

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

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

2. Exports to Article 5 Countries

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

January 1, 2030 through December 31, 2039.

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

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

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

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

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

1. Petition for Each Individual Shipment

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

2. Threshold Quantity Requiring a Petition

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

3. Information Requirements

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

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