**Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hazardous air pollutants, Incorporation by reference, Volatile organic compounds, Ozone.

Dated: November 14, 2002.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart P—Indiana**

2. Section 52.770 is amended by adding paragraph (c)(156) to read as follows:

**§ 52.770 Identification of plan.**

* * * * *

(c) * * *

(156) On April 3, 2000 the State submitted a revision to Indiana's State Implementation Plan to allow the Department of the Navy use of military specification coatings containing volatile organic compound (VOC) control requirements with content up to 5.45 pounds of VOC per gallon of coating less water for the projectile renovations operations in Building 2728 at the Naval Surface Warfare Center, Crane Division.

(i) Incorporation by reference.

(A) Part 70 Significant Source Modification No.: 101–11153–00005 as issued by the Indiana Air Pollution Control Board on October 12, 1999.

[FR Doc. 02–31669 Filed 12–30–02; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 82**

**[FRL–7428–2]**

**RIN 2060–AK44**

## Protection of Stratospheric Ozone: Additional Reconsideration of Petition Criteria and Incorporation of Montreal Protocol Decisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** With this action, EPA is making minor revisions to the accelerated phaseout regulations that govern the production, import, export, transformation and destruction of substances that deplete the ozone layer under the authority of Sections 604, 605, 606, and 614 of Title VI of the Clean Air Act Amendments of 1990 (CAA or the Act). As part of this action, EPA is clarifying the petition process for imports of used class I controlled substances. Today's amendments also reflect changes in U.S. reporting obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) due to a recent decision

by countries that are Parties to this international agreement. Additionally, in response to a petition submitted to EPA, the Agency is removing the requirement in the petition process for imports of used class I controlled substances that a person must certify knowledge of tax liability.

**EFFECTIVE DATE:** This rule is effective on January 30, 2003.

**ADDRESSES:** Materials supporting this rulemaking and comments are contained in Public Docket No. A–92–13, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The docket is located in Room M–1500, Waterside Mall (Ground Floor). Dockets may be inspected from 8am until 12 noon, and from 1:30 p.m. until 3 p.m., Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** The Stratospheric Ozone Protection Hotline at 1–800–269–1996 between the hours of 10 a.m. and 4 p.m. Eastern Standard Time, or Suzie Kocchi, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, (202)–564–5289, *kocchi.suzanne@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

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## I. What Is the Legislative and Regulatory Background of Phasing Out Production and Consumption of Controlled Substances that Deplete the Ozone Layer?

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone-depleting substances were promulgated by the Environmental Protection Agency (EPA or the Agency) in the **Federal Register** on December 20, 1994 (59 FR 65478), May 10, 1995 (60 FR 24970), August 4, 1998 (63 FR 41625), and October 5, 1998 (63 FR 53290). The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol).[1] The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 4, 1988. Congress then enacted, and President Bush signed into law, the Clean Air Act Amendments of 1990 (CAA or the Act) that included Title VI on Stratospheric Ozone Protection. Today's actions amend the existing EPA regulations published under Sections 604, 605, 606 and 614 of the CAA governing the production and consumption of ozone-depleting substances. Today's amendments are designed to ensure the U.S. meets its obligations under the Protocol and the CAA.

EPA derives its authority for today's action from sections 602, 604, 605, 606, and 614 of the CAA. One of today's changes is made to reflect a decision taken by the Parties to the Protocol. EPA is acting in accordance with section 614 of the CAA in amending the regulations to reflect this change. Section 614 of the CAA states that Title VI of the Act ''shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of [Title VI of the CAA] and any provision of the Montreal Protocol, the more stringent provision shall govern.'' Section 606 of the CAA allows EPA to accelerate the phaseout schedules found in sections 604 and 605 of the Act. Today's action adjusts the regulatory framework promulgated under section 606, while retaining the accelerated phaseout dates.

The requirements contained in the final rules published in the **Federal Register** on December 20, 1994 (59 FR 65478), May 10, 1995 (60 FR 24970), August 4, 1998 (63 FR 41625), and October 5, 1998 (63 FR 53290) establish an Allowance Program. The Allowance Program and its history are described in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on November 10, 1994 (59 FR 56276). The control and the phaseout of production and consumption of ozone-depleting substances as required under the Protocol and CAA are accomplished through the Allowance Program.

In developing the Allowance Program, EPA collected information on the amounts of ozone-depleting substances produced, imported, exported, transformed and destroyed within the United States for specific baseline years for specific chemicals. This information was used to establish the U.S. production and consumption ceilings for these chemicals. The data were also used to assign company-specific production and import rights to companies that were in most cases producing or importing during the specific year of data collection. These production or import rights are called ''allowances.'' Due to the complete phaseout of many of the ozone-depleting chemicals, the quantities of production allowances and consumption allowances granted to

[1] Several revisions to the original 1988 rule were issued on the following dates: February 9, 1989 (54 FR 6376), April 3, 1989 (54 FR 13502), July 5, 1989 (54 FR 28062), July 12, 1989 (54 FR 29337), February 13, 1990 (55 FR 5005), June 15, 1990 (55 FR 24490) and June 22, 1990 (55 FR 25812) July 30, 1992 (57 FR 33754), and December 10, 1993 (58 FR 65018).

companies for those chemicals were gradually reduced and eventually eliminated. Production allowances and consumption allowances continue to exist for only one specific class I controlled ozone-depleting substance—methyl bromide. All other production or consumption of class I controlled substances is prohibited under the Protocol and the CAA, but for a few narrow exemptions.

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the ''use'' of a controlled substance, but rather is defined as production plus imports minus export of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under these regulations, unless otherwise precluded under separate regulations.

The specific names and chemical formulas for the controlled ozone-depleting substances in the Groups of class I controlled substances are in Appendix A and Appendix F in Subpart A of 40 CFR Part 82. The specific names and chemical formulas for the class II controlled ozone-depleting substances are in Appendix B and Appendix F in Subpart A.

Although the regulations phased out the production and consumption of class I, Group II (halons) on January 1, 1994, and all other class I controlled substances (except methyl bromide) on January 1, 1996, a very limited number of exemptions exist, consistent with U.S. obligations under the Protocol. The regulations allow for the manufacture of phased-out class I controlled substances, provided the substances are either transformed, or destroyed. (40 CFR 82.4(b)) They also allow limited manufacture if the substances are (1) exported to countries listed under Article 5 of the Protocol, (2) produced for essential uses as authorized by the Protocol and the regulations, or (3) produced with destruction or transformation credits. (40 CFR 82.4 (b))

The regulations allow import of phased-out class I controlled substances provided the substances are either transformed or destroyed. (40 CFR 82.4(d)) Limited exceptions to the ban on the import of phased-out class I controlled substances also exist if the substances are: (1) Previously used, (2) imported for essential uses as authorized by the Protocol and the regulations, or (3) a transhipment or a heel. (40 CFR 82.4(d))

## II. What Is the Context for Today's Final Rule?

On August 4, 1998, EPA published a direct final rule and a concurrent notice of proposed rulemaking in the **Federal Register** (63 FR 41625, 63 FR 41652). EPA received comments on some portions of the rulemakings and therefore published a partial withdrawal of the direct final rule in the **Federal Register** on October 5, 1998 (63 FR 53290). In Part III of today's action, EPA responds to comments and describes the Agency's final action changing the Allowance Program in Subpart A of 40 CFR Part 82.

## III. What Are EPA's Responses to Comments?

### *A. What Is Happening to the Sections EPA Withdrew on October 5, 1998 (63 FR 53290) From the Direct Final Rule Published on August 4, 1998 (63 FR 41627)?*

1. The definition for individual shipment is contained in this rule.

2. The definition for non-objection notice is contained in this rule.

3. The definition for source facility is contained in this rule.

4. The definition for national security allowances is contained in the Notice of Proposed Rulemaking published in the **Federal Register** on July 20, 2001 (66 FR 38064).

5. The revision of newly designated 40 CFR 82.4(j), addressing the prohibition on the import of any used class I controlled substance by a person that has not received a non-objection notice, is contained in this rule.

6. The paragraph (t)(3) in newly designated 40 CFR 82.4(t) proposed allocating essential-use allowances for quantities of a specific class I controlled substance by means of a confidential letter for pre-2000 control periods, thus it is no longer applicable and is not contained in any rule.

7. The paragraph (u)(3) in newly designated 40 CFR 82.4(u), addressing national security production allowances for HCFC–141B, is contained in the Notice of Proposed Rulemaking published in the **Federal Register** on July 20, 2001 (66 FR 38064).

8. The paragraph (a)(5) in revised 40 CFR 82.9(a), addressing the baseline amounts for Article 5 production allowances, is contained in the direct final rule published in the **Federal Register** on November 28, 2000 (65 FR 70795).

9. The addition of 40 CFR 82.9(g), addressing national security production allowances for HCFC–141B, is contained in the Notice of Proposed Rulemaking published in the **Federal Register** on July 20, 2001 (66 FR 38064).

10. The addition of 40 CFR 82.12(a)(3), addressing essential-use allowances for metered-dose inhalers (MDIs), is contained in the direct final rule published in the **Federal Register** on March 13, 2001 (66 FR 14760).

11. The addition of 40 CFR 82.13(f)(2)(xvii), (g)(1)(xvii), and (g)(4)(xv) and the revision of newly designated 40 CFR 82.13(f)(3)(xiii), which relate to proposed recordkeeping and reporting for process agent uses of controlled substances, are not contained in this final rule because of a Decision by the Parties to the Protocol in the intervening time. The Agency will consider whether to take action to address process agent uses of controlled substances in future rulemakings.

12. The revision of 40 CFR 82.13 (g)(2) and (3), addressing the petition process for submitting a request to import a used class I controlled substance, is contained in this rule.

13. The revision of 40 CFR 82.13(u), addressing reporting requirements for essential use allowances, is contained in this rule.

### *B. What Are EPA's Responses to Comments Regarding the Petition Process To Import Used Controlled Substances?*

In the direct final rule and concurrent proposal published in the **Federal Register** on August 4, 1998, EPA set forth changes to the petition process for the import of used controlled substances. EPA's goal was to clarify existing provisions and to strengthen the Agency's ability to ensure that material is, in fact, previously used before it is imported. EPA received twelve comments on amendments to the petition process for importing used controlled substances and therefore withdrew all the amendments related to the petition process before the rule became effective on October 5, 1998.

The petition process for importing used controlled substances is found in various paragraphs (40 CFR 82.3 through 40 CFR 82.13) of the Stratospheric Ozone Protection Program. In responding to comments, this preamble begins with changes in Section 82.3—Definitions, then addresses comments on the changes in Section 82.4—Prohibitions, and finally, addresses comments on changes in Section 82.13—Recordkeeping and reporting requirements.

1. Section 82.3—What Are the Definitions for the Phrases ''Individual Shipment'', ''Non-Objection Notice'', and ''Source Facility''?

EPA proposed to add definitions for the phrases ''individual shipment'', ''non-objection notice'', and ''source facility'' in order to clarify the meaning of existing requirements pertaining to the petition process for imports of used controlled substances.

EPA received one comment on the definition of ''individual shipment.'' The comment asks for a clarification of the phrase ''not to be dis-aggregated'' in the definition. The comment also points out an inconsistency between this phrase and the phrase ''not to be aggregated'' in the initial paragraph under 40 CFR 82.13(g)(2). With this action, EPA is adding a definition of ''individual shipment'' to 40 CFR 82.3 that does not employ the phrase ''not to be dis-aggregated'', and is removing the phrase ''not to be aggregated'' from the pre-existing language in 40 CFR 82.13(g)(2). The intent of the definition continues to be the same as explained in the rule published in the **Federal Register** on August 4, 1998: that an importer shall submit a petition to import a specific quantity of used class I controlled substance as a single U.S. Customs entry. If an importer cannot arrange for the entire quantity to be shipped as one entry through U.S. Customs, the importer is required to submit to EPA a separate petition for the quantity of each individual U.S. Customs entry of a used controlled substance.

EPA received no comments on the definition of ''non-objection notice.'' EPA is finalizing this definition as proposed.

EPA received one comment on the definition of ''source facility.'' The commenter states that the phrase ''exact location'' is too specific, believing that it could refer to the valve or fitting on the piece of equipment from which the used controlled substance is recovered. The commenter points out that the valve or fitting will not have a mailing address. The commenter suggests replacing the phrase ''exact location'' with the word ''site.'' EPA believes there may be some merit to the commenter's concern about the specificity of the proposed phrase. EPA's intent was to refer to the postal address of the owner of the equipment from which the ozone-depleting substance was recovered, not the exact location of the specific piece of equipment. However, to maintain the consistency of the wording within the definition, EPA is replacing the phrase ''exact location'' with the word ''location'' rather than site.

In response to one commenter's confusion over the meaning of the word ''recover'', used in the definition of ''source facility'', EPA would like to clarify that to recover a controlled substance means to remove it from its intended use system. EPA does not consider the transfer of a controlled substance from one container to another to be the ''recovery'' of the controlled substance.

2. Section 82.4—What Quantity Constitutes a Separate Violation?

EPA received one comment on the proposed new language for 40 CFR 82.4(j), which includes a prohibition on the import of any used class I controlled substance by a person that has not received a non-objection notice in accordance with 40 CFR 82.13(g). The commenter believes that the phrase ''exact quantity, in kilograms'' is more precise than can be currently met by common commercial practices because it implies that a tiny fraction of a kilogram would be a violation. EPA believes that the final sentence of 40 CFR 82.4(j) clearly indicates that it is ''every kilogram of importation'' that would be a violation and that this sentence clarifies the phrase, ''exact quantity, in kilograms.'' If a person receives a non-objection notice from EPA for a specific quantity, such as 450 kilograms, the wording in the prohibition would make the 451st kilogram a separate violation. If the specific quantity approved was 450 kilograms, the import of 450 kilograms plus a tiny fraction of a kilogram would not result in a violation.

3. Section 82.13—What Are the Changes to the Process for Submitting a Petition To Import a Used Class I Controlled Substance?

The following discussion responds to adverse comments received on EPA's proposed petition process. Provisions on which the Agency received no adverse comments are being finalized as proposed.

a. Changing the de minimis Quantity for an Individual Shipment for Which a Person Is Required To Submit a Petition to Import Used Class I Controlled Substances

EPA is reducing the *de minimis* amount for an individual shipment for which a person is required to submit a petition to import used class I controlled substances. Section 81.13(g)(2) of the final rule published in the **Federal Register** on May 10, 1995, requires a person to submit a petition to import used class I controlled substances ''for each individual shipment over 150 pounds.'' A *de minimis* amount of 150 pounds was established in the May 10, 1995 final rule to allow companies to import small samples of material so they could run laboratory analyses and determine if reclamation would be physically possible and economically justifiable before importing a large tank. EPA has since learned that samples of class I controlled substances are generally taken from large ISO-tanks using special cylinders that generally weigh less than 2 pounds. EPA is therefore setting the *de minimis* quantity at five (5) pounds. EPA believes that a quantity of 150 pounds is much larger than necessary to conduct laboratory analysis for a prospective import. A *de minimis* level of five pounds allows a company to take three samples from a large ISO-tank so the samples can be sent to a laboratory testing facility in the U.S. without being subject to the petition requirements for used material. In developing today's amendments, EPA also considered requiring that a person who wishes to import any quantity of used class I controlled substance, regardless of the size, be required to submit a petition, thereby eliminating the *de minimis* level altogether. EPA decided not to eliminate the *de minimis* level altogether in order to minimize burden on the regulated community and conserve Agency resources.

b. How Much Time Will EPA Have for Reviewing Petitions?

EPA received seven (7) comments regarding the proposed extension of time for the Agency's review of petitions from 15 working days to 40 working days. Five of these comments support the extension of time for the review of petitions, recognizing the importance of independent verification of the submitted information. The five supportive comments also indicate that companies could easily anticipate the longer review period and manage their business practices accordingly. Two commenters suggest that the 40 working day review period would be too long because of possible shifts in market demand during this time and the need to buy the material overseas in a shorter period. EPA believes that a 40-day review period is necessary because of the need to confirm foreign governments' restrictions and requirements for exports of used controlled substances, as well as to independently verify the source facility information provided in the petition. In addition, EPA wishes to point out that many shipments of used class I controlled substances over the past 5 years were made at least 6 months after

the Agency issued a non-objection notice. Thus, today's action extends the time for EPA's review of a petition to 40 working days in order to balance the goals of responsiveness to legitimate requests to import used class I controlled substances and thoroughness in identifying abuses of the petition process.

An additional two (2) comments object to the removal of the provision for automatic approval of petitions if the Agency does not issue a notice within the 40 working-day review period. The commenters state that the petition process already impedes the normal time of a commercial import transaction. The automatic approval provisions were originally included in the process to ensure that the Agency's review did not unduly delay commercial transactions. However, EPA again notes that many shipments of used class I controlled substances over the last five years were made more than 6 months after the date EPA issued a non-objection notice. EPA believes that because today's action would make the automatic approval process inconsistent with the prohibition in 40 CFR 82.4(j) that requires an importer of used class I controlled substance to receive a non-objection notice, as well as being inconsistent with the requirement that the non-objection notice accompany the shipment through U.S. Customs, the automatic approval provision should be removed from the petition process. In eliminating the automatic approval provision EPA is committing to continued expeditious review and processing of petitions to avoid delays in commercial transactions. We believe that today's changes to the petition process will better ensure that the material entering the United States is, in fact, previously used class I controlled substance so the U.S. meets its obligations under the Montreal Protocol and prevents illegal imports under the Clean Air Act.

c. What Are the Revised and Expanded Information Requirements for a Petition To Import Used Class I Controlled Substances?

EPA listed fourteen (14) information requirements that were numbered (i) through (xiv) in the August 4, 1998, direct final rule and concurrent proposal. No adverse comments were received by EPA on information requirements 40 CFR 82.13(g)(2)(i) through (iii), (vii), (ix) through (xi), (xiii), and (xiv), accordingly, EPA is finalizing these requirements as proposed.

Comments on the proposed information requirement in 40 CFR 82.13(g)(2)(iv) point out that the phrase ''dated documents'' 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 suggest 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 express 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. Finally, several commenters point out a number of practical objections to the requirement that the ODS must have remained in the equipment for at least 24 months. Two commenters suggest 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.'' EPA believes that it has discretion under the existing rules to allow an import to proceed if a petition contains the best available information.

EPA received one comment on the proposed information requirement in 40 CFR 82.13(g)(2)(v), which requires the person submitting a petition for the import of used ODS to include, ''A list of the name, make and model number of the equipment from which the material was recovered at each source facility.'' The commenter states that obtaining such information may not always be possible. The commenter emphasizes that the chain of custody for used refrigerant may involve multiple transfers of ownership. 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. EPA uses information about the specific 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 kinds of analyses, and contact with the source facility, EPA can more readily determine whether controlled substances were previously used. 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. Therefore, EPA is promulgating this requirement as proposed.

Several commenters supported the information requirement in 40 CFR 82.13(g)(2)(vi), which requires the,

''[n]ame, address, contact person, phone number and fax number of the exporter and of all persons to whom the material was transferred or sold after it was recovered from the source facility.'' However, they suggested that EPA retain discretion to approve a petition if some of the information regarding ownership in the chain of custody is not available. EPA believes that it has discretion under the existing rules to allow an import to proceed if a petition contains the best available information. Similarly, under the new rules, EPA ''may'' object to a petition if the petition lacks any of the information required under 40 CFR 82.13(g)(2); however, it is not obligated to do so. EPA is modifying the proposed language for 40 CFR 82.13(g)(3)(iv) to clarify that it is retaining the discretion not to object to a petition.

EPA received three comments on the proposed information requirement in 40 CFR 82.13(g)(2)(viii), which required the importer to 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 request that EPA clarify this information requirement. 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 argue 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 controlled substance, and when possible, the name, address, contact person, phone number and fax number of the ultimate purchaser in the United States.''

EPA received several comments on the proposed information requirement in 40 CFR 82.13(g)(2)(xii), which requires that the importer submit ''An export license from the appropriate government agency in the country of export and, if recovered in another country, the export license from the appropriate government agency in that country.'' One of the comments was supportive of the requirement. The other comments suggested that there might not be such a government authority and that the licensing requirements are ''not yet determined at this time.'' EPA believes that with the adoption in 1997 of Article 4B to the Montreal Protocol, which requires all Parties to establish a licensing system for imports and exports, and in light of Decision IX/8, also adopted in 1997, which requires each Party to identify a contact person for inquiries about imports and exports, each petitioner should be able to meet the reporting requirement. *See* Handbook for the International Treaties for the Protection of the Ozone Layer, available at *http://www.unep.ch/ozone/Handbook2000.shtml*. Accordingly, EPA is adopting this requirement as proposed.

d. Why Is the Information Requirement Regarding the Certification of Tax Liability for Used Class I Controlled Substances Being Removed From the Petition Process?

EPA is removing the requirement in 40 CFR 82.13(g)(2) (viii) of the current rule from the list of information to be included with a petition to import used class I controlled substances. EPA received no adverse comments on the removal of this requirement. The provision required an importer to certify that the purchaser of the used, recycled or reclaimed substance ''is liable for the payment of the tax.'' *See* 60 FR 24970 (May 10, 1995). EPA published a stay of this provision on January 31, 1996 (61 FR 3316), and published an extension of the stay on June 11, 1996 (61 FR 29485). EPA believes it is more appropriate to defer interpretation of regulatory requirements regarding excise taxes for ozone-depleting chemicals to the Internal Revenue Service (IRS), the Federal agency given authority for these taxes under the Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget Reconciliation Act of 1990 and the Energy Policy Act of 1992. EPA understands from the IRS that there is an excise tax on bulk shipments of class I controlled substances, used class I controlled substances, products containing class I controlled substances and products made with but not containing class I controlled substances. However, EPA requests that all questions regarding the excise taxes on ozone-depleting chemicals be directed to the Internal Revenue Service.

e. On What Grounds Can EPA Issue an Objection Notice to a Petition for the Import of Used Class I Controlled Substances?

EPA proposed nine (9) reasons for issuing an objection notice in response to a petition to import used class I controlled substances. These proposed reasons were labeled (A) through (I) of 40 CFR 82.13(g)(3) in the direct final rule and concurrent proposal. EPA received no adverse comments on reasons (A), (C) and (D); accordingly, these reasons are being adopted as proposed.

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.'' The adverse comment on reason (B) for issuing an objection notice states that reason (B) would allow EPA to issue an objection notice if EPA ''has reason to believe'' that a petition contains false or misleading information and this action would be ''based on unsubstantiated allegations or unfounded belief.'' Since the petition process is designed to enable EPA to independently verify whether the class I controlled substance was previously used, EPA's decision hinges on whether the material was recovered from the intended use system (*i.e.*, equipment such as a refrigeration chiller or a fire suppression system). The intent of the petition process is to protect against the illegal entry of virgin (*i.e.*, un-used) class I controlled substances, which would be contrary to the United States' obligations under the Montreal Protocol and the requirements of the Clean Air Act, while at the same time not unduly impeding commerce. Accordingly, EPA is creating a process based on documentation and cross-checking of information that focuses on whether the ODS was removed from equipment. Logistically EPA cannot actually witness the removal of the ODS from the equipment. Therefore, EPA must be able to rely on written and verbal statements made by both U.S. and foreign persons or entities or agencies to independently verify whether the ODS was previously used. Under these circumstances, EPA believes that it is reasonable to issue an objection notice if the Agency has information regarding the willingness of a company or individual listed in the petition to create and/or provide false or misleading information. However, 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.''

Under reason (E) in the proposed rule, EPA could issue an objection notice ''If allowing the import of the used class I controlled substance would run counter to the spirit of statements made by

government officials in the country of recovery or export regarding controlled ozone-depleting substances.'' The adverse comment on reason (E) for disallowing a petition points to the lack of specificity in the phrase, ''counter to the spirit of statements made by government officials in the country of recovery or export regarding controlled ozone-depleting substances.'' EPA agrees that this language is too broad and, therefore, with today's action clarifies and adds specificity through the use of the phrase, ''counter to government restrictions from either the country of recovery or export regarding controlled ozone-depleting substances.''

EPA received several similar comments on reasons (F) and (G) for disallowing petitions to import used class I controlled substances. In the proposed rule, reason (F) was: ''If the Administrator has received information indicating that a person listed in the petition has at any time been willing to produce false information regarding trade in controlled substances, 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 published by the U.S. Environmental Protection Agency.'' The comments object 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.

EPA received many comments on reason (H) which, as proposed, said that EPA may issue an objection notice, ''[i]f the Administrator determines that, for the current control period, the U.S. demand for the controlled substance cited in the petition can be satisfied by domestic stockpiles and estimated recycling and reclamation of quantities contained in domestic equipment.'' One company that provides waste management services commented that any ban on imports of a used class I substance should not apply to imports for disposal. Additionally, commenters say there might be reasons for importing quantities of a controlled substance beyond immediate demand that wouldn't be evident to the Agency. The commenters also state that EPA lacks the expertise to determine market supply and demand for ozone-depleting substances. Considering the impact coupled with the administrative burden associated with the market analysis that would be required, in today's action EPA is not going final with reason (H) as a reason for EPA to issue an objection notice.

As proposed, reason (I) stated that EPA could issue an objection notice, ''[i]f reclamation capacity is installed or is being installed for that specific controlled substance in the country of recovery or country of export and the capacity is funded in full or in part through the Multilateral Fund.'' The two adverse comments regarding reason (I) claim that a country with a reclamation facility paid for by the Multilateral Fund of the Montreal Protocol may not have a need for the substance and thus may not have an incentive to reclaim and reuse it domestically. However, if the Executive Committee of the Montreal Protocol's Multilateral Fund decided to allocate money to a country for the construction of a reclamation facility, the Executive Committee would consider the demand for the substance within that country and region before approving the disbursement of funds. Therefore, EPA believes no used controlled class I substances should be imported from countries where reclamation capacity, for that specific controlled substance, has been or is being installed through the assistance of the Multilateral Fund. The United States contributes approximately one fourth of all funds going to the Multilateral Fund, the general purpose of which is to assist countries operating under Article 5(1) of the Protocol to make the transition away from ozone-depleting substances; and a transition policy includes the development of reclamation facilities in order to optimize the use of existing ozone-depleting substances so as to avoid unnecessary production of virgin materials. Thus, EPA views the importation of used class I controlled substances from countries where reclamation capacity has been supported by the Multilateral Fund to run counter to the aims of a global phaseout strategy. Accordingly, EPA is adopting reason (I) as proposed. In today's action, it appears as reason (F) for issuing an objection notice.

f. What Must Accompany the Shipment of Used Class I Controlled Substances Through U.S. Customs Clearance?

EPA is adding a requirement that the petition, and the non-objection notice from EPA that approves the import of a used class I controlled substance, accompany each shipment through U.S. Customs. The Agency did not receive any comments on this proposed requirement. In the preamble to the final rule published in the **Federal Register** on May 10, 1995, EPA suggested that the petition and EPA approval letter accompany the shipment of used class I controlled substances through U.S. Customs. However, EPA did not make this a requirement. Today EPA is adding this requirement to 40 CFR 82.13(g) such that all importers of used class I controlled substances must provide these documents to bring a shipment into the United States. The experience of the past 5 years has shown that presenting the petition and the EPA-approval letter with a shipment facilitates the shipment's clearance through U.S. Customs.

*C. Why Does This Rule Not Affect the Provisions for Transferring Essential-Use Allowances in 40 CFR 82.12?*

The direct final rule and concurrent proposal published in the **Federal Register** on August 4, 1998 (63 FR 41625, 63 FR 41652 contained aprovision allowing transfers of essential-use authorizations for metered-dose inhalers (MDIs) in emergency situations. EPA received adverse comment on this provision and withdrew it from the direct final rule on October 5, 1998 (63 FR 53290). The commenters believed that the scope of the transfer provision was too narrow. EPA subsequently revisited the issue of transfers following the Parties' agreement to Decision XII/2 in December 2000, which allows transfers of essential use authorizations and CFCs produced with such authorizations more broadly. EPA has now finalized a broader transfer provision and a system to monitor and track the various types of MDI essential-use transfers. For more information see the final rule published in the **Federal Register** on February 11, 2002 (67 FR 6352).

*D. Why Does This Rule Not Include Recordkeeping and Reporting Requirements in 40 CFR 82.13 for Quantities of Class I Controlled Substance Used as a Process Agent?*

The direct final rule and concurrent proposal contained requirements to maintain and submit a certification that a quantity of class I controlled substance would be used as a process agent. We received adverse comment on these proposed recordkeeping and reporting requirements and withdrew them from the direct final rule on October 5, 1998. In the time between the proposed rule and today's action, the Parties to the Protocol agreed to Decision X/14 on process agent uses of controlled substances. Decision X/14 stated process agent uses of controlled substances should be treated as feedstock uses until the end of 2001. The Parties to the Protocol are conducting ongoing discussions in order

to determine how process agent uses of controlled substances should be accounted for beyond 2001. Because of this new Decision by the Parties to the Protocol, EPA is not taking action on the requirements proposed prior to the Decision. The Agency will consider whether to take action to address process agent uses of controlled substances in future rulemaking.

**E. What Are the Changes to the Recordkeeping and Reporting Requirements for Entities Allocated Essential-Use Allowances?**

The direct final rule and concurrent proposal contained changes to the recordkeeping and reporting requirements for entities allocated essential-use allowances. EPA received adverse comment on these proposed requirements and withdrew them from the direct final rule on October 5, 1998. After considering comments, EPA is finalizing a revised version of these requirements in today's action.

EPA is changing the recordkeeping and reporting requirements for entities allocated essential-use allowances for two reasons. First, EPA wishes to meet its Montreal Protocol obligations under Decision VIII/9 to complete the yearly ''Reporting Accounting Framework for Essential Uses other than Laboratory and Analytical Applications'' (Accounting Framework). Second, the reporting requirements provide EPA and the Food and Drug Administration with information on the amount of MDIs containing CFCs manufactured annually. This information is important for making decisions regarding the amount of CFCs that should be nominated to the Parties to the Montreal Protocol for essential use authorizations in subsequent years.

The Accounting Framework, included in annex IV of the document entitled ''Report of the Eighth Meeting of the Parties to the Montreal Protocol on Substances That Deplete the Ozone Layer'' (UNEP/OzL.Pro.8/12), is designed to assist the Parties in, among other things, monitoring the amount of controlled substances acquired through exempt essential-use production or import. Since 1996, EPA has requested each company receiving essential use allowances to complete the Accounting Framework under the authority of section 114 of the CAA. Today's final rule requires entities allocated essential use allowances to submit the information necessary for EPA to complete the U.S. aggregate Accounting Framework by January 30th of each year.

The following chart identifies the information that EPA requires from essential use allowances holders in order to complete the accounting framework, and where EPA will obtain this information after publication of this final rule.

| | Data | Source of data |
|---|---|---|
| A | Year of Essential Use | The previous calendar year (*e.g.* the year 2001 accounting framework is sent to the Parties on January 31, 2002) |
| B | Amount of Class I ODS Exempted for Year of Essential Use | The amount of essential use allowances granted by the Parties for the calendar year of the accounting framework |
| C | Amount Acquired by Production | The total amount of ODS produced in the U.S. under essential use exemptions. This data is compiled from the companies' quarterly reports already required under 40 CFR 82.13(u) |
| D | Amount Acquired for Essential Uses by Import and Country(s) of Manufacture. | The total amount of ODS imported into the U.S. under essential use exemptions. This data is compiled from the companies' quarterly reports already required under 40 CFR 82.13(u) |
| E | Total Acquired for Essential Uses | Row C + Row D |
| F | Total essential use allowances authorized but not acquired | Row B − Row E |
| G | Amount of ODSs On Hand at Start of Year | This amount is equal to the amount the company reported to be ''on hand at end of year'' in the previous year accounting framework. |
| H | Available for Use in Current Year | Row G + Row E |
| I | The Amount of ODS Used for Essential Use | EPA is adding the requirement that this amount be reported within the first 30 days of January each year. (See 40 CFR 82.13(u)(2)(i)) |
| J | Quantity of ODS Contained in Products Exported | EPA is adding the requirement that this amount be reported within the first 30 days of January each year. (See 40 CFR 82.13(u)(2)(ii)) |
| K | Quantity of ODS Destroyed or Recycled. | EPA is adding the requirement that this amount be reported within the first 30 days of January each year. (See 40 CFR 82.13(u)(2)(iii)) |
| L | Quantity of ODS On Hand at the End of Year | Row H, − Row I, − Row K |

For I, ''The Amount of ODS Used for Essential Use'' the quantity to be reported includes CFCs that are included in marketable (*i.e.*, not defective) CFC MDIs, CFCs used to clean the lines of the manufacturing equipment, and CFCs that are lost as fugitive emissions during manufacture. This amount does not include CFCs that are in non-marketable CFC MDIs that are subsequently destroyed or recycled.

For K, ''Quantity of ODS Destroyed or Recycled'' the quantity to be reported includes CFCs from non-marketable CFC MDIs that are subsequently recycled or destroyed. It also includes any CFCs that are recaptured from the manufacturing process that are recycled or destroyed.

With this final rule, companies are required to supply EPA with the minimum amount of information necessary to complete the accounting framework. In the above chart, rows C and D encompass previously existing requirements and rows I, J, and K represent added requirements. The data today's regulation specifically requires essential use allowance holders to report appears in rows C, D, I , J, and K. However, EPA highly recommends that essential use allowances holders complete the accounting framework in its entirety to assure that the completed framework is an accurate depiction of the amount of CFCs each company has on hand at the end of the year.

EPA has simplified some of the proposed reporting requirements, in

part due to public comment. First, EPA has reordered the reporting requirements under 40 CFR 82.13(u)(2) in order to more closely follow the list of information necessary to complete the Essential Use Accounting Framework. Second, EPA has reworded the language of the reporting requirements to clarify which requirements apply to all holders of essential use allowances and which apply only to companies that hold allowances to produce CFC MDIs. Third, EPA has omitted 40 CFR 82.13(u)(4), which requested the quantity of each controlled substance that was emitted during the essential use, and 40 CFR 82.13(u)(5), which requested, for MDIs, the quantity that was incorporated into marketable MDIs. These paragraphs were redundant. The quantity emitted and the quantity incorporated into marketable MDIs should be reported as part of the quantity ''used for essential use'' reported in 40 CFR 82.12(u)(2)(i).

EPA proposed that essential use allowance holders be required to submit reports on a quarterly basis. In response to the proposal, EPA received comments suggesting that the reporting should be on an annual basis, rather than on a quarterly basis. One commenter suggested that EPA allow annual reporting of information required by today's action while retaining quarterly reporting of the information currently required. EPA is adopting the commenter's suggestion. The existing requirements call for essential-use holders to report quarterly the quantity of each controlled substance received from each importer or producer, and are incorporated into 40 CFR 82.13(u)(1) without change. The new requirements are listed in 40 CFR 82.13(u)(2) and call for annual reporting.

EPA's practice has been to request companies to report quantities that are recycled together with quantities that are destroyed through letters requesting information under section 114 of the CAA. Today's rule slightly modifies the proposed language for 40 CFR 82.13(u)(3), which has been renumbered as (u)(2)(iii), to reflect this practice. Thus, the new (u)(2)(iii) requires reporting on the quantities of CFCs destroyed and the quantities of CFCs recycled.

EPA is clarifying the need for annual information to be submitted within 20 days after the end of the year, when possible, because this information needs to be incorporated into the U.S. nomination to the Parties to the Protocol for future-year essential-use exemptions. Although the regulation will require submission of the reports within 30 days after the end of the year, EPA is requesting the information be submitted within 20 days after the end of the year, when possible, in order to assist the Agency in meeting the January 31st deadline for submission of the U.S. essential-use nomination as required by the Parties to the Protocol in Decision VIII/9, paragraph 8.

One commenter objected to EPA's proposed reporting requirement that holders of essential use allowances for production of MDIs report ''the total number of units of each specific product manufactured in the control period (including marketable and defective units)'' (40 CFR 82.13(u)(9)), renumbered 40 CFR 82.13(u)(2)(vi)). The commenter stated that there was insufficient reason given in the proposal for requesting submission of this information. With today's action, EPA is adopting a slightly modified version of this reporting requirement by simply asking for ''the total number of marketable units of each specific metered-dose inhaler product manufactured in the control period.'' EPA believes this information is necessary for several reasons. The first is to validate the quantity of CFCs each company is requesting for future control periods, and to assist the Food and Drug Administration (FDA) in determining what is medically necessary for specific allocations of essential-use allowances for each company. *See* CAA section 604(d)(2). The second reason is to assist EPA and FDA in developing the U.S. nomination of essential use allowances for CFCs to the Parties to the Protocol. As the U.S. transition to non-CFC MDIs progresses (and as more non-CFC MDIs are approved by FDA) the U.S. will eventually begin a process of removing particular CFC-based MDIs from the market. While this U.S. transition to non-CFC MDIs happens, it will be important for EPA and FDA to have historical data on the numbers of units of specific marketed MDI products to accurately adjust the allocation of essential-use allowances and to develop future-year U.S. nominations for consideration by the Parties to the Protocol.

## IV. What Is the Address for Submission of Reports and Petitions?

Since the publication of the direct final rule, the concurrent proposal and the withdrawal notice, the mailing address for EPA and the name of the Division have changed. Therefore, today's action corrects the address for submission of reports and petitions under the definition of the ''Administrator,'' to EPA (6205J), Global Programs Division, 1200 Pennsylvania Ave., NW., Washington, DC, 20460.

## V. Administrative Requirements

### *A. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local and tribal governments, in the aggregate, or by the private sector, in any one year. Viewed as a whole, all of today's amendments do not create a Federal mandate resulting in costs of $100 million or more in any one year for State, local and tribal governments, in the aggregate, or for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule

contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this proposal does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected State, local, and tribal officials under section 204.

*B. Regulatory Flexibility Analysis*

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that is identified by the North American Industry Classification System code (NAICS) in the Table below.

| Type of enterprise | NAICS code | Size standard (number of employees) |
|---|---|---|
| Organic Chemical Wholesaling | 422690 | 100 |

(2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA concludes that this action will not have a significant economic impact on a substantial number of small entities. This rule changes the recordkeeping and reporting requirements for Essential Use Allowance holders and clarifies the petition process for import of used class I controlled substances. The Essential Use Allowances holders are large corporations. The clarifications to the petition process affects importers of which there could be some small entities. EPA receives approximately 140 petitions a year. On average, a single entity submits three to five (3–5) petitions per year. Further, the average petition preparation time is 2–3 hours. EPA estimates the additional information required in the revised petition process finalized with this rule involves approximately thirty (30) more minutes of preparation time. Additionally, the information can be generally be found in the same location and from the same sources as the information required for the current petition process. Assuming 75 dollars is equivalent to one (1) hour worth of work for a small entity, the revised petition process would cost an average of 113–187 additional dollars each year per entity.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the rule on all entities by rejecting a regulatory alternative that had been under consideration, which would have eliminated the *de minimis* exception to the petition process.

*C. 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 OMB review and the requirements of the Executive Order. The Order defines a ''significant'' regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*D. Applicability of Executive Order 13045—Children's Health Protection*

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62FR19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it implements specific standards established by Congress in Title VI of the Clean Air Act.

*E. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0170.

The information collection under this rule is authorized under sections 603(b) and 114 of the Clean Air Act (CAA). This information collection is conducted to meet U.S. obligations under Article 7, Reporting Requirements, of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol); and to carry out the requirements of Title VI of the CAA, including sections 603 and 614.

The reporting requirements included in the amendments to the current rule are designed to:

(1) Ensure compliance with the restrictions on production, import and export of controlled ozone-depleting substances after the January 1, 1996 phaseout of class I substances (except methyl bromide);

(2) Allow exempted production and import for certain essential uses and the consequent tracking of that production and import;

(3) Address industry and Federal concerns regarding the illegal import of controlled substances mislabelled as ''used'' that are undercutting U.S. markets;

(4) Respond to industry comments on the functioning of the program to streamline reporting and eliminate administrative inefficiencies;

(5) Satisfy U.S. obligations under the international treaty, the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7;

(6) Fulfill statutory obligations under Section 603(b) of Title VI of the Clean Air Act Amendments of 1990 (CAA) for reporting and monitoring;

(7) Provide information to report to Congress on the production, use and consumption of class I and class II controlled substances as statutorily required in Section 603(d) of Title VI of the CAA.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B, and will be disclosed only if EPA determines that the information is not entitled to confidential treatment. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

The information collection requirements for this action have an estimated reporting burden averaging 23.3 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing the collection of information.

The estimate includes the time needed to comply with EPA's reporting requirements, as well as that used for the completion of the reports under the amended regulations.

| Collection activity | No. of respondents | Responses/ Respondent | Total responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| Producer's Report | 8 | 4 | 32 | 16 | 512.00 |
| Importer's Report | 12 | 4 | 48 | 16 | 768.00 |
| Notification of Trade | 2 | 1 | 2 | 2 | 4.00 |
| Export Report | 10 | 1 | 10 | 80 | 800.00 |
| Lab Certification | 1,000 | 1 | 1,000 | 1 | 1,000.00 |
| Class II Report | 14 | 4 | 56 | 16 | 896.00 |
| Transformation & Destruction | 15 | 1 | 15 | 80 | 1,200.00 |
| Essential Use Allowance Holders | 12 | 4 | 48 | 32 | 1,536.00 |
| Lab Suppliers | 4 | 4 | 16 | 24 | 384.00 |
| Lab Suppliers—Reference Standards | 10 | 1 | 10 | 16 | 160.00 |
| Total Burden Hrs | | | | | 7,260.00 |

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

*F. Executive Order 13132 (Federalism)*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The accelerated phaseout regulations are administered and enforced solely by the Federal government, and are not currently delegated to State or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments,'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule extends an exemption used by large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances. It has no effect on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

*H. The National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus

standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*I. Executive Order 13211 (Energy Effects)*

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

*J. Congressional Review*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 30, 2003.

**VI. Judicial Review**

Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review of this action in the United States Circuit Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements that are the subject of today's rule may not be challenged later in judicial proceedings brought to enforce these requirements.

**List of Subjects in 40 CFR Part 82**

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Ozone layer, Reporting and recordkeeping requirements.

Dated: December 18, 2002.

**Christine Todd Whitman,**

*Administrator.*

For the reasons set out in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.

## Subpart A—Production and Consumption Controls

2. Section 82.3 is amended by adding new definitions in alphabetical order for the terms ''Individual shipment'', ''Non-Objection notice'', and ''Source facility,'' and revising the definition of ''Administrator.'' To read as follows:

**§ 82.3 Definitions.**

* * * * *

*Administrator* means the Administrator of the United States Environmental Protection Agency or his authorized representative. For purposes of reports and petitions, the Administrator must be written at the following mailing address: EPA (6205J), Global Programs Division, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

* * * * *

*Individual shipment* means the kilograms of a used controlled substance for which a person may make one (1) U.S. Customs entry as identified in the non-objection notice from the Administrator under § 82.13(g).

* * * * *

*Non-Objection notice* means the privilege granted by the Administrator to import a specific individual shipment of used controlled substance in accordance with § 82.13(g).

* * * * *

*Source facility* means the location at which a used controlled substance was recovered from a piece of equipment, including the name of the company responsible for, or owning the piece of equipment, a contact person at the location, the mailing address for that specific location, and a phone number and a fax number for the contact person at the location.

* * * * *

3. Section 82.4 is amended by revising paragraph (j) to read as follows:

**§ 82.4 Prohibitions.**

* * * * *

(j) Effective January 1, 1995, no person may import, at any time in any control period, a used class I controlled substance, without having received a non-objection notice from the Administrator in accordance with § 82.13(g)(2) and (3). A person who receives a non-objection notice for the import of an individual shipment of used controlled substances may not transfer or confer the right to import, and may not import any more than the exact quantity, in kilograms, of the used controlled substance cited in the non-objection notice. Every kilogram of importation of used controlled substance in excess of the quantity cited in the non-objection notice issued by the Administrator in accordance with § 82.13(g)(2) and (3) constitutes a separate violation.

* * * * *

4. Section 82.13 is amended by revising paragraphs (g)(2), (g)(3), and (u) to read as follows:

**§ 82.13 Recordkeeping and reporting requirements.**

* * * * *

(g) * * *

(1) * * *

(2) Petitioning—Importers of Used, Recycled or Reclaimed Controlled Substances. For each individual shipment over 5 pounds of a used controlled substance as defined in § 82.3, an importer must submit directly to the Administrator, at least 40 working days before the shipment is to leave the foreign port of export, the following information in a petition:

(i) Name and quantity in kilograms of the used controlled substance to be imported;

(ii) Name and address of the importer, the importer ID number, the contact person, and the phone and fax numbers;

(iii) Name, address, contact person, phone number and fax number of all previous source facilities from which the used controlled substance was recovered;

(iv) 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;

(v) A list of the name, make and model number of the equipment from which the material was recovered at each source facility;

(vi) Name, address, contact person, phone number and fax number of the exporter and of all persons to whom the material was transferred or sold after it was recovered from the source facility;

(vii) The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the chemical. If at the time of submitting a petition the importer does not know the U.S. port of entry, the expected date of shipment and the vessel transporting the chemical, and the importer receives a non-objection notice for the individual shipment in the petition, the importer is required to notify the Administrator of this information prior to the actual U.S. Customs entry of the individual shipment;

(viii) A description of the intended use of the used controlled substance, and, when possible, the name, address, contact person, phone number and fax number of the ultimate purchaser in the United States;

(ix) Name, address, contact person, phone number and fax number of the U.S. reclamation facility, where applicable;

(x) If someone at the source facility recovered the controlled substance from the equipment, the name and phone and fax numbers of that person;

(xi) If the imported controlled substance was reclaimed in a foreign Party, the name, address, contact person, phone number and fax number of any or all foreign reclamation facility(ies) responsible for reclaiming the cited shipment;

(xii) An export license from the appropriate government agency in the country of export and, if recovered in another country, the export license from the appropriate government agency in that country;

(xiii) If the imported used controlled substance is intended to be sold as a refrigerant in the U.S., the name and address of the U.S. reclaimer who will bring the material to the standard required under section 608 (§ 82.152(g)) of the CAA, if not already reclaimed to those specifications; and

(xiv) A certification of accuracy of the information submitted in the petition.

(3) Starting on the first working day following receipt by the Administrator of a petition to import a used class I controlled substance, the Administrator will initiate a review of the information submitted under paragraph (g)(2) of this section and take action within 40 working days to issue either an objection-notice or a non-objection notice for the individual shipment to the person who submitted the petition to import the used class I controlled substance.

(i) For the following reasons, the Administrator may issue an objection notice to a petition:

(A) If the Administrator determines that the information is insufficient, that is, if the petition lacks or appears to lack any of the information required under § 82.13(g)(2);

(B) 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;

(C) If the importer wishes to import a used class I controlled substance from a country which is, for that particular controlled substance, out of compliance regarding its phaseout obligations under the Protocol or the transaction in the petition is contrary to other provisions in the Vienna Convention or the Montreal Protocol;

(D) If the appropriate government agency in the exporting country has not agreed to issue an export license for the cited individual shipment of used controlled substance;

(E) If allowing the import of the used class I controlled substance would run counter to government restrictions from either the country of recovery or export regarding controlled ozone-depleting substances;

(F) If reclamation capacity is installed or is being installed for that specific controlled substance in the country of recovery or country of export and the capacity is funded in full or in part through the Multilateral Fund.

(ii) Within ten (10) working days after receipt of the objection notice, the importer may re-petition the Administrator, only if the Administrator indicated ''insufficient information'' as the basis for the objection notice. If no appeal is taken by the tenth working day after the date on the objection notice, the objection shall become final. Only one appeal of re-petition will be accepted for any petition received by EPA.

(iii) Any information contained in the re-petition which is inconsistent with the original petition must be identified and a description of the reason for the inconsistency must accompany the re-petition.

(iv) In cases where the Administrator does not object to the petition based on the criteria listed in paragraph (g)(3)(i) of this section, the Administrator will issue a non-objection notice.

(v) To pass the approved used class I controlled substances through U.S. Customs, the petition and the non-objection notice issued by EPA must accompany the shipment through U.S. Customs.

(vi) If for some reason, following EPA's issuance of a non-objection notice, new information is brought to EPA's attention which shows that the non-objection notice was issued based on false information, then EPA has the right to:

(A) Revoke the non-objection notice;

(B) Pursue all means to ensure that the controlled substance is not imported into the United States; and

(C) Take appropriate enforcement actions.

(vii) Once the Administrator issues a non-objection notice, the person receiving the non-objection notice is required to import the individual shipment of used class I controlled substance within the same control period as the date stamped on the non-objection notice.

(viii) A person receiving a non-objection notice from the Administrator for a petition to import used class I controlled substances must maintain the following records:

(A) a copy of the petition;

(B) the EPA non-objection notice;

(C) the bill of lading for the import; and

(D) U.S. Customs entry documents for the import that must include one of the commodity codes from Appendix K to this subpart.

* * * * *

(u) Holders of Essential-Use Allowances—Reporting.

(1) Within 30 days of the end of every quarter, any person allocated essential-use allowances must submit to the Administrator a report containing the quantity of each controlled substance, in kilograms, purchased and received from each producer and each importer during that quarter as well as from which country the controlled substance was imported.

(2) Any person allocated essential-use allowances must submit to the Administrator a report containing the following information within 30 days of the end of the control period, and, if possible, within 20 days of the end of the control period:

(i) The gross quantity of each controlled substance, in kilograms, that was used for the essential use during the control period; and

(ii) The quantity of each controlled substance, in kilograms, contained in exported products during the control period; and

(iii) The quantity of each controlled substance, in kilograms, that was destroyed or recycled during the control period; and

(iv) The quantity of each controlled substance, in kilograms, held in inventory as of the last day of the control period, that was acquired with essential use allowances in all control periods (*i.e.* quantity on hand at the end of the year); and

(v) The quantity of each controlled substance, in kilograms, in a stockpile that is owned by the company or is being held on behalf of the company under contract, and was produced or imported through the use of production allowances and consumption allowances prior to the phaseout (*i.e.* class I ODSs produced before their phaseout dates); and

(vi) For essential use allowances for metered-dose inhalers only, the allowance holder must report the total number of marketable units of each specific metered-dose inhaler product manufactured in the control period.

* * * * *

[FR Doc. 02–32386 Filed 12–30–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

**[SW–FRL–7432–8]**

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is granting a petition submitted by Tokusen USA, Inc. (Tokusen) to exclude from hazardous waste control (or delist) a certain solid waste. This final rule responds to the petition submitted by Tokusen to delist F006 dewatered sludge generated from the on-site Wastewater Treatment Plant (WWTP) from its electroplating operations.

After careful analysis and use of the Delisting Risk Assessment Software, the EPA has concluded the petitioned waste is not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies to 670 cubic yards annually of dewatered WWTP sludge resulting from its electroplating operations. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills.

**EFFECTIVE DATE:** December 31, 2002.

**ADDRESSES:** The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th floor from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is ''F–02–ARDEL–TOKUSEN.'' The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact Catherine E. Carter, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202 at (214) 665–6792. For technical information concerning this notice, contact Larry K. Landry, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–8134.

**SUPPLEMENTARY INFORMATION:**

The information in this section is organized as follows:



## I. Overview Information

### *A. What Action Is EPA Finalizing?*

After evaluating the petition, EPA proposed, on July 12, 2002 to exclude the Tokusen waste from the lists of hazardous waste under §§ 261.31 and 261.32 (*see* 65 *FR* 75897). The EPA is finalizing:

(1) The decision to grant Tokusen's petition to have its wastewater treatment sludge excluded, or delisted, from the definition of a hazardous waste, subject to certain continued verification and monitoring conditions; and

(2) the decision to use the Delisting Risk Assessment Software to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

### *B. Why Is EPA Approving This Delisting?*

Tokusen's petition requests a delisting for an F006 listed hazardous waste. Tokusen does not believe the petitioned waste meets the criteria for which EPA listed it as a hazardous waste. Tokusen also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA also evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is: (1) Acutely toxic; (2) the concentration of the constituents in the waste; (3) their tendency to migrate and to bioaccumulate; (4) their persistence in the environment once released from the waste; (5) plausible and specific types of management of the petitioned waste; (6) the quantities of waste generated; and (7) waste variability. The EPA believes the petitioned waste does not meet these criteria or the listing criteria. EPA's final decision to delist waste from Tokusen's facility is based on the information submitted by