

this paperwork that is already generated to document an "order" for an HCFC to be exported to an overseas affiliate in lieu of an invoice.

3. Transformation and Destruction

Three commenters requested that EPA clearly state that HCFCs used as feedstocks; HCFC heels in tank trailers, cylinders, and drums; and used HCFCs are exempted from the rule. Two of the three commenters suggested eliminating the proposed recordkeeping and reporting requirements associated with these exemptions. Section 82.15 (prohibitions for class II control substances) in the rule exempts the production and import of HCFCs for transformation or destruction purposes. That same section exempts the import of transshipments, heels, and used HCFCs from the prohibitions. EPA believes no further clarification of these exemptions is necessary. Although there are no allowances associated with feedstock, heels, and used HCFCs, the Protocol requires reporting of these quantities by each of the Parties. Therefore, EPA needs to obtain basic information regarding such activities. Accordingly, EPA is adopting the reporting and recordkeeping requirements as proposed.

Another commenter on the proposed requirement that producers maintain dated records for HCFCs used as feedstock proposed that production records be enough to satisfy this requirement. Under the Protocol and CAA, quantities of HCFCs used for feedstock are exempt from calculations of production and consumption. However, in accordance with obligations under the Protocol EPA must report the total amount of HCFCs produced, imported and exported for use as a feedstock during a calendar year to the Parties. The intent of monitoring feedstock quantities is to ensure there is no abuse of the exemption. Because feedstock quantities can be produced, imported and exported in one year and may not actually be transformed during that same calendar year EPA is retaining the requirement that producers, importers and exporters submit a transformation verification for class II controlled substance as proposed.

A commenter on reporting requirements for those purchasing HCFCs for transformation felt a change in timing for transformation should not require a revised verification since inventory fluctuations might influence the decision to transform. The proposed requirement calls for a "period of time over which the person intends to transform" the HCFCs rather than a

specific date. The person reporting may estimate the period of time during which the transformation might take place rather than report a specific date, however, the Agency is not requiring a re-submission of the verification as proposed if the timing happens to change.

A commenter on the reporting of transformation or destruction believed that submitting invoices or sales agreements 15 days after the end of the quarter might be difficult and suggested that this be changed to a recordkeeping requirement. EPA has expanded the reporting period from 15 days to 30 days to allow the exporter more time to submit the required paperwork. This is especially important at the end of the fourth quarter, when the annual figures are compiled and any discrepancies might occur. EPA is retaining this as a reporting, rather than a recordkeeping, requirement in order to meet U.S. reporting obligations under the Protocol.

4. Heels

One producer suggested that heel weights be excluded from the reporting requirements in § 82.24(f) since the company does not normally record these quantities in rail car shipments or tank trucks. The commenter adds that it is possible to record the heels remaining in rail cars because tare weights are assigned. The commenter feels that heels in tank trucks are irrelevant because customers are only billed for the net amount of HCFCs delivered. The commenter believes that reporting of heels that are not normally recorded will result in additional cost and provide little environmental benefit.

EPA believes that the supplier and the customer both possess information regarding the total mass (weight) for the container, whether it be a tank truck or a rail car. As suggested by the commenter, the residual quantity (heel) in a rail car is the difference between the empty weight of the rail car and the tare weight after a delivery. Suppliers very typically determine the weight of a rail car or tank truck after a delivery to be able to know the how much to bill the customer (weight before the delivery minus weight after the delivery = amount delivered). The residual quantity (heel) in a tank truck would be calculated in the same manner; the difference between the empty weight of the tank truck and the tare weight after the delivery. EPA believes that determining the residual quantity (heel) in this manner will not result in additional cost to the supplier.

The industry rule of thumb is that a heel is up to ten percent of the volume of the container. If the residual quantity

entering the United States is ten percent or less of the total volume, the residual quantity may be considered a heel. The supplier may certify that the heel will remain in the container and be included in a future shipment; be recovered and transformed; be recovered and destroyed, or be recovered for a non-emissive use. If the residual quantity entering the United States is greater than ten percent, then it may not be considered a heel and the importer will be required to expend consumption allowances. Non-reporting of residual quantities greater than ten percent of the total volume provides the supplier with additional consumption allowances it has not been granted and compromises the environmental benefits of the phaseout.

The commenter requests that EPA clarify that "heels" do not apply to small containers but only to bulk shipments because cylinders and small containers are by definition returned empty and are not weighed. In most cases, they are presumed empty; in some cases, they are vented to a thermal oxidizer before being refilled. No residual quantity, whether in small containers or large ISO tanks, can qualify as a heel unless it represents ten percent or less of the volume of the container.

The same commenter requested that the notice the Department of Transportation mandates in 49 CFR 172.203(e)(1&2) for bulk shipments precede the heel weight on the bill of lading. EPA agrees with the commenter that the heel weight may follow the notice "RESIDUE: Last Contained * * *" on the bill of lading.

The commenter noted that an invoice seldom accompanies a heel and that U.S.-mandated labeling of a shipping container from an Article 5 country may be a particular problem. EPA requests the heel weight be indicated on the bill of lading or the invoice to allow the importer more than one place on which to record the heel weight in case one or the other document is not available. EPA will monitor the ability of Parties, especially Article 5 countries, to include U.S.-mandated information on the documents accompanying heels to determine if further refinements are necessary.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the