

equipment to verify that the quantity a petitioner wants to import could have been recovered from that equipment during the normal course of its operation. In general, the Agency has access to technical specifications for most equipment, including their typical ODS "charge" or amount of ODS they can hold. Over the years, the Agency has received many petitions to import tens of metric tonnes of an ODS claimed to have been recovered from specific equipment when the equipment's specifications indicated that the amount specified in the petition would not typically have been held in, or recovered from, the specific equipment (even in leaky, malfunctioning situations) over a 10-year period. Based on these kind of analyses, and contact with the source facility, EPA has been able to object to petitions. The Agency also wants to note that most petitions received to date have included this information. Finally, EPA believes that the petitioner must take some responsibility for ensuring that the ODS was previously used before submitting a petition, and to do this the petitioner should follow the chain of custody of the material back to the source facility and equipment from which it was recovered. This diligence in tracing ODS back to the source facility would allow a petitioner to include the specific information about the equipment from which it was recovered. Because U.S. obligations under the Protocol limit imports to zero after the phaseout, the Agency's ability to independently verify that a quantity of ODS was, in fact, recovered at a source facility from specific equipment is the most critical step in ensuring the U.S. compliance under the international treaty.

Several commenters on proposed changes to the petition process for used class I substances took issue with the proposed requirement that the importer submit " * * * a copy of the contract for the purchase of the controlled substance that includes the name, address, contact person, phone number and fax number of the purchaser." The commenters requested that EPA clarify this information requirement, which appeared both in the proposed changes to the class I petition process and in the proposed class II petition process. EPA intended that the petitioner provide a copy of the contract for the purchase of the controlled substance by the ultimate user in the United States. The commenters argued that in many cases the petitioner does not know the ultimate purchaser of the material at the time the petition is being submitted. EPA believes that in some instances the

importer of a used controlled substance will already know the purchaser, but this will not always be the case. Therefore, EPA is revising the proposed language so that the final requirement reads: "A description of the intended use of the used control substance, and when possible, the name, address, contact person, phone number and fax number of the ultimate purchaser in the United States."

One commenter on the proposed petition process for class II controlled substances noted that equipment is commonly "top charged," meaning a little material is added to the equipment. This was in response to the requirement that the importer supply the date the material was put into equipment at each source facility and that the material must have remained in the equipment for at least 24 months prior to recovery. The commenter requested that EPA clarify whether a refrigeration system that is top charged within 24 months of the material's proposed import date may be imported as used material. In § 82.24(c)(3)(iv), EPA proposed the 24 month period for an HCFC to be considered "used" in order to make certain that imported HCFCs were actually employed in a working system (e.g., as a refrigerant). Several commenters on the identical proposed change to the petition process for used class I substances pointed out that the phrase "dated documents," as used in this proposed requirement, is ambiguous. The proposed information requirement in (iv) was, "A detailed description of the previous use of the controlled substance at each source facility and dated documents indicating the date the material was put into the equipment at each source facility (material must have remained in the equipment at least 24 months prior to recovery to be considered previously used)". The commenters suggested that the phrase "dated documents" needs clarification as to whether the Agency is seeking documents dated at the time the ODS was put into the equipment or documents dated at the time a person submits a petition certifying, to the best of their knowledge, when the ODS was put into the equipment. In addition, several commenters expressed concern that finding documents that are dated from the time the ODS was put into the equipment may be virtually impossible because enterprises only keep documents for a limited number of years and the equipment could have been filled with the ozone-depleting substance many years ago. Commenters on the proposed changes to the petition process for class I substances also

pointed out a number of practical objections to the proposed requirement that the ODS must have remained in the equipment for at least 24 months. Two commenters on those proposed changes suggested that instead of requiring documents regarding the date when the controlled substance was put into equipment EPA could request such documents be submitted, when possible, but at a minimum require the petitioner to certify a "best estimate" of the length of time that the ODS was in the equipment. EPA believes that these are useful suggestions. In addition, EPA believes that the practical realities cited by commenters regarding a minimum residence time for the ODS in equipment makes such a requirement unworkable. Thus, instead of retaining the language from the proposal, EPA is adopting the following language in today's final action: "A detailed description of the previous use of the controlled substance at each source facility and a best estimate of when the specific controlled substance was put into the equipment at each source facility, and, when possible documents indicating the date the material was put into the equipment."

4. Timing for Review of a Petition

Based on its experiences with the 15 working-day time limit for processing petitions to import used CFCs, EPA proposed forty (40) working days to allow more time for the review of petitions to import used HCFCs. The period for review would begin on the working day after EPA's Global Programs Division receives the petition, with no automatic approval. The proposed 40 working-day period is an effort to balance responsiveness and thoroughness in review of the petition. While EPA will make every effort to respond to the petitioner within the 40 working-day period, a lack of response does not constitute a grant of authority to import. A commenter stated that given the large amount of data requiring verification, it may be difficult for EPA to verify the information within two months. EPA believes that 40 working days will be adequate to review each petition in all but exceptional cases, based on EPA's experience processing petitions to import used CFCs. The provisions are finalized as proposed.

5. Reasons for Issuing an Objection Notice

Since 1994, EPA has worked with the Department of Justice, the Internal Revenue Service, the Customs Service, the State Department, and the Department of Defense to confirm the information in petitions to import used