

were able to comply with this request, allowing EPA to track whether domestic consumption was close to the U.S. consumption cap. However, EPA wishes be responsive to the commenters' concern that 15 days is insufficient time. Therefore, with today's action, EPA is requiring reporting within 30 days after each quarter. EPA believes that this is a sufficient period of time to allow companies to gather the information and ensure its accuracy before submission to EPA. EPA has decided not to retain the current 45-day reporting requirement because of the continuing need to monitor compliance with the U.S. consumption cap as closely as possible.

Three commenters were concerned that certain proposed reporting requirements may involve the provision of highly confidential business information. EPA will treat all business information submitted under the HCFC reporting requirements in accordance with the confidential business information provisions at 40 CFR Part 2, Subpart B.

One commenter suggested that supplying hard copies of the records EPA requires, such as the quarterly reports, may demand more human resources than anticipated since these documents are not readily available through normal business electronic systems. EPA has doubled the reporting period from the proposed 15 days to 30 days to allow more time for filing quarterly reports. This commenter suggested that allowance holders with computer records be allowed to supply a minimal number of hard copies and allow the computerized records to provide the first level of recourse to resolve discrepancies. EPA is making the forms available electronically, as a first step. In addition, EPA is working to make it possible for people to complete the forms electronically with special guidance on a "file naming protocol." EPA wants to create this "file naming protocol" so forms completed electronically by producers and importers can be saved with similar nomenclature for transmission to EPA by email. For example, the company, Acme Ltd., might complete the third-quarter importer's report electronically and save the document with the name 3Q_ImpR_Acme and send it, by email, to EPA. The Agency believes guidance on a "file naming protocol" will ease the process for electronically filing, searching and identifying forms for both the Agency and companies, and be especially helpful if a question arises about information in a specific form. EPA will strive to have forms available that can be completed electronically by

the regulatory deadline for submission of the first-quarter reports (30 days after the end of the quarter in 2003), and will make every effort to have them available no later than for submission of second-quarter reports. Concurrent with the process for making it possible to electronically complete forms for submission by email, EPA is pursuing technical and logistical questions about creating a secure Web-based system for direct electronic reporting of data. If EPA deems that it is feasible and efficient to create a secure Web-based database for direct electronic reporting, then EPA will work to bring such a system online by 2004. This commenter also suggested that records should be maintained for two years rather than the three years proposed by EPA. However, 3 years is the standard retention period for records concerning both class I and class II controlled substances. (40 CFR 82.13(d)). EPA is not changing this pre-existing requirement in this final rule.

In order to ensure that EPA reports accurate information to the Montreal Protocol on behalf of the U.S., the Agency requires that companies send revisions to reports no more than 180 days after the due date for the specific report. EPA reports data on U.S. national production and consumption of controlled substances in accordance with obligations under Article 7 of the Montreal Protocol. This information is used by the Parties to assess compliance with phaseout obligations under Article 2 of the Protocol. To ensure accuracy in U.S. data reported under Article 7 of the Protocol, EPA requests that companies limit revisions to their reporting to no longer than 180 days after the required submission date under § 82.24.

1. Producers

For determining violations, EPA proposed to assume a company had produced at full capacity during a control period if the producer failed to keep records of production or failed to submit reports on production for that control period. One commenter suggested that EPA consider notifying the company and allow the company 30 days in which to comply before assuming the company had produced at full capacity. The commenter believed that such a grace period would alleviate a potentially harsh sanction for inadvertent non-compliance or difficulty in obtaining the required information in a timely manner. If a producer determines that it is unable to report in 30 days because of difficulty in obtaining information, it should immediately notify EPA and give EPA an estimate of when it can comply with the reporting requirements. U.S.

producers have been required to report to EPA since 1996 but inadvertent non-compliance after many years of experience may still occur. EPA currently contacts producers after the end of the reporting period if a report has not been filed. Under the new 30-day reporting period, companies will be notified if a report has not been received after 30 days due to inadvertent non-compliance. The producer will be allowed an additional 15 days in which to file a report, after which the determination of violations will begin.

One commenter wondered whether a bill of lading would be sufficient verification of an export to an affiliate in an Article 5 country for expending Article 5 allowances since EPA proposed requiring written verification. For recordkeeping purposes, EPA will accept a bill of lading as proof of export to an affiliate in an Article 5 country.

Two commenters believed that the 100-pound recordkeeping threshold for spills or releases of HCFCs should not include Toxic Release Inventory quantities for fugitive emissions. EPA agrees that producers need not include Toxic Release Inventory quantities for fugitive emissions. In addition, EPA is clarifying that this recordkeeping requirement applies only to spills or releases that occur while the producer has title to the chemical.

With respect to the proposed reporting requirement at § 82.24(b)(1)(vi), a producer pointed out that it sometimes sells to wholesalers who may export a portion of the shipment intended for transformation or destruction and the producer may not be aware of it. The commenter believed that producers should not be accountable for reporting these sales and that their responsibility should be limited to those shipments where the "Ship to" destination is to a foreign entity. EPA agrees that the producer need only report the names and quantities of HCFCs exported by that producer and has removed the phrase "or by other U.S. persons" from the reporting requirement.

2. Exporters

A producer that manufactures for the export market questioned whether it needed to supply the source of the HCFC and the date it was purchased if it was shipping directly to its own affiliate in another country. EPA believes interactions between a U.S. producer and an overseas affiliate probably generate some form of paperwork to document the manufacture of an HCFC that is subsequently exported to the affiliate. The producer/exporter may substitute