. The report included in the docket focuses on two major equipment types: refrigeration and air conditioning.

Refrigeration equipment can be broken down into four categories: (1) Domestic refrigeration, (2) refrigerated transport, (3) industrial process refrigeration (IPR), and (4) commercial refrigeration. Domestic refrigeration includes household refrigerators, household freezers, combination refrigerator/freezer units, and water coolers. With the exception of certain older household freezers that use HCFC-22, this category typically does not use HCFCs or blends containing HCFCs. Refrigerated transport includes refrigeration used in equipment that moves products from one place to another and includes refrigerated ship holds, truck trailers (*i.e.*, reefer trucks), railway freight cars, and other shipping containers. Industrial process refrigeration systems are complex, customized systems used to cool process streams in the chemical, food processing, pharmaceutical, petrochemical, and manufacturing industries. This sector also includes industrial ice machines, equipment used directly in the generation of electricity, and ice rinks. Commercial

refrigeration can be further broken down into three end-uses: cold storage warehouses, retail food systems, and ice makers.

EPA estimates that HCFC-22 use in air-conditioning and refrigeration equipment was approximately 115,000 metric tons in 2006. Approximately 66 percent—about 76,000 metric tons—was for servicing existing equipment, with the percentage higher for the refrigeration industry than the air-conditioning industry. The majority of HCFC-22 consumption for servicing is currently attributed to residential and small commercial unitary equipment and retail food refrigeration equipment.

The projected servicing need for HCFC-22 in 2010 is approximately 62,500 MT (3,438 ODP-weighted metric tons) or approximately 90 percent of the consumption cap for all HCFCs in 2010, which is 3,810 ODP-weighted metric tons. Although EPA estimates that the servicing need for HCFC-22 will decrease each year beginning in 2010, EPA is not convinced that there is enough room under the aggregate HCFC cap to consider any scenario where the allocation of allowances for HCFC-22 production or consumption is substantially higher than the projected servicing need, given the need to allocate allowances for other HCFCs as discussed elsewhere in this NPRM.

In the 2003 allocation rule, EPA issued baseline consumption allowances for HCFC-22 equaling 119,384,852 kilograms (119,385 metric tons) and allocated 100 percent of the baseline for the 2003–2009 control periods. The Montreal Protocol cap for all U.S. HCFC consumption beginning in 2004 was 9,906 ODP-weighted metric tons. The baseline allowances for HCFC-22 consumption represented approximately 66 percent of the Montreal Protocol HCFC consumption cap for the United States.

In the 2003 allocation rule EPA issued baseline production allowances for HCFC-22 equaling 110,619,359 kilograms (110,619 metric tons), or 6,084 ODP-weighted metric tons) and allocated 100 percent of the baseline for the 2003–2009 control periods. The Montreal Protocol cap for all U.S. HCFC production beginning in 2004 was 10,999 ODP-weighted metric tons. The baseline allowances for HCFC-22 production represented approximately 70 percent of the Montreal Protocol HCFC production cap for the United States.

In the 2003 allocation rule EPA issued baseline consumption allowances for HCFC-142b equaling 21,088,677 kilograms (21,089 metric tons, or 1,371

ODP-weighted metric tons) and allocated 100 percent of the baseline for the 2003–2009 control periods. This represented approximately 14 percent of the Montreal Protocol HCFC consumption cap of 9,906 ODP-weighted metric tons for the United States.

In the 2003 allocation rule EPA issued baseline production allowances for HCFC-142b equaling 25,090,394 kilograms (25,090 metric tons, or 1,631 ODP-weighted metric tons) and allocated 100 percent of the baseline for the 2003–2009 control periods. This represented approximately 15 percent of the 10,999 ODP-weighted metric tons allowed for the United States under the Montreal Protocol HCFC cap.

In the 2003 allocation rule EPA issued baseline consumption and production allowances for HCFC-141b, and under its “worst first” chemical-specific approach allocated 0 percent of baseline for consumption and production—eliminating, with certain narrow exemptions, the production and import of HCFC-141b. EPA projects that a minimal amount of HCFC-141b will continue to be needed for exempted HCFC-141b production until 2015. Although EPA does not intend to allocate HCFC-141b production or consumption allowances, EPA must account for continued consumption and production of minimal exempted amounts of HCFC-141b to ensure compliance with the 2010 caps.

In addition, EPA must ensure that production and consumption of HCFCs for which baselines were not established in the 2003 allocation rule does not result in an aggregate allocation exceeding the HCFC production or HCFC consumption caps established by the Montreal Protocol.

Air-conditioning and refrigeration equipment commonly requires servicing, which may include the need to add refrigerant to account for refrigerant losses that occur over time. The limited amount of production and import of HCFC-22 and HCFC-142b beginning January 1, 2010, will be allowed only for servicing equipment manufactured prior to January 1, 2010. Later in this proposal, EPA will consider what is meant by “manufactured.”

The Agency recognizes that servicing needs can be met with a combination of newly manufactured HCFCs (virgin HCFCs) and HCFCs that have been recovered and either recycled or reclaimed. Therefore, EPA does not anticipate that the entire projected HCFC-22 servicing need (3,438 ODP tons) will need to be produced or imported to meet the anticipated

demand. A percentage of that servicing need will be met by recovering used HCFC-22 from existing equipment. The "servicing tail" report provides analysis of various scenarios regarding reclamation. In addition, EPA's memo to the docket "Summary: EPA Analysis of U.S. Reclamation Practices and Trends" provides background on the reclamation industry, which includes information concerning capacity to reclaim greater amounts of refrigerants, and projects that more than 20 percent of the servicing need can be met by recovering used HCFC-22 from existing equipment.

Recycled and reclaimed HCFCs offset the need for newly-manufactured HCFCs and after the terminal phaseout, as with the CFC phaseout, will become the sole source of HCFCs for servicing existing equipment. EPA regulations at 40 CFR part 82 Subpart F manage the recovery, recycling, reclamation, and reuse of HCFCs under section 608 of the CAAA. Under those regulations, HCFCs may not be vented and must be recovered and are then generally either recycled, reclaimed, or in some cases destroyed. Therefore, it is reasonable to assume that some amount of used HCFCs will be available to meet servicing needs. In accordance with the chemical-by-chemical phaseout regime adopted by the United States, after 2020 only recycled, reclaimed, and stockpiled HCFC-22 and HCFC-142b will be available to service appliances that require those substances. EPA's existing regulations at § 82.16 terminate HCFC-22 and HCFC-142b production and consumption at the end of 2019, and EPA is not proposing to modify that provision. The very small amount of additional production and consumption of HCFCs allowed under Article 2F of the Montreal Protocol between 2020 and 2030 for servicing existing appliances (0.5 percent of baseline) will only be permitted for HCFCs other than HCFC-141b, HCFC-22, and HCFC-142b, per § 82.16(e), and restricted to servicing only air-conditioning and refrigeration equipment manufactured prior to January 1, 2020 per § 82.16(d).

Given its previous experience with the Class I phaseout, EPA believes that over time a larger percentage of recovered HCFCs will be available for reuse. For example, after the 1996 CFC phaseout, motor vehicles with CFC-12 air-conditioning systems continued to be serviced with used CFC-12. In fact, even today recovered CFC refrigerants are still in use for servicing a range of older equipment.

The Servicing Tail report used EPA's Vintaging Model to determine the quantities of HCFC-22 from existing (recycled or reclaimed) sources that can

meet post-2010 servicing needs with the remaining quantities required through virgin manufacture (expending allowances). For a given year, the Vintaging Model assumes that a certain percentage of refrigerants, which varies by end-use, is recovered from discarded equipment. The model aggregates the quantities recovered but does not distinguish the "pool" of refrigerant between quantities that are reclaimed versus those that are recycled. EPA's Vintaging Model was the primary tool used to launch the analysis and form the basis for quantitative estimates of projected HCFC consumption. The Vintaging Model estimates the annual chemical emissions from industry sectors that have historically used ODS, including air conditioning, refrigeration, foams, solvents, aerosols, and fire protection. Within these industry sectors, there are over 50 independently modeled end-uses. The model uses information on the market size and growth for each of the end-uses, as well as a history and projections of the market transition from ODS to alternatives. As ODS are phased out, a percentage of the market share originally filled by the ODS is allocated to each of its substitutes. 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. EPA's Vintaging Model makes use of this market information to build an annual inventory of in-use stocks of equipment and the ODS refrigerant and non-ODS substitutes in each of the end-uses.

For purposes of analysis, the Servicing Tail report considers scenarios for HCFC-22 and HCFC-142b where differing amounts of servicing needs were met by recycled and reclaimed refrigerants. For example, the report examines scenarios in which 10 percent, 15 percent, 20 percent, 25 percent, 50 percent, and 75 percent of the total amount of HCFC-22 in retired or converted equipment is recovered. These analyses depict the potential ratios of new and recovered HCFCs that could be available during the years 2010–2019 to meet the overall servicing needs recognizing that the higher recovery rates are less likely for the earlier control periods.

EPA has anecdotal and reported information concerning recovery rates for refrigerants. Commenters at the September 2006 stakeholder meeting indicated that approximately 10 percent

of HCFC-22 in current use was recovered and either reclaimed or recycled. Data reported to EPA consistent with 40 CFR Part 82 Subpart F shows that approximately 3716 metric tons (204 ODP tons) of HCFC-22 was reclaimed in 2007. EPA does not track recycled refrigerants, since recycled refrigerant (unlike reclaimed refrigerant) typically is charged back into equipment with the same ownership rather than re-entering the market. Readers interested in additional information concerning recovery and recycling should review the Servicing Tail report. Given the regulatory requirements for recycling and reclamation (at 40 CFR part 82 subpart F), experience with the CFC phaseout, and industry practices, EPA estimates that during the period 2010–2014, an amount greater than 20 percent of the total servicing need for HCFC-22 can be met with HCFC-22 that has been recovered and either recycled or reclaimed. Since EPA is not banning the use of HCFC-22 equipment, recovered and reclaimed HCFC-22 will become a more valuable commodity as the U.S. approaches the January 1, 2015, stepdown. The demand for HCFC-22 to service existing equipment should provide an economic incentive for an increase in the quantities of used HCFC-22 available for reclamation. As an indicator, EPA notes that several reclamation companies have recently started offering financial payments for used HCFC-22. The docket for this NPRM provides further information regarding EPA's assumptions regarding the availability of recycled or reclaimed HCFC-22 to meet servicing needs.

EPA has considered, but is proposing to reject, using an increasing number to represent the contribution of recycled and reclaimed refrigerant for each of the control periods from 2010–2014 and thus simultaneously reducing the amount of allowances needed for HCFC-22. EPA believes for these control periods, maintaining a constant number of allowances would reduce the overall burden for the allowance holders and would ease business practices. EPA notes that recovery rates could fluctuate yearly and thus holding steady for control periods 2010–2014 is an appropriate approach. In addition, the step downs in the expected recycling and reclamation rates then more closely reflect the international commitments in Decision XIX/6. EPA expects that for the 2015–2019 control periods, the percent of servicing need met by recovered refrigerants will increase and, as noted above, beginning in 2020 all servicing needs for HCFC-22 will be met with

recovered refrigerants. EPA will address the percent of servicing need to be met by recovered refrigerants in 2015–2019 in a subsequent rulemaking to reflect the 2015 stepdown required by Article 2F:

Each Party shall ensure that for the twelve-month period commencing on 1 January 2020, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group 1 of Annex C does not exceed zero. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of the controlled substances in Group 1 of Annex C does not exceed zero. However, \* \* \* each Party may exceed that limit on consumption by up to zero point five percent of the sum referred to in paragraph 1 of this Article in any such twelve-month period ending before 1 January 2030, provided that such consumption shall be restricted to the servicing of refrigeration and air conditioning equipment existing on 1 January 2020.

EPA believes that meeting demand after 2010 will require the reuse of HCFC–22, and is particularly concerned with ensuring that demand is met during the first years of the 2010–2014 control periods when a large number of appliances using HCFC–22 will still be suitable for use. EPA notes that a smooth transition for stakeholders—including continued availability of needed material for approved uses—has historically been an essential aspect of the U.S.’s success in implementing the Montreal Protocol and Clean Air Act requirements. For purposes of the 2010–2014 control periods, EPA is proposing to use a number in the range of 15–25 percent to represent the contribution of recovered refrigerant to the total servicing need. EPA requests comments on the amount of the total servicing need for HCFC–22 that can be met with recovered refrigerants, which is between 15 and 25 percent of total estimated servicing need.

#### 7. HCFC–22 Allowances for 2010–2014

EPA is proposing to allocate HCFC–22 consumption allowances to meet 80 percent of the servicing need, assuming that the remaining 20 percent will be met by recovered HCFC–22 that is either recycled or reclaimed. This translates into approximately 50,000 metric tons (2,750 ODP-weighted metric tons), or approximately 72 percent of the total HCFC consumption cap for each of the control periods from 2010 through 2014.

As it did in the 2003 allocation rule, EPA is proposing to allocate production allowances among different chemicals using the same percentage breakdown as for consumption allowances. This would allocate 45,498 metric tons (2,502 ODP tons) of the 3,884.25-ODP-ton

production cap to HCFC–22 production. This is consistent with section 605(c) of the Clean Air Act, which states that EPA shall promulgate a phaseout schedule for HCFC consumption that is the same as that applicable to HCFC production. EPA recognizes that there is a difference between the amount of imported and produced HCFCs and that the degree of difference may vary over time. However, EPA does not believe it is necessary to use two different chemical-by-chemical percentage breakdowns (*i.e.*, one for consumption allowances and another for production allowances) to ensure compliance with the production and consumption caps. Therefore, for simplicity and for consistency with section 605(c), EPA is proposing to use the same percentages for production and consumption allocations—deriving the percentages based on estimated need for each individual HCFC.

If more HCFC–22 is recovered, recycled, and reclaimed than assumed in this proposed rule, EPA anticipates that the demand for virgin HCFC–22 will decrease. Thus it is possible that not all the production and consumption allowances will be used. It is also possible that any “extra” HCFC–22 allowances could be converted via inter-pollutant transfers to meet other HCFC needs.

EPA requests comments on its application of a 20 percent rate of availability of recovered (recycled or reclaimed) HCFC–22. As discussed above, EPA estimates that at least 20 percent of the 2010–2014 servicing need can be met from recycled or reclaimed material. EPA believes that by the January 1, 2010, effective date of this rule, 20 percent of the 2010–2014 servicing needs should be available from recycled or reclaimed material, and that the availability of recycled or reclaimed material would be expected to increase as the phaseout progresses. EPA notes that in 2020 all HCFC–22 and HCFC–142b used to service air-conditioning and refrigerant equipment will need to be recycled or reclaimed, in light of the nearly-complete phasedown of production and import of virgin material that is scheduled to occur by that date. Additionally, EPA regulations already prohibit the intentional venting of refrigerants and require refrigerant recovery, and the market for recycled and reclaimed refrigerant is predicted to grow as the phaseout progresses. EPA is interested in other data regarding the actual and projected rates of refrigerant recycling and reclamation in the U.S., as well as whether it should consider allocating allowances for HCFC–22 at other levels, such as approximately 100

percent, 90 percent, 80 percent, or 75 percent of the aggregate 2010 cap.

#### 8. HCFC–142b Allowances for 2010–2014

After subtracting out the proposed 72 percent of the 2010 cap for HCFC–22, 28 percent remains to meet all other HCFC needs. EPA believes that the remaining 28 percent is more than the projected HCFC–142b servicing needs, the amounts of HCFC–141b that EPA expects to allow based on the petition process, and all other likely HCFC consumption for the 2010–2014 control periods. This is based on a review of required quarterly, annual, and periodic reports; the Servicing Tail analysis; and comments submitted to EPA by stakeholders in advance of this proposed rulemaking. As described below, the amounts allocated for these substances reflect these assumptions.

As discussed in the Servicing Tail report described above, the projected servicing need for HCFC–142b is extremely low: Approximately 100 metric tons (7 ODP tons). In estimating the need for 2010–2014, EPA has considered the amount of HCFC–142b produced and imported into the United States as reported to EPA in recent years under the existing requirements. Whereas earlier versions of the Servicing Tail analysis focused on HCFC–22, the most recent version—which is included in the docket for this rulemaking—also projects the demand for all other HCFCs for which consumption and production are likely to occur: HCFC–142b, HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb. The recovery, recycling, and reclamation requirements apply to HCFC–142b as they do to all refrigerants, but recovery rates for HCFC–142b are considerably lower than for HCFC–22, largely because HCFC–142b is typically used in blended refrigerants. The limited amount of data available to EPA indicates that less than 1 percent of HCFC–142b is recycled or reclaimed. In light of the limited data available, and the extremely low estimate of recycling and reclamation, EPA is proposing to allocate 100 percent of the projected HCFC–142b servicing need rather than assuming that a specified percentage of the need will be met through the use of recycled or reclaimed amounts. EPA is proposing to issue consumption allowances for HCFC–142b of 100 metric tons (7 ODP tons). Allocating 72 percent of the consumption cap to HCFC–22 and less than 1 percent to HCFC–142b allows up to 27 percent to be allocated to other HCFCs.

EPA is proposing to allocate production allowances for HCFC-142b at the same proportion of the production cap as was used to allocate consumption allowances as a proportion of the consumption cap. Thus EPA is proposing to allocate production allowances for HCFC-142b at 142 metric tons (9.2 ODP tons).

9. How Does the Aggregate for HCFC-22 and HCFC-142b Translate to Entity-by-Entity?

EPA is proposing to allocate up to a total of no more than 50,000 metric tons of HCFC-22 consumption allowances, 45,498 metric tons of HCFC-22 production allowances, 100 metric tons of HCFC-142b consumption allowances, and 142 metric tons of HCFC-142b production allowances. However, EPA actually allocates allowances to individual persons (*i.e.*, legal entities). As discussed in section III.A.2 of this preamble, EPA's preferred approach is to apportion baselines and allocate allowances on a pro-rata basis to the entities that received baseline allowances in the 2003 allocation rule. Nevertheless, the Agency is taking comment on other allocation options, which are discussed below.

Company-specific production and consumption baselines (also referred to as "baseline allowances") for HCFC-141b, HCFC-22, and HCFC-142b are listed at §§ 82.17 and 82.19(a), respectively. The percentage of baseline each entity receives in each control period from 2003 through 2009 appears at § 82.16(a). EPA is proposing to amend § 82.16(a) to include the 2010–2014 control periods. For the years 2010–2014, as for the years 2003–2009, EPA's preferred approach is to specify the same percentage of baseline for each entity. EPA considers allocation of the same percentage to each entity listed at § 82.17 and § 82.19 to be the most equitable approach. EPA does not believe that its allocation of baseline allowances should reflect sales of controlled substances that would subsequently occur. EPA believes that the market for HCFCs that the allowance holders sell to, will evolve to reflect these restrictions as it would evolve other market conditions. This approach is consistent with EPA's previous approach to allocations. However, EPA does note that there have been and continue to be restrictions on use of controlled substances. EPA considered alternative approaches such as evaluating sales information for HCFCs where allowances were expended and considering the differences between expended allowances versus allowances

acquired via inter-pollutant transfers. EPA has included in the docket to this rulemaking a memorandum titled *Draft Regulatory Options for Allocating HCFC Allowances after 2009* as well as comments submitted by stakeholders describing alternative approaches that the Agency may consider.

As previously noted, allowances allocated for individual control periods may be thought of as "calendar-year allowances" to distinguish them from the apportioned baseline production or consumption allowances (§ 82.17 and § 82.19). For 2010–2014, EPA is proposing to apportion production and consumption baselines for HCFC-22 and HCFC-142b to the same entities that were apportioned HCFC-22 and HCFC-142b baselines in the 2003 allocation rule. EPA is proposing to amend that list of entities and their baselines to reflect changes in the entities' names as well as mergers and acquisitions, but only where EPA has been notified of changes in writing before or during the comment period for this rulemaking, which closes February 23, 2009 or March 9, 2009 if a hearing is held.

The proposed company-specific baselines also reflect adjustments resulting from approved inter-pollutant and/or inter-company transfers of baseline allowances (*i.e.*, permanent rather than calendar-year allowances) through the process described in § 82.23. To be reflected in the final apportionment of baselines in the final rule, such transfers must have occurred, with EPA approval, before or during the second quarter of the 2008 control period (*i.e.*, by June 16, 2008). As noted in the 2003 allocation rulemaking, EPA is sensitive to the need to avoid creating an "uneven playing field" that could potentially skew allocations to entities with ample resources and good access to information. EPA held a public meeting on June 16, 2008. As it did in the 2003 allocation rulemaking when determining which years to use for establishing a baseline, EPA is using the date of the public meeting as a cutoff date for inter-pollutant and inter-company transfers of permanent baseline allowances that would be reflected in the revised tables shown in this NPRM. EPA believes that since allowance transfers affect the pool of allowances for each controlled substance and thus the amounts apportioned company-by-company, a cutoff date in advance of the issuance of the NPRM is necessary and thus selected a date based on availability and access to information.

EPA recognizes that in some cases entities are no longer actively involved in HCFC production, import, and/or export activities. EPA is seeking comment on whether it should retain the baselines for such entities (the preferred approach) or whether it should retire, auction, or redistribute the baselines among the active entities. EPA has placed in the docket to this proposed rule a memorandum that considers and evaluates each of these options, discussing both the advantages and disadvantages, titled *Draft Regulatory Options for Adjusting the HCFC Baseline for Allowance Allocations*. For example, apportioning a baseline to an entity that is no longer active means that its allowances might not be expended, resulting in a net environmental benefit. Allocating allowances via an auction may allow for new entrants to purchase allowances or for allowances to be purchased and intentionally retired. However, EPA currently does not use an auction for allocating allowances and anticipates that designing and deploying an auction system could cause administrative delays. An auction system could impose costs on new participants, which would be borne by non-participants who received allowances for the 2003–2009 control periods without charge. EPA notes, however, that under the current allowance system for new entrants to acquire allowances, allowances must be transferred from an existing allowance holder and that when such a transfer occurs, costs are likely to arise from the purchase price and any transaction costs. Allocating allowances to entities that are no longer active in the field may provide an option for new entrants and for entities seeking to purchase and retire allowances, as the inactive entities would presumably be willing sellers. EPA is proposing to retain the baselines for HCFC-22 and HCFC-142b as previously apportioned, subject to updates to reflect name changes and permanent inter-company and inter-pollutant transfers.

Consistent with past practice, EPA is publishing baseline allowance information in this NPRM, having first notified the affected companies of its intention to do so.

Applying the approach described above, EPA proposes to apportion production and consumption baselines for HCFC-141b, HCFC-22, and HCFC-142b to the following entities in the following amounts:

**Table**

Person	Controlled substance	Allowances (kg)
<b>Production Allowance Allocation</b>		
Arkema .....	HCFC-22 .....	46,692,336
	HCFC-141b .....	24,647,925
	HCFC-142b .....	484,369
DuPont .....	HCFC-22 .....	42,638,049
Honeywell .....	HCFC-22 .....	37,378,252
	HCFC-141b .....	28,705,200
	HCFC-142b .....	2,417,534
MDA Manufacturing .....	HCFC-22 .....	2,383,835
Solvay Solexis .....	HCFC-142b .....	6,541,764
<b>Consumption Allowance Allocation</b>		
ABCO Refrigeration Supply .....	HCFC-22 .....	279,366
Altair Partners .....	HCFC-22 .....	302,011
Arkema .....	HCFC-22 .....	48,637,642
	HCFC-141b .....	25,405,570
	HCFC-142b .....	483,827
Automatic Equipment Sales .....	HCFC-22 .....	54,088
Condor Products .....	HCFC-22 .....	74,843
Continental Industrial Group .....	HCFC-141b .....	20,315
Coolgas, Inc .....	HCFC-141b .....	16,097,869
Coolgas Investment Property .....	HCFC-22 .....	590,737
Discount Refrigerants .....	HCFC-22 .....	375,328
	HCFC-141b .....	994
Dupont .....	HCFC-22 .....	38,814,862
	HCFC-141b .....	9,049
	HCFC-142b .....	52,797
Full Circle .....	HCFC-22 .....	14,865
H.G. Refrigeration Supply .....	HCFC-22 .....	40,068
Honeywell .....	HCFC-22 .....	35,392,492
	HCFC-141b .....	20,749,489
	HCFC-142b .....	1,315,819
ICC Chemical Corp .....	HCFC-141b .....	81,225
Ineos Fluor Americas .....	HCFC-22 .....	2,546,305
Kivlan & Company .....	HCFC-22 .....	2,081,018
MDA Manufacturing .....	HCFC-22 .....	2,541,545
Mondy Global .....	HCFC-22 .....	281,824
National Refrigerants .....	HCFC-22 .....	5,528,316
Refricenter of Miami .....	HCFC-22 .....	381,293
Refricentro .....	HCFC-22 .....	45,979
R-Lines .....	HCFC-22 .....	63,172
Saez Distributors .....	HCFC-22 .....	37,936
Solvay Fluorides .....	HCFC-22 .....	3,781,691
	HCFC-141b .....	3,940,115
Solvay Solexis .....	HCFC-142b .....	194,536
Tulstar Products .....	HCFC-141b .....	89,913

EPA requests comments on the proposed method and calculations for allocating allowances on an entity-by-entity basis for HCFC-22 and HCFC-142b production and consumption.

#### 10. Baselines for HCFC-123, HCFC-124, HCFC-225ca, and HCFC-225cb

EPA is proposing to establish and apportion baselines for other HCFCs that have been produced or imported in recent years by using information on production, import, export, and other transactions that has been reported to the Agency under existing regulations. EPA requires recordkeeping and reporting for production, import, export, and trade of all ozone-depleting substances, including HCFCs for which baseline allowances have not yet been

established. The recordkeeping and reporting requirements implement section 603 of the Clean Air Act and ensure that companies are in compliance with regulatory and Clean Air Act requirements and that the United States is able to meet international obligations. EPA is not proposing any changes to these requirements.

EPA reviewed HCFC production, import, and export data for the years leading up to the 2003 allocation rule, and chose to establish baselines and allocate allowances for the highest-ODP HCFCs (e.g., a "worst-first" approach) in a manner that ensured U.S. compliance with the 2004 cap (35 percent below the U.S. baseline). Prior to the tightening of the 2010 HCFC cap at the 19th Meeting

of the Parties to the Montreal Protocol in September 2007, EPA anticipated that limiting production and consumption of HCFC-22 and HCFC-142b for the 2010–2014 control periods would ensure sufficient room under the then-effective 65 percent reduction cap without the need to restrict production and consumption of other HCFCs. Prior to attending the 19th Meeting of the Parties where agreement was reached to reduce the 2010 cap from a 65 percent reduction to a 75 percent reduction, EPA conducted analysis which was shared with stakeholders to ensure that the U.S. could consider changes to our obligations that were both meaningful for ozone layer protection and achievable, allowing servicing needs to continue to be met. Considering that the

September 2007 Montreal Adjustment provides for adjustment of the cap from a 65 percent to a 75 percent reduction, EPA is proposing additional precautions to ensure that the more stringent cap will not be exceeded. These precautions include establishing and apportioning baselines for the 2010–2014 control periods for other HCFCs that were produced or imported during the 2003–2007 control periods.

EPA is proposing to apportion baselines for the other HCFCs by amending §§ 82.17 and 82.19 to include company-specific production and consumption baselines for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb. EPA data indicate that those four HCFCs were produced, imported, or exported during the 2003–2007 control periods.

In the 2003 allocation rule, EPA did not issue allowances for all HCFCs, noting in part “that the continuously developing HCFC market would be hampered by such distribution” and that the market proportions at that time “of these lower-ODP HCFCs do not reflect the rapidly expanding market and that distributing allowances for these HCFCs at [that] time would unnecessarily restrict their supply and impede transition to less ozone-depleting substances” (68 FR 2823). Considering the recent adjustments to the Montreal Protocol and the evolution in the HCFC market, EPA believes it is now appropriate to establish a baseline and apportion baseline allowances for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb.

All HCFCs are covered under the Montreal Protocol stepwise reductions, and EPA must consider all HCFC production and import in ensuring that the United States continues to meet its international obligations. The four HCFCs identified in this proposal are the only remaining HCFCs commonly used in the United States that do not currently have established baselines. EPA does not expect that establishing baseline allowances for these four HCFCs would trigger additional recordkeeping or reporting obligations, since companies that produce, import, or export any HCFC already report production and consumption data to EPA. The impacts stem from the years chosen for establishing a baseline, the apportionment of the baseline among companies, and the percentage of baseline allocated for the control years 2010–2014. EPA discusses these issues more specifically below.

EPA recognizes that many different methods and data sources can be used to establish baseline allowances. EPA believes that the best data to use for this

purpose are the data reported to the Agency under § 82.24. Entities that have not reported data would not be included in the baseline calculations and would not receive baseline allowances. If necessary, EPA could augment the data for completeness or to verify accuracy by issuing requests for information under section 114 of the CAA. EPA seeks comment on its proposal to use data reported under § 82.24 as the basis for identifying the entities to which allowances should be allocated.

In the 2003 allocation rule, EPA calculated each entity’s HCFC–141b, HCFC–22, and HCFC–142b baseline from that entity’s highest reported consumption and production from the years 1994–1997. EPA chose that particular range of years because beginning in 1998, some entities were aware of the impending rulemaking and could have increased production or import in an effort to secure higher baseline allowances. EPA stated in the 2003 allocation rulemaking that “by not selecting a year after 1997 it will avoid creating an uneven playing field that skews allocations to those companies with ample resources and good access to information” (68 FR 2832). EPA is proposing to follow a similar approach for these four HCFCs by considering the highest reported data from a range of years rather than selecting a single baseline year. EPA is proposing to use the data reported for the 2005–2007 control periods to calculate baselines for the four additional HCFCs, based on an entity’s highest reported consumption and production for the 2005–2007 control periods. By using past years, EPA avoids any ramp-up in the level of production and consumption resulting from a desire to maximize individual baselines in anticipation of this rule going into effect. By using recent data, EPA ensures the baseline reflects the current market as closely as possible, and issues raised when EPA decided to postpone allocating baseline allowances for these HCFCs in 2003.

EPA requests comment on the need to establish baselines for these four additional HCFCs at this time. In particular, EPA is interested in comments concerning whether establishing and apportioning a baseline for these four HCFCs, and allocating a percentage of that baseline for the 2010–2014 control periods, is necessary to ensure that the United States does not exceed the 25 percent HCFC cap under the 2007 Montreal Adjustment. EPA requests comments on the appropriateness of using each company’s highest reported consumption and production for 2005–

2007 rather than the lowest or an average.

#### 11. What Percentage of the Baseline Will EPA Allocate for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb for the Control Periods 2010–2014?

EPA is proposing to establish baseline production and consumption allowances for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb, and to allocate 125 percent of these baselines for the 2010–2014 control periods. By establishing these baseline production and consumption allowances, EPA would be creating a mechanism for limiting growth in production and consumption for these HCFCs during those control periods. Regardless of any action by EPA, given the 605(a) self-effectuating provisions, further growth for these HCFCs will be constrained in 2015 by the provisions on use. For example, given the characteristics of HCFC–225ca and HCFC–225cb, they are generally used as solvents. As of January 1, 2015 that application will be restricted. Thus any growth in the use of these HCFCs will be balanced to some extent by the self-effectuating provisions. Thus EPA is recognizing that other limiting factors, such as section 605(a) of the CAA, will considerably affect how these HCFCs can be used in subsequent control periods. While it is appropriate and necessary for EPA to allocate less than 100 percent of the baseline allowances for HCFC–22 and HCFC–142b, given the use restrictions that apply beginning January 1, 2010, these four low-ODP HCFCs are not subject to domestic use restrictions until a later date. For example, while newly manufactured HCFC–22 cannot be produced or imported for charging into new air-conditioning and refrigeration appliances as of January 1, 2010 (40 CFR 82.16(c)), HCFC–123 can be produced or imported for new appliances until 2020 (40 CFR 82.16(d)). Therefore, EPA believes that it is not appropriate to allocate less than 100 percent of baseline for these compounds in this action. EPA has included information and analysis on these HCFCs in Chapter 3 of the Servicing Tail analysis, which is in the docket for this rulemaking. After reviewing trends in the production, import, export, and trade data submitted to EPA since 2003, EPA believes that allocating 100 percent of the baseline should be sufficient to meet current demand. The Servicing Tail analysis available in the docket provides additional information concerning trends based on the Vintaging Model and additional information provided by stakeholders. However, EPA has heard

from stakeholders that some amount of market expansion for these low-ODP HCFCs is possible during the 2010–2014 control periods. Given the low ODPs for these HCFCs, EPA believes that if it were to allocate 125 percent of the baseline for 2010–2014, the United States could still meet the overall HCFC cap of 75 percent below the baseline during these control periods. EPA believes that any continued growth for these HCFCs will be considerably affected by section 605(a) as of January 1, 2015.

Through this action, EPA is proposing to allocate allowances equaling 125 percent of the baseline for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb for the 2010–2014 control periods. If rapid growth were to occur, creating the need for additional amounts of these HCFCs, EPA believes that inter-pollutant transfers could be used to make adjustments. If the full amount of allowances is not needed, then some allowances may go unused. In accordance with the next stepdown under the Montreal Protocol, EPA will issue a rule prior to the 2015 HCFC milestone to limit aggregate production and consumption of all HCFCs to no more than 10 percent of the U.S. baselines for production and consumption. At that time, EPA plans to consider the appropriate level of

allowances for 2015 and beyond based on market demand and the section 605(a) restrictions on introduction into interstate commerce and use discussed elsewhere in this NPRM. Examples of uses that will be limited by section 605(a) beginning in 2015 are solvent uses and fire suppression. EPA anticipates other changes as well. For example, EPA's proposed allowance level for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb does not assume a specified level of recycling and reclamation. For HCFCs used in non-refrigeration applications, such as those used as solvents (*i.e.*, HCFC–225ca and HCFC–225cb), the section 608 “no venting” prohibition is not applicable. HCFC–123 is used in chillers that in some cases are replacing CFC chillers. Given that in many cases these appliances will last a long time, it will be some time before significant amounts of HCFC–123 are recovered and recycled or reclaimed. In future rulemakings, however, EPA may estimate the amount of the total need for HCFC–123 that can be met through recycling and reclamation. As the HCFC–123 market matures, the refrigerant recovery, recycling, and reclamation requirements in 40 CFR part 82 subpart F, will result in a greater amount of reusable HCFC–123. Recognizing that the HCFC market will

continue to evolve, subject to the constraints in section 605(a), EPA is proposing to establish and apportion baseline allowances and provide calendar-year allowances for the control periods 2010–2014 for these HCFCs.

EPA has established company baselines for these four low-ODP HCFCs by choosing each company's highest production and consumption years from 2005, 2006, and 2007. This is the same approach EPA used to establish the company baselines for HCFC–141b, HCFC–22, and HCFC–142b in the 2003 allocation rule.

Data show that 125 percent of the highest year's consumption of HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb for all the companies combined equals 163 ODP-weighted metric tons, which is slightly more than 4 percent of the total HCFC consumption cap of 3,810 ODP tons.

EPA data also show that 125 percent of the highest year's production of HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb for all the companies combined equals 135 ODP-weighted metric tons, which is slightly more than 3 percent of the total HCFC production cap of 3,884.25 ODP tons.

EPA proposes to allocate production allowances to the following entities for the following amounts:

Person	Controlled substance	Allowances (kg.)
AGC Chemicals Americas .....	HCFC–225ca .....	266,608
	HCFC–225cb .....	373,952
DuPont .....	HCFC–124 .....	2,269,210
Honeywell .....	HCFC–124 .....	1,804,121

EPA also proposes to allocate consumption allowances to the

following entities for the following amounts:

Person	Controlled substance	Allowances (kg.)
AGC Chemicals Americas .....	HCFC–225ca .....	285,328
	HCFC–225cb .....	286,832
Arkema .....	HCFC–124 .....	3,719
Condor Products .....	HCFC–124 .....	3,746
Coolgas, Inc. ....	HCFC–123 .....	20,000
Dupont .....	HCFC–123 .....	2,933,906
	HCFC–124 .....	743,312
Honeywell .....	HCFC–124 .....	1,284,265
ICOR .....	HCFC–124 .....	81,220
National Refrigerants .....	HCFC–123 .....	72,600
	HCFC–124 .....	50,380
Tulstar Products .....	HCFC–123 .....	34,800
	HCFC–124 .....	229,582

EPA is proposing to allocate 125 percent of each company's baseline for these low-ODP HCFCs for the 2010–2014 control periods. These allocations

would appear as additions to the table at § 82.16. EPA requests comments on its proposal to grant 125 percent of

baseline to companies for these HCFCs for the 2010–2014 control periods.

## 12. What About Other HCFCs?

In addition to HCFC-141b, HCFC-22, and HCFC-142b, as well as newly addressed HCFC-123, HCFC-124, HCFC-225ca, and HCFC-225cb, EPA recognizes that the list of HCFCs in appendix B to subpart A includes additional substances. EPA's proposed allocations, based on projected 2010–2014 need, have the effect of reserving some room under the 2010 aggregate HCFC cap for any HCFCs not specifically included in §§ 82.16, 82.18, and 82.19. Given the 4 percent of the 3,810 consumption cap EPA is proposing to allocate for the newly addressed HCFCs (–123, –124, –225ca and –225cb), room under the 2010 production and consumption caps still remains. EPA notes that some niche applications in the U.S. use other HCFCs, such as HCFC-21. However, EPA is not aware of additional need for production or import of these substances at this time. Also, some amount of HCFC-141b will likely continue to be produced or imported via the petition process during the 2010–2014 control periods. EPA believes it is appropriate to reserve some room in case circumstances were to change and users of another HCFC were to seek to acquire an amount either by production or by import. EPA notes that the producer or importer would be required to report to EPA consistent with the existing recordkeeping and reporting requirements. If necessary, EPA could subsequently propose amending the regulations to set and apportion baselines and issue allowances for these HCFCs. EPA requests comments on its proposed approach of allocating baseline allowances for HCFC-141b, HCFC-22, HCFC-142b, HCFC-123, HCFC-124, HCFC-225ca, and HCFC-225cb based on the projected need for virgin material in the U.S., which would have the effect of not allocating allowances for the remaining amount under the 3,810 ODP-ton cap.

### *B. Does the Article 5 Allowance Provision Change Given the Adjustments to the Montreal Protocol?*

Under the Montreal Protocol, industrialized countries and developing countries have different schedules for phasing out ODS production and consumption. Developing countries operating under Article 5, paragraph 1 of the Montreal Protocol in most cases have additional time in which to phase out ODSs. Recognizing that it would be inadvisable for developing countries to spend their scarce resources to build new ODS manufacturing facilities to meet basic domestic needs for chemicals

they would ultimately phase out, the Parties to the Montreal Protocol decided to permit a small amount of production in industrialized countries, in addition to the amounts otherwise permitted for such countries under the relevant phaseout schedules, for export to meet the basic domestic needs of developing countries. As discussed above, at the 19th Meeting of the Parties (MOP) to the Montreal Protocol held in September 2007, the Parties agreed to a revised phaseout schedule for both Article 5 and non-Article 5 Parties. Included with the changes to the phaseout schedule were changes to the amount of production in industrialized countries that would be permitted to meet the basic domestic needs of Article 5 Parties. These changes were in keeping with the more stringent phaseout schedule for developing countries. Previously, the Montreal Protocol had allowed non-Article 5 countries to produce at 15 percent of their baseline levels for export to Article 5 countries from 2016, the year in which Article 5 countries were required to freeze consumption, through the terminal phaseout in 2040. At the 19th MOP the Parties agreed that to satisfy basic domestic needs of Article 5 countries, non-Article 5 Parties would be allowed to produce up to 10 percent of baseline levels until 2020. For the period after 2020, the Parties agreed to consider further reduction of the production for basic domestic needs no later than 2015 (*UNEP/OzL.Pro.19/7 Decision XIX/6: Adjustments to the Montreal Protocol with regard to Annex C, Group I, substances (hydrochlorofluorocarbons)*).

Section 605(d)(2) of the Clean Air Act states that notwithstanding the restrictions on production, use, and introduction into interstate commerce set forth in paragraphs (a) and (b) of that section, EPA “may authorize the production of limited quantities of a class II substance in excess of the quantities otherwise permitted under such provisions solely for export to and use in developing countries that are Parties to the Montreal Protocol, as determined by the Administrator” (42 U.S.C. 7671d(d)(2)). EPA's implementing regulation at 40 CFR § 82.18(a) provides for allocation of “Article 5 allowances” for production of specified ODSs solely for export to Article 5 Parties to meet those countries' basic domestic needs. The “Article 5” Parties are listed at 40 CFR part 82, subpart A, appendix E. Currently under § 82.18(a) an entity that is apportioned baseline HCFC production allowances receives an amount of Article 5

allowances equal to 15 percent of that production baseline.

EPA is proposing to amend § 82.18(a) to reflect the adjustment to the Montreal Protocol at the 19th MOP and to ensure that the United States does not permit a level of production to meet basic domestic needs in Article 5 Parties that exceeds the level specified in the adjustments. EPA is taking this action in accordance with section 606(a)(3) of the Clean Air Act. EPA is also proposing minor changes to 82.15(c) to clarify that HCFCs produced with Article 5 allowances may be introduced into interstate commerce if destined for export.

Section 82.18(a)(1) currently states that a person apportioned baseline production allowances for specified HCFCs is also apportioned Article 5 allowances for the specified HCFCs equal to the following percentages of that person's baseline: For control periods through 2014, 15 percent; for control periods from 2015 through 2029, 10 percent; and for control periods from 2020 through 2039, 15 percent. While the Montreal Protocol previously permitted production for the basic domestic needs of Article 5 countries equal to 15 percent of the U.S. production baseline for each control period until 2040, section 605(d)(2)(B) of the Clean Air Act requires that for the period between 2015 and 2030 the production for Article 5 countries be limited to 10 percent of baseline. Thus EPA regulations at § 82.18(a) currently restrict Article 5 allowances to 10 percent of production baseline from January 1, 2015, through December 31, 2029, but otherwise allow the full 15 percent previously permitted by the Protocol.

EPA is proposing to amend § 82.18(a) to allocate Article 5 allowances for the HCFCs covered by this rulemaking, for the period 2010–2019, consistent with the recent changes to the Montreal Protocol. Prior to 2015, exports to Article 5 Parties of HCFC-123, HCFC-124, HCFC-225ca, or HCFC-225cb would not require expending Article 5 allowances.

Given that Article 2F of the Montreal Protocol, as adjusted in September 2007, does not provide for additional HCFC production to meet the basic domestic needs of Article 5 Parties past 2019, EPA is proposing to sunset the Article 5 allowance provision for all HCFCs at the end of 2019 in the absence of further adjustments to the Protocol. Decision XIX/6 paragraph 14 states “In order to satisfy basic domestic needs [the Parties] agree to allow for up to 10% of baseline until 2020, and for the period after that, to consider no later than 2015

further reductions of production for basic domestic needs.” If the Parties were to adjust the basic domestic needs provisions of the Protocol to permit continued production for such needs past 2019, EPA would evaluate that adjustment and consider issuing a proposed regulation to extend the availability of Article 5 allowances for basic domestic needs to the extent consistent with the Clean Air Act. Any such proposed regulations would include production levels and schedules that were at least as stringent as those specified in the Montreal Protocol, as adjusted.

EPA requests comments on its proposed revisions to § 82.18(a).

### *C. How Does EPA Interpret “Introduce Into Interstate Commerce or Use”?*

Section 605(a) is titled “Restriction of use of class II substances” and reads:

“Effective January 1, 2015, 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; or

(3) Is used as a refrigerant in appliances manufactured prior to January 1, 2020.

As used in this subsection, the term ‘refrigerant’ means any class II substance used for heat transfer in a refrigerating system.”

Section 605(a) is self-effectuating, banning the introduction into interstate commerce and use of HCFCs by its own terms. In section 605(c), however, Congress directed EPA to promulgate regulations restricting the use of class II substances in accordance with section 605. In today’s action, EPA is proposing to complete its implementation of the section 605 provisions on use of class II substances. EPA is also proposing regulatory language to reflect the section 605 provisions on introduction into interstate commerce of class II substances.

As discussed earlier in this notice, the provisions governing HCFC–22 and HCFC–142b promulgated as part of the 1993 phaseout rule were intended “to prohibit the use of the chemicals (virgin material only) for any use except as a feedstock or as a refrigerant in existing equipment as of January 1, 2010” (58 FR 15028). As promulgated, however, the regulatory prohibitions did not control use directly, but instead banned production and import for most uses. EPA is proposing to add the direct use prohibitions contemplated in the 1993

phaseout rule as well as the corresponding prohibitions on introduction into interstate commerce contained in section 605(a). Consistent with the schedule adopted in the 1993 phaseout rule, the section 605(a) use and interstate commerce restrictions would apply to HCFC–22 and HCFC–142b beginning in 2010 and to all other HCFCs beginning in 2015.<sup>8</sup> The restrictions on production and import, both in general and for particular uses, that were promulgated in 1993 are at 40 CFR 82.16(b)–(g). EPA is not proposing to change these provisions in this action. However, EPA is further implementing section 605(a) by proposing direct restrictions on use and introduction into interstate commerce to be codified at § 82.15 and by clarifying its interpretation of the statutory requirements.

Since the promulgation of the 2003 allocation rule, EPA has received questions from stakeholders regarding the Agency’s interpretations of section 605(a). Based on these questions, EPA has decided to include in this proposed rule a discussion of how it interprets that section, particularly the terms “introduction into interstate commerce” and “use.” EPA is proposing to promulgate a definition of interstate commerce to facilitate the implementation of section 605(a).

Section 605(a) includes the phrase “introduction into interstate commerce.” Section 611 (Labeling) contains a similar phrase, noting that certain products shall not be “introduced into interstate commerce” unless the product bears a clearly legible and conspicuous warning label. EPA’s definition of interstate commerce for section 611 purposes appears at 40 CFR 82.104(n):

*Interstate Commerce* means the distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States customs clearance.

<sup>8</sup> The petition process for HCFC–141b exemption allowances at 82.16(h) would sunset in 2015, since HCFC–141b is not used as a refrigerant and thus does not meet the criteria established by 605(a) for an exception from the statutory ban on use. EPA intends to revise § 82.16(h) when it addresses the control periods 2015–2019.

After considering this regulatory definition, and noting the similarities in the statutory language, EPA proposes to amend § 82.3 to include a definition of “interstate commerce” that is identical to the definition at § 82.104(n), except that the phrase “controlled substance” would appear where the § 82.104(n) definition uses the term “product.” This is because section 605(a) addresses substances rather than products. Adding a definition of interstate commerce to § 82.3 will clarify the applicability of the section 605(a) provisions. Choosing a definition that is already well-established in the labeling program will minimize stakeholder confusion. EPA requests comments on adding this definition of interstate commerce to subpart A.

EPA notes that under this definition, “introduction into interstate commerce” would include release of HCFCs by the domestic manufacturer for distribution and transport prior to export. The section 605(a) ban thus has relevance to the export of HCFCs—limiting exports to HCFCs that are “used, recovered, and recycled” (section 605(a)(1)); HCFCs that are destined for transformation (section 605(a)(2)); HCFCs that will be used as a refrigerant in appliances manufactured before the date specified in the regulations (section 605(a)(3)); and HCFCs that will be exported to Article 5 Parties (section 605(d)(2)). As a result, HCFC exports to non-Article 5 Parties would be limited as of January 1, 2010, or January 1, 2015, depending on the specific HCFC.

In addition to banning “introduction into interstate commerce” of HCFCs, section 605(a) also bans “use,” subject to three statutory exceptions that inform EPA’s understanding of the term “use.” While these exceptions apply to the “interstate commerce” ban as well as the “use” ban, the discussion below focuses on the “use” aspects of the exceptions. EPA is proposing to interpret the “use” ban as applying to the use of HCFCs in manufacturing and servicing HCFC products.

The first exception, which appears at section 605(a)(1), applies to class II substances that have been “used, recovered, and recycled.” This exception confirms EPA’s understanding of the use ban as limited to the manufacture and servicing of HCFC products. If the ban applied to use of HCFCs by a consumer, such “use” might include the continued operation of an appliance (e.g., a residential air conditioner) where an HCFC acts as the refrigerant. Under this broad definition of “use,” there would be an incentive for consumers to hire servicing technicians to recover the

HCFCs from appliances already in their homes and businesses, to recycle the HCFCs for reuse, and to charge the HCFCs back into the same appliances. These steps should not be necessary for continued operation of installed equipment. However, by taking these steps, consumers could avail themselves of the exception for “used, recovered, and recycled” substances at section 605(a)(1). There would be no environmental benefit to following such a procedure. There could even be an environmental detriment, given the potential for losses of refrigerant during the recovery and recycling process. EPA does not believe that Congress intended such a result. Moreover, EPA believes that Congress intended to permit the continued use of previously manufactured appliances, as indicated by the third exception to the use ban (section 605(a)(3)). Thus, EPA is not proposing an interpretation that would result in shortening the useful lifetime of appliances that were manufactured prior to the effective date of the use restriction. EPA concludes that the section 605(a) “use” ban does not apply to a consumer’s operation of equipment that contains HCFCs. Rather, it applies to use during manufacture and servicing of equipment. EPA believes that Congress meant for the section 605(a)(1) exception to allow the use of “used, recovered, and recycled” HCFCs in appropriate instances by servicing technicians, reclaimers, and appliance manufacturers.

Section 605(a)(2) refers to HCFCs that are “used and entirely consumed (except for trace quantities) in the production of other chemicals.” Similar language appears as an exception to the definition of “production” at section 601(11). This type of use is referred to in EPA’s regulations as “transformation” (see the definition of “transform” at 40 CFR 82.3). The current phaseout schedule for HCFC production and consumption already includes a transformation exception within § 82.16. EPA intends to implement the transformation exception in section 605(a)(2) consistent with the transformation exception to the HCFC production phaseout.

Section 605(a)(3) provides an exception for HCFCs that are “used as a refrigerant in appliances manufactured prior to January 1, 2020.” EPA reads this exception as allowing appliances manufactured before the specified date to be serviced with virgin HCFCs. This is consistent with the legislative history of the exception. The predecessor to section 605(a)(3) in the Senate bill was an exception for “other regulated substances” (such as HCFCs) that are

“used to maintain and service household appliances or commercial refrigeration units manufactured prior to January 1, 2015.” The House amendment contained identical language. While the language that emerged in the Conference Agreement is less specific, we can infer that this exception was intended to address, at a minimum, maintenance and servicing needs.

As noted above, EPA interprets the 605(a) use ban to cover initial charges as well as maintenance and servicing. As written, the section 605(a)(3) exception would permit some newly manufactured appliances (*i.e.*, those manufactured prior to January 1, 2020) to be charged with virgin HCFCs following the effective date of the use ban. In the 1993 phaseout rule, however, EPA banned production and import of HCFC-22 and HCFC-142b, effective January 1, 2010, for use in appliances manufactured after 2009. EPA also indicated that it intended to ban use of virgin HCFC-22 and HCFC-142b in such appliances. Consistent with decisions made in the 1993 rule, EPA is proposing, for HCFC-22 and HCFC-142b, to apply the section 605(a)(3) exception only to the use of these HCFCs in appliances manufactured before 2010. Such use would consist of servicing and maintenance of these appliances. EPA notes that servicing could entail a wide range of activities including replacing parts or components. For the low ODP-refrigerants covered by 82.16(d), however, EPA is proposing to apply the section 605(a)(3) exception to the use of HCFCs in equipment manufactured before January 1, 2020, which would allow initial charging of equipment for a limited period as well as servicing and maintenance uses. For those refrigerants, 82.16(d) bans production and import effective January 1, 2015 for use in appliances manufactured after 2019.

EPA notes that the exception at section 605(a)(3) limits introduction into interstate commerce and use to situations where the HCFC: “is used as a refrigerant in appliances manufactured prior to” the specified date. Section 601 defines appliance as “any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.” EPA recognizes many devices meet the section 601 definition of appliance. For example, commercial refrigeration includes the retail food and cold storage sectors. Industrial process refrigeration includes customized appliances used in

the chemical, pharmaceutical, petrochemical and manufacturing industries. Other types of appliances include household refrigerators and freezers; chillers; water coolers; vending machines; residential and light commercial heat pumps; residential dehumidifiers; unitary systems; and commercial ice machines. Under the SNAP program and regulations promulgated under § 608, EPA has recognized the differences in these appliances and in some cases has found substitute refrigerants acceptable for some appliances but not others or established different control thresholds such as different leak rate requirements. For the purposes of this action, EPA has considered the definition of appliance carefully, particularly evaluating at what point a device becomes a manufactured appliance. EPA believes that the difference in types of appliances affects the point when manufacture is complete.

Through this action, EPA is providing an interpretation of section 605(a) under which air-conditioning and refrigeration appliances are “manufactured” when the refrigerant loop is completed, the appliance can function, the appliance holds the complete and proper charge, and is ready for use for its intended purposes. For refrigerators and room air-conditioners, manufacture may be complete while the appliance is still at a manufacturing facility. For instance, if such an appliance has been pre-charged with the desired amount of refrigerant, has gone through the entire manufacturing line so that all mechanical, electrical, labeling and painting/marketing procedures are complete, and is ready to be packaged and shipped, and is a “stand-alone” piece of equipment (*i.e.*, it only needs to be plugged into an electrical outlet and turned on to function properly), then EPA would consider the appliance as “manufactured.” The situation differs, however, for other appliances, such as commercial refrigeration and industrial process refrigeration, involving more complex installation processes. Such devices are field charged with refrigerant; the refrigerant loop typically is completed onsite, and—particularly with industrial process refrigeration—the parts are custom-built. EPA would consider these field-charged appliances “manufactured” at the point installation of all parts is completed and fully charged refrigerant (whether or not the appliance had started operation). For some appliances, such as condensing (outside) units for split-system air conditioners, refrigerant charge is often included in the product during the

manufacturing process but then is typically adjusted in the field to account for different line sizes and indoor unit configurations. EPA would consider the “manufacture” of this type of appliance similar to that for field-charged equipment; that is, manufacture would not be complete until the device is installed in the field, connected with the indoor unit, and charged to the proper level.

EPA does not interpret “use” to include destruction, recovery for disposal, discharge consistent with all other regulatory requirements or other similar actions where the substance is part of a disposal chain. At the point disposal-related actions occur, other statutory and regulatory provisions generally govern. For example, Congress addressed the issue of disposal under section 608. EPA has promulgated regulations to implement section 608 for appliances: These safe disposal requirements are codified at 40 CFR part 82 subpart F. In some instances, HCFCs may need to be introduced into interstate commerce in order to reach an appropriate destruction facility. Consistent with its interpretation of “use,” EPA is interpreting the interstate commerce prohibition to exclude introduction into interstate commerce for the purpose of destruction.

As noted above, the current regulatory provisions already preclude production or import of HCFC–22 and HCFC–142b in 2010 and beyond for purposes that are not exempted at § 82.16(c) consistent with section 605(a).<sup>9</sup> However, EPA is proposing through this action to amend § 82.15 to add prohibitions that specifically preclude any person from introducing into interstate commerce or using (according to the interpretations above) any HCFCs for purposes that are not consistent with section 605. EPA believes that this is appropriate because section 605(a) specifically bans use and introduction into interstate commerce. In addition, under the current regulatory structure the prohibitions apply to the producer or importer of the HCFC compounds. The provisions EPA is proposing to add to the regulations would apply to manufacturers of appliances and other HCFC products, as well as anyone who services such products. EPA requests comments on adding these prohibitions and on its interpretation of section 605(a).

Finally, EPA is proposing revisions to its regulations on export production allowances to ensure consistency with

section 605(a). Export production allowances allow an HCFC that is subject to a domestic phaseout to be produced for export to Parties that continue to allow imports of that substance (40 CFR 82.18(b)). Currently, entities that hold baseline production allowances for HCFC–141b are allocated export production allowances equal to 100 percent of their baseline production allowances. EPA is proposing to sunset this provision on December 31, 2009, in order to avoid a conflict with the section 605(a) restrictions on use and introduction into interstate commerce. Under the proposed interstate commerce definition, “introduction into interstate commerce” would include release of HCFCs by the domestic manufacturer for distribution and transport prior to export. EPA is not proposing to allocate export production allowances for any other HCFCs. EPA seeks comment on the sunset of provisions for export production allowances.

#### IV. Statutory and Executive Order Reviews

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

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action.” Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

EPA did not conduct a specific analysis of the benefits and costs associated with this NPRM. Many previous analyses provide a wealth of information on the costs and benefits of the U.S. HCFC phaseout including:

- The 1993 *Addendum to the 1992 phaseout regulatory impact analysis: Accelerating the phaseout of CFCs, halons, methyl chloroform, carbon tetrachloride, and HCFCs*.
- The 1999 Report *Costs and Benefits of the HCFC Allowance Allocation System*.
- The 2000 Memorandum *Cost/Benefit comparison of the HCFC Allowance Allocation System*.
- The 2005 Memorandum *Recommended scenarios for HCFC phaseout costs estimation*.
- The 2006 ICR *Reporting and Recordkeeping Requirements of the HCFC Allowance System*.

- The 2007 Memorandum *Preliminary estimates of the incremental cost of the HCFC phaseout in Article 5 countries*.

- The 2007 Memorandum *Revised Ozone and Climate Benefits Associated with the 2010 HCFC Production and Consumption Stepwise Reductions and a Ban on HCFC Pre-charged Imports*.

Copies of these documents and a summary memorandum is available in the docket.

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA already requires recordkeeping and reporting requirements and through this action is not proposing to amend those provisions. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 subpart A under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0498. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

##### C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposal on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This proposal will affect the following categories:

<sup>9</sup> As discussed earlier in this action, there is an additional exception for production to meet the

basic domestic needs of Article 5 countries, consistent with section 605(d).

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing .....	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers.
Chlorofluorocarbon gas importers .....	325120	2869	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas exporters .....	325120	2869	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters.
Manufacturers of air conditioners and refrigerators	333415		Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
Importers of air conditioners and refrigerators .....	333415	3585	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.

After considering the economic impacts of the proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA is not proposing to change the methodology for the 2010–2014 control periods. Instead, EPA is continuing to allocate production and consumption allowances using the same approach currently used for control periods 2003–2009. Thus the 13 small businesses eligible for allowances for HCFC–22 and HCFC–142b identified in that rulemaking (68 FR 2845) are still eligible for allowances under this rule. In addition, small businesses eligible for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb using the same methodology, will also be eligible for allowances. EPA is not proposing any changes to the recordkeeping or reporting provisions and thus will not have any impact on the burden to these businesses.

While EPA does not believe this proposal will have a significant economic impact on a substantial number of small entities, nonetheless, EPA continues to try to reduce further any impacts on small entities. With respect to the allowance allocation system as a whole, EPA is proposing to continue to provide flexibility. Consistent with the methodology for establishing baselines for HCFC–141b, HCFC–22, and HCFC–142b, while small entities will be on the same footing as larger entities, EPA is again proposing to use the highest year of consumption. EPA is also to limit consideration of company-specific baseline adjustments to reflect permanent inter-company or inter-pollutant transfers made prior to June 16, 2008 as discussed elsewhere in the preamble to avoiding skewing baselines to entities with ample resources or access to information. EPA also believes that the ability to transfer allowances among entities provides the greatest flexibility for small entities to manage their allocation. As noted in the 2003 allocation (68 FR 2846), unlike with the class I substances, there is no restriction to limit inter-pollutant

transfers to groups of substances. Both inter-pollutant and inter-company transfers of allowances are possible, either on a calendar-year or permanent basis. A small entity can opt for short-term or long-term decisions concerning the allowances it holds after evaluating its place in the overall market. EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act*

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The requirements already established at 40 CFR part 82 subpart A already govern the production, import, and export of ODS. The regulatory changes for the next major milestone in the general phaseout continue to implement the same general framework previously established. EPA does not anticipate that this proposed rulemaking will have any significant direct impacts or State, local and tribal governments or private sector entities. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule would apportion production and consumption allowances and establish baselines for private entities, not small governments.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include

regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today’s proposal is expected to primarily affect producers, importers, and exporters of HCFCs. Thus, the requirements of section 6 of the Executive Order do not apply. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposal does not significantly or uniquely affect the communities of Indian tribal governments. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule.

#### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This action is not subject to EO 13045 (62 F.R. 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. The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assess results of early-life exposure to UV radiation.

This action proposes to reduce the potential continued use of Class II controlled substances and the emissions of such substances. It implements the United States commitment to reduce the total basket of HCFCs produced and imported to a level that is 75 percent below the respective baselines. While on an ODP-weighted basis, this is not as large a step as previous actions, such as the 1996 Class I phaseout, it is one of the most significant remaining actions the United States can take to complete the overall phaseout of ODS and further decrease impacts on children's health from stratospheric ozone depletion. EPA requests comments regarding the impacts of this proposal on the continued efforts to protect children's health.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed regulation predominately impacts HCFC production, imports, exports, and trades. The Agency has concluded that this rule is not likely to have any adverse energy effects.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected

populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. By allocating allowances for HCFCs and thus restricting the amount of HCFCs available as of January 1, 2010, this rule avoids emissions of these ozone-depleting substances, lessening the adverse human health effects for the entire population.

**List of Subjects in 40 CFR Part 82**

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

Dated: December 11, 2008.

**Stephen L. Johnson,**  
*Administrator.*

40 CFR part 82 is proposed to be amended as follows:

**PART 82—PROTECTION OF STRATOSPHERIC OZONE**

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

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

**Subpart A—Production and Consumption Controls**

2. Amend § 82.3 by adding in alphabetical order the definition of "Interstate Commerce" to read as follows:

**§ 82.3 Definitions for Class I and Class II Controlled Substances.**

\* \* \* \* \*

*Interstate Commerce* means the distribution or transportation of any controlled substance between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any controlled substance in more than one state, territory, possession or District of Columbia. The entry points for which a controlled substance is introduced into interstate commerce are the release of a controlled substance from the facility in which the controlled substance was manufactured, the entry into a warehouse from which the domestic manufacturer releases the controlled substance for sale or distribution, and at the site of United States customs clearance.

\* \* \* \* \*

3. Amend § 82.15 by revising paragraph (c) and adding paragraph (g) to read as follows:

**§ 82.15 Prohibitions for Class II Controlled Substances.**

\* \* \* \* \*

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

\* \* \* \* \*

(g) *Introduction into interstate commerce or use.* (1) Effective January 1, 2010, no person may introduce into interstate commerce or use HCFC-141b (unless used, recovered, and recycled) for any purpose except for use in a process resulting in its transformation or

its destruction; for export to Article 5 Parties under § 82.18(a); for HCFC-141b exemption needs; as a transshipment or heel; or for exemptions permitted in § 82.15(f).

(2) Effective January 1, 2010, no person may introduce into interstate commerce or use HCFC-22 or HCFC-142b (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, 2010; for export to Article 5 Parties under § 82.18(a); as a transshipment or heel; or for exemptions permitted in § 82.15(f).

(3) Effective January 1, 2015, no person may introduce into interstate commerce or use HCFC-141b (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction; for export to Article 5 Parties under § 82.18(a), as a transshipment or heel; or for exemptions permitted in § 82.15(f).

(4) Effective January 1, 2015, no person may introduce into interstate commerce or use any class II controlled substance not governed by paragraphs (g)(1) through (3) of this section (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 export to Article 5 Parties under § 82.18(a); as a transshipment or heel; or for exemptions permitted in § 82.15(f).

(5) Effective January 1, 2030, no person may introduce into interstate commerce or use any class II controlled substance (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction; for export to Article 5 Parties under § 82.18(a); as a transshipment or heel; or for exemptions permitted in § 82.15(f).

(6) Effective January 1, 2040, no person may introduce into interstate commerce or use any class II controlled substance (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction, as a transshipment or heel, or for exemptions permitted in § 82.15(f).

4. Revise § 82.16(a) to read as follows:

**§ 82.16 Phaseout Schedule of Class II Controlled Substances.**

(a) In each control period as indicated in the following table, each person is granted the specified percentage of baseline production allowances and baseline consumption allowances for the specified Class II controlled substances apportioned under §§ 82.17 and 82.19:

Control period	HCFC-141b	HCFC-22	HCFC-142b	HCFC-123	HCFC-124	HCFC-225ca	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	35.2	4.9	125	125	125	125
2011 .....	0	35.2	4.9	125	125	125	125
2012 .....	0	35.2	4.9	125	125	125	125
2013 .....	0	35.2	4.9	125	125	125	125
2014 .....	0	35.2	4.9	125	125	125	125

\* \* \* \* \*

5. Revise § 82.17 to read as follows:

**§ 82.17 Apportionment of Baseline Production Allowances for Class II Controlled Substances.**

Effective January 1, 2010, the following persons are apportioned

baseline production allowances for HCFC-22, HCFC-141b, HCFC-142b, HCFC-123, HCFC-124, HCFC-225ca, and HCFC-225cb, as set forth in the following table:

Person	Controlled substance	Allowances (kg.)
AGC Chemicals Americas .....	HCFC-225ca .....	266,608
	HCFC-225cb .....	373,952
Arkema .....	HCFC-22 .....	46,692,336
	HCFC-141b .....	24,647,925
DuPont .....	HCFC-142b .....	484,369
	HCFC-22 .....	42,638,049
	HCFC-124 .....	2,269,210

Person	Controlled substance	Allowances (kg.)
Honeywell .....	HCFC-22 .....	37,378,252
	HCFC-141b .....	28,705,200
	HCFC-142b .....	2,417,534
	HCFC-124 .....	1,804,121
MDA Manufacturing .....	HCFC-22 .....	2,383,835
Solvay Solexis .....	HCFC-142b .....	6,541,764

6. Revise § 82.18(a) and (b) to read as follows:

**§ 82.18 Availability of Production in Addition to Baseline Production Allowances for Class II Controlled Substances.**

(a) *Article 5 allowances.*

(1) Effective January 1, 2003, a person apportioned baseline production allowances for HCFC-141b, HCFC-22, or HCFC-142b under § 82.17 is also apportioned Article 5 allowances, equal to 15 percent of their baseline production allowances, for the specified HCFC for each control period up until December 31, 2009, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(2) Effective January 1, 2010, a person apportioned baseline production allowances under § 82.17 for HCFC-141b, HCFC-22, or HCFC-142b is also

apportioned Article 5 allowances, equal to 10 percent of their baseline production allowances, for the specified HCFC for each control period up until December 31, 2019, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(3) Effective January 1, 2015, a person apportioned baseline production allowances under § 82.17 for HCFC-123, HCFC-124, HCFC-225ca, and HCFC-225cb is also apportioned Article 5 allowances, equal to 10 percent of their baseline production allowances, for the specified HCFC for each control period up until December 31, 2019, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(b) *Export Production Allowances.*

(1) Effective January 1, 2003, a person apportioned baseline production

allowances for HCFC-141b under § 82.17 is also apportioned export production allowances, equal to 100 percent of their baseline production allowances, for HCFC-141b for each control period up until December 31, 2009 to be used for the production of HCFC-141b for export only, in accordance with this section.

(2) [Reserved]

\* \* \* \* \*

7. Revise § 82.19 to read as follows:

**§ 82.19 Apportionment of Baseline Consumption Allowances for Class II Controlled Substances.**

(a) Effective January 1, 2010, the following persons are apportioned baseline consumption allowances for HCFC-22, HCFC-141b, HCFC-142b, HCFC-123, HCFC-124, HCFC-225ca, and HCFC-225cb, as set forth in the following table:

Person	Controlled substance	Allocation (kg)
ABCO Refrigeration Supply .....	HCFC-22 .....	279,366
AGC Chemicals Americas .....	HCFC-225ca .....	285,328
	HCFC-225cb .....	286,832
Altair Partners .....	HCFC-22 .....	302,011
	HCFC-22 .....	48,637,642
Arkema .....	HCFC-141b .....	25,405,570
	HCFC-142b .....	483,827
	HCFC-124 .....	3,719
Automatic Equipment Sales .....	HCFC-22 .....	54,088
Condor Products .....	HCFC-22 .....	74,843
	HCFC-124 .....	3,746
Continental Industrial Group .....	HCFC-141b .....	20,315
Coolgas, Inc .....	HCFC-141b .....	16,097,869
	HCFC-123 .....	20,000
Coolgas Investment Property .....	HCFC-22 .....	590,737
Discount Refrigerants .....	HCFC-22 .....	375,328
	HCFC-141b .....	994
Dupont .....	HCFC-22 .....	38,814,862
	HCFC-141b .....	9,049
	HCFC-142b .....	52,797
	HCFC-123 .....	2,933,906
	HCFC-124 .....	743,312
Full Circle .....	HCFC-22 .....	14,865
H.G. Refrigeration Supply .....	HCFC-22 .....	40,068
Honeywell .....	HCFC-22 .....	35,392,492
	HCFC-141b .....	20,749,489
	HCFC-142b .....	1,315,819
	HCFC-124 .....	1,284,265
ICC Chemical Corp .....	HCFC-141b .....	81,225
ICOR .....	HCFC-124 .....	81,220
Ineos Fluor Americas .....	HCFC-22 .....	2,546,305
Kivlan & Company .....	HCFC-22 .....	2,081,018
MDA Manufacturing .....	HCFC-22 .....	2,541,545
Mondy Global .....	HCFC-22 .....	281,824
National Refrigerants .....	HCFC-22 .....	5,528,316
	HCFC-123 .....	72,600

Person	Controlled substance	Allocation (kg)
Refricenter of Miami .....	HCFC-124 .....	50,380
Refricentro .....	HCFC-22 .....	381,293
R-Lines .....	HCFC-22 .....	45,979
Saez Distributors .....	HCFC-22 .....	63,172
Solvay Fluorides .....	HCFC-22 .....	37,936
	HCFC-22 .....	3,781,691
	HCFC-141b .....	3,940,115
Solvay Solexis .....	HCFC-142b .....	194,536
Tulstar Products .....	HCFC-141b .....	89,913
	HCFC-123 .....	34,800
	HCFC-124 .....	229,582

(b) [Reserved]

[FR Doc. E8-29965 Filed 12-22-08; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

[EPA-HQ-OAR-2007-0163; FRL-8752-6]

RIN 2060-AH67

### Protection of Stratospheric Ozone: Ban on the Sale or Distribution of Pre-Charged Appliances

**AGENCY:** Environmental Protection Agency [EPA].

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to ban the sale or distribution of air-conditioning and refrigeration appliances containing HCFC-22, HCFC-142b, or blends containing one or both of these substances, beginning January 1, 2010. In addition, EPA is proposing to extend these requirements to air-conditioning and refrigeration appliances that are suitable only for use with newly produced HCFC-22, HCFC-142b, or blends containing one or both of these controlled substances as the refrigerant, and pre-charged appliance parts. We are proposing these restrictions to protect stratospheric ozone.

**DATES:** Comments must be received on or before January 22, 2009, unless a public hearing is requested. Comments must then be received on or before February 6, 2009. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Standard Time on January 2, 2009. If a hearing is held, it will take place on January 7, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2007-0163, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov).
- *Fax:* 202-566-1741.
- *Mail:* Docket #, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Docket #EPA-HQ-OAR-2003-0163, Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2007-0163. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of

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**SUPPLEMENTARY INFORMATION:** (1) Under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol), as amended, the U.S. and other industrialized countries that are Parties to the Protocol have agreed to limit production and consumption of hydrochlorofluorocarbons (HCFCs) and to phase out consumption in a step-wise fashion over time, culminating in a complete phaseout in 2030. Title VI of the Clean Air Act Amendments of 1990 (CAAA) authorizes EPA to promulgate regulations to manage the consumption and production of HCFCs until the total phaseout in 2030. EPA promulgated final regulations establishing an allowance tracking system for HCFCs on January 21, 2003 (68 FR 2820). These regulations were amended on June 17, 2004 (69 FR 34024) and July 20, 2006 (71 FR 41163). This action proposes a ban on sale or distribution of air-conditioning and refrigeration appliances that contain HCFC-22, HCFC-142b, or blends containing one or both of these controlled substances. In addition, EPA is proposing to extend these requirements to air-conditioning and refrigeration appliances that are suitable only for use with newly produced HCFC-22, HCFC-142b, or blends containing one or both of these controlled substances as the refrigerant.

(2) Abbreviations and Acronyms Used in This Document.

CAAA—Clean Air Act Amendments of 1990  
CFC—chlorofluorocarbon  
HCFC—hydrochlorofluorocarbon