

CFCs. Based on this experience, EPA proposed a list of reasons for issuing an objection notice to a petition to import used HCFCs.

EPA proposed five reasons for issuing an objection notice that are included in today's action. Reason (A) is a lack of sufficient information. Reason (B) is the submission of false or misleading information. If the transaction appears to be contrary to the provisions of the *Vienna Convention on Substances that Deplete the Ozone Layer*, the Montreal Protocol and Decisions by the Parties, or the Protocol's non-compliance procedures, EPA may issue an objection notice pursuant to reason (C).

Under reason (D), EPA may issue an objection notice if the exporting country has not granted an export license for the shipment. Finally, under reason (E), EPA may disallow a petition to import used HCFCs from an Article 5 country that has reclamation facilities subsidized by the Multilateral Fund (MLF).

In the proposed rule, reason (B) for issuing an objection notice read as follows: "If the Administrator determines that any portion of the petition contains false or misleading information or has reason to believe that the petition contains false or misleading information." One of the commenters on the proposed changes to the petition process for class I substances stated that an EPA objection under reason (B) might be "based on unsubstantiated allegations or unfounded belief." EPA agrees that the phrase "has reason to believe" may be too vague. Thus, in today's action, EPA is modifying reason (B) for issuing an objection notice to read: "If the Administrator determines that any portion of the petition contains false or misleading information, or the Administrator has information from other U.S. or foreign government agencies indicating that the petition contains false or misleading information."

EPA received one comment on its proposal to issue an objection notice for any petition to import used HCFCs from an Article 5 country that has reclamation facilities subsidized by the MLF. The intent of the MLF was to allow Article 5 countries to reclaim used HCFCs for their domestic needs. The commenter stated that there were technically valid reasons for allowing imports of used HCFCs from Article 5 countries that had MLF reclamation facilities. That commenter believed that most of those facilities were simple and not capable of technically complex reclamation. However, the complexity of HCFC reclamation from Article V countries' equipment and appliances

has no bearing on the proposed petitioning process, because the process only applies to the import of used HCFCs and not the import of equipment containing HCFCs; therefore, EPA is finalizing this proposed basis for issuing an objection notice. EPA would not want to circumvent the efforts of Article 5 countries in establishing their own HCFC management plans. EPA believes that if it allowed the import of used HCFCs from such Article 5 countries that this action might jeopardize the countries' efforts to properly handle used HCFCs and reduce their domestic demand for newly produced material. In today's final action, this reason for objection appears as reason (E).

EPA proposed two reasons for issuing an objection notice that are not included in today's final action. In the proposed rule, reason (F) was: "If the Administrator has received information indicating that a person listed in the petition has produced at any time false information regarding trade in class II controlled substances as defined in this subpart, including information required by EPA or required by the appropriate government agency in the exporting country." Reason (G) was: If the Administrator has received information indicating that a person listed in the petition is in violation of a requirement in any regulation under Title VI of the Clean Air Act." Commenters on the proposed changes to the petition process for class I substances objected to the likely use of "hearsay" and information "incorrectly or maliciously" provided to EPA during its petition review. EPA agrees that the potential for abuse of these reasons by competitors or disgruntled employees is too great. Thus, reasons (F) and (G) are not being included in today's action.

In addition, in this final action EPA has combined two reasons relating to the exporting country's desire not to allow the export. Reason (D) is sufficiently broad to cover both a refusal to grant an export license in a particular instance and a general policy of not allowing exports.

Finally, EPA is modifying the proposed language for § 82.13(g)(3)(iv) to clarify that it is retaining the discretion not to object to a petition. The new language states: "In cases where the Administrator does not object to the petition based on the criteria listed in paragraph (c)(4)(i) of this section, the Administrator will issue a non-objection notice."

#### 6. Petition and Non-Objection Letter To Accompany the Shipment

EPA proposed requiring that the petition and the non-objection notice

from EPA accompany each shipment through U.S. Customs in the belief that this would facilitate clearance through customs. One commenter believed that in most circumstances no documentation other than labeling accompanies the shipment. This commenter also believed that the paperwork and the shipment are not processed simultaneously and suggested that EPA should require that the documentation be sent to the freight forwarder and accompany the bill of lading. In saying that the non-objection notice must accompany the shipment, EPA intends to require that the non-objection notice be submitted and reviewed by U.S. Customs with all documentation associated with a shipment, *i.e.*, the bill of lading and Customs entry form. EPA respectfully disagrees with the commenter's belief that the paperwork does not accompany the shipment as it passes U.S. Customs. EPA frequently receives calls from U.S. Customs port inspectors asking questions about individual shipments of CFCs that are at the port, when the associated bill of lading and Customs entry form are not accompanied by the EPA non-objection notice. When there is no EPA non-objection notice issued for such a shipment, it is seized by U.S. Customs as an illegal import in violation of regulations under authority of the CAA. However, when U.S. Customs inspectors call EPA and the non-objection notice accompanies the bill of lading and the Customs entry form, it is an easier process to "clear" the shipment. The Agency wants to note that the commenter did not provide a rationale for why the non-objection notice should not accompany the shipment through U.S. Customs. Because the petitioner must receive the non-objection notice *before* the shipment leaves the foreign country of export, timing cannot be the reason for not including a non-objection notice with a shipment's entry through U.S. Customs. EPA believes requiring that the non-objection notice accompany the shipment's entry will expedite HCFC imports through U.S. Customs.

#### J. Will There be New Restrictions on Imports To and Exports From Specific Parties?

At the eleventh meeting in 1999, the Parties agreed to an amendment to the Protocol requiring that, beginning January 1, 2004, each Party shall ban HCFC imports from and exports to countries that have not ratified the amendments with control measures for HCFCs relevant to that country. This ban reflects a strategy by the Parties to encourage ratification of the Protocol