

Product name	Harmonized tariff schedule heading	ODC	ODC weight
Not included in HTS chapters 84, 85, 90 <sup>3</sup>		CFC-113	0.0004 pound/\$1.00 of entry value.
PART III—Products that are not Imported Taxable Products:			
Room air conditioners	8415.10.00.60		
Dishwashers	8422.11		
Clothes washers	8450.11		
Clothes dryers	8451.21		
Floppy disk drive units	8471.93		
Transformers and inductors	8504		
Toasters	8516.72		
Unrecorded media	8523		
Recorded media	8524		
Capacitors	8532		
Resistors	8533		
Switching apparatus	8536		
Cathode tubes	8540		

<sup>1</sup> See paragraph (e)(3)(ii)(C) of this section. Denotes an ODC used in the manufacture of rigid foam insulation.  
<sup>2</sup> See paragraph (f)(2)(ii)(A) of this section. Denotes product for which the effective date is October 1, 1990.  
<sup>3</sup> See paragraph (f)(2)(ii)(B) of this section. Denotes products for which the effective date is January 1, 1992.

(g) *Requests for modification of Table—*  
 (1) *In general.* Any manufacturer or importer of a product may request that the Secretary modify the Table in any of the following respects:

- (i) Adding a product to the Table and specifying its Table ODC weight.
- (ii) Removing a product from the Table.
- (iii) Changing or specifying the Table ODC weight of a product.

(2) *Form of request.* The Secretary will consider a request for modification that includes the following:

- (i) The name, address, taxpayer identifying number, and principal place of business of the requester.
- (ii) For each product with respect to which a modification is requested:
  - (A) The name of the product;
  - (B) The HTS heading or subheading;
  - (C) The type of modification requested;
  - (D) The Table ODC weight that should be specified for the product if the request relates to adding a product or changing or specifying its Table ODC weight; and
  - (E) The data supporting the request.
- (3) *Address.* The address for submission of requests under this paragraph (g) is: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (Imported Products Table), room 5228, Washington, DC 20044.

(4) *Public inspection and copying.* Requests submitted under this paragraph (g) will be available in the Internal

Revenue Service Freedom of Information Reading Room for public inspection and copying.

[T.D. 8370, 56 FR 56311, Nov. 4, 1991, as amended by T.D. 8370, 58 FR 14518, Mar. 18, 1993]

**§ 52.4682-4 Floor stocks tax.**

(a) *Overview.* This section provides rules for identifying ozone-depleting chemicals (ODCs) that are subject to the floor stocks tax imposed by section 4682(h)(1), determining the person that is liable for the tax, and computing the amount of the tax. See § 52.4681-1(a)(3) and (c) for general rules and definitions relating to the floor stocks tax.

(b) *Identifying rules—*(1) *ODCs subject to floor stocks tax; ODCs held for sale or for use in further manufacture—*(i) *In general.* The floor stocks tax is imposed only on an ODC that is held for sale or for use in further manufacture on the date the tax is imposed. This paragraph (b)(1) provides rules for identifying ODCs held for sale or for use in further manufacture.

(ii) *Held for sale—*(A) *In general.* For purposes of determining whether an ODC is held for sale, the term *sale* shall have the meaning set forth in § 52.4681-1(c)(6). ODCs held for sale include ODCs that will be sold in connection with the provision of services or in connection with the sale of a manufactured article and, in such cases, include ODCs that will be sold without the statement of a separate charge for those ODCs.

(B) *ODCs held by a government.* An ODC that is held by a government for its own use is not held for sale even if the ODC will be transferred between agencies or other subdivisions that have or are required to have different employer identification numbers.

(iii) *Held for use in further manufacture.* Except as otherwise provided in paragraph (b)(2)(v) of this section, an ODC is held for use in further manufacture if—

(A) The ODC will be used as a material (within the meaning of paragraph (b)(1)(iv) of this section) in the manufacture of an article; and

(B) Such article will be held for sale.

(iv) *Use as material—(A) In general.* Except as provided in paragraph (b)(1)(iv)(B) of this section, an ODC will be used as a material in the manufacture of an article if the ODC will be—

(1) Incorporated into the article; or

(2) Released into the atmosphere in the process of manufacturing the article.

(B) *ODCs used in equipment.* For purposes of the floor stocks tax, an ODC is not used as a material in the manufacture of an article if the ODC is (or will be) contained in equipment used in such manufacture and the ODC will be used for its intended purpose without being released from such equipment. Thus, ODCs that are (or will be) used as coolants in a factory's air-conditioning system are not used as materials in the manufacture of articles produced in the factory.

(v) *Storage containers.* The floor stocks tax is imposed on an ODC without regard to the type or size of the storage container in which the ODC is held. Thus, the tax may apply to an ODC whether it is in a 14-ounce can or a 30-pound tank.

(vi) *Examples.* The provisions of this paragraph (b)(1) may be illustrated by the following examples:

*Example 1.* A, a manufacturer of air conditioners, holds an ODC for use in air conditioners that it will manufacture and sell. A holds the ODC for use in further manufacture.

*Example 2.* B, a manufacturer of electronic components, holds an ODC for use as a solvent to clean printed circuits that it will sell to computer manufacturers. B holds the ODC for use in further manufacture.

*Example 3.* C, an automobile dealer, holds an ODC for use in charging air conditioners installed in automobiles that it sells to retail customers. C does not hold the ODC for use in further manufacture. C does, however, hold the ODC for sale, even if the customers are not separately charged for ODCs used in the automobile air conditioners.

*Example 4.* D operates an air-conditioning repair service and holds an ODC for use in repairing air conditioners for its customers. D holds the ODC for sale even if the customers are not separately charged for ODCs used in the repairs.

*Example 5.* E, a grocery-store chain, holds an ODC for use in its refrigeration units. E does not hold the ODC for sale or for use in further manufacture.

*Example 6.* F, a bank, holds an ODC for use in its fire extinguishers to protect the computer system. F does not hold the ODC for sale or for use in further manufacture.

*Example 7.* G, a government agency, holds an ODC for use in the refrigeration equipment of its various units. The units have separate employer identification numbers. The ODC is stored in a central warehouse until needed by a unit and then transferred to the unit upon request. G does not hold the ODC for sale or for use in further manufacture.

(2)(i) *Mixtures—(A) Tax imposed on January 1, 1990.* In the case of the floor stocks tax imposed on January 1, 1990, the tax is not imposed on an ODC that has been mixed with any other ingredients.

(B) *Taxes imposed after 1990—(1) In general.* In the case of the floor stocks tax imposed on January 1 of a calendar year after 1990, the tax is not imposed on an ODC that has been mixed with any other ingredients, but only if it is established that such ingredients contribute to the accomplishment of the purpose for which the mixture will be used. A mixture is not exempt from tax under this paragraph (b)(2)(i)(B), however, if it contains only an ODC and an inert ingredient that does not contribute to the accomplishment of the purpose for which the mixture will be used.

(2) *Exception.* In the case of a floor stocks tax imposed on or after January 1, 1992, a mixture is not exempt from floor stocks tax under this paragraph (b)(2)(i)(B) if it contains only ODCs and one or more stabilizers. For this purpose, the term *stabilizer* means an ingredient needed to maintain the chemical integrity of the ODC.

(C) *Examples.* The provisions of this paragraph (b)(2)(i) may be illustrated by the following examples:

*Example 1.* The floor stocks tax is not imposed on the ODCs contained in refrigerants such as R-500 and R-502 because such products are mixtures of ODCs and other chemicals that contribute to the accomplishment of the purpose for which the mixture will be used.

*Example 2.* The floor stocks tax is not imposed on the ODCs contained in automotive products used for checking for leaks because such products are a mixture of ODCs and small amounts of dyes and oils that contribute to the accomplishment of the purpose for which the mixture will be used.

*Example 3.* The floor stocks tax is not imposed on Halon 1301 pressurized with nitrogen. Although nitrogen is an inert ingredient, it contributes to the accomplishment of the purpose for which the mixture will be used.

*Example 4.* On January 1, 1993, the floor stocks tax is imposed on methyl chloroform that is stabilized to prevent hydrolyzation or chemical reaction during transportation or use, unless the stabilized methyl chloroform has also been mixed with other ingredients that contribute to the accomplishment of the purpose for which the mixture will be used.

(ii) *Manufactured articles.* The floor stocks tax is not imposed on an ODC that is contained in a manufactured article in which the ODC will be used for its intended purpose without being released from such article. For example, the tax is not imposed on the ODCs contained in the cooling coils of a refrigerator even if the refrigerator is held for sale. However, the tax is imposed on a can of ODC used to recharge an air conditioning unit because the ODC must be expelled from the can in order to be used. Similarly, beginning in 1991, the tax is imposed on Halons contained in a fire extinguisher held for sale because such ODCs must be expelled from the fire extinguisher in order to be used.

(iii) *Recycled ODCs.* The floor stocks tax is not imposed on ODCs that have been reclaimed or recycled. For example, the tax is not imposed on an ODC that is held for use in further manufacture after being used as a solvent and recycled.

(iv) *ODCs held by the manufacturer or importer.* The floor stocks tax is not im-

posed on ODCs held by their manufacturer or importer.

(v) *ODCs used as a feedstock—(A) In general.* The floor stocks tax is not imposed on any ODC that was sold in a qualifying sale for use as a feedstock (as defined in § 52.4682-1(c)).

(B) *Post-1989 ODCs sold before January 1, 1990; post-1990 ODCs sold before January 1, 1991.* A post-1989 ODC that was sold by its manufacturer or importer before January 1, 1990, or a post-1990 ODC that was sold by its manufacturer or importer before January 1, 1991, shall be treated, for purposes of this paragraph (b)(2)(v), as an ODC that was sold in a qualifying sale for purposes of § 52.4682-1(c) if the ODC will be used as a feedstock (within the meaning of § 52.4682-2(c)(3)).

(vi) *ODCs to be exported—(A) In general.* The floor stocks tax is not imposed on any ODC that was sold in a qualifying sale for export (as defined in § 52.4682-5(d)(1)).

(B) *ODCs sold before January 1, 1993.* An ODC that was sold by its manufacturer or importer before January 1, 1993, is treated, for purposes of this paragraph (b)(2)(vi), as an ODC that was sold in a qualifying sale for export for purposes of § 52.4682-5(d)(1) if the ODC will be exported.

(vii) *ODCs used as propellants in metered-dose inhalers; years after 1992—(A) In general.* The floor stocks tax is not imposed on January 1 of calendar years after 1992 on any ODC that was sold in a qualifying sale for use as a propellant in a metered-dose inhaler (as defined in § 52.4682-1(h)).

(B) *ODCs sold before January 1, 1993.* An ODC that was sold by its manufacturer or importer before January 1, 1993, is treated, for purposes of this paragraph (b)(2)(vii), as an ODC that was sold in a qualifying sale for purposes of § 52.4682-1(h) if the ODC will be used as a propellant in a metered-dose inhaler (within the meaning of § 52.4682-1(h)).

(viii) *ODCs used as medical sterilants; 1993.* The floor stocks tax is not imposed in 1993 on any ODC held for use as a medical sterilant (as defined in § 52.4682-1(g)).

(c) *Person liable for tax—(1) In general.* The person liable for the floor stocks tax on an ODC is the person that holds

the ODC on a date on which the tax is imposed. The person who holds the ODC is the person who has title to the ODC (whether or not delivery to such person has been made) as of the first moment of such date. The person who has title at such time is determined under applicable local law.

(2) *Special rule.* Each business unit that has, or is required to have, its own employer identification number is treated as a separate person for purposes of the floor stocks tax. For example, a chain of automotive parts stores that has one employer identification number is one person for purposes of the floor stocks tax, and a parent corporation and subsidiary corporation that each have a different employer identification number are two persons for purposes of the floor stocks tax.

(d) *Computation of tax; tentative tax amount—(1) In general—(i) Generally applicable rules.* This paragraph (d) provides rules for determining the tentative tax amount and the amount of the floor stocks tax. Section 52.4681-1(a)(3) provides that the amount of the floor stocks tax on an ODC is determined by reference to a tentative tax amount. The tentative tax amount is the amount of tax that would be imposed on the ODC under section 4681(a)(1) if a sale of the ODC by the manufacturer or importer had occurred on the date the floor stocks tax is imposed. The amount of the floor stocks tax imposed on the ODCs contained in a nonexempt mixture is computed on the basis of the weight of the ODCs in that mixture.

(ii) *Floor stocks tax imposed on post-1989 ODCs on January 1, 1990.* The floor stocks tax imposed on post-1989 ODCs (as defined in § 52.4681-1(c)(9)) on January 1, 1990, is equal to the tentative tax amount. See paragraph (d)(2) of this section for rules relating to the floor stocks tax imposed on ODCs used in the manufacture of rigid foam insulation. See paragraph (d)(3) of this section for rules relating to the floor stocks tax imposed on Halons.

(iii) *Floor stocks tax imposed on post-1990 ODCs on January 1, 1991.* The floor stocks tax imposed on post-1990 ODCs (as defined in § 52.4681-1(c)(9)) on January 1, 1991, is equal to the tentative tax amount.

(iv) *Other floor stocks taxes—(A) In general.* The following rules apply for floor stocks taxes imposed on post-1989 ODCs after January 1, 1990, and on post-1990 ODCs after January 1, 1991:

(1) The tentative tax amount is determined, except as provided in paragraph (d)(2), (3), or (4) of this section, by reference to the rate of tax prescribed in section 4681(b)(1)(B) and the ozone-depletion factors prescribed in section 4682(b).

(2) The amount of the floor stocks tax on an ODC is equal to the amount by which the tentative tax amount exceeds the amount of taxes previously imposed on the ODC.

(B) *Example.* The application of this paragraph (d)(1)(iv) may be illustrated by the following example:

*Example.* The floor stocks tax imposed on one pound of CFC-12 held for sale on January 1, 1992, is \$0.30 (the amount by which \$1.67, the tentative tax, exceeds \$1.37, the tax previously imposed on CFC-12).

(2) *ODCs used in the manufacture of rigid foam insulation; 1990, 1991, 1992, and 1993—(i) In general.* In the case of an ODC that was sold in a qualifying sale for purposes of § 52.4682-1(d) (relating to use in the manufacture of rigid foam insulation) the tentative tax amount is determined under section 4682(g) for purposes of computing the floor stocks tax imposed on the ODC on January 1, 1990, 1991, 1992 or 1993. For purposes of computing the floor stocks tax imposed on the ODC on January 1, 1990, the tentative tax amount is zero. The floor stocks tax is not imposed on ODCs for use in the manufacture of rigid foam insulation in 1992 and 1993.

(ii) *Post-1989 ODCs sold before January 1, 1990; post-1990 ODCs sold before January 1, 1991.* A post-1989 ODC that was sold by its manufacturer or importer before January 1, 1990, or a post-1990 ODC that was sold by its manufacturer or importer before January 1, 1991, shall be treated, for purposes of paragraphs (d)(2) and (e) of this section, as an ODC that was sold in a qualifying sale for purposes of § 52.4682-1(d) if the ODC will be used in the manufacture of rigid foam insulation (within the meaning of §§ 52.4682-1(d) (3) and (4)).

(3) *Halons; 1990, 1991, 1992, and 1993.* In the case of Halon-1211, Halon-1301, or Halon-2402 (Halons), the tentative tax

amount is determined under section 4682(g) for purposes of computing the floor stocks tax imposed on Halons on January 1, 1990, 1991, 1992, or 1993. For purposes of computing the floor stocks tax imposed on Halons on January 1, 1990, the tentative tax amount is zero. The floor stocks tax is not imposed on Halons in 1992 and 1993.

(4) *Methyl chloroform; 1993.* In the case of methyl chloroform, the tentative tax amount is determined under section 4682(g)(5) for purposes of computing the floor stocks tax imposed on January 1, 1993.

(e) *De minimis exception—(1) 1990 and 1992.* In the case of the floor stocks tax imposed on January 1, 1990 or 1992, a person is liable for the tax only if, on the date the tax is imposed, the person holds at least 400 pounds of post-1989 ODCs that are not described in paragraph (d) (2) or (3) of this section and are otherwise subject to tax.

(2) *1991.* In the case of the floor stocks tax imposed on January 1, 1991, a person is liable for the tax only if, on such date, the person holds at least 400 pounds of ODCs subject to the 1991 floor stocks tax. For this purpose, ODCs subject to the 1991 floor stocks tax are—

(i) Post-1990 ODCs that are subject to tax; and

(ii) Post-1989 ODCs that are described in paragraph (d) (2) or (3) of this section and are otherwise subject to tax.

(3) *1993.* In the case of the floor stocks tax imposed on January 1, 1993, a person is liable for the tax only if, on such date, the person holds at least 400 pounds of ODCs that are not described in paragraph (d) (2) or (3) of this section and are otherwise subject to tax.

(4) *1994.* In the case of the floor stocks tax imposed on January 1, 1994, a person is liable for the tax only if, on such date, the person holds—

(i) At least 400 pounds of ODCs that are not described in paragraph (d)(2) or (d)(3) of this section and are otherwise subject to tax;

(ii) At least 200 pounds of ODCs that are described in paragraph (d)(2) of this section and are otherwise subject to tax; or

(iii) At least 20 pounds of ODCs that are described in paragraph (d)(3) of this

section and are otherwise subject to tax.

(5) *Calendar years after 1994.* In the case of the floor stocks tax imposed on January 1 of 1995 and each following calendar year, a person is liable for the tax only if, on such date, the person holds—

(i) At least 400 pounds of ODCs that are not described in paragraph (d)(3) or (d)(4) of this section and are otherwise subject to tax;

(ii) At least 50 pounds of ODCs that are described in paragraph (d)(3) of this section and are otherwise subject to tax; or

(iii) At least 1000 pounds of ODCs that are described in paragraph (d)(4) of this section and are otherwise subject to tax.

(6) *Examples.* The rules of this paragraph (e) may be illustrated by the following examples:

*Example 1.* On January 1, 1990, A holds for sale 300 pounds of CFC-12 (a post-1989 ODC not described in paragraph (d)(2) or (d)(3) of this section) and 500 pounds of R-500 (a mixture). A does not hold at least 400 pounds of ODCs that are taken into account under paragraph (e)(1) of this section and, under paragraph (b)(2)(i) of this section, mixtures are not subject to the floor stocks tax. Thus, A is not liable for the floor stocks tax imposed on January 1, 1990.

*Example 2.* On January 1, 1990, B holds for sale 250 pounds of CFC-12 and 250 pounds of CFC-113 (post-1989 ODCs not described in paragraph (d) (2) or (3) of this section). B holds 500 pounds of ODCs that are taken into account under paragraph (e)(1) of this section. Thus, B is liable for the floor stocks tax imposed on January 1, 1990, because B holds at least 400 pounds of ODCs for sale.

*Example 3.* On January 1, 1990, C holds 200 pounds of post-1990 ODCs and 500 pounds of post-1989 ODCs for use in further manufacture. C will use 300 pounds of the post-1989 ODCs in the manufacture of rigid foam insulation (as defined in §52.4682-1(d) (3) and (4)). The remainder of the ODCs are not described in paragraph (d) (2) or (3) of this section. Under paragraph (e)(1) of this section, post-1990 ODCs and ODCs that will be used in the manufacture of rigid foam insulation are disregarded in determining whether the *de minimis* exception is applicable in 1990. Thus, C holds only 200 pounds of ODCs that are taken into account under paragraph (e)(1) of this section and is not liable for the floor stocks tax imposed on January 1, 1990.

*Example 4.* (a) The facts are the same as in *Example 3*, except that the ODCs are held on January 1, 1991. Under paragraph (e)(2) of

this section, the 200 pounds of post-1990 ODCs and the 300 pounds of post-1989 ODCs that will be used in the manufacture of rigid foam insulation are taken into account in determining whether the *de minimis* exception is applicable in 1991. Under paragraph (b)(2) of this section, the remaining 200 pounds of post-1989 ODCs are not taken into account because the base tax amount applicable to post-1989 ODCs does not increase in 1991. Thus, C holds 500 pounds of ODCs that are taken into account under paragraph (e)(2) of this section and is liable for the floor stocks tax imposed on January 1, 1991.

(b) The amount of the floor stocks tax imposed on the 200 pounds of post-1990 ODCs and the 300 pounds of post-1989 ODCs that will be used in the manufacture of rigid foam insulation is equal to the tentative tax amount because those ODCs were not previously subject to tax.

*Example 5.* (a) On January 1, 1994, D holds for sale 300 pounds of CFC-113 (an ODC not described in paragraph (d)(2) or (d)(3) of this section) and 25 pounds of Halon-1301 (an ODC described in paragraph (d)(3) of this section). D is liable for the floor stocks tax imposed on January 1, 1994, because 25 pounds of Halon-1301 exceeds the *de minimis* amount specified in paragraph (e)(4)(iii) of this section. The 300 pounds of CFC-113 is less than the amount specified in paragraph (e)(4)(i) of this section. Nevertheless, tax is imposed on both the 25 pounds of Halon-1301 and the 300 pounds of CFC-113.

(b) The amount of the floor stocks tax is determined separately for the 300 pounds of CFC-113 and the 25 pounds of Halon-1301 and is equal to the difference between the tentative tax amount and the amount of tax previously imposed on those ODCs. For Halon-1301, for example, the tax is determined as follows. The tentative tax amount is \$1,087.50 ( $\$4.35$  (the base tax amount in 1994)  $\times 10$  (the ozone-depletion factor for Halon-1301)  $\times 25$  (the number of pounds held)). The tax previously imposed on the Halon-1301 is \$6.28 ( $\$3.35$  (the base tax amount in 1993)  $\times 10$  (the ozone-depletion factor for Halon-1301)  $\times 0.75$  percent (the applicable percentage determined under section 4682(g)(2)(A))  $\times 25$  (the number of pounds held)). Thus, the floor stocks tax imposed on the 25 pounds of Halon-1301 in 1994 is \$1,081.22, the difference between \$1,087.50 (the tentative tax amount) and \$6.28 (the tax previously imposed).

(f) *Inventory*—(1) *In general.* If, on the date on which the floor stocks tax is imposed, a person holds ODCs for sale or for use in further manufacture and the ODCs were not manufactured or imported by such person, the following rules apply:

(i) The person shall prepare an inventory of all such ODCs that the person holds on the date on which the tax is imposed.

(ii) The inventory shall be taken as of the first moment of the date on which the tax is imposed, but work-back or work-forward inventories will be acceptable if supported by adequate commercial records of receipt, use, and disposition of ODCs held for sale or for use in further manufacture.

(iii) The person must maintain records of the inventory and make such records available for inspection and copying by internal revenue agents and officers. Records of the inventory are not to be filed with the Internal Revenue Service.

(2) *Circumstances in which an inventory is not required.* The inventory requirement of paragraph (f)(1) of this section does not apply to any person holding, on a date on which floor stocks tax is imposed, only ODCs that are not subject to tax by reason of a statutory exemption (e.g., use as a feedstock) or regulatory exclusion other than the *de minimis* exception provided by paragraph (e) of this section (e.g., mixtures). In addition, any person that holds ODCs subject to the floor stocks tax and also holds ODCs that are nontaxable under the provisions of paragraph (b)(2) of this section, is not required to inventory the nontaxable ODCs. However, any person that holds any ODCs that either are subject to the floor stocks tax or would be subject to the floor stocks tax but for the *de minimis* exception must inventory those ODCs.

(3) *Examples.* The rules of this paragraph (f) may be illustrated by the following examples:

*Example 1.* On January 1, 1990, A holds for sale 300 pounds of CFC-12 (a post-1989 ODC not described in paragraph (d)(2) or (d)(3) of this section) and 500 pounds of R-500 (a mixture). As required by paragraph (f)(1) of this section, A must prepare an inventory of the CFC-12. A holds for sale on that date even though, under paragraph (e)(1) of this section, the 300 pounds of CFC-12 is not taken into account because it is *de minimis*. However, as provided in paragraph (f)(2) of this section, A is not required to inventory the R-500 because, under paragraph (b)(2) of this section, mixtures are not subject to the floor stocks tax.

*Example 2.* On January 1, 1991, B holds for sale 1,000 pounds of CFC-12 (a post-1989 ODC not described in paragraph (d)(2) or (d)(3) of this section). As provided under paragraph (f)(2) of this section, B is not required to prepare an inventory because CFC-12 is not subject to the floor stocks tax in 1991.

(g) *Time for paying tax.* The floor stocks tax imposed under section 4682(h) shall be paid without assessment or notice. In the case of the floor stocks tax imposed on January 1, 1990, the tax shall be paid by April 1, 1990. In the case of floor stocks taxes imposed after January 1, 1990, the tax shall be paid by June 30 of the year in which the tax is imposed.

[T.D. 8370, 56 FR 56317, Nov. 4, 1991, as amended by T.D. 8622, 60 FR 52852, Oct. 11, 1995]

#### § 52.4682-5 Exports.

(a) *Overview.* This section provides rules relating to the tax imposed under section 4681 on ozone-depleting chemicals (ODCs) that are exported. In general, tax is not imposed on ODCs that a manufacturer or importer sells for export, or for resale by the purchaser to a second purchaser for export, if the procedural requirements set forth in paragraph (d) of this section are met. The tax benefit of this exemption is limited, however, to the manufacturer's or importer's exemption amount. Thus, if the tax that would otherwise be imposed under section 4681 on ODCs that a manufacturer or importer sells for export exceeds this exemption amount, a tax equal to the excess is imposed on the ODCs. The exemption amount, which is determined separately for post-1989 ODCs and post-1990 ODCs, is calculated for each calendar year in accordance with the rules of paragraph (c) of this section. This section also provides rules under which a tax imposed under section 4681 on exported ODCs may be credited or refunded, subject to the same limit on tax benefits, if the procedural requirements set forth in paragraph (f) of this section are met. See § 52.4681-1(c) for definitions relating to the tax on ODCs.

(b) *Exemption or partial exemption from tax—(1) In general.* Except as provided in paragraph (b)(2) of this section, no tax is imposed on an ODC if the manufacturer or importer of the ODC sells the ODC in a qualifying sale for export

(within the meaning of paragraph (d)(1) of this section).

(2) *Tax imposed if exemption amount exceeded—(i) Post-1989 ODCs.* The tax imposed on post-1989 ODCs that a manufacturer or importer sells in qualifying sales for export during a calendar year is equal to the excess (if any) of—

(A) The tax that would be imposed on the ODCs but for section 4682(d)(3) and this section; over

(B) The post-1989 ODC exemption amount for the calendar year determined under paragraph (c)(1) of this section.

(ii) *Post-1990 ODCs.* The tax imposed on post-1990 ODCs that a manufacturer or importer sells in qualifying sales for export during a calendar year is equal to the excess (if any) of—

(A) The tax that would be imposed on the ODCs but for section 4682(d)(3) and this section; over

(B) The post-1990 ODC exemption amount for the calendar year determined under paragraph (c)(2) of this section.

(iii) *Allocation of tax—(A) Post-1989 ODCs.* The tax (if any) determined under paragraph (b)(2)(i) of this section may be allocated among the post-1989 ODCs on which it is imposed in any manner, provided that the amount allocated to any post-1989 ODC does not exceed the tax that would be imposed on such ODC but for section 4682(d)(3) and this section.

(B) *Post-1990 ODCs.* The tax (if any) determined under paragraph (b)(2)(ii) of this section may be allocated among the post-1990 ODCs on which it is imposed in any manner, provided that the amount allocated to any post-1990 ODC does not exceed the tax that would be imposed on such ODC but for section 4682(d)(3) and this section.

(c) *Exemption amount—(1) Post-1989 ODC exemption amount.* A manufacturer's or importer's post-1989 ODC exemption amount for a calendar year is the sum of the following amounts:

(i) The 1986 export percentage of the aggregate tax that would (but for section 4682(d), section 4682(g), and this section) be imposed under section 4681 on the maximum quantity, determined without regard to additional production allowances, of post-1989 ODCs that the person is permitted to manufacture