ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 84

[EPA–HQ–OAR–2022–0430; FRL–8838–01–OAR]

RIN 2060–AV45

Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency is proposing to amend existing regulations to implement certain provisions of the American Innovation and Manufacturing Act, as enacted on December 27, 2020. This rulemaking proposes to establish the methodology for allocating hydrofluorocarbon production and consumption allowances for the calendar years of 2024 through 2028. EPA is also proposing to amend the consumption baseline to reflect updated data and to make other adjustments based on lessons learned from implementation of the hydrofluorocarbon phasedown program thus far, including proposing to: codify the existing approach of how allowances must be expended for import of regulated substances; revise recordkeeping and reporting requirements; and implement other modifications to the existing regulations.

DATES: Comments on this notice of proposed rulemaking must be received on or before December 19, 2022. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best ensured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before December 5, 2022. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Daylight Time on November 8, 2022. If a virtual public hearing is held, it will take place on or before November 18, 2022 and further information will be provided at *https://www.epa.gov/climate-hfcs-reduction.*

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2022–0430, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

You may find the following suggestions helpful for preparing your comments: direct your comments to specific sections of this proposed rulemaking and note where your comments may apply to future separate actions where possible; explain your views as clearly as possible; describe any assumptions that you used; provide any technical information or data you used that support your views; provide specific examples to illustrate your concerns; offer alternatives; and, make sure to submit your comments by the comment period deadline. Please provide any published studies or raw data supporting your position. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*e.g.,* on the web, cloud, or other file sharing system).

EPA recognizes that given the nature of this proposed rulemaking, potentially affected entities may wish to submit Confidential Business Information (CBI) or other confidential information. CBI should not be submitted through *https://www.regulations.gov.* For submission of confidential comments or data, please work with the person listed in the **FOR FURTHER INFORMATION CONTACT** section. For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: John Feather, U.S. Environmental Protection Agency, Stratospheric Protection Division, telephone number: 202–564–1230; or email address: *feather.john@epa.gov.* You may also visit EPA's website at *https://www.epa.gov/climate-hfcs-reduction* for further information.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' ''the Agency,'' or ''our'' is used, we mean EPA. Acronyms that are used in this rulemaking that may be helpful include:

ABI—Automated Broker Interface
AES—Automated Export System
AHRI—Air-Conditioning, Heating, and Refrigeration Institute
AIM Act—American Innovation and Manufacturing Act of 2020
ASHRAE—American Society of Heating, Refrigerating and Air-Conditioning Engineers
CAA—Clean Air Act
CBI—Confidential Business Information
CBP—U.S. Customs and Border Protection
CFR—Code of Federal Regulations
CO_2—Carbon Dioxide
DBA—Doing Business As
e-GGRT—Electronic Greenhouse Gas Reporting Tool
EEI—Electronic Export Information
EPA—U.S. Environmental Protection Agency
EVe—Exchange Value Equivalent
FR—Federal Register
GHG—Greenhouse Gas
GHGRP—Greenhouse Gas Reporting Program
GWP—Global Warming Potential
HAP—Hazardous Air Pollutants
HTS—Harmonized Tariff Schedule
HCFC—Hydrochlorofluorocarbon
HFC—Hydrofluorocarbon
HFO—Hydrofluoroolefin
HTS—Harmonized Tariff Schedule
ICR—Information Collection Request
IEC—International Electrotechnical Commission
IMO—International Maritime Organization
IPCC—Intergovernmental Panel on Climate Change
ISO—International Organization for Standardization
ITN—Internal Transaction Number
JCGM—Joint Committee for Guides in Metrology
LCD—Liquid Carbon Dioxide
$MMTCO_2$ e—Million Metric Tons of Carbon Dioxide Equivalent
MMTEVe—Million Metric Tons of Exchange Value Equivalent
MTEve—Metric Tons of Exchange Value Equivalent
NAAQS—National Ambient Air Quality Standards
NAICS—North American Industry Classification System
NATA—National Air Toxics Assessment
NEI—National Emissions Inventory
ODS—Ozone-Depleting Substances
PRA—Paperwork Reduction Act
RACA—Request for Additional Consumption Allowances
RFA—Regulatory Flexibility Act
RIA—Regulatory Impact Analysis

SISNOSE—Significant Economic Impact on a Substantial Number of Small Entities
TRI—Toxics Release Inventory
XPS—Extruded Polystyrene

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I. General Information

A. Does this proposed action apply to me?

You may be potentially affected by this proposal if you produce, import, export, destroy, use as a feedstock or process agent, reclaim, or recycle HFCs. Potentially affected categories, North American Industry Classification System (NAICS) codes, and examples of potentially affected entities are included in Table 1.

TABLE 1—NAICS CLASSIFICATION OF POTENTIALLY AFFECTED ENTITIES

NAICS code	NAICS industry description
325120	Industrial Gas Manufacturing.
325199	All Other Basic Organic Chemical Manufacturing.
325211	Plastics Material and Resin Manufacturing.
325412*	Pharmaceutical Preparation Manufacturing.
325414*	Biological Product (except Diagnostic) Manufacturing.
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.
326220	Rubber and Plastics Hoses and Belting Manufacturing.
326150*	Urethane and Other Foam Product.
326299	All Other Rubber Product Manufacturing.
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
333511	Industrial Mold Manufacturing.
334413*	Semiconductor and Related Device Manufacturing.
334419**	Other Electronic Component Manufacturing.
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing.
336212*	Truck Trailer Manufacturing.
336214*	Travel Trailer and Camper Manufacturing.
336411*	Aircraft Manufacturing.
336611*	Ship Building and Repairing.
336612*	Boat Building.
339112	Surgical and Medical Instrument Manufacturing.
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers.

TABLE 1—NAICS CLASSIFICATION OF POTENTIALLY AFFECTED ENTITIES—Continued

NAICS code	NAICS industry description
423740	Refrigeration Equipment and Supplies Merchant Wholesalers.
423830	Industrial Machinery and Equipment Merchant Wholesalers.
423840	Industrial Supplies Merchant Wholesalers.
423860 *	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.
424690	Other Chemical and Allied Products Merchant Wholesalers.
488510	Freight Transportation Arrangement.
541380	Testing Laboratories.
541714	Research and Technology in Biotechnology (except Nanobiotechnology).[11]
562111	Solid Waste Collection.
562211	Hazardous Waste Treatment and Disposal.
562920	Materials Recovery Facilities.
922160 *	Fire Protection.

Codes marked with an asterisk may apply to sectors that receive application-specific allowances under the American Innovation and Manufacturing Act of 2020 (AIM Act).

This table is not intended to be exhaustive, but rather provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this section could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the AIM Act, and what authority does it provide to EPA as it relates to this proposed action?

On December 27, 2020, the AIM Act was enacted as section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (42 U.S.C. 7675). The AIM Act authorizes EPA to address HFCs in three main ways: phasing down HFC production and consumption through an allowance allocation program; facilitating sector-based transitions to next-generation technologies; and promulgating certain regulations for purposes of maximizing reclamation and minimizing releases of HFCs and their substitutes from equipment. This rulemaking focuses on the first area—the phasedown of the production and consumption of HFCs.

Subsection (e) of the AIM Act gives EPA authority to phase down the production and consumption of listed HFCs through an allowance allocation and trading program. Subsection (c)(1) of the AIM Act lists 18 saturated HFCs, and by reference any of their isomers not so listed, that are covered by the statute's provisions, referred to as ''regulated substances'' under the Act. Congress also assigned an ''exchange value'' [1] [2] to each regulated substance (along with other chemicals that are used to calculate the baseline). EPA has codified the list of the 18 regulated substances and their exchange values in appendix A to 40 CFR part 84.

The AIM Act requires EPA to phase down the consumption and production of the statutorily listed HFCs on an exchange value-weighted basis according to the schedule in subsection (e)(2)(C) of the AIM Act. The AIM Act requires that the EPA Administrator ensures the annual quantity of all regulated substances produced or consumed [3] in the United States does not exceed the applicable percentage listed for the production or consumption baseline. EPA has codified the phasedown schedule at 40 CFR 84.7.

To implement the directive that the production and consumption of regulated substances in the United States does not exceed the statutory targets, the AIM Act in subsection (e)(3) requires EPA to issue regulations establishing an allowance allocation and trading program to phase down the production and consumption of the listed HFCs. These allowances are limited authorizations for the production or consumption of regulated substances. Subsection (e)(2) of the Act has a general prohibition that no person [4] shall produce or consume a quantity of regulated substances in the United States without a corresponding quantity of allowances.

EPA published a final rule on October 5, 2021 (86 FR 55116; hereinafter called the Framework Rule), that, among other things: established the HFC production and consumption baselines; determined an initial approach to allocating production and consumption allowances for 2022 and 2023, identifying both the entities receiving allowances and how to determine what quantities of allowances they would receive; established a process for issuing ''application-specific'' allowances to entities in six specific applications listed in subsection (e)(4)(B)(iv) of the AIM Act; created a set-aside pool of allowances for new entrants and entities for which the Agency did not have verifiable data prior to the finalization of the rule; established provisions for the transfer of allowances; established recordkeeping and reporting requirements; and established a suite of

[1] EPA has determined that the exchange values included in subsection (c) of the AIM Act are identical to the global warming potentials (GWPs) included in the Intergovernmental Panel on Climate Change (IPCC) (2007). EPA uses the terms ''global warming potential'' and ''exchange value'' interchangeably in this proposal.

[2] IPCC (2007): Solomon, S., D. Qin, M. Manning, R.B. Alley, T. Berntsen, N.L. Bindoff, Z. Chen, A. Chidthaisong, J.M. Gregory, G.C. Hegerl, M. Heimann, B. Hewitson, B.J. Hoskins, F. Joos, J. Jouzel, V. Kattsov, U. Lohmann, T. Matsuno, M. Molina, N. Nicholls, J. Overpeck, G. Raga, V. Ramaswamy, J. Ren, M. Rusticucci, R. Somerville, T.F. Stocker, P. Whetton, R.A. Wood and D. Wratt, 2007: Technical Summary. In: Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA *https://www.ipcc.ch/report/ar4/wg1*.

[3] In the context of allocating and expending allowances, EPA interprets the word ''consume'' as the verb form of the defined term ''consumption.'' For example, subsection (e)(2)(A), states the phasedown consumption prohibition as ''no person shall . . . *consume* a quantity of a regulated substance without a corresponding quantity of consumption allowances.'' While a common usage of the word ''consume'' means ''use,'' EPA does not believe that Congress intended for everyone who charges an appliance or fills an aerosol can with an HFC to expend allowances.

[4] Under the Act's term, this general prohibition applies to any ''person.'' Because EPA anticipates that the parties that produce or consume HFCs—and that would thus be subject to the Act's production and consumption controls—are companies or other entities, we frequently use those terms to refer to regulated parties in this proposal. Using this shorthand, however, does not alter the applicability of the Act's or regulation's requirements and prohibitions. Similarly, in certain instances EPA may use these terms interchangeably in this rule preamble, but such differences in terminology should not be viewed to carry a material distinction in how EPA interprets or is planning to apply the requirements discussed herein.

compliance and enforcement-related provisions. Unless otherwise stated in the proposal sections included in this notice, EPA's proposed requirements and revisions are based on the same interpretations of the AIM Act, and the Clean Air Act as applicable under subsection (k) of the AIM Act, as discussed in the Framework Rule. EPA also has inherent authority to prevent and identify noncompliance, to ensure the Agency can meet the statutory directive in subsection (e)(2)(B), and to create a level playing field for the regulated community.

C. What are HFCs?

HFCs are anthropogenic [5] fluorinated chemicals that have no known natural sources. HFCs are used in a variety of applications such as refrigeration and air conditioning, foam blowing agents, solvents, aerosols, and fire suppression. HFCs are potent greenhouse gases (GHGs) with 100-year GWPs (a measure of the relative climatic impact of a GHG) that can be hundreds to thousands of times that of carbon dioxide (CO_2).

HFC use and emissions,[6] have been growing worldwide due to the global phaseout of ozone-depleting substances (ODS) under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol), and the increasing use of refrigeration and air-conditioning equipment globally. HFC emissions had previously been projected to increase substantially over the next several decades. In 2016, in Kigali, Rwanda, countries agreed to adopt an amendment to the Montreal Protocol, known as the Kigali Amendment, which provides for a global phasedown of the production and consumption of HFCs. Global adherence to the Kigali Amendment would substantially reduce future emissions, leading to a peaking of HFC emissions before 2040.[7] [8]

Atmospheric observations of most currently measured HFCs confirm their abundances are increasing at accelerating rates. Total emissions of HFCs increased by 23 percent from 2012 to 2016 and the four most abundant HFCs in the atmosphere, in GWP-weighted terms, are HFC–134a, HFC–125, HFC–23, and HFC–143a.[9]

In 2016, HFCs, excluding HFC–23, accounted for a radiative forcing [10] of 0.025 W/m^2: This is a 36 percent increase in total HFC forcing relative to 2012. Under status quo conditions, this radiative forcing was projected to increase by an order of magnitude to 0.25 W/m^2 by 2050.[11] If the Kigali Amendment were to be fully implemented, it would be expected to reduce the future radiative forcing due to HFCs (excluding HFC–23) to 0.13 W/m^2 in 2050 which is a reduction of about 50 percent compared with the radiative forcing projected in the business-as-usual scenario of uncontrolled HFCs.[12]

There are hundreds of possible HFC compounds. The 18 HFCs listed as regulated substances by the AIM Act are some of the most commonly used HFCs and have high impacts as measured by the quantity of each substance emitted multiplied by their respective GWPs. These 18 HFCs are all saturated, meaning they have only single bonds between their atoms and therefore have longer atmospheric lifetimes.

In the United States, HFCs are primarily used in refrigeration and air-conditioning equipment in homes, commercial buildings, and industrial operations (approximately 75 percent of total HFC use in 2018) and in air conditioning in vehicles and refrigerated transport (approximately 8 percent). Smaller amounts are used in foam products (approximately 11 percent), aerosols (approximately 4 percent), fire protection systems (approximately 1 percent) and solvents (approximately 1 percent).[13]

More detailed information on HFCs, their uses, and their impacts is available in the Framework Rule and its associated supporting documentation. We also discuss costs and benefits associated with this action in section IX of this preamble, and consider potential environmental justice impacts in section X of this preamble.

II. What is the summary of this proposed action?

EPA proposes to:

- Establish a methodology for issuing production and consumption allowances for calendar years 2024 through 2028; [14]
- Confirm that entities may confer or transfer allowances as soon as allowances are allocated;
- Adjust the consumption baseline to reflect corrected data;
- Codify requirements related to the expenditure of allowances for import;
- Clarify and revise recordkeeping and reporting requirements, including a new requirement to report emissions from HFC production facilities; and
- Implement other revisions.

EPA is also carrying out further analyses in light of these proposed actions, including:

- Estimating incremental changes in costs and benefits of the HFC phasedown from 2024 through 2050 due to the proposal to adjust the consumption baseline and revising an abatement option used in the analysis; and
- Providing further consideration of potential environmental justice impacts, including updating the analysis with more recent data, adding another facility, and providing more demographic detail on potentially affected communities.

[5] While the overwhelming majority of HFC production is intentional, EPA is aware that HFC–23 can be a byproduct associated with the production of other chemicals, including but not limited to hydrochlorofluorocarbon (HCFC)-22.

[6] World Meteorological Organization (WMO), *Scientific Assessment of Ozone Depletion: 2018,* World Meteorological Organization, Global Ozone Research and Monitoring Project—Report No. 58, 67 pp., Geneva, Switzerland, 2018. *https://ozone.unep.org/sites/default/files/2019-05/SAP-2018-Assessment-report.pdf.*

[7] Ibid.

[8] A recent study estimated that global compliance with the Kigali Amendment is expected to lower 2050 annual emissions by 3.0–4.4 Million Metric Tons of Carbon Dioxide Equivalent ($MMTCO_2e$). Guus J.M. Velders et al. *Projections of hydrofluorocarbon (HFC) emissions and the resulting global warming based on recent trends in observed abundances and current policies.* Atmos. Chem. Phys., 22, 6087–6101, 2022. Available at *https://doi.org/10.5194/acp-22-6087-2022.*

[9] WMO, 2018.

[10] Radiative forcing is expressed in units of watts per square meter (W/m^2) and is defined by the IPCC as ''a measure of the influence a factor has in altering the balance of incoming and outgoing energy in the Earth-atmosphere system and is an index of the importance of the factor as a potential climate change mechanism.'' IPCC, 2007: Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, Pachauri, R.K and Reisinger, A. (eds.)]. IPCC, Geneva, Switzerland, 104 pp. *https://www.ipcc.ch/report/ar4/syr/.*

[11] Guus J.M. Velders, David W. Fahey, John S. Daniel, Stephen O. Andersen, Mack McFarland, Future atmospheric abundances and climate forcings from scenarios of global and regional hydrofluorocarbon (HFCs) emissions, Atmospheric Environment, doi:10.1016/j.atmosenv.2015.10.071, 2015.

[12] Ibid.

[13] Calculations based on EPA's Vintaging Model, which estimates the annual chemical emissions from industry sectors that historically used ODS, including refrigeration and air-conditioning, foam blowing agents, solvents, aerosols, and fire suppression. The model uses information on the market size and growth for each end use, as well as a history and projections of the market transition from ODS to alternatives. The model tracks emissions of annual ''vintages'' of new equipment that enter into operation by incorporating information on estimates of the quantity of equipment or products sold, serviced, and retired or converted each year, and the quantity of the compound required to manufacture, charge, and/or maintain the equipment. Additional information on these estimates is available in U.S. EPA, April 2016. EPA Report EPA–430–R–16–002. Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014. Available at *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014.*

[14] In the context of this proposal, ''2024 through 2028'' means ''2024 through, and including, 2028.''

III. How is EPA proposing to determine allowance allocations starting in 2024?

This section provides an overview of EPA's proposal to establish a methodology for issuing calendar year production and consumption allowances starting in calendar year 2024. In the Framework Rule, EPA codified an initial approach to allocating production and consumption allowances for calendar years 2022 and 2023, and did not establish any allocation methodology for further years. This rulemaking proposes an approach to calculating production and consumption allowance allocations for future calendar years, beginning with calendar year 2024 allowances. EPA is proposing that this methodology would apply for calculating production and consumption allowances for calendar years 2024 through 2028.

The Framework Rule established that application-specific allowances would be available to identified entities for calendar years 2022, 2023, 2024, and 2025. EPA is not proposing to change the methodology for issuing application-specific allowances through this rulemaking. The existing application-specific allowance allocation methodology codified at 40 CFR 84.13 will continue to apply as finalized in the Framework Rule.

Subsection (e)(3) of the AIM Act requires EPA to implement the statutorily established phasedown of the production and consumption of regulated substances through an allowance allocation program. Congress established a cap on the number of allowances available each year (by defining how to calculate the baseline and requiring a set percentage reduction in specific years from that baseline) and requires EPA to establish ''an allowance allocation and trading program.''

In the Framework Rule, EPA made clear that the Agency intended to revisit how to allocate production and consumption allowances for 2024 and beyond. EPA presented and took advance comment on ideas on potential criteria and a framework for issuing allowances for 2024 and later years. EPA stated that comments received on the elements noted for advance comment would be taken under advisement by the Agency and incorporated, as appropriate, in future and separate rulemakings with an opportunity for public comment prior to finalization of any provisions. Accordingly, EPA has considered the advance comments provided on potential methodology for allocation methodologies starting with calendar year 2024 allowances in development of this proposal. Those comments can be found at Docket ID No. EPA–HQ–OAR–2021–0044. EPA is not including those comments in the docket for this rule, does not consider those advance comments to be part of this rulemaking record, and does not anticipate providing any further response to them.

A. For which years is EPA proposing to establish the allocation methodology?

EPA is proposing to establish a methodology for allocating production and consumption allowances for calendar year 2024 through 2028. During these five years, the annual production and consumption caps established in the AIM Act are 60 percent of the baseline.[15] EPA is proposing to establish a consistent methodology for the duration of this next phasedown step.

In the phaseout of HCFCs, which EPA is implementing under Title VI of the Clean Air Act, EPA has similarly used an approach of periodically revisiting its allocation methodology and has found that a periodic revisiting of the allowance allocation methodology allowed the Agency to respond to changing market conditions or challenges in program implementation. Examples of changes in market conditions that the Agency could potentially consider in revisiting its methodology in the HFC phasedown include, among other things, companies entering or exiting the market, corporate mergers and acquisitions, significant quantities of allowances unexpended at the end of the year, and/or supply shortages for specific HFCs. EPA is proposing to implement the current methodology through allocation of calendar year 2028 allowances to align the next periodic revisiting of the methodology with the next phasedown step, which occurs in 2029. This allows EPA to consider lessons learned from implementation, prior year use of allowances, and any concerns surrounding distribution of allowances prior to the next reduction in the production and consumption caps. For example, EPA might want to adjust the allocation methodology if certain allowance allocations are not being expended, leading to supply constraints, or if there are concerns of market disruptions tied to the next phasedown step that EPA could alleviate through a change in allocation methodology. Establishing a methodology for these five years, as opposed to a shorter period of time, is intended to provide allowance holders a predictable understanding of a likely range of allocation levels for these five years so they can make longer term decisions and plans about how to deploy their allowances (*e.g.,* whether to transfer or produce or import directly).

While the Agency's primary proposal is to establish an allowance methodology through 2028 and reassess the methodology for allocation of calendar year 2029 production and consumption allowances, EPA is also considering whether it may be less disruptive to the market to reassess and potentially change methodologies in a year prior to or after a phasedown step (*e.g.,* alter the methodology for allocation of calendar year 2028 or 2030 allowances, instead of aligning with the next phasedown step in 2029). EPA is also interested in commenters' input on whether it is appropriate to establish the methodology through a different phasedown step, such as through the allocation of calendar year 2036 allowances when the production and consumption caps reach 15 percent of baseline.

B. What is EPA's proposed framework for determining how many allowances each entity receives?

This section discusses how EPA proposes to determine the quantity of production and consumption allowances each entity would receive. As in the Framework Rule, EPA seeks to provide as seamless a transition as possible as HFCs are phased down, ensure that the methodology is in place before October 1, 2023,[16] and develop a methodology that utilizes robust data. EPA is proposing to use a similar methodology to calculate allocation quantities as the initial framework used for allocating calendar year 2022 and 2023 production and consumption allowances, with adjustments to accommodate new market entrants [17] that received allowances from EPA on March 31, 2022, pursuant to 40 CFR 84.15(e)(3). EPA is not proposing to establish another pool of set-aside allowances. Nor is EPA proposing any change to the methodology outlined in

[15] In 2029, the production and consumption caps decline to 30 percent of baseline.

[16] Under the AIM Act, by October 1 of each calendar year EPA must calculate and determine the quantity of production and consumption allowances for the following year. EPA intends to issue allowances for the 2024 calendar year no later than October 1, 2023, using the procedure established through this rulemaking.

[17] EPA allocated calendar year 2022 and 2023 consumption allowances to entities that met the criteria of 40 CFR 84.15(c)(2) as part of the initial pool of set-aside allowances. In the context of this proposal, EPA generally refers to these entities as new market entrants. As discussed in this section, EPA is not proposing to establish another pool of set-aside allowances or to extend 40 CFR 84.15(c)(2) to future new market entrants.

40 CFR 84.13 for determining application-specific allowance allocations and accordingly is not reopening that methodology in this rulemaking.[18]

1. Which methodology is EPA proposing to use as the basis for allocations?

EPA is proposing to base production allowance allocations on an entity's market share derived from the average of the three highest years (not necessarily consecutive) of production of regulated substances [19] between 2011 and 2019. EPA is proposing to base consumption allowance allocations on an entity's market share derived from the average of the three highest years (not necessarily consecutive) of consumption of regulated substances between 2011 and 2019.[20] For new market entrants that were allocated allowances in 2022 and 2023, EPA is proposing an approach that would allocate consumption allowances such that they would see an equivalent reduction in allowances between the 2022–2023 and 2024–2028 timeframes as general pool allowance holders. Since new market entrants do not receive allowances based on prior import history between 2011 and 2019, EPA is proposing to create a value that can serve as a stand in for an average of the three highest years of consumption of regulated substances between 2011 and 2019 for each new market entrant.

EPA would determine this based on the number of allowances allocated to each new market entrant in calendar year 2023 (which is identical to the number of allowances allocated for calendar year 2022) and the percent reduction all general pool allowance holders experience in calendar year 2023 relative to the average of their three highest years of consumption. For reference, each general pool allowance holder received allowances at a level 32.1 percent below their individual high three-year average in calendar year 2022. The reduction in calendar 2023 will likely be different, assuming the number of application-specific allowances allocated is different, and will be determined by October 1, 2023. EPA would divide each new market entrant's calendar year 2023 allowance value by the proportion of allowances received by general pool allowance holders relative to their high three-year average in calendar year 2023. For example, if general pool allowance holders receive allowances equivalent to 67.9 percent of their high three-year average identical to calendar year 2022, a new market entrant that received 200,000 MTEVe of allowances in 2023 would be credited with approximately 294,435 MTEVe as the stand in for their high three-year average.

EPA would then add the high three-year average values for historic producers and importers with the stand in values for new market entrants to determine an aggregate total across all eligible allowance holders. This approach is intended to ensure that new market entrants and general pool allowance holders would experience the same proportionate reduction between their 2023 allocation and their 2024 allocation. If any entity qualifies under both the new market entrant and historic producer or importer methodologies, the Agency will allocate with the methodology that issues the greater number of allowances. EPA is proposing that if a company that has prior production and/or import activity during the relevant timeframe acquires a new market entrant, the Agency would add the new market entrant's high three-year average stand-in value to the acquiring entity's high three-year average consumption value and would use this value for future allocation determinations.

After determining entities' market share and eligibility (see section III.C of this preamble), EPA is proposing to then use the same steps as described in the Framework Rule (86 FR 55147) and codified at 40 CFR 84.9(a)(2)–(4) and 40 CFR 84.11(a)(2)–(4) that currently apply for purposes of allocations for calendar years 2022 and 2023. Independently for production and consumption allowances, EPA would add every entity's average to determine a percentage market share of production and consumption allowances, respectively, for each entity. EPA would multiply each entity's percentage market share by the total amount of general pool calendar-year allowances available to determine each entity's production or consumption allocation.

EPA is proposing to continue using historic production and consumption data from 2011 to 2019, matching the approach taken for allocating calendar year 2022 and 2023 allowances, for many of the reasons described in the Framework Rule (86 FR 55145–55147). Among these reasons is that a broad range of years such as 2011–2019 accounts for changes in market behavior (*e.g.,* actively commercializing alternatives to high-GWP HFCs) that took place earlier in the transition as a result of the global agreement to the Kigali Amendment or other countries enacting HFC phasedown regulations.

Beyond the rationales detailed in the Framework Rule, EPA is proposing to continue to use 2011–2019 data for additional reasons. First, using the same timeframe as finalized in the Framework Rule would minimize disruption to the market in 2024. EPA is seeking to provide a smooth transition from HFCs through the next phasedown step. Over the past year, allowance holders and their supply chains have been adjusting to the HFC Allocation Program, and more specifically, entity-specific allocation levels. Continuing to use the same set of years reduces the disruption to the market. This is especially valuable since reducing U.S. production and import from 90 percent of baseline to 60 percent of baseline will result in other changes to business practices, such as the increased use and changes in production or import of alternatives and reclaimed HFCs. Using the same methodology would provide continuity between the 2022 to 2023 timeframe and the 2024 to 2028 timeframe, and would allow producers and importers to estimate their anticipated allocation and plan accordingly. Since EPA has already gone through the process of identifying entities' high three years of historic data, averaged those, and calculated respective market shares, entities have more specific insight on what proportion of available production and/or consumption allowances they would be allocated if EPA continued with the same methodology, although EPA does anticipate some entity-specific revisions due to corrected historic data. In comments received on the Framework Rule, EPA heard from regulated entities that they have long planning horizons and would prefer allowances be allocated consistently for as long as possible. Establishing a methodology for five years that continues forward an approach that is similar to the one used for the calendar year 2022 and 2023 allocation provides a longer-term planning horizon for HFC producers and importers. This will help enable entities to make decisions about which HFCs, and HFC alternatives, to produce

[18] As noted previously, the existing methodology in 40 CFR 84.13 makes application-specific allowances available to identified entities for calendar years 2022, 2023, 2024, and 2025. The existing application-specific allowance allocation methodology codified at 40 CFR 84.13 will continue to apply as finalized in the Framework Rule. EPA will consider any comments on this methodology outside the scope of this rulemaking.

[19] The Agency is not, at this time, proposing to designate any new regulated substances under subsection (c)(3), just as the Agency did not designate any new regulated substances under subsection (c)(3) in the Framework Rule (Response to Comments on the Framework Rule at page 193).

[20] If a company did not have three years of data, EPA took the average of the years between 2011 and 2019 for which the company produced or imported HFCs, assuming the company was active in 2020 or applied for and received special consideration (86 FR 55146).

and import as the market transitions away from high exchange value equivalent (EVe) regulated substances. Second, EPA has conducted multiple rounds of outreach and review and most entities have reviewed and corrected their data, if needed. EPA has reviewed 2011–2019 data against information available through other systems, such as import paperwork filed with U.S. Customs and Border Protection (CBP), and conducted outreach where significant inconsistencies were identified. If a significant inconsistency was identified, EPA requested entities correct the data or provide source materials to verify previously provided figures. As such, the 2011–2019 dataset is well understood and has received more review than any other set of years. Further, after implementing this approach through the Framework Rule, EPA has not identified any reasons that merit significantly changing course at this time, especially given the regulated community has recently adjusted to this new allocation program.

Since the Agency is proposing to look at entity-specific data from such a wide range of years, EPA is proposing to average an entity's three highest years of data (not necessarily consecutive), as opposed to going with a single high year. Taking an average of multiple years minimizes the effect of market fluctuations and mitigates the possibility of an entity receiving a large share of allocations based on a single very high year. Using an average of the three highest years during the 2011–2019 period incorporates consideration of both industry history and ongoing growth and market change. EPA recognizes that there is no single year that is ''better'' for all market participants. There is no year in which a forward-looking entity may not have been stockpiling in preparation for a restriction on HFCs or new duties that were imposed by the Department of Commerce. Though countries agreed to the Kigali Amendment in 2016, efforts to amend the Montreal Protocol took the better part of a decade. As such, taking an average of a wider range of years is more equitable to all entities in the market. Each entity receives its ''best'' years regardless of actions taken by other entities.

To determine entity-specific consumption data and an entity's three highest years, EPA intends to rely on production, import, export, destruction, and transformation data reported to the Greenhouse Gas Reporting Program (GHGRP),[21] which parallels the approach taken in the Framework Rule and in the Agency's allocation of calendar year 2022 general pool allowances. EPA acknowledges that the definition of ''importer'' under GHGRP could apply to multiple entities, such that more than one entity could be considered an ''importer'' for purposes of GHGRP. As a result, entities could have played varying roles in the import activity, but still been appropriately considered an ''importer'' under GHGRP definitions. Importantly, the GHGRP definition of importer is substantially similar to the definition of importer in the 40 CFR part 84 regulations.[22]

It is critical to develop an approach to allocation that helps ensure that only one entity receives credit as the ''entity that imported'' particular HFCs. For example, if both a consignee and an importer of record received credit for the same historically imported HFCs, this would double-allocate allowances for that single shipment. This double-allocation would distort the allowance system such that it was not a best available reflection of historic patterns. For purposes of determining historic import levels, EPA intends to rely on the entity that has historically reported the imports for a shipment. If two or more entities report the same import to GHGRP, EPA would include that import in the allowance allocation calculation of the entity that first reported the import to GHGRP. EPA considers historic reporting to GHGRP as indicative of the entity that took primary responsibility for complying with EPA requirements for that import and considers this a critical data point to determining who to credit that import to. EPA is concerned that entities who took limited if any responsibility for the import, including complying with EPA reporting requirements, may attempt to claim that they are in fact the importer now that EPA has begun implementing the AIM Act.

EPA is also considering whether to include more recent data in determining allocation levels given that more recent data may be a more accurate reflection of the current state of the HFC production and import market. EPA requests comment on whether to expand the range of years to use to develop each allowance holder's high three-year average to include 2020 and 2021. EPA has not included these years in its primary proposal because the Agency recognizes that production and importation of HFCs in 2020 and 2021 were likely influenced by external factors such as the COVID–19 pandemic, and supply chain disruptions. In addition, EPA is concerned that data from 2020 and 2021 could be distorted due to an entity's awareness that the AIM Act may be, or had been, passed. Data from 2021, in particular, may be skewed given the likelihood of stockpiling in advance of the Framework Rule becoming effective and the associated restrictions on production and import of regulated substances that began on January 1, 2022. Expanding the range of years could also significantly change each entity's market share, which could disrupt the market and negatively affect ongoing adjustments to the HFC Allocation Program that have taken place in 2022 and 2023. Further, EPA is unaware of any environmental benefit associated with changing the years used to determine allowance allocations. For the reasons described, EPA's primary proposal is to not use 2020 and 2021 data to determine entity-specific allocation amounts. However, EPA requests comment on whether there are advantages and disadvantages of including 2020 and 2021 data, and if so, what those would be.

EPA is proposing to include data that dates as far back as 2011 because of potential concerns that data from more recent years, particularly 2017–2021, could reflect attempts at market manipulation, stockpiling, or other system gaming by some entities that were aware of agreement of the Kigali Amendment to the Montreal Protocol on October 15, 2016, and/or development and consideration of the AIM Act by Congress. By using only later years of data, and not data from the earlier timeline, EPA could potentially unfairly give additional weight to entities that had inflated numbers due to attempts at artificial market positioning or stockpiling behavior ahead of the HFC phasedown.

EPA also considered using a rolling set of years, such as allocating based on entities' prior three years of production or consumption data, but decided against proposing this as an option. Using a rolling average based on the most recent production or consumption data would allow allocations for additional new entrants beyond entities that are allocated allowances based on historic production and import and as new market entrants from the set-aside pool. Under EPA's Framework Rule, 40

[21] The GHGRP requires various facilities and suppliers to annually report data related to GHGs to EPA (see 40 CFR part 98). Subpart OO, ''Suppliers of Industrial Greenhouse Gases,'' is the section relevant to reporting on HFC production and consumption. Because the HFCs listed as regulated substances under the AIM Act are industrial GHGs, EPA has collected data relevant to HFC production and consumption as defined under the AIM Act. Further discussion of the GHGRP can be found in the notices and dockets related to the Framework Rule.

[22] Compare 40 CFR 98.6 to 40 CFR 84.3.

CFR 84.15, and our primary proposal in this rule, any entity that did not receive allowances as a new market entrant to import going forward or that lacked production or import history from 2011–2019, would have to purchase allowances from an entity willing to engage in a transfer. As currently established, each transfer is a one-off transaction that only applies to the year of the transfer. Unless an entity acquires a different entity that holds allowances outright and receives a regular allocation, this approach does not allow for an entity to secure allowances for the duration of the allocation period. However, there are many advantages of using a stable set of past years instead of using more recent data, especially data from after the start of the HFC Allocation Program. Many stakeholders have expressed concerns that if EPA were to base allocations on production and import volumes in 2022 and later years, entities that transferred their allowances would effectively reduce their market share and receive fewer allowances in a future allocation. Likewise, entities that receive allowances through an inter-company transfer would be gaining market share that could increase their future allocation. In the proposal prior to the finalized Framework Rule (86 FR 27203, May 19, 2021), EPA sought advance input on what approaches to consider for 2024 and later years, indicating that the methodology used to determine allowance allocations for calendar years 2022 and 2023 may not be used for the 2024 allocation. Uncertainty about whether EPA may decide to allocate future allowances on the basis of data from a rolling set of years rather than from a fixed historical period may have contributed to reluctance from some allowance holders to engage in transfers. This uncertainty would be resolved over the intermediate future if EPA finalizes the approach of continuing to use historic production and consumption data to determine allowance allocations for calendar years 2024 through 2028. Transfers are important for an efficiently functioning market and ensuring the opportunity for full utilization of allowances. Basing allowance allocations on data from a rolling set of years during this timeframe could promote uncertainty among allowance holders and inhibit the efficient transfer of allowances. EPA is concerned about finalizing an allocation methodology that would disincentivize transfers unless there were other compelling reasons to argue for such a methodology and is therefore not proposing to use a rolling set of years to determine entity-specific allocation amounts for the 2024 through 2028 allocations.

2. What other allocation methodologies did EPA consider?

As indicated in the proposal to the Framework Rule (86 FR 27150), including in the section seeking advance comment to inform future rulemakings, EPA has been considering other ways to undertake allowance allocation beyond allocating allowances to entities based on historic production and import activity at no cost (86 FR 27203). In considering different allocation mechanisms, EPA considered multiple factors, including ease of implementation for both the regulated community and the U.S. government; consistency with the AIM Act; facilitating an efficient market, such as by collecting and releasing data on production, import, and inventories of HFCs; transparency and certainty for regulated entities and the public; distributional effects, such as on new entrants; responsiveness to changing market conditions (*e.g.,* companies entering or existing the market, corporate mergers and acquisitions, significant quantities of allowances unexpended at the end of the year, or supply shortages or market disruptions for specific HFCs); small business implications; minimizing the opportunity for fraud; and other factors.

In developing this proposed rulemaking, the Agency considered charging a fee for allowances or establishing a system to auction allowances. These approaches have advantages, including returning value to taxpayers and setting a visible price signal, which could provide useful price information for the public and for market participants. A fee or auction would be aimed at further incentivizing the highest economically valued use due to the upfront expenditures needed for all entities seeking allowances to produce and import HFCs. There is extensive literature discussing the conditions where auctions may be more suitable than other allocation methods.[23] The academic literature indicates that auctions may have potential advantages in addressing challenges such as new entrants, ensuring efficient and equitable allocations as market conditions change, and encouraging competition and innovation.[24] Both EPA, and the federal government overall (for example, the Federal Communication Commissions' spectrum auctions and the U.S. Treasury Department's sealed pay as bid and uniform bid auctions on debt of various maturities), have experience administering auctions of various formats.

However, EPA also anticipates challenges with establishing a potential fee-based or auction system and is not proposing to use these methods of allocation in this proposed rulemaking. EPA and regulated entities have experience implementing the allocation methodology set for the calendar years of 2022 and 2023, which is similar to the system that many entities also participated in for the phaseout of ODS under Title VI of the Clean Air Act (CAA).[25] Creating and administering a different system would result in additional burden on EPA and uncertainty for those involved in the early stages of the HFC phasedown. EPA is also concerned that smaller entities with less available capital may not be able to bear the initial costs of purchasing allowances either through a fee system or through an auction. EPA would also need to consider what safeguards would be appropriate to deter or prevent efforts by well-capitalized entities, particularly in an auction system, to artificially corner a portion of the HFC market for their overall business gains.

For these reasons, EPA is not proposing to establish a fee-based or auction system to allocate allowances in this proposed rule. These considerations may change as the phasedown proceeds. EPA recognizes that the market may face scarcity as HFC production and consumption is phased down, and we may also see allowances unused as new alternatives not subject to allocations replace HFCs. The use of an EV-weighted system rather than chemical-by-chemical allocation in part addresses these different market forces by providing flexibility about which HFCs are produced and imported. EPA intends to consider all relevant information when developing future rulemaking. To facilitate our continued

[23] See, *e.g.,* Administrative Conference of the United States, Recommendation 2017–4: Marketable Permits (2017), *https://www.acus.gov/sites/default/files/documents/Recommendation%202017-4%20%28Marketable%20Permits%29.pdf* (citing relevant literature, including the consultant's report, which further summarizes the literature, available at *https://www.acus.gov/sites/default/files/documents/Marketable%20Permits%20Report-final.pdf*).

[24] The 2017 review conducted by the Administrative Conference of the United States also notes that ''even when an agency has statutory discretion to use [an auction] program, such a program may not be the most suitable regulatory tool to achieve an agency's goal.'' See *https://www.acus.gov/sites/default/files/documents/Recommendation%202017-4%20%28Marketable%20Permits%29.pdf.*

[25] A key difference between the phaseout of ODS and this program is that consumption and production of HFCs will not be phased out entirely.

consideration, separate and apart from this current rulemaking, EPA invites advance comments on whether there are any current or potential future disadvantages with the currently proposed allocation system that could be addressed by an alternate allocation mechanism, as well as comments on design features or timing options for alternate allocation mechanisms that EPA could consider were the Agency to determine at a future point that changes are warranted.

3. What did EPA consider in developing its proposal as to the appropriate entities to be allocated allowances?

As outlined in section III.B.1 of this preamble, EPA is proposing to use a similar methodology to calculate allocation quantities as the initial framework used for allocating calendar year 2022 and 2023 production and consumption allowances, with adjustments to accommodate new market entrants that received allowances from EPA on March 31, 2022. In developing this proposed approach, EPA has considered whether to allocate production and consumption allowances to entities beyond those that have historic production and import data.

As part of this deliberation, EPA has considered whether allowance allocations can be used to incentivize certain behavior such as to maximize reclamation and minimize releases of regulated substances. Some commenters to the Framework Rule encouraged EPA to issue allowances to reclaimers. The result of this suggestion could be that reclaimers have allowances available to directly import virgin regulated substances that they could use to rebalance refrigerant blends that are slightly off specification after reprocessing recovered refrigerant. The allowances could be transferred to another entity to import or produce on the reclaimer's behalf, or could be used to ease a reclaimer's ability to purchase regulated substances from another entity. This could be an indirect way to foster the development of HFC reclamation operations. However, EPA notes that reclaimers that have historically directly imported were included in the Framework Rule methodology and would be included under the primary proposed methodology for this rule. EPA notes as well that several reclaimers applied for, and received, new market entrant allowances from the set-aside pool for calendar years 2022 and 2023. EPA does not view issuing allowances to reclaimers that are not eligible based on the methodology EPA is proposing to use for 2024 through 2028 (*i.e.,* similar to the methodology used for 2022 and 2023 including the additional allowances issued to new market entrants) as a meaningful way to increase opportunities for reclamation and recognizes that by doing so, EPA would reduce the number of allowances available to other market participants including other reclaimers. Moreover, EPA is exploring options to promote reclamation under other sections of the AIM act (*e.g.,* under subsection (h) Management of regulated substances). Further, the phasedown of HFCs increases opportunities for use of reclaimed HFCs by restricting the amount of newly produced and imported HFCs that can enter U.S. commerce.

As noted previously in this section, EPA is not proposing to establish a set-aside pool of allowances for calendar years 2024 through 2028. In the Framework Rule, EPA created a set-aside pool of allowances to be allocated no later than March 31, 2022. The prior set-aside pool was created for three types of entities: application-specific allowance holders, historic importers that were under the GHGRP reporting threshold and did not receive general pool allowances, and new market entrants. The first two categories were created for entities that may not have known of or fully understood the regulatory system created in the Framework Rule given that the Agency undertook the rulemaking in 270 days at Congress's direction and was implementing a program under a new statute. This concern is no longer applicable. Under 40 CFR part 84, entities are required to expend allowances for import and production of regulated substances as of January 1, 2022; therefore, EPA anticipates that entities active in the HFC market are now well aware of EPA's HFC phasedown program. The third group eligible for set-aside allowances was new market entrants. EPA determined in the Framework Rule it was appropriate to exercise its discretion to create a small set-aside pool of allowances for entities looking to enter the HFC import market. It was appropriate to consider this as a one-time opportunity at the initiation of the HFC phasedown program. EPA is not privy to individual entities' decisions on whether to apply for new market entrant allowances, but entities were provided notice of the opportunity and many applied. While the number of consumption allowance holders doubled from the initial allocation with the addition of the eligible new market entrants, these new entrants hold a small percentage of the overall number of allowances issued. EPA recognizes that the goal of the AIM Act is to establish a national phase down of HFC production and consumption by 85 percent by 2036, and therefore, while the Agency did offer this one-time opportunity, EPA does not view further allocations for a set-aside pool and/or allowances for entities who have not previously produced and imported HFCs as supporting the AIM Act's objectives.

C. How is EPA accounting for past production or import activity to determine allocation eligibility?

In order to be eligible to receive general pool allowances for 2024 through 2028 based on historic production and import activity (*i.e.,* for entities that produced and imported regulated substances in 2011 through 2019), EPA is proposing that an entity must have produced (for production and consumption allowances) or imported (for entities only receiving consumption allowances) HFCs in 2021 or 2022. EPA had a similar requirement in the Framework Rule, specifically requiring production or import in 2020.[26] This additional eligibility requirement, that an entity has demonstrated import or production activity in recent years, is intended to exclude entities from receiving allocations that are no longer undertaking the activities for which allowances are required. EPA is interested in avoiding allocating to entities that had historic import or production data in the 2011–2019 timeframe, and have since ceased operations or transitioned away from HFC production or import. Allocating allowances to entities that cannot or will not use them could be disruptive to the market during the phasedown if allowances go unexpended or could result in windfall profits to an entity that will only use the allowances to transfer for a price. The practical effect of not allocating allowances to an entity due to their inactivity would be a pro rata increase of allocation levels to other entities receiving allowances from the general pool allocation.

Relying on information from 2021 or 2022 would incorporate more recent activity than was used for the calendar year 2022 and 2023 allocations, which required production or import in 2020,

[26] EPA also allowed for an entity to identify individual circumstances for not importing in that year due to the COVID–19 pandemic, which is no longer applicable. EPA is not proposing a mechanism to allow an entity to request unique consideration if they did not produce or import in 2021 or 2022.

or for purposes of allocating consumption allowances, an entity to identify individual circumstances for not importing or producing in 2020, given that it was an unusual year due to the COVID–19 pandemic. Allowing two years, as opposed to a single year, provides additional time to demonstrate activity in the market, and is intended to reduce the impacts of supply chain delays, temporary changes in demand, or other business decisions. Some entities also import small volumes of HFCs and may not need to import every year. EPA is proposing to use a fixed set of years (*i.e.,* 2021 and 2022) to determine eligibility for entities to be allocated allowances for calendar years 2024 through 2028 to provide a degree of clarity and certainty to entities during this period in order to minimize disruption to existing supply chains that have adjusted to the 2022 and 2023 allowance allocations. If this approach is finalized as proposed, all market participants will be able to generally understand their own and other allowance holders' market share for the 2024 through 2028 period as of October 1, 2023, because there would not generally be shifts in how many entities EPA is allocating allowances to and the relative share of allowances going to those entities. EPA considered proposing to use a rolling set of years to confirm activity, but using a rolling set of years would not provide the same stability since allowance holders could come into and out of the allocation system, hereby affecting everyone's relative share of available allowances. EPA also does not want to incentivize entities in each subsequent rolling set of years' entities to continue importing or producing small quantities that would otherwise be outside the entity's plans in future years just to maintain position to receive future calendar year HFC allowances. Looking to behavior in 2021 or 2022 would also have administrative benefits to EPA. For example, determining annual allocations would be more streamlined because EPA would be relying on data that has been vetted and reviewed at a single point in time that is in advance of the calendar year 2024 allocation as well as all allocations through calendar year 2028.

EPA's primary proposal is to not apply this eligibility criteria for new market entrants, and instead allocate allowances to all new market entrants as described in section III.B.1 of this preamble, but EPA is considering and taking comment on whether EPA should require that new market entrants import in 2022 to be eligible for allocation of allowances for calendar years 2024 through 2028. Most new market entrants are, as their name suggests, new to the HFC import market and would not reasonably be expected to have any import activity in 2021. Therefore, if the Agency applies eligibility criteria to new market entrants at all, it seems reasonable to look to 2022 for import activity. Accordingly, for these entities, EPA would not be able to look across two years for import for most new market entrants, unlike for general pool participants. EPA anticipates that most new market entrants would make use of allocated allowances and import regulated substances in 2022, so it may be reasonable to look for this action to determine whether the new entrants did in fact enter the market and if they should maintain future eligibility. On the other hand, EPA previously recognized that new market entrants might have difficulty operationalizing their business to begin importing regulated substances in 2022 if the entity was fully new to this aspect of the import business. As a result, in the Framework Rule the Agency took the position that EPA would ''not reduc[e] allowances to new market entrants in 2023 for failing to use all the allowances issued in 2022,'' (86 FR 55159).

If the approach to determining eligibility for general pool allowances from 2024 through 2028 is finalized as proposed, for purposes of determining whether an entity imported or produced regulated substances in 2021, the Agency intends to rely on data that have been reported to EPA under the GHGRP.[27] Entities who imported HFCs in quantities below the GHGRP reporting threshold (*i.e.,* 25,000 $MTCO_2e$ for the year) who wish to be considered for allowances, should report their import and export activity data through the electronic Greenhouse Gas Reporting Tool (e-GGRT) no later than the close of the comment period on December 19, 2022. EPA will not consider data submitted after this date for purposes of issuing allowances under the AIM Act for 2024 and later years. For purposes of determining whether an entity imported or produced regulated substances in 2022, EPA intends to rely on data that have been reported pursuant to the 40 CFR part 84 requirements. EPA intends to rely on data reported no later than February 14, 2023, which aligns with the reporting deadline for fourth quarter calendar year 2022 HFC reports under the HFC allocation requirements at 40 CFR part 84, subpart A.[28] Further, EPA is proposing that in cases where allowances were not expended at the time of production and/or import of HFCs in 2022, that production and import would not count as activity in 2022 for eligibility purposes. In other words, for 2022, EPA would only consider production and import of HFCs where allowances were expended as required when determining whether an entity is eligible for allowances. EPA has established a GHGRP Help Desk to assist potential reporters with issues related to registering and electronic reporting. The hotline can be reached at *GHGreporting@epa.gov* or 1–877–444–1188 (toll free).

Alternatively, EPA is taking comment on simply basing allocations on historic reported data between 2011 and 2019, without including an additional eligibility requirement relating to whether the entity produced or imported HFCs in recent years, such as 2021 or 2022. As noted previously, EPA is concerned that this approach would result in allocating to entities that are no longer in the HFC production or import business, and may no longer be in business at all.

D. Can allowances be transferred or conferred prior to the calendar year?

EPA is proposing to clarify that entities may confer or transfer allowances at any point after they are allocated until the allowance expires at the end of the calendar year for which it was allocated. Allowances can only be expended to cover imports or production in the calendar year for which they are allocated, but entities can confer or transfer allowances before January 1 of the calendar year. 40 CFR 84.5(d) provides that all production, consumption, and application-specific allowances are valid only for the calendar year for which they are allocated (*i.e.,* January 1 through December 31). The intent of this provision was to state that allowances could only be expended in the calendar year for which they were issued. However, use of the term ''valid'' could be read as ambiguous with regard to whether it allows for transfers and conferrals before the calendar year. EPA is proposing to amend this prohibition to more clearly state that entities may transfer and confer their allowances upon their allocation, including ahead

[27] In the limited situations where data on certain HFCs are not required to or cannot be reported to the GHGRP, *e.g.,* production of HFC–23 that is created during production of HCFC–22, EPA would continue to rely on verified submissions from entities no later than the close of the comment period on December 19, 2022.

[28] For more information, visit *https://www.epa.gov/climate-hfcs-reduction/hfc-allocation-rule-reporting-and-recordkeeping.*

of January 1 of the calendar year for which the allowances were allocated.

The Agency hopes that this added clarity would facilitate allowance holders' planning for that upcoming year. EPA encourages allowance holders to undertake transfers and conferrals early in the year and, where possible, well in advance of when regulated substances would need to be produced or imported. Under the existing 40 CFR part 84 regulations, the entity that is producing or importing the regulated substances must have the allowances in their possession as required (see section V.A of this preamble) and at the time that allowances are required to be expended.

IV. How is EPA proposing to update the consumption baseline?

This section explains how EPA determined the consumption baseline in the Framework Rule, how it proposes to update the baseline, and how it plans to further update associated data. Subsection (e)(1) of the AIM Act directs EPA to establish a production baseline and a consumption baseline and provides the equations for doing so. In the Framework Rule, EPA calculated and codified the production and consumption baselines according to the formulas outlined in subsection (e)(1) of the AIM Act. After EPA finalized these baselines, a company informed EPA that they had misreported data previously reported to EPA that factors into the consumption baseline. EPA is now proposing to update the consumption baseline and associated phasedown schedule with this corrected dataset. Separate and in parallel to this action, EPA is also providing a final opportunity for entities to revise their HFC data from 2011 through 2021 for purposes of issuing allowances under the AIM Act.

A. How did EPA determine the consumption baseline in the Framework Rule?

The AIM Act instructs EPA to calculate the consumption baseline by, among other things, using the average annual quantity of all regulated substances consumed in the United States from January 1, 2011, through December 31, 2013. EPA used multiple sources of data to calculate HFC consumption figures for 2011 through 2013: (1) Data reported to EPA's GHGRP; (2) data received in response to the notice of data availability published February 11, 2021 (86 FR 9059); (3) data from the Automated Commercial Environment (ACE) and confirmed through letters sent out under CAA section 114 (EPA ICR 2685.01); and (4) data received in response to the notice of proposed rulemaking for the Framework Rule by the comment due date. Through these sources, EPA received new or revised production, import, export, and destruction data, all of which affected the final baseline values. Based on the data reviewed and collected through these robust efforts, EPA codified the final consumption baseline as 303,887,017 Metric Tons of Exchange Value Equivalent (MTEVe) (40 CFR 84.7(b)(2)). A complete description of EPA's process in developing the codified baseline figure can be found in the Framework Rule at 86 FR 55137—55142.

In subsection (e)(2)(C) of the AIM Act, Congress provided the HFC phasedown schedule measured as a percentage of the baseline. In the Framework Rule, EPA codified this phasedown schedule at 40 CFR 84.7(a). EPA also codified the total production and consumption in MTEVe for regulated substances in the United States in each year by multiplying the finalized production and consumption baselines by the percentages of the phasedown schedule. EPA codified total production and consumption allowance quantities that could be allocated at 40 CFR 84.7(b)(3).

B. How is EPA proposing to adjust the consumption baseline?

After EPA finalized the Framework Rule, one company informed EPA that the 2011 and 2012 HFC import data that it had reported to the GHGRP and certified per 40 CFR 98.4(e)(1) as true, accurate, and complete under penalty of law, was, in fact, significantly more than its actual import quantities. Because EPA used the company's 2011 and 2012 HFC import data in the calculation of the consumption baseline, the Agency's calculated and codified consumption baseline was high. The company has since submitted and certified revised reports. EPA has verified the amended data by reviewing the importer's invoices and comparing the reported data to import data provided by CBP. EPA is proposing to update the codified consumption baseline with the corrected data. Specifically, EPA is proposing to revise the consumption baseline from 303,887,017 MTEVe to 300,257,386 MTEVe, which is a decrease of 3,629,631 MTEVe to account for this error. Because the erroneous data related only to imports, the Agency's previously calculated production baseline is not affected and EPA is not proposing to reopen the production baseline in this rulemaking. There are only nine known HFC production facilities and given EPA's experience with these reporters, the Agency does not expect that there are material errors in their data submissions from the 2011–2013 timeframe.

The proposed revision of the baseline amounts to about a one percent change in the baseline. This is not an insignificant difference, but once EPA applies the relevant phasedown step to the baseline and then allocates the resulting allowances among eligible recipients, the change in baseline is expected to have a small effect on individual entities' allocations. Further, this revised baseline, if finalized, would start affecting allowance allocations for calendar year 2024. Because of the prior framing of EPA's regulations, specifically the fact that there was no prior allocation methodology that would apply to calendar year 2024 allowances and beyond, no entities should have had a realistic expectation of allowance allocation levels. Therefore, EPA expects that this alteration of baseline would not affect the regulated communities' reasonable reliance interests.

As outlined in section IV.C of this preamble, EPA is going through a process under the AIM Act to provide a final opportunity for entities to confirm, and if necessary correct, the data available to EPA on those entities' historic consumption activities to inform future allocation calculations. Should other entities identify misreporting in 2011 through 2013 through that process, and sufficiently certify and verify the corrected numbers to EPA, the Agency would include those revised figures in the proposed revision to the consumption baseline in addition to the revision outlined in the prior paragraph.

Data that are submitted under the GHGRP in e-GGRT already have undergone a variety of verification checks during and after report submission. Facilities are sent messages about potential errors in their report; they can either reply with an explanation of the unusual values, or they can resubmit their report to correct any errors and certify the accuracy of the submission. EPA may also request copies of bills of lading, invoices, or CBP entry forms in order to verify reports.

In 2021 in order to verify accurate data for calculation of the AIM Act baseline and allocation of allowances, EPA compared import data submitted to GHGRP to import data from CBP as an additional form of verification. If the sum of metric tons of HFCs reported to e-GGRT diverged significantly from the sum of metric tons of imports under HFC-related Harmonized Tariff Schedule (HTS) codes in CBP records,

these submissions were flagged for possible issues. The Agency generally contacted each facility that was flagged requesting that they either:

- Provide documentation (*e.g.,* bills of lading, invoices, and/or CBP Entry Forms substantiating their imports), or
- Resubmit their report to GHGRP to correct potential errors that would account for why the reported GHGRP data did not more closely align with data reported to CBP.

EPA staff reviewed resubmitted reports and supporting documentation. Any issues found in the documentation review resulted in additional messages sent to the facility to verify reported data. Additional steps taken to verify the data include quality assurance reviews by EPA staff and steps to confirm corporate or common ownership of reporting entities for each allowance holder.

Revising the consumption baseline would change the total consumption cap in MTEVe for regulated substances in the United States in each year after the revision takes effect. In subsection (e)(2)(C) of the AIM Act, Congress provided the HFC phasedown schedule measured as a percentage of the baseline, which EPA codified at 40 CFR 84.7(a). EPA also codified the total production and consumption in MTEVe for regulated substances in the United States in each year by multiplying the finalized production and consumption baselines by the percentages of the phasedown schedule. Therefore, EPA proposes to revise the table of production and consumption limits at 40 CFR 84.7(b)(3) by replacing the current values in Table 2, column 3 of this preamble with the values in column 4.

TABLE 2—REVISED LIMIT OF TOTAL PRODUCTION AND CONSUMPTION ALLOWANCES

Year	Total production (MTEVe)	Previously codified total consumption (MTEVe)	Proposed revised total consumption (MTEVe)
2024–2028	229,532,771	182,332,210	180,154,432
2029–2033	114,766,386	91,166,105	90,077,216
2034–2035	76,510,924	60,777,403	60,051,477
2036 and thereafter	57,383,193	45,583,053	45,038,608

For additional context and transparency, we note that separate from this rulemaking process, EPA has recalculated the number of allowances that should have been allocated to the company that had reported erroneous data. EPA took administrative consequences to retire portions of that company's allocated calendar year 2022 and 2023 consumption allowances equal to the difference between the allocation level based on the updated historical import data and what was previously calculated by the Agency based on misreported data.

C. What other opportunities is EPA providing to further update data?

Separate from this action, EPA is providing a final opportunity for entities to verify, and if necessary correct, the data available to EPA on those entities' historic consumption activities from 2011 through 2021 for purposes of the AIM Act. EPA sent an electronic communication or letter to all entities that were known, or likely, to have had consumption activity of regulated substances from 2011 through 2021 that they had until September 26, 2022, to verify, and if necessary correct, the data available to EPA on those entities' historic consumption activities from 2011 through 2021.[29] EPA is providing this final opportunity to entities to make any corrections to historic data; after this point, EPA does not intend to consider any data revisions in allocation decisions.[30]

If there is any entity that did not receive a letter or electronic communication from EPA that had consumption activity of regulated substances from 2011 through 2021, EPA is hereby providing notice that for the purposes of future HFC allowance allocations under the AIM Act, EPA will not consider any data unless submitted to EPA through e-GGRT by the close of the comment period on December 19, 2022. To allow EPA to verify the reported data in a timely manner, anyone reporting past consumption data for the first time must provide transactional records (*e.g.,* bills of lading, invoices, or CBP entry forms). Failure to provide EPA with sufficient documentation at the time of submission to verify these reports may prevent EPA from considering the data in allowance allocations.

This final opportunity for AIM Act purposes would help ensure that allowance allocations are based on the most accurate data available. EPA notes that entities may be referred to EPA's enforcement office for potential reporting violations under the CAA and EPA may issue administrative consequences to adjust 2022 and/or 2023 allowances where appropriate.

V. How is EPA proposing to revise requirements related to allowances for import?

EPA is proposing to make amendments that codify our existing practice for determining which calendar year allowances must be expended for an import as well as who can expend allowances. Additionally, EPA is proposing to specify the requirements for the importation of heels[31] when the precise quantity remaining is uncertain. EPA is making these proposals based on the experience gained in implementing the HFC phasedown program to date under the existing 40 CFR part 84 regulations and establishing a system for consistent implementation and enforcement.

[29] This request was for purposes of implementing the AIM Act. Nothing in this letter or in the complementary process described below relieves any entity of obligations under the GHGRP regulations codified in 40 CFR part 98.

[30] These revisions would be taken into account when determining the annual allocation issued by October 1 of each year for 2024 and future year allocations. If information reveals an entity has provided false, inaccurate, or misleading information, EPA reserves the right to issue administrative consequences to adjust allowances downward (in the same year or a subsequent year). Regardless of whether or not EPA applies an administrative consequence, EPA may also pursue any and all appropriate enforcement action.

[31] ''Heel'' is defined at 40 CFR 84.3 as ''the amount of a regulated substance that remains in a container after the container is discharged or offloaded (that is no more than 10 percent of the volume of the container).'' EPA views this as an amount that is no more than 10 percent by weight of the amount of that same substance that is typically sold in a ''full'' container of that size. For example, if a ''full'' cylinder of HFC–134a typically contains 25 pounds of HFC–134a, then 2.5 pounds or less of HFC–134a remaining in the cylinder would be considered a heel.

A. Codifying the Point in Time That an Allowance Must Be Expended to Import Regulated Substances

Currently in 40 CFR 84.5(b)(1)(i) EPA prohibits persons from importing bulk [32] regulated substances except, among other conditions and with limited exceptions, ''[b]y expending, at the time of the import, consumption or application-specific allowances in a quantity equal to the exchange value-weighted equivalent of the regulated substances imported.'' Through implementing the HFC allocation system, EPA has described the exact point in time used to determine which calendar year allowance would need to be expended for each import of a regulated substance. EPA has spoken explicitly to this issue, including through a December 21, 2021, post on our HFC phasedown Frequently Asked Questions web page.[33] EPA stated that a marine vessel waiting off the coast of the United States in December 2021, that berthed in January 2022, would be required to expend a calendar year 2022 allowance for any HFCs that berth at a port in the United States in 2022. EPA is proposing to incorporate this previously stated interpretation into the 40 CFR part 84 regulatory text. Providing specificity on this point in the regulations would help ensure consistent and accurate accounting associated with allowance use for all importers.

The AIM Act and EPA's implementing regulations define ''import'' [34] broadly to mean:

> to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, regardless of whether that landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States. Offloading used regulated substances [35] recovered from equipment aboard a marine vessel, aircraft, or other aerospace vehicle during servicing is not considered an import.

EPA is not proposing to amend this regulatory definition given that it matches the definition provided by Congress in the AIM Act. However, EPA is proposing a specific regulatory definition of when an allowance must be expended for the import of bulk regulated substances. Under this proposed approach, EPA would revise the prohibition language in 40 CFR 84.5(b)(1)(i) to remove the point that an allowance must be expended ''at the time of import'' and instead require that an allowance be expended at the time of ship berthing [36] for vessel arrivals, border crossing for land arrivals such as trucks, rail, and autos, and first point of terminus in U.S. jurisdiction for arrivals via air.

If EPA were to finalize this proposed regulatory revision, EPA proposes to also require that the importer of record for the purposes of compliance with the final rule be in possession of allowances in the amount that will need to be expended at the time of filing their advance report under 40 CFR 84.31(c)(7). As explained in the Framework Rule, this advance notice reporting requirement is intended to allow ''EPA to verify if allowances are available or the HFCs have prior approval for import in the case of HFCs imported for destruction or transformation under 40 CFR 84.25, or imported for transshipment under 40 CFR 84.31(c)(3), and confirm whether a shipment should be allowed to clear Customs or not'' (86 FR 55186). If an entity does not possess requisite allowances for the import of bulk regulated substances at the time of the advance notice reporting, EPA will not be able to verify if allowances are available and whether the shipment meets EPA's HFC requirements to be released from CBP's custody. Given that advance reporting is required, no later than fourteen days [37] before allowances must be expended, EPA does not anticipate this proposed requirement would be a burden on regulated entities and would have significant benefits for EPA implementation and enforcement efforts.

For context, the point in time that a vessel berths, a truck crosses the border or the first point of terminus in U.S. jurisdiction for planes may be reflected as the ''Conveyance Arrival'' date for shipments, which importers or their brokers with access to the Automated Broker Interface (ABI) may find through an ACE Cargo Manifest/In-Bond/Entry Status Query. However, regardless of the date identified in ABI as the ''Conveyance Arrival,'' it is the importer's obligation, or it would be the importer of record's obligation as proposed in this rulemaking and discussed below in section V.B of this preamble, to ensure that it has expended the appropriate calendar year allowances in the appropriate quantity to align with regulatory requirements.

The Framework Rule at 40 CFR 84.5(b)(1)(i) prohibits the importation of bulk regulated substances without expending the required allowances, with limited exceptions. Since the definition of ''import'' in the AIM Act and the 40 CFR part 84 regulations finalized in the Framework Rule includes an ''attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States,'' it is clear that the existing statutory and regulatory framework prohibit an entity from attempting to land, bring, or introduce regulated substances into the United States without expending the required allowances, unless the importer meets one of the limited exceptions in the regulations. EPA does not intend to narrow prohibited behavior as defined under the AIM Act and the associated scope of liability with attempts to land, bring, or introduce regulated substances into the United States. We are proposing to add language at 40 CFR 84.5(b) that states: ''No person may attempt to land bulk regulated substances on, bring regulated substances into, or introduce regulated substances into, any place subject to the jurisdiction of the United States without meeting one of the categories set forth in 40 CFR 84.5(b)(1).'' These proposed changes to 40 CFR 84.5(b) maintain liability for attempting to land, bring, or introduce regulated substances into the United States without requisite allowances.

It is possible at the final rulemaking stage for EPA to not amend the general prohibition provided in 40 CFR 84.5(b)(1)(i). However, EPA identified a need through implementation of the Framework Rule to describe to importers which calendar year

[32] ''Bulk'' is defined at 40 CFR 84.3 as ''a regulated substance of any amount that is in a container for the transportation or storage of that substance such as cylinders, drums, ISO tanks, and small cans. A regulated substance that must first be transferred from a container to another container, vessel, or piece of equipment in order to realize its intended use is a bulk substance. A regulated substance contained in a manufactured product such as an appliance, an aerosol can, or a foam is not a bulk substance.''

[33] EPA. Phasedown of Hydrofluorocarbons Final Rule Frequently Asked Questions. *https://www.epa.gov/climate-hfcs-reduction/phasedown-hydrofluorocarbons-final-rule-frequently-asked-questions.*

[34] The definition of ''import'' is intended to allow for effective implementation of the AIM Act's HFC phasedown provisions and does not, nor was it intended to, match CBP's definition. The definition of ''import'' is similar to, but different from, the definition of ''date of importation,'' which is a CBP defined term and is discussed later in section VI.A.1 of this preamble.

[35] EPA defines ''used regulated substances'' (or used HFCs) in 40 CFR 84.3 as ''regulated substances that have been recovered from their intended use systems (including regulated substances that have been, or may be subsequently, recycled or reclaimed).''

[36] EPA has and continues to interpret berth to mean ''to moor (a ship) in its allotted place at a wharf or dock.''

[37] Currently under EPA's regulations, importers are required to provide advance notification of import no later than 14 days prior to import. As explained in a subsequent section, EPA is proposing to modify and take comment on these requirements based on the mode of transportation.

allowance must be expended for a specific import. Since the process of importing has multiple different events that play out over a period of days, weeks, and months, EPA previously described which year's allowances would be needed in case-specific examples as well as through the above-cited post on our web page to provide direction as to which year's allowances an individual import would be counted against for compliance purposes.

As an alternative proposal, EPA is considering revising text at 40 CFR 84.5(b)(1)(i) to specify that the calendar year allowances that must be expended are based on the time of ship berthing for vessel arrivals, border crossing for land arrivals such as trucks, rail, and autos, and first point of terminus in U.S. jurisdiction for arrivals via air. Such specificity is appropriate given that identifying a single point in time facilitates determination of which calendar year allowances must be expended.

B. Who must expend allowances for import?

EPA proposes to specify that only the importer of record can expend allowances for an import of regulated substances. Under CBP requirements, the importer of record is ultimately responsible for the correctness of the entry documentation and all associated duties, taxes, and fees.[38] Specifying that only the importer of record can expend allowances for an import would facilitate clarity, transparency, and accountability. It can be difficult for EPA to compare import records and other filings from CBP against advance notification records and the balance sheet of existing allowance holders without a clear expectation of how the entity that will expend allowances for an import of regulated substances would be identified in CBP filings. This can slow down EPA and CBP processing of imports at a minimum,[39] and in the worst-case scenarios can hamper EPA's ability to identify shipments to be held at the border to halt potentially illegal shipments from entering the United States. Requiring that only the importer of record may expend allowances for a shipment would address this difficulty because EPA would be able to advise CBP to hold or deny entry of merchandise where the importer of record is not an allowance holder or had not filed appropriate reports for the destruction, transformation, or transhipment of imported merchandise.

The Agency is also concerned about instances where allowance holders may try to circumvent the requirements in 40 CFR 84.19, including but not limited to the requisite offset for inter-company transfers of allowances. EPA has received inquiries from entities seeking to facilitate imports on an allowance holder's behalf where the facilitating entity would be listed on all available CBP paperwork and appear in meaningful ways to be the ''importer.'' In such instances, it would seem that the facilitating entity is truly importing regulated substances, and using a separate entity's allowances to do so. In such an instance, it seems more in line with existing EPA regulations and the AIM Act that either the allowance holder act more directly in the act of importing or for the allowance holder to transfer allowances to the facilitating entity. Making the regulatory change proposed in this section would help lead to such an outcome and would strengthen EPA's ability to track the importation of regulated substances and expenditure of allowances and support compliance assurance.

The Framework Rule at 40 CFR 84.3 defines ''importer'' broadly to include the importer of record and any person who imports a regulated substance into the United States, the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf, the consignee, the actual owner, and the transferee, if the right to draw merchandise in a bonded warehouse has been transferred. The Framework Rule at 40 CFR 84.5(b)(2) states that ''[e]ach person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that another party who meets the definition of an importer met one of the exceptions set forth in paragraph (b)(1).''

These two sections of the regulations help EPA maintain the integrity of the HFC Allocation Program by imposing broad liability on parties involved in importing HFCs while providing regulated parties with a flexible approach to contractually allocate risk. Without this approach, EPA could be forced to pursue enforcement actions for illegal imports against insolvent entities or entities without assets in the United States.

In order to align the proposal to only allow the importer of record to expend allowances with the existing regulations, we are also proposing to amend 40 CFR 84.5(b)(2) to make it clear that a person who meets the definition of an importer will be liable unless they can demonstrate that the importer of record possessed and expended the appropriate allowances. This would clarify that while the importer of record must be the entity possessing and expending allowances for imports of bulk regulated substances, if this requirement is not met, EPA has discretion to pursue enforcement action and/or administrative consequences on all entities that meet the definition of importer for violations of those requirements. This approach will encourage all parties who meet the definition of importer under EPA's regulations to ensure compliance with the HFC Allocation Program, provide regulated parties with a flexible approach to contractually allocate risk, and facilitate EPA's compliance evaluations.

Nothing in this proposal is intended To alter the liability provision at 40 CFR 84.5(b)(2).

C. Existing Requirement To Expend Allowances for Regulated Substance Components of Blends

In addition to clarifying when an allowance must be expended and the entity permitted to expend allowances for import, EPA is proposing revisions to 40 CFR part 84.5(b)(1) to reflect and further clarify the existing requirement that allowances must be expended to import bulk regulated substances regardless of whether the import is of an HFC that is imported as a single component substance, *i.e.,* neat substance, or whether the HFC is part of a multicomponent substance, *i.e.,* a blend or mixture containing one or more regulated substances.

The requirement to expend allowances equivalent to the EVe of a regulated substance that is a component of a blend when the blend is imported in bulk is based on a straightforward reading of the statutory language and was already made clear in the Framework Rule (86 FR 55133). EPA stated in the Framework Rule ''allowances [are] necessary to produce or import [a] blend, or more precisely, the regulated HFC components contained in the blend'' (86 FR 55142). Under the Agency's existing approach, the requisite number of allowances to import a multicomponent substance in bulk is determined by the exchange

[38] CBP. Tips for New Importers and Exporters. *https://www.cbp.gov/trade/basic-import-export/importer-exporter-tips.*

[39] As a real-world example, during EPA review of HFC imports, there was a single import entry with six unique entities (referred to as parties), where at least three parties, based on their named roles in the entry, could expend allowances to cover the import under EPA's existing regulations. This situation can be particularly confusing and lead to uncertainty if multiple listed parties in an entry are allowance holders.

values of the blend components that are regulated substances. If a blend contains multiple regulated substances, then the exchange values of each component are used to determine the number of necessary allowances (86 FR 55133–55134). If a blend contains components that are not regulated substances, then those components are not included in determining the number of necessary allowances. While the Framework Rule already made this requirement clear, we are proposing to revise the regulations so that they more explicitly reflect the already existing requirement to expend allowances for import of bulk multicomponent substances equivalent to the EVe quantity of regulated substance components contained within the blend. This proposed change to the regulations would therefore further enhance clarity but would not further change the scope of existing requirements.

D. Establish Presumed Amount for Heel Imports of Unknown Quantity

Many cylinders when ''empty'' still retain a residual amount of its contents, and some cylinders contain more than a heel if not all the contents are used. Removing this ''heel'' or remaining HFC requires the use of recovery equipment, like that used to recover refrigerant from an appliance. Through the Framework Rule, EPA has required that any import of bulk regulated substances in any quantity, including heels, requires the expenditure of allowances (86 FR 55183). In the Framework Rule EPA defined a heel as ''the amount of a regulated substance that remains in a container after the container is discharged or offloaded (that is no more than 10 percent of the volume of the container)'' (40 CFR 84.3; 86 FR 55183).[40] During early implementation of the requirement that allowances are required for the importation of heels of regulated substances, some entities have expressed concern that there may be situations where an entity does not know the precise weight of the heel imported until the container arrives at the entity's U.S. facility. Because the heel is the residual remainder left in a container, EPA understands that entities would know the type of regulated substance of which the heel is composed, but may not know the precise volume or weight of regulated substance remaining. Importers of regulated substances must expend allowances corresponding to the exchange-value weighted equivalent, which is obtained by multiplying the mass of the regulated substance by the exchange value particular to that given regulated substance. An entity needs to know the volume or weight of the heel to calculate the amount of allowances necessary to expend for the import of that heel.

To address this potential concern, EPA proposes to establish a standard presumption of an HFC heel content of 10 percent of the total potential volume of that container in EVe terms, if the heel weight has not been measured or documented prior to import. This standard presumption, by its terms, would only be available for the import of a heel, which was previously defined in the Framework Rule as ''the amount of a regulated substance that remains in a container after the container is discharged or offloaded (that is no more than 10 percent of the volume of the container)'' (40 CFR 84.3; 86 FR 55183). Because 10 percent is the upper bound of the volume of the container that a regulated substance could comprise and still be considered to be a ''heel,'' and the standard presumption, if finalized, would only be available for a shipment that meets the regulatory definition of a ''heel.'' EPA is proposing the standard presumption at the 10 percent level as an inherently conservative estimate of what quantity would be a heel in a container. If an entity wanted to take advantage of this standard presumption, under the proposed approach that entity would be required to expend allowances equivalent to 10 percent of the volume of the container being comprised of the regulated substance that is residual in the container. Under this proposed approach, the entity would also utilize the 10 percent presumption for the advance notification requirement of 40 CFR 84.31(c)(7). The proposed standard presumption is intended to only apply in situations where an entity is importing a heel of a regulated substance (*i.e.,* the container contains 10 percent or less of the total potential volume of the container) and the entity does not know the precise quantity, volume, or weight of the heel. If the quantity of HFCs in the container is known (or the importer should have had reason to know), then the regulations would apply as for any other shipment, *i.e.,* allowances would need to be expended to cover the quantity of HFCs held in the container. Given the possibility that an importer could use this provision as a way to underreport how much HFC they are importing, EPA requests comment on whether to set limits for the number of times an importer could use this presumption or whether to limit the total quantity that could be eligible in a given shipment, and if so, what the appropriate limits should be. For example, EPA could limit the use of the presumption to a set number of containers in a given year, to a set size category of containers (*e.g.,* for containers that have a maximum capacity under 7 kg), to shipments with a set number of containers (*e.g.,* fewer than 20 containers in a shipment), and/or if the net weight of regulated substances in a shipment is below a set weight (*e.g.,* 200 kg). Alternatively, EPA could presume the container is full unless the importer demonstrates otherwise, such as with records documenting the actual weight. EPA also requests comment on whether a provision like this is needed or if importers have resolved the early concerns with determining the heel weight prior to import.

As an alternative, EPA is also considering an option of allowing the importer of record to submit a provisional estimate of the quantity of heel imported, but requiring within a two-week period that the provisional estimate be corrected to match the exact amount of the imported HFC heel content. EPA invites comment on how this alternative option would align with the proposal in section V.A of this preamble. In particular, EPA is unsure how and when allowances would be expended under this provisional estimate model, and if allowances are expended based on the provisional estimate, how expended allowances would be reconciled with the corrected exact amount of imported heel. EPA is also concerned what the enforcement implications of this approach would be and seeks comment on whether such an approach would create avenues for an entity to illegally import that are not currently present under EPA's existing regulations.

EPA notes that these proposals would only apply to imports of HFCs that are heels and would not change the requirement to know the precise quantity of HFCs in a heel for an export. Further, anyone requesting an additional consumption allowance under 40 CFR 84.17 and anyone exporting HFC heels must continue to report the actual weight of a heel that is exported.

[40] EPA views this as an amount that is no more than 10 percent by weight of the amount of that same substance that is typically sold in a ''full'' container of that size. For example, if a ''full'' cylinder of HFC–134a typically contains 25 pounds of HFC–134a, then 2.5 pounds or less of HFC–134a remaining in the cylinder would be considered a heel.

VI. How is EPA proposing to clarify and revise recordkeeping and reporting requirements?

EPA established recordkeeping and reporting requirements in the Framework Rule, in accordance with subsection (d) of the AIM Act. These requirements can be found in 40 CFR 84.31. EPA is proposing to make amendments to certain recordkeeping and reporting requirements as well as proposing new recordkeeping and reporting requirements based on the experience gained in implementing the HFC phasedown program.

A. How is EPA proposing to modify the import reporting requirements?

In the Framework Rule, EPA established reporting requirements for importers at 40 CFR 84.31(c). EPA is proposing amendments which include specifying reporting obligations that fall to the importer of record, modifying elements of the advance notification requirement, clarifying how to consider import of heels, and new application of joint and several liability to quarterly and advance notification reporting requirements. EPA proposes all these amendments to provide additional detail on requirements and further promote transparency and consistency in implementation and enforcement of the rule.

1. Specify Reporting Obligations on the Importer of Record

To align with the proposal made elsewhere in this notice that only the importer of record may expend allowances for the import of bulk regulated substances, EPA is proposing to specify that certain reporting obligations will fall to the importer of record. Specifically, EPA is proposing that the importer of record, or their authorized agent,[41] would be required to file the advance notification report pursuant to 40 CFR 84.31(c)(7), and the importer of record will be required to make quarterly reports pursuant to 40 CFR 84.31(c)(1). EPA is making this proposal to improve clarity of who must fulfill certain reporting requirements with the Agency and also ease EPA implementation in aligning the reporting requirement with the entity obligated to expend allowances for the import.

2. Modify Advance Notification of Import Requirements

EPA's regulations contained in 40 CFR 84.31(c)(7) require ''[a] person importing a regulated substance, or their agent,'' to report certain information ''no later than 14 days before importation.'' The Agency requires reporting of data elements that are generally already collected by CBP (*e.g.,* cargo description, port of entry). This approach simplifies the process for importers or their customs brokers to provide such information to EPA on time. This would generally be at least, and likely more than, 14 days before a vessel carrying HFCs berths. EPA finalized these requirements because timely access to this information helps the Agency ensure that annual production and consumption in the United States are consistent with the reductions established by Congress in the AIM Act. Under the AIM Act, some entities will face burdens and costs associated with the Congressionally mandated phasedown; those increased burdens and costs create economic incentives to avoid compliance. That reality increases EPA's statutory and policy imperative to identify and apply tools that counter those incentives to increase the rate of compliance. Given the risk of noncompliance, as described throughout section IX of the Framework Rule, there is an imperative to develop reasonable tools to ensure compliance and thus achieve the objectives of the AIM Act. EPA has required entities to provide advance notification through ACE so that EPA can conduct a real-time review of allowances before the imported material is at a U.S. port or border. Given the serious concerns about potential noncompliance and the undermining of Congress's directive to ensure reductions in production and consumption occur consistent with the statutory schedule, real-time review of import data will support EPA's ability to effectively implement the statute.

The regulation enumerates several required elements that must be included in an advance notification of import filed through the CBP-authorized electronic data interchange system, such as the ABI. To align with the proposal made elsewhere in this notice that only the importer of record may expend allowances for the import of bulk regulated substances, EPA is proposing to specify that the advance notification reporting obligation falls to the importer of record, or their authorized agent. If EPA finalizes this proposal, this should improve clarity of who must submit the advance notification reports and also ease EPA implementation in aligning the reporting requirement with the entity obligated to expend allowances for the import.

To support effective real-time review of regulated HFC imports, including but not limited to using reported data to track imports using CBP databases to determine when allowances must be expended, EPA is proposing to add a required element to the report required pursuant to 40 CFR 84.31(c)(7), specifically the container number(s) of the shipment (if applicable), for all modes of import. EPA is also proposing that for maritime shipments, the vessel name and the International Maritime Organization (IMO) number must be included as part of the pre-importation notification.

EPA's current regulations in 40 CFR 84.31(c)(7) require provision of the ''quantity'' (in kilograms) of each import in the advance notification of import. Some regulated entities have expressed confusion over how to interpret this term. Under the current ''quantity'' requirement, some appear to be providing the net weight, while others appear to be providing the gross weight. EPA is seeking to resolve this ambiguity and standardize reporting. To improve clarity in the Agency regulations and provide for consistent treatment across regulated entities, EPA is proposing to specifically require the provision of both the net weight (or net product weight) and gross weight (net weight plus container weight), as well as unit of mass (*i.e.,* kilogram), for each container in the shipment in the pre-import notification. EPA requests comment on any potential difficulties that would be associated with meeting this revised requirement.

Currently 40 CFR 84.31(c)(7) requires the submission of advance notification ''no later than 14 days before importation'' of any regulated substance. Footnote 97 of the preamble to the Framework Rule states, in part: ''EPA is using the term 'date of importation' consistent with CBP's definition at 19 CFR 101.1. ''Date of importation'' means ''in the case of merchandise imported otherwise than by vessel, the date on which the merchandise arrives within the Customs territory of the United States. In the case of merchandise imported by vessel, ''date of importation'' means the date on which the vessel arrives within the limits of a port in the United States with intent then and there to unlade[42] such

[41] For purposes of providing advance notification of import through a system such as the ABI, the vast majority (if not all) notifications for the imports of regulated HFCs have been filed by customs brokers who are licensed and regulated by CBP to assist importers and exporters in meeting Federal requirements governing imports and exports. EPA included ''authorized agents'' as permissible reporting entities to accommodate this standard business practice.

[42] In the context of imports, EPA considers ''unlade'' to mean unload.

merchandise.'' To ensure consistency EPA proposes to amend 40 CFR 84.31(c)(7) to clarify that our reference to ''before importation'' in the Framework Rule means ''before the date of importation (consistent with the definition at 19 CFR 101.1).'' EPA also proposes to clarify in 40 CFR 84.25(a)(1)(v) and 40 CFR 84.31(c)(3)(i)(D) that these references are consistent with the definition at 19 CFR 101.1.[43] The ''Import Date'' box on CBP Form 7501, ''Entry Summary,'' as well as CBP Form 214 for entries where importers are applying for foreign-trade zone admission and/or status designation may provide information about the date of importation, but it is the importer's obligation to ensure that it has submitted its advance notification report in a timely manner regardless of the date identified in the Import Date box on these forms.

As noted above in this subsection, EPA currently requires prior notification no later than 14 days in advance. Based on EPA's implementation experience, this timeframe is achievable for shipment by sea, but can be impractical based on standard practices used for non-marine vessel imports, such as from trucks, trains, and airplanes. Importers bringing in goods via these transportation modes may not have the necessary information available at least 14 days in advance under current standard market practice. However, prior notification is important for EPA and CBP to be able to adequately review the shipment and relevant information. Accordingly, EPA is proposing to distinguish between modes of transport and to shorten the prior notification requirement for truck, rail, air, and other non-sea arrivals to 5 days prior to the date of importation, as discussed in the prior paragraph. EPA is proposing a 5-day prior notification after consultation with CBP about similar notification provisions used by other federal government agencies and informed by our stakeholder meetings that included customs brokers that have experience with importing a range of goods. EPA is requesting comment on whether this revised, 5-day prior notification is achievable for imports arriving via air, rail, truck, and other non-sea modes of transport. EPA is also considering whether it would be warranted to shorten the prior notification for arrivals by sea and is requesting comment on whether a 10-day prior notification requirement would be appropriate for arrivals by sea, since EPA has heard from some regulated entities that it takes fewer than 14 days for certain marine shipments from Europe.

3. Clarify the Reporting of Heels

In the previous ODS phaseout, EPA witnessed some situations where imported ODS, including in heels, had been reported to CBP as U.S. goods returned as a way to evade EPA's import restrictions. The Agency is concerned this could happen for HFCs. Given that EPA requires expenditure of allowances for import of any bulk regulated substance and must monitor the import of such HFCs, including for heels, as discussed in section V.D of this preamble, we are clarifying that the HTS Code for the regulated substance, regardless of whether or not comprising the heel, must be used, and not the HTS codes for U.S. goods returned or empty containers. As stated in the Framework Rule, EPA is concerned that misreported imports of HFCs could provide avenues for illegal imports or could contribute to inefficient implementation and processing of EPA and CBP procedures for comparing shipments against available allowances (86 FR 55183). Reporting all volumes of regulated substances with the applicable HTS Code for the contained HFCs facilitates accurate treatment of the imports of these regulated substances under EPA regulations.

4. Changes to and Requirement of Importer of Record Information

As part of the Agency's overall efforts to better identify and assess potentially violative shipments of regulated substances and to simultaneously streamline the import review process, EPA proposes to require the submission of certain information directly to EPA that had been voluntarily provided, in part, through the importer of record form (EPA Form #5900–556). EPA is proposing a regulatory requirement that certain information must be submitted by any entity anticipating being the importer of record for a shipment of regulated substances by November 15 of the prior calendar year. In other words, an entity that anticipates being the importer of record for a shipment of HFCs during calendar year 2024 must submit the required information by November 15, 2023. If an entity is not issued allowances directly from EPA, is the recipient of transferred or conferred allowances and it is impracticable for the entity to submit the importer of record form by November 15, EPA is proposing that the importer of record form be submitted within 15 calendar days of receiving the Agency's non-objection notice for conferral or inter-company transfer.

EPA is also proposing that if changes are necessary on the importer of record form after its initial submission that those changes be made at least 21 calendar days prior to any import of bulk regulated substances for which the concerned entity will be the importer of record after the change in information occurs.

As explained in the Framework Rule and reiterated in section VIII.C of this preamble, movement of allowances between a parent company and its subsidiaries, or among companies that are commonly owned, may occur without a transfer (86 FR 55145). However, there may be instances where these corporate relationships are not immediately clear to EPA. The importer of record form provides information on corporate relationships to EPA, and accounting for such instances would ensure not only that allowances are being expended by the right entity, but also that reviews of shipments are not unnecessarily delayed. In a similar manner, entities receiving allowances may operate under different names, *e.g.,* ''Doing Business As'' (DBA), where it is not immediately clear to the Agency that the DBA is associated with the allowance holder. Accordingly, EPA is proposing that the names of all subsidiaries, entities majority owned and/or controlled by the same individual(s),[44] all DBAs, and any corresponding importer of record numbers are included on the importer of record form, even if the importer of record number(s) is identical for the subsidiaries, entities majority owned and/or controlled by the same individual(s), and/or DBAs as it is for the allowance holder. In order to further efficient and accurate review of imports by EPA, the Agency reminds regulated entities of the importance of ensuring that when an allowance holder or associated subsidiary, entity that is majority owned and/or controlled by the same individual(s), and/or DBA provides advance notification of import filed through a CBP-authorized electronic data interchange system, such as the ABI, that the importer of record number accurately aligns with the name of the importer.

As part of this information submission, EPA is also proposing that

[43] These clarifications citing, and relying on, definitions from CBP are intended to provide a consistent point in time for which importers must submit advance notification; however, they are not meant to change or otherwise be linked to how EPA has defined ''import'' in 40 CFR part 84.

[44] Note that EPA intends to align the specific definition of ''entities majority owned and/or controlled by the same individual(s)'' with the proposal regarding the ability to move allowances among commonly owned or companies with certain affiliation without a transfer, if it finalizes the proposal in section VIII.C of this preamble.

if an entity receiving allowances (either allocated directly by EPA or through a conferral or transfer) includes subsidiaries, entities majority owned and/or controlled by the same individual(s), and/or DBAs as part of its form, the corporate structure of the entity receiving allowances must also be provided, and the description of the corporate structure must, at a minimum, explicitly show the relationship between the allowance holder and each subsidiary, entity that is majority owned and/or controlled by the same individual(s), and/or DBA. An entity also would need to provide the owners, and their respective percentage of ownership, of each subsidiary, entity that is majority owned and/or controlled by the same individual(s), and DBA on the submitted form. Further, an entity would need to indicate how many allowances will be expended by each other affiliated entity (*e.g.,* subsidiaries, majority owned and/or controlled), specifically a quantity of allowance that will be expended by each affiliated entity identified by name and importer of record number(s). Collectively, the proposed revisions to the importer of record form would allow EPA to have a current understanding of pertinent information concerning the allowance holder, such as how to confirm that the importer(s) of record was still active, whether there had been a change in ownership, and whether ownership of subsidiaries and other majority-owned and/or controlled entities was shared, common, or familial. These revisions would help ensure that EPA has the updated information necessary to efficiently monitor and implement this program.

As an alternative to EPA's proposal to require the reporting of how many allowances will be expended by each other affiliated entity, EPA is considering and seeking comment on requiring information as part of the advance notification requirement of 84.31(c)(7) that would specify which entity was allocated the allowances or received the allowances through a transfer that are associated with an individual shipment.

5. Joint and Several Liability for Importer Reporting Requirements

EPA proposes in section VI.A.1 of this preamble to specify that the advance notification reporting obligation of 40 CFR 84.31(c)(7) and quarterly reporting requirements of 40 CFR 84.31(c)(1) falls to the importer of record, or their authorized agent for advance notification. EPA is making this proposal to align with the proposed change that the importer of record must expend allowances to import bulk regulated substances. However, such proposed changes to the reporting requirements could have an adverse impact on compliance with and/or EPA's ability to enforce reporting obligations. As explained in more detail elsewhere in this notice and in EPA's September 2021 Framework Rule, compliance with reporting requirement is critically important so that EPA can build a robust and enforceable allowance system. Complete and accurate reporting is an important component of EPA's efforts to monitor compliance, verify relevant information, and enforce requirements.

Accordingly, EPA proposes to apply joint and several liability for violations of the quarterly reporting and the advance notification reporting requirements. Specifically, in 40 CFR 84.31(c)(10), EPA proposes that each person meeting the definition of an importer is jointly and severally liable for a violation of the quarterly reporting requirements at 40 CFR 84.31(c)(1) unless they can demonstrate that the importer of record fulfilled the quarterly reporting requirements, and in 40 CFR 84.31(c)(11), EPA proposes that each person meeting the definition of an importer is jointly and severally liable for a violation of the advance notification requirements at 40 CFR 84.31(c)(7) unless they can demonstrate that the importer of record or their authorized agent fulfilled the advance notification requirements. These revisions would provide EPA with additional enforcement tools to ensure that EPA receives necessary information concerning past and incoming imports.

Adding joint and several liability would parallel the proposal made in section V.B of this preamble to apply the joint and several liability provisions of 40 CFR 84.5(b)(2) to each person who meets the definition of an importer, unless they can demonstrate that the importer of record possessed and expended the appropriate allowances for the import of bulk regulated substances. As further discussed in section V.B of this preamble, this joint and several liability provision provides EPA discretion to pursue enforcement actions necessary to ensure compliance while providing regulated parties with a flexible approach to contractually allocate risk.

With respect to the proposal to extend joint and several liability to reporting provisions, EPA requests comment on any potential reporting difficulties that could be associated with extending joint and several liability for these importer reporting requirements and on the potential burden or downsides associated with these proposed requirements. This proposed change would require individuals involved in the import of HFCs to coordinate to ensure reporting is complete and accurate, so EPA also seeks comment on whether additional resources and/or processes would be helpful to support this coordination and prevent duplicative reporting for the same import.

Note that the importer of a regulated substance in 40 CFR 84.31(c)(2) must maintain certain records to document each import. EPA also seeks comment on whether more specificity is needed than ''importer,'' for example to define that recordkeeping obligations would fall specifically on the importer of record, and is taking comment on the effectiveness, accuracy, and completeness of the importer bearing responsibility for the recordkeeping in this section.

B. Modify Recordkeeping and Reporting Requirements Regarding Expending Allowances

In the Framework Rule, EPA codified various recordkeeping requirements for producers and importers of HFCs. In 40 CFR 84.31(c)(2), EPA established the types of records that importers must maintain. In 40 CFR 84.31(b)(3), EPA codified recordkeeping obligations for producers. For both importers and producers, EPA is proposing to add an obligation to the existing recordkeeping requirements that producers and importers undertake same day documentation of any allowances expended. Put another way, if a producer or importer expends allowances, on the same day the producer or importer would have a recordkeeping obligation to document the date, quantity, and type of allowances expended on that date. EPA is further proposing to require that entities include this record of same day documentation as part of the quarterly report required under 40 CFR 84.31(b)(2) (for producers) and 40 CFR 84.31(c)(1) (for importers). Additionally, EPA is proposing to require each producer and importer certify to EPA as part of their quarterly reporting that they expended the requisite number of allowances on the dates specified in the form for each date-specific production or import transaction.

If this proposal is finalized, EPA would add additional fields to the producer and importer reporting forms to document the specific date allowances were expended. This would be a slight change for the importer form, since it already includes a ''date of import'' column, which should match

the ''date allowances were expended'' on a per transaction basis. For the quarterly producer report, EPA would need to collect date-specific production information.

Finalizing these additional recordkeeping and reporting obligations would be intended to allow for better accountability to ensure no entity is producing ''regulated substances, intentionally or unintentionally, in excess of the quantity of unexpended production allowances and consumption allowances or unexpended application-specific allowances held'' by that entity at a given point in time (40 CFR 84.5(a)(1)). Finalizing these recordkeeping and reporting obligations would also allow EPA better accountability to ensure that entities expend allowances on import per the requirements of 40 CFR 84.5(b)(1)(i). EPA is proposing this additional requirement to strengthen and ease implementation and enforcement of the HFC phasedown obligations. In requiring such a recordkeeping obligation, EPA will enable better oversight for any onsite inspections to align regulated substances found on site and corporate records with up-to-date information on allowances expended for such materials. In requiring these records and a certification be included in the entity's quarterly report, EPA intends to enable better coordination of information provided by the Agency with Customs records and other available information to help ensure the integrity of the allowance system. EPA understands that entities likely already undertake this sort of date-specific tracking of allowances for corporate records, so expects that establishing this requirement would have minimal effect on regulated entities, but invites comment on the potential burden or downsides associated with this proposed requirement.

C. Modify the Reporting of Regulated Substances Produced for Transformation, Destruction or Use as a Process Agent at a Different Facility Under the Same Owner

EPA currently requires in 40 CFR 84.31(b)(2)(i)–(iii) that each producer of a regulated substance include in the quarterly report for each facility information on the quantity of each regulated substance produced for use by the producer or a second party in processes resulting in their transformation, destruction, or use as a process agent. There are situations, however, where regulated substances are produced at one facility, but transformed, destroyed, or used as a process agent at another facility owned by the same entity. Such situations are distinct from regulated substances transformed, destroyed, or used at the same facility where the regulated substances were produced and those transformed, destroyed, or used by an entity different from the one that produced the regulated substances. EPA is proposing that 40 CFR 84.31(b)(2)(i)–(iii) be modified to include requirements to report the name, quantity, and recipient facility for regulated substances produced at one facility for, correspondingly, transformation, destruction, or use as a process agent at another facility owned by the same entity.

Since EPA requires the names and quantities of transformed or destroyed regulated substances produced or imported by another entity to be reported at the facility level under 40 CFR 84.31(e)(1), these proposed revisions to these sections would establish consistency within the regulations under 40 CFR part 84. Furthermore, these revisions would provide greater transparency within the system and would better align with current AIM Act reporting forms and the GHGRP, both of which track transformation, destruction, and use as a process agent by facility. This facility-level reporting would increase transparency, such as for environmental justice concerns so that local communities have better insight into how regulated substances may move between facilities owned by a single entity. Such information would also provide EPA a better understanding of industry practice, help verify disposition of regulated substances, and may inform future rulemakings.

D. Additional HFC Production Facility Emissions Reporting Requirements

Currently, EPA requires, as part of the producer one-time report, that producers provide a ''list of any coproducts, byproducts, or emissions from the production line that are other regulated substances; ozone-depleting substances listed in 40 CFR part 82, subpart A; or hazardous air pollutants [HAP] initially identified in section 112 of the CAA, and as revised through rulemaking and codified in 40 CFR part 63'' (40 CFR 84.31(b)(1)(v)). These one-time reports were due May 1, 2022, for existing facilities and within 120 days for any facility that begins producing HFCs after January 1, 2022.

The reported information is qualitative (*i.e.,* producers must only provide a list of the relevant chemicals) and is only required a single time, so the existing regulatory requirement would not allow the Agency to monitor changes in the list of relevant chemicals or volumes of relevant chemicals at facilities. EPA is particularly concerned about an inability to monitor such changes at facilities as the HFC phasedown progresses and as facilities may transition to production of lower EVe regulated substances or away from production of regulated substances altogether. Some entities with multiple production facilities may choose to consolidate production of regulated substances at a subset of facilities as the phasedown continues, which could lead to an increase in regulated substance production at a single facility, despite the overall phasedown of production. EPA stated its intention in the Framework Rule to ''continue to monitor the impacts of [the HFC phasedown] program on HFC and substitute production, and emissions in neighboring communities, as we move forward to implement this rule'' (86 FR 55129).

As such, EPA is proposing to build on the one-time reporting requirement and require annual reporting of the emissions from each facility's HFC production line emissions units, specifically HAP, ODS, and HFCs.[45] Collecting these data would allow the Agency to more closely monitor potential impacts of the HFC phasedown on relevant emissions and on communities located near facilities producing regulated substances. As noted in the Framework Rule, ''EPA may consider taking appropriate action in the future[,] including action [. . .] under CAA authorities, in future HFC allocation rules, or under other relevant authorities, if we develop further information indicating there is a risk of disproportionate impacts'' (86 FR 55129). EPA views information on the impacts of HFC production as important for informing policies, regulations, and other decisions, including to carry out the Agency's commitment to environmental justice. For example, EPA could use data collected through this reporting requirement, if finalized, in crafting the next allowance allocation methodology if shifts in production resulted in disproportionate impacts on overburdened communities. EPA could also consider using the reported data to propose alternative offsets for production allowance transfers based on potential disproportionate impacts. These proposed regulatory requirements

[45] While most ODS and HFCs are not HAP and generally do not have local effects, some do (*e.g.,* carbon tetrachloride). Further, collecting this information from HFC production facilities allows EPA to better track potential changes in emissions of all three sets of chemicals and inform policies, regulations, and other decisions.

can also be viewed as part of an effort to improve data transparency particularly with regard to the Agency's commitment to the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Therefore, EPA is proposing to require more detailed annual reporting on emissions from each facility's HFC production lines.

The Agency has reviewed other potential sources of data to determine if facilities producing regulated substances are already required to report annual emissions at the production line level under other EPA regulatory programs, but did not identify such requirements. Based on EPA's review, data currently required to be submitted to EPA under different authorities are not detailed or comprehensive enough to allow the Agency to sufficiently monitor potential changes in emissions due to the phasedown of HFCs. Emissions data reporting is required for some larger facilities, and can be obtained, at the facility- or process-level, through the National Emissions Inventory (NEI), Toxics Release Inventory (TRI), and Title V permits. However, process-level emissions data are not required for all HFC production facilities, which results in data gaps that hinder EPA's ability to identify relevant emissions and track changes over time.

AirToxScreen, and prior to its 2017 release the National Air Toxics Assessment (NATA) risk screen, identifies the cumulative risk to individuals within an area due to impacts from surrounding facilities without distinguishing between emission sources. While community-level analyses are available for all facilities producing regulated substances based on cumulative emissions, an HFC production facility may be emitting only one portion of the total modeled emissions with other portions being attributable to other nearby facilities contributing to the overall risk value. The currently available data do not allow EPA to consistently isolate the portion of the risk associated with HFC production, or to track potential changes in the overall risk level that could be attributable to the phasedown in HFC production and consumption, for example resulting from shifts in production levels of HFCs.

To address these identified data and knowledge gaps, EPA is proposing to require that each facility producing regulated substances report on an annual basis emissions for each HFC production line, including the:

—Quantity (in pounds) of each of the following emitted at the facility in the prior year: HAP initially identified in section 112 of the CAA, and as revised through rulemaking and codified in 40 CFR part 63; HFC listed in Appendix A to 40 CFR part 84; and ODS listed in appendix F of 40 CFR part 82, subpart A; and

—Quantity (in pounds) of each such HAP, HFC, or ODS emitted in the prior year on an emission unit basis (*e.g.,* ''Storage tank #45a'', or ''Scrubber #2'').

EPA proposes that the reported emission levels reflect each facility's and emission unit's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. EPA is considering a range of options by which emissions would be reported and is welcoming comment on the associated data, calculations, and method used to determine emissions. While EPA is currently considering a range of options, the Agency intends to finalize a single chosen approach for determination of emissions in that there is a limited, well-understood universe of HFC production facilities and those facilities share a number of common features.

EPA is considering the following options to be applied to determine the emissions required to be reported under this proposed approach:

—Continuous emission monitoring system;

—tack test at a six month or annual frequency;

—Material balance;

—U.S. EPA emission factor; or

—The compliance method required under the most recent permit issued to the facility pursuant to 40 CFR part 70 or 71, under the facility's operating permit for sources without a permit under 40 CFR part 70 or 71, or using federally recognized procedures if emissions cannot be determined using the compliance methods from the facility's air permit.

EPA is also seeking comment on whether fenceline monitoring, in particular of HAP that potentially pose the greatest risk to local communities, would be appropriate, in combination with or as an alternative to gathering data on emissions from these facilities. If this approach is finalized instead, EPA seeks comment on the advantages and disadvantages of this approach, what metrics should be reported, and how EPA could use this data to better understand the role that HFC production plays in emissions of HAP, HFCs, and ODS. EPA is proposing a range of options and is seeking comment to inform what option to finalize in order to allow for the effective monitoring of these emissions and gathering of information that could be relevant if a future rule would be appropriate under the AIM Act, CAA or other authority to address any potential disproportionate impacts associated with the HFC phasedown. EPA also requests comment on what methods of emissions estimation and monitoring are in practice currently, and whether these methods are appropriate for monitoring emissions changes over time at regulated substance production facilities. The Agency is also taking comment on whether the data listed in this proposal for additional reporting are already required under different authorities. Finally, in the interest of data transparency, if finalized, EPA intends to publish the emissions data on the Agency's website. The public availability of the data will allow for the public, local environmental agencies, or other entities to also monitor emissions changes due to changes in HFC production from facilities in their communities.

Subsection (k) of the AIM Act provides that section 114 of the CAA applies to ''any rule, rulemaking, or regulation'' promulgated pursuant to the AIM Act. For purposes of applying section 114, the AIM Act provides that section 114 of the CAA shall apply as though the AIM Act were part of Title VI of the CAA. Section 114(a) provides EPA with the authority, among other things, to require any person who owns or operates any emission source that may have information necessary to provide such information as the Administrator may reasonably require for purposes of carrying out any provision of the CAA, or the AIM Act pursuant to subsection (k). As noted, EPA has determined that requiring reporting of the outlined data regarding emissions from HFC production facilities is necessary to inform future decisions on whether it may be appropriate to undertake a rulemaking to address potential disproportionate impacts associated with the HFC phasedown.

The Agency requests comment on whether it would be appropriate and feasible to require each facility producing an HFC to report on an annual basis the quantity of each criteria air pollutant, and its precursors, for which EPA has established a National Ambient Air Quality Standard

(NAAQS)[46] emitted by the facility and the quantity of each such pollutant emitted annually from each HFC production line on an emission unit basis. EPA is proposing to require reporting both for the regulated substance production line as a whole and the emission units associated with the production line to understand where emissions are most significant and to better gauge what, if any, additional regulatory action could be considered in future.

VII. How is EPA proposing to revise sampling and testing requirements?

In the Framework Rule codified at 40 CFR 84.5(i), EPA established the requirement to label containers containing a regulated substance that are sold or distributed, or offered for sale or distribution, and for certain entities to confirm the accuracy of the labels by testing a representative sample of contents to verify that the composition matches the container label. In that regulatory section, EPA also codified a prohibition on the sale or distribution of regulated substances for use as a refrigerant that did not meet specifications in appendix A to 40 CFR part 82. EPA is proposing to amend these requirements and related requirements to establish additional verification requirements and codify procedures to be followed to meet the requirement to test a representative sample. These proposed changes are intended to provide clarity and direction to regulated entities, create a consistent approach to help ensure smoother implementation, and provide greater assurance on the accuracy of these container labels, particularly for non-refrigerant applications. If finalized, these proposed revisions are intended to lead to improved veracity in compositional testing, which in turn would result in more accurate expenditures of consumption and production allowances. These modifications would also improve the ability of EPA to understand the process taken and reliability of information gleaned in the compositional determinations that are made throughout the supply chain.

Specifically, EPA is proposing to (1) Modify 40 CFR 84.5(i)(3)(i) to add that already required sampling and testing of regulated substances must follow a combination of appendix A of 40 CFR part 82, subpart F and EPA Method 18 in Appendix A–6 to 40 CFR part 60 to verify the label composition for all applications; (2) add a requirement to sample and test under specified methodology to ensure compliance with the existing requirements in 40 CFR 84.5(i)(3)(ii); (3) define the records required under 40 CFR 84.33 associated with testing and add recordkeeping requirements to 40 CFR 84.33 for recyclers for fire suppression and repackagers to ensure results from required testing are maintained; (4) add definitions at 40 CFR 84.3 of ''batch'' and ''representative sample'' and clarify the relationship between these terms; (5) add a definition at 40 CFR 84.3 for ''laboratory testing'' such that laboratories used by regulated entities to meet the existing requirement in 40 CFR 84.5(i) must be accredited and follow the test methods in appendix A of 40 CFR part 82, subpart F; and (6) add a requirement that certificates of analysis accompany all imports of regulated substances.

A. Use of Appendix A to 40 CFR Part 82 and EPA Method 18 in Appendix A–6 to 40 CFR Part 60 for Sampling and Testing

In the Framework Rule EPA codified regulations in 40 CFR part 84 that require, for regulated substances sold as refrigerants, that sampling must be done consistent with appendix A to 40 CFR part 82, subpart F. Appendix A is based on the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 700–2016, *Specifications for Refrigerants.* Appendix A references detailed ''referee tests'' that are included in the *2008 Appendix C to AHRI Standard 700–2014,* which are incorporated by reference in 40 CFR 82.168(b)(2). Generic maximum contaminant levels are defined in 40 CFR 82 subpart F appendix A1.

40 CFR part 84 does not specify the sampling methods that must be used to verify that the composition of the regulated substances matches the container labeling for regulated substances that are sold for another use than as refrigerants. The current regulations also only explicitly require that sampling is consistent with appendix A, but they do not explicitly require that test methods are consistent with appendix A.

EPA is proposing to revise 40 CFR 84.5(i)(3)(i), such that no person producing, importing, reclaiming, recycling for fire suppression, or repackaging regulated substances may sell or distribute, or offer for sale or distribution, regulated substances without first testing a representative sample of the regulated substances that they are producing, importing, reclaiming, recycling for fire suppression, or repackaging to verify that the composition of the regulated substance(s) matches the container labeling using the sampling and testing methodology prescribed in 40 CFR part 82, subpart F appendix A for regulated substances offered for sale and distribution as refrigerants and using the following testing methods for regulated substances offered for non-refrigerant uses:[47]

TABLE 3—NON-REFRIGERANT REGULATED SUBSTANCE TESTING METHODS

Regulated substance	Testing method
HFC–23, HFC–134, HFC–125, HFC–143a, HFC–41, HFC–152a	Part 7 of *2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014,* incorporated by reference in 40 CFR part 82, subpart F, appendix A.
HFC–134a, HFC–143, HFC–245fa, HFC–32, HFC–152	Part 9 of *2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014,* incorporated by reference in 40 CFR part 82, subpart F, appendix A.
HFC–365mfc, HFC–227ea, HFC–236cb, HFC–236ea, HFC–236fa, HFC–245ca, HFC–43–10mee.	EPA Method 18; Appendix A–6 to 40 CFR part 60—Test Methods 16 through 18.

[46] The pollutants for which EPA has established a NAAQS are: sulfur dioxide, PM_{10}, $PM_{2.5}$, carbon monoxide, ozone, nitrogen dioxide, and lead. See 40 CFR part 50.

[47] EPA is proposing to use Part 7 of 2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014 as the testing method for HFC–134 is because HFC–134a is covered as a potential contaminant, whereas Part 9 looks at HFC–134 as a contaminant in HFC–134a. The same rationale applies to the testing methods used for HFC–143a and HFC–143. The testing methods are chosen based on the list of target analytes provided at each method.

EPA is proposing these modifications to ensure that the testing methods used to verify the composition of all bulk HFCs can achieve at least the same accuracy as those specified in appendix A to 40 CFR part 82, subpart F.

Under the existing regulations at 40 CFR 84.5(i)(3)(ii), no person may sell or distribute, or offer for sale or distribution, regulated substances as a refrigerant that do not meet the specifications in appendix A to 40 CFR part 82, subpart F—Specifications for Refrigerants. EPA is proposing to clarify that this existing requirement is applicable for a regulated substance or mixture containing regulated substance(s). EPA is further proposing to add a requirement under 40 CFR 84.5(i)(3)(ii) that producers, importers, reclaimers, recyclers for fire suppression, or repackagers must verify the applicable specifications using the sampling and testing methodology prescribed in appendix A to 40 CFR part 82, subpart F.

EPA is proposing these modifications to ensure that the testing methods used to verify the composition of all bulk HFCs offered for sale or distribution can achieve at least the same accuracy as those specified in appendix A to 40 CFR part 82, subpart F. All of these proposed requirements are intended to reduce the frequency that mislabeled, misrepresented, or off-specification regulated substances enter commerce from producers, importers, reclaimers, fire suppressant recyclers, and repackagers. EPA is also concerned that, without testing requirements, or specification around what sampling and testing methodology must be used, the composition of containers sold could not be sufficiently accurate, resulting in inaccurate quantities of consumption or production allowances expended.

Collectively, the proposed changes will ensure that defined procedures will be used to perform testing on representative samples of single component HFCs or multicomponent HFC mixtures by all entities that produce, import, reclaim, recycle for fire suppression, or repackage HFCs. Regulated substances used as refrigerants must conform to the specifications provided in appendix A to 40 CFR part 82, subpart F, or, if not listed therein, the Generic Maximum Contaminant Levels in appendix A1 to 40 CFR part 82, subpart F. At a minimum, the proposed changes require that samples of single component regulated substance shall be quantitively analyzed for the component on the label, air and other non-condensable compounds, impurities (both volatile impurities and halogenated unsaturated volatile impurities), and high boiling residue. At a minimum, the proposed changes require that samples of multicomponent HFC mixtures shall be quantitatively analyzed for each component expected based on the container label, air and other non-condensables, impurities (both volatile impurities and halogenated unsaturated volatile impurities), and high boiling residue.

EPA believes that this testing regime is appropriate to determine the composition of HFCs sold for both refrigerant and non-refrigerant applications. The proposed methods for testing HFCs are provided in Table 3. For illustrative purposes, EPA is also noting the specifications for regulated substances in Table 4.

TABLE 4—REGULATED SUBSTANCE SPECIFICATIONS

Regulated substance	Specifications
HFC–23, HFC–32, HFC–125, HFC–134a, HFC–143a, HFC–152a, HFC–227ea, HFC–236fa, HFC–245fa.	Refrigerant use: All in Table 1A of 40 CFR part 82, subpart F, appendix A. Non-refrigerant use: Testing results match nominal composition on label.
HFC–41, HFC–134, HFC–143, HFC–152, HFC–236cb, HFC–236ea, HFC–245ca, HFC–365mfc, HFC–43–10mee.	Refrigerant use: All in 40 CFR part 82, subpart F, appendix A1. Non-refrigerant use: Testing results match nominal composition on label.

The testing regime specified in AHRI 700 is sufficiently flexible to allow for the use of more recent analytical technology. Section 5 of appendix A to 40 CFR part 82, subpart F, entitled ''Sampling and Summary of Test Procedures,'' identifies the test methods in the section as ''referee tests'' and states that, ''[i]f alternative test methods are employed, the user must be able to demonstrate that they produce results at least equivalent to the specified referee test method.'' The referee test for refrigerant identification is specified in section 5.3 of appendix A as gas chromatography as described in 2008 appendix C to AHRI Standard 700–2014 (incorporated by reference, see § 82.168(b)(2)). Appendix C to AHRI Standard 700–2014 contains several different gas chromatography methods, specialized for different refrigerant types. Section 7 of each method in Appendix C to AHRI Standard 700–2014 provides information concerning the sensitivity, precision, and accuracy of that test method. Therefore, to demonstrate that an alternate test method is equivalent, it is sufficient to demonstrate that the alternate test method can achieve the same sensitivity, precision, and accuracy as the referee test method.

EPA anticipates that alternate test methods could include gas chromatography using physical layer open tubular columns alternative to packed columns, two-dimensional alternatives to one-dimensional chromatography, and alternate detectors (*e.g.,* mass spectrometer as an alternative to a flame ionization detector). Since Appendix C to AHRI Standard 700–2014 does not include specific test procedures for determining the quality of regulated substances that are not used as refrigerants, EPA is proposing using EPA Method 18 for HFC–227ea, HFC–236cb, HFC–236ea, HFC–236fa, HFC–245ca, HFC–365mfc, HFC–43–10mee, isomers of listed regulated substances and mixtures of regulated substances not used as a refrigerant. EPA Method 18, ''Measurement of gaseous organic compound emissions by gas chromatography,'' can be found at Appendix A–6 to 40 CFR part 60—Test Methods 16 through 18. This method appears to be appropriate for the HFCs regulated under the AIM Act and would provide a well-established standard used in other EPA regulatory programs. EPA requests comment on whether this standard is appropriate to fill gaps in the requirements in appendix A to 40 CFR part 82, subpart F, or if EPA could rely on appendix A to 40 CFR part 82, subpart F, including appendix A1 and the incorporated Appendix C to AHRI Standard 700–2014, for all sampling and testing requirements. EPA could finalize an approach that uses one or both standards.

While the current testing and sampling requirement in 40 CFR 84.5(i)(3) applies to entities producing, importing, reclaiming, recycling for fire suppression, or repackaging regulated substances, EPA seeks comment on whether to extend this requirement to exporters (or exporters that request additional consumption allowances under 40 CFR 84.19) to verify the regulated substances being exported match the label and, where relevant, the request for additional consumption allowances. EPA also seeks comment on whether to extend the testing and sampling requirements to additional entities, including others that sell or distribute regulated substances, or that offer them for sale and distribution as well as those that transform, use as a process agent, destroy, or receive application-specific allowances in the six applications listed in subsection (e)(4)(B)(iv) of the AIM Act to further ensure the label matches the regulated substance in containers and aid in the detection of off-specification and potentially non-compliant containers of regulated substances. Finally, EPA seeks comment on whether to establish purity and other specifications for non-refrigerants similar to those found in appendix A to 40 CFR part 82, subpart F or if the proposed approach of requiring the label to match the nominal composition of regulated substance(s) in the container is sufficient to ensure purchasers know the contents of the container and that all entities can verify the number of allowances that needed to be expended when the regulated substances in the container were imported or produced.

B. Recordkeeping of Tests

EPA proposes to modify the existing recordkeeping requirements in 40 CFR 84.31 to specify that the types of records required to be maintained related to testing results includes instrument calibration, sample testing data files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review.

Since the existing requirement in 40 CFR 84.5(i)(3)(i) requires fire suppressant recyclers [48] and repackagers [49] to test a representative sample of regulated substances before they are sold, EPA is proposing that the recordkeeping requirement for test records be extended from producers, importers, and reclaimers to include recyclers for fire suppression and repackagers to ensure sufficient records are maintained. Specifically, EPA is proposing to add a recordkeeping provision at 40 CFR 84.31(j)(3)(ii) and 84.31(k) requiring that recyclers for fire suppression and repackagers maintain dated records of batch tests of regulated substances packaged for sale or distribution, including information on instrument calibration, sample testing data files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review. This would support enforcement efforts if EPA identifies an off-specification or mislabeled container of regulated substances and needs to confirm proper testing was conducted to verify the contents of the container(s).

To align with the request for comment on whether to extend the testing and sampling requirements, EPA seeks comment on whether to extend this recordkeeping requirement to other entities, such as exporters.

C. Define ''Batch'' and ''Representative Sample'' and Clarify the Relationship Between These Terms

In the Framework Rule, reclaimers, producers, and importers are required to maintain records of the results of ''batch tests'' of regulated substances. Producers and importers are required to keep ''[d]ated records of batch tests of regulated substances packaged for sale or distribution'' (40 CFR 84.31(b)(3)(xi) and 40 CFR 84.31(c)(2)(xvi)), whereas the requirement for reclaimers does not depend upon sale or distribution and echoes the language in the definition of ''reclaim.'' EPA is proposing to add requirements to maintain dated records of batch tests of regulated substances packaged for sale or distribution for fire suppressant recyclers and repackagers.

The current rule specifies testing requirements for producers and importers only at 40 CFR 84.5(i)(3)(i), which requires testing of a ''representative sample.'' Regulated substances sold as refrigerants must be sampled according to appendix A. Part 5.2, Refrigerant Sampling at 5.2.1 provides that ''[s]pecial precautions should be taken to ensure that representative samples are obtained for analysis.'' Since the rest of section 5.2 specifies methods for sampling refrigerants, it is clear that the intent of these sampling methods is to allow for the collection of representative samples of refrigerants. The sampling methods defined for refrigerants are specific to sampling of individual cylinders, which are commonly used in the sale of refrigerants, but may not cover all possible containers used for sales or distributions of refrigerants. EPA's proposed changes for regulated substances, both sold as a refrigerant and for other uses, is specified in the preceding section.

EPA is proposing to include a definition of ''batch'' at 40 CFR 80.3. EPA is proposing that a batch be defined as (1) A vessel, container, or cylinder from which a producer, importer, reclaimer, recycler, or repackager transfers HFCs directly for sale or distribution, or for repackaging for sale or distribution or (2) a population of small vessels, containers, or cylinders that a producer, importer, reclaimer, recycler, or repackager directly offers for sale or distribution.

EPA is also proposing to define the term ''representative sample'' within the context of this regulation. EPA is proposing a two-part definition of representative sample. The first defines a representative sample of a container for sale as a sample collected from a container offered for sale or distribution using a sampling method that obtains all components of HFC(s) in an unbiased and precise manner. This definition is consistent with the implied notion of representative sample in appendix A of CFR part 82 Subpart F, which outlines specific methods for sampling containers. For the second part, EPA proposes to define a representative sample of a batch as a sample that can be used to infer that the composition of HFC(s) in a population of containers offered for sale or distribution that constitute, or are derived from, the batch are within stated tolerances (*e.g.,* within the specifications established in the tables in section 6 of appendix A to 40 CFR part 82, subpart F, such as

[48] Generally, an entity that collects used HFC fire suppressants and directly resells those recovered HFCs—with or without any additional reprocessing including testing for purity—to another person for reuse as a fire suppressant would qualify as a fire suppressant recycler (also referred to as a ''recycler for fire suppression'' in 40 CFR part 84, subpart A). A person that recovers and aggregates used HFC fire suppressants for distribution to another entity for reprocessing before being sold for reuse as a fire suppressant would not be a fire suppressant recycler. Reselling HFC fire suppressants that have already been recovered and subsequently reprocessed by another person would not be a fire suppressant recycler. In effect, a fire suppressant recycler is the first entity to reintroduce recovered HFC fire suppressants into the market use as fire suppressant. EPA requests comment on whether existing interpretations and guidance provide sufficient clarity on this issue or whether EPA should codify this explanation to provide a regulatory definition of fire suppressant recyclers.

[49] EPA views repackagers and cylinder fillers interchangeably under the regulations at 40 CFR part 84, subpart A, and would define repackagers as entities who transfer regulated substances, either alone or in a mixture, from one container to another container prior to sale or distribution or offer for sale or distribution. EPA requests comment on whether it should codify this explanation to provide a regulatory definition of repackagers.

composition and percent by volume air and other non-condensables).

EPA is proposing to make these changes to allow for the common scenario when testing of a batch is used to satisfy the requirement for ''testing of a representative sample'' to verify that the composition of HFCs in containers matches the container labeling, while also requiring that these batch test results produce valid labels for individual containers. These changes will help clarify the recordkeeping requirements associated with maintaining records of ''batch tests.''

D. Laboratory Methods and Accreditation

At 40 CFR 82.5(i)(2)(ii), EPA currently provides an option to importers that want to repackage regulated substances that were initially either unlabeled or mislabeled to ''[v]erify the contents with independent laboratory testing results and affix a correct label on the container that matches the test results before the date of importation (consistent with the definition at 19 CFR 101.1) of the container.'' But this requirement places no restrictions on what constitutes an ''independent laboratory'' nor on the quality of the analysis that the laboratory would have to achieve.

EPA is proposing to define ''laboratory testing'' as the use of the sampling and testing methodology prescribed by a laboratory that is accredited to ISO 17025. EPA is proposing this change to make clear that laboratory testing means, for purposes of 40 CFR part 84, the use of the methods specified (or incorporated by reference) in appendix A to 40 CFR 82, subpart F and EPA Method 18, where appropriate. This ensures that laboratory testing undertaken pursuant to the 40 CFR part 84 regulations uses a methodology that is consistent with the testing required for sales and distribution of HFCs, which will ensure consistency throughout the HFC regulatory environment. EPA is also proposing that laboratories must be accredited in order to be used for purposes of meeting the 40 CFR 84.5(i)(2)(ii) requirements. Laboratory accreditation bodies assess a variety of aspects of a laboratory, including the technical competence of staff; the validity and appropriateness of test methods; traceability of measurements and calibration to national standards; suitability, calibration, and maintenance of the testing environment; sampling, handling, and transportation of test items; and quality assurance of test and calibration data. In November 2017, International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) published a new version of the test laboratory accreditation standard, ISO/IEC 17025:2017. In addition to adding a definition of ''laboratory,'' the new version replaces certain prescriptive requirements with performance-based requirements and allows for greater flexibility in satisfying the standard's requirements for processes, procedures, documented information, and organizational responsibilities. Interested persons may purchase a copy of ISO/IEC 17025:2017 from the source provided in 40 CFR 84.37(b)(1), and it is available at *https://www.techstreet.com/standards/iso-iec-17025-2017?product_id=2000100.* This accreditation would ensure that laboratories follow good laboratory practices and that their operations have been reviewed by a recognized accreditation authority.

EPA is seeking comment on whether to require that all testing under 40 CFR 84.5(i)(3) be conducted by an independent and/or accredited laboratory. EPA understands that some entities have in-house laboratories and/or unaccredited laboratories that they currently rely upon for testing. Since the requirement for sampling and testing generally is in response to concerns about the potential for unlabeled or mislabeled container(s), the additional stringency of this requirement may be justified. However, EPA seeks comment on whether other safeguards are in place at laboratories that are currently typically used by this regulated community that are similar in nature to accreditation, such as certification by an independent third party, that would decrease the importance of testing being conducted by an independent and/or accredited laboratory.

EPA is also seeking comment on whether AHRI Certified Refrigerant Testing Laboratory and others should be allowed in addition to ISO 17025 laboratories. The AHRI certification program requires competence with the refrigerant testing requirements of appendix A, although the certification is not as rigorous as an ISO 17025 accreditation.

E. Certificate of Analysis for Imports of Regulated Substances

To aid in the review and monitoring of imports of HFCs, EPA is also proposing to require that certificates of analysis records accompany all imports of regulated substances. Under this proposal, certificates of analysis would include the sampling and testing that is used to verify the composition of bulk regulated substance(s) offered for sale or distribution, and the proposed definitions will facilitate this recordkeeping when batch testing is used to satisfy the labeling requirement. EPA understands that certificates of analysis regularly accompany imports of HFCs currently and does not expect this requirement to change current practices. If finalized, it would provide EPA additional information to confirm the number of allowances that need to be expended at the time of import. Under this proposal, EPA would require that the certificate of analysis be made available to EPA on the same timeline as the advance notice required under 40 CFR 84.31(c)(7).

EPA seeks comment on whether EPA should require that the certificate of analysis that is provided and testing and sampling conducted prior to import be conducted by a laboratory accredited under ISO 17025. For the same reasons described in the prior section of this preamble, this accreditation would ensure that laboratories follow good laboratory practices and that their operations have been reviewed by a recognized accreditation authority.

VIII. What other revisions is EPA proposing?

In addition to what is outlined in the prior sections, EPA is proposing a number of additional regulatory changes based on both lessons learned and current practices that have proved useful in implementing the HFC phasedown.

A. Define the Term ''Expend''

Under the AIM Act and EPA's implementation of the HFC phasedown, a person must expend allowances to produce or import regulated substances outside of limited exceptions. In the Framework Rule, EPA did not codify a regulatory definition of ''expend'' in 40 CFR 84.3. EPA proposes to amend 40 CFR 84.3 to include a definition of expend. EPA proposes to define expend to mean to subtract the number of allowances required for the production or import of regulated substances under 40 CFR part 84 from a person's unexpended allowances. We are proposing in section V.A of this preamble to codify the point in time that determines when calendar year allowances are expended, in section V.B of this preamble to codify that importers of record must expend allowances, and in section VI.B of this preamble to require same day recordkeeping of when producers and importers expend allowances that would be included in quarterly reports. EPA is proposing to add a regulatory definition of ''expend'' to accompany these proposed regulatory revisions to provide additional

specificity on how parties are required to implement these requirements.

B. Modify Labeling Requirements

EPA codified certain labeling requirements in 40 CFR 84.5(i)(1), to require a person who is selling, distributing, offering for sale or distribution, or importing containers containing a regulated substance that the container include ''a label or other permanent markings stating the common name(s), chemical name(s), or American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) designation of the regulated substance(s) or blend contained within, and the percentages of the regulated substances if a blend.'' EPA is proposing several changes to this regulatory text to provide additional detail on requirements, both to enable more transparency into the movement of HFCs and to help enable implementation and enforcement, where appropriate. Having accurate labeling of containers of regulated substances allows EPA, CBP, and other enforcement officials to quickly identify containers of interest, understand the contents of those containers, and make decisions about whether further inspection is warranted.

EPA proposes revising 40 CFR 84.5(i)(1) to require a ''permanent label'' in place of ''a label or other permanent marking.'' In other regulatory programs, EPA has experienced situations where an entity has swapped out easily removable labels in anticipation of an upcoming inspection. During the phaseout of ODS, EPA is aware of instances where an importer would import cylinders labeled as containing HFCs (prior to enactment of the AIM Act), when in fact they contained regulated HCFCs. Shortly after import, the importer would relabel the cylinders and sell them as HCFCs in an attempt to circumvent the CAA prohibition on importing HCFCs without allowances. EPA is proposing to require a permanent label to avoid such situations and to prohibit tampering with the permanent label. EPA is soliciting comment on examples of situations where permanent labels may be appropriate and is also soliciting comment on what type of ''permanent marking'' may be available for use on the types of containers used for regulated substances that are consistent with other Federal requirements. EPA is also soliciting comment on whether there are reasons why regulated entities would benefit from the ability to use a ''permanent marking'' in place of a label. EPA is also soliciting comment on any implementation challenges associated with requiring a ''permanent label.'' EPA is also soliciting comment on any implementation challenges associated with requiring a ''permanent label.''

To ensure that the labeling requirements meet their intended purpose, EPA is also proposing to add more detail and specificity on the regulatory labeling requirements. EPA proposes to make changes to the existing regulatory text at 40 CFR 84.5(i)(1) to include the following features such that all marks must be:

- Durable and printed or otherwise labeled on, or affixed to, the external surface of the bulk HFC container;
- Readily visible and legible;
- Able to withstand open weather exposure without a substantial reduction in visibility or legibility;
- Displayed on a background of contrasting color; and
- If a container of regulated substances is contained within a box or other overpack, the exterior packaging must contain legible and visible information in at least 20-point font of what regulated substance is contained within.

These proposed revisions to the labeling requirements are intended to help ensure that all containers of regulated substances would contain labeling that is not easily manipulated, that would be easily visible and legible, and would contain information that is necessary for appropriate inspection and enforcement, as appropriate. As outlined in detail in the Framework Rule (86 FR 55166), the Agency has significant concerns about the potential for and impact of illegal trade in regulated substances. This concern is particularly heightened at the start of a new phasedown step. The requirements of the HFC phasedown are implemented at a variety of locations, including at border entries and industrial facilities. As a result, EPA relies on a diverse array of law enforcement officials to aid in compliance efforts related to the 40 CFR part 84 requirements. It is particularly important in light of these circumstances for EPA to strive to ensure a program that can be readily and efficiently implemented. Without appropriate labeling, containers of regulated substances may not be readily distinguishable from containers of other products. Accordingly, these proposed provisions would facilitate inspections by providing durable labels that clearly identify contents.

As a complementary measure to these additional labeling requirements, EPA is proposing to add to the prohibitions at 40 CFR 84.5(i)(2), that no one other than the importer of record may repackage or relabel regulated substances that were initially unlabeled or mislabeled. EPA is proposing to change the current text, which applies to importers, to allow only for the importer of record to undertake these actions. This is intended to parallel the proposals elsewhere in this preamble that would permit only an importer of record to expend allowances for the import of bulk regulated substances. Additionally, the current regulatory text does not preclude relabeling; it only precludes repackaging. However, this regulatory text is intended to apply to regulated substances that were ''initially mislabeled or unlabeled.'' While it is important to provide restrictions in such situations on repackaging, it is equally important to speak to relabeling for a scenario where the regulated substances are not moved into a different container.

C. Clarify Ability To Move Allowances Among Companies With Certain Affiliation Without a Transfer

EPA made clear in the Framework Rule that in calculating the quantity of allowances to allocate, ''for purposes of determining the quantity of past imports, EPA is treating all companies majority owned and/or controlled by the same individual(s) as a single company, even if there is no corporate parent'' (86 FR 55145). EPA also considers all parent, [50] subsidiary,[51] sister,[52] and commonly owned [53] companies together in determining past imports. Complementarily, it is EPA's longstanding practice that allowances can be expended by parents, subsidiaries, sister, or commonly owned companies without a transfer. EPA is proposing to revise the regulatory text at 40 CFR 84.19(a) to codify this practice for additional clarity for allowance holders.

Given that EPA considers historic activity together for these companies in determining a single quantity of allowances to allocate, it is appropriate to allow companies in this situation to expend from the single pool of allowances through different arms of its corporate chain. Therefore, it seems

[50] In referring to a parent, EPA means a company that has a majority, *i.e.* at least fifty percent, stake in another company.

[51] In referring to a subsidiary, EPA means a company that is majority, *i.e.* at least fifty percent, owned by another company.

[52] In referring to a sister company, EPA means an entity related to another entity by a shared corporation with majority ownership.

[53] In referring to a commonly owned company, EPA means a company that is related to another company by a shared individual owner or owners, where there is at least (1) a single individual that owns 30 percent or more of each company or (2) individuals with direct family relationships (parent, child, sibling, or spouse) that own a majority of each company.

inappropriate to require a transfer, including a petition to the Agency and a transfer offset, when EPA considers these commonly owned companies as a single entity for purposes of calculating and allocating allowances. However, EPA invites comments on potential negative implications of this proposal. EPA requests comment on whether the proposed revisions to the text adequately capture the appropriate entities.

D. Revise Required Elements To Request Additional Consumption Allowances

In the Framework Rule EPA created a process by which a person may obtain consumption allowances equivalent to the quantity of regulated substances exported by that person. Given that the AIM Act subtracts exports in the definition of ''consumption'' under subsection (b)(3), it is consistent with the Act to refund consumption allowances that were expended to import or produce regulated substances if those regulated substances were later exported from the country. An exporter must submit certain information (40 CFR 84.17(a)) for EPA's review to verify that the regulated substances were in fact exported.

Through implementation of the existing 40 CFR 84.17 regulations, EPA has learned that the review of requests for additional consumption allowances (RACAs) could be more efficient if exporters provided additional information with their RACA requests. Specifically, EPA is proposing to require that RACA applicants submit the following additional data points: (1) Internal Transaction Numbers (ITNs) for all shipments regardless of monetary value, destination country, or other characteristics that could otherwise exempt or preclude an exporting entity from obtaining an ITN, (2) conveyance names, (3) IMOs of the vessel(s) carrying the export, as applicable and (4) container numbers (*e.g.,* ISO tank numbers). Inclusion of this additional information would aid EPA in verifying reported exports through CBP data. These proposed additional data points should help ensure that EPA can quickly locate exports and review RACA applications expeditiously. An ITN is received as confirmation that the Electronic Export Information (EEI) has been accepted in the Automated Export System (AES). EPA notes that there are some exports where an exporter is not required to receive an ITN. This may be the case for certain exports destined for Canada or valued under $2,500, for example. This proposal would require that all exports of regulated substances have associated EEI that is filed by way of AES, regardless of whether the exports are destined for Canada, under a low value threshold, or otherwise not required to have an ITN. EPA requests comment on whether there are any additional data points that would aid the Agency in quickly verifying the information provided in a RACA application, including but not limited to customs release documents from the country receiving the exports and proof of receipt at the final destination. EPA also requests comment on whether any entity that may apply for a RACA would have difficulty gathering and submitting the additional data points proposed here. EPA's understanding is that these data points appear on existing bills of lading, although the specific data points on a given bill of lading may differ by broker.

EPA is also taking comment on whether the Agency should require the reporting of certain EEI, which are data that must be filed through AES, to aid in EPA's review of RACAs and to verify export data more generally similar to those required (and proposed to be required) under 40 CFR 84.31(c)(7), such as cargo description, gross and net weight, unit of mass (*i.e.,* kilograms), HTS Code, container number(s) of the shipment (if applicable), vessel name and the IMO number, where applicable, CAS Number(s) of the regulated substance(s) imported and, for regulated substances that are in a mixture, either the ASHRAE numerical designation of the refrigerant or the percentage of the mixture containing each regulated substance.

Finally, while the current RACA requirements allow an entity to receive a refund on allowances for an export regardless of when the HFC was initially produced or imported, EPA is considering amending the regulations to require that exporters provide documentation to verify an allowance was expended when the regulated substance being exported was produced or imported. This could reduce the opportunity for an entity to illegally import an HFC, export it legally, and receive a legal consumption allowance, effectively allowing a bad actor to launder smuggled HFCs. It would also reduce the opportunity for entities to receive RACAs for stockpiled HFCs imported or produced prior to 2022. EPA noted its concern in the proposed Framework Rule that an entity could over produce or import high-GWP HFCs prior to January 1, 2022, and export them to gain additional allowances in later years. In the Framework Rule, EPA initially proposed that RACAs would only be available for regulated substances that were produced or imported in the same year as the export occurred, but did not finalize that time restriction noting that it could be unnecessarily prescriptive, cause challenges around the change in calendar year, and the challenges such a requirement would have for net exporters who are not allocated allowances at the start of the year since their historic consumption would be negative. EPA seeks comment on whether these reasons will still be valid by 2024 and also whether it is appropriate to finalize a requirement with some more flexible time-related restriction.

E. Petitions To Import Regulated Substances for Laboratory Testing with Eventual Destruction

EPA's regulations codified in 40 CFR 84.25(b) detail the process by which entities can import used regulated substances into the United States for destruction without expending allowances. The Framework Rule explained that used HFCs may need to be destroyed when they are contaminated beyond the point that reclamation is economical, and that providing a pathway to import used HFCs for proper disposal in the United States can benefit the environment and the domestic destruction industry (86 FR 55181). The Agency explicitly excluded importing virgin HFCs for disposal from the petition process, stating that ''Importing virgin HFCs, even for disposal, requires the expenditure of consumption allowances.''

In reviewing import activity, EPA has learned that some entities may import small amounts of regulated substances for laboratory testing to determine the type and amount of any impurities in the United States, after which point the substances are destroyed. In such situations the regulated substances are virgin material, but may not meet the exact specifications required by the producer or for the intended applications. The current regulations require allowances to be expended in these instances, as these materials are not used regulated substances. Even if these regulated substances could be considered used, there are no provisions in the current regulations to allow for an intermediary step (such as laboratory testing) prior to destruction without expending allowances.

Based on current information, EPA does not consider laboratory testing of regulated substances that are ultimately bound for destruction as meriting an exemption from expending allowances. EPA established a regulatory petition process for other situations where

regulated substances are imported without expending allowances, such as for feedstock uses or disposal by destruction. Those standardized processes provide a means for EPA to document shipments, verify that the intended functions are being carried out, and expedite reviews. In the case of laboratory testing with eventual destruction, the frequency, quantity, and number of potentially affected entities are not fully known, though the Agency does not believe that that they are sufficient enough in scale to necessitate a regulatory petition process for the entities to be exempt from expending allowances. The Agency currently lacks compelling reasons or rationale for why such testing cannot be performed in the country of use. Nonetheless, EPA is soliciting comment on whether a petition process like that in 40 CFR 84.25(b) would be appropriate and necessary, and on the number of entities that would potentially make use of a petition process as well as the frequency and quantity of such imports. If compelling comments are received demonstrating that these tests cannot be performed in the countries of use or that the scope of these activities warrant a regulatory petition process, EPA would consider finalizing a process as outlined further in this section.

Should EPA determine there is need for such a petition process, EPA is taking comment on whether a petition process should be provided, by which allowances would not be necessary for importing virgin or used regulated substances exclusively for laboratory testing for the type and quantity of impurities, where the regulated materials are ultimately bound for destruction.

Specifically, EPA is taking comment on a process for which imports of regulated substances could qualify if they are imported for laboratory testing and ultimately bound for destruction and are limited to 0.5 kg per shipment, and that a person must petition the Agency for the import of each individual shipment of a regulated substance that met these criteria in order to not expend allowances. If EPA were to determine such a process is needed, it is taking comment on including the following requirements in that process: a petition would be required at least 30 days before the shipment is to arrive at a U.S. port, containing the following information:

- Name, HTS code, and quantity in kilograms (limited to 0.5 kg) of each regulated substance to be imported;
- Name and address of the importer, the importer identification number, and the contact person's name, email address, and phone number;
- Name and address of the consignee and the contact person's name, email address, and phone number;
- Name and address of any intermediary who will hold the imported regulated substances for laboratory testing, and the contact person's name, email address, and phone number;
- Name and address of any intermediary who will hold the imported regulated substances for destruction, and the contact person's name, email address, and phone number;
- Source country;
- An English translation, if needed, of the export license (or application for an export license) from the appropriate government agency in the country of export;
- The U.S. port of entry for the import, the expected date of import, and the vessel transporting the material. If at the time of submitting the petition the importer does not know this information, and the importer receives a non-objection notice for the individual shipment in the petition, the importer is required to notify the relevant Agency official of this information prior to the entry of the individual shipment into the United States;
- Name, address, contact person, email address, and phone number of the responsible party at the laboratory testing facility;
- Name, address, contact person, email address, and phone number of the responsible party at the destruction facility;
- A certification from the importer attesting that prior to destruction, the regulated substances are only being imported for testing to determine the type and quantity of impurities with no other use;
- A certification from the laboratory conducting the testing that they will only distribute the regulated substances to the destruction facility specified in the petition after testing is complete and will send the regulated substances to the destruction facility within 60 days of receipt; and
- A certification from the destruction facility that they will destroy the regulated substance within 45 days of receipt.

EPA is further taking comment on using a review process, time by which the regulated substances must be destroyed, quantity (in MTEVe) limits, proof of destruction requirements, and recordkeeping provisions for the petition process described above in this section, that would be similar to those currently codified in 40 CFR 84.25 (b)(2)–(6). Finally with respect to this petition process, the Agency is taking comment on requiring that the laboratory performing the purity testing submit to EPA information demonstrating and confirming that the regulated substances have been delivered to a destruction facility in accordance with approved technologies in 40 CFR 84.29 within 15 calendar days of the destruction facility receiving the regulated substances.

IX. What are the costs and benefits of this proposed action?

In the Framework Rule, EPA conducted a Regulatory Impact Analysis (RIA) which estimated the costs and benefits of implementing the phasedown of HFCs as a result of the passage of the AIM Act, as realized by promulgating that rule. This action proposes to follow an allocation methodology and framework nearly identical to that rule, and this action is not expected to result in significant changes to the phasedown program as a whole or fundamentally change the assumptions made in the RIA. As described in this preamble, we are proposing to adjust the consumption baseline, revise particular recordkeeping and reporting requirements, and carry out other limited revisions to the existing regulations. These revisions would generally apply from the years 2024 and beyond. In this section we discuss two discrete changes to the analysis of benefits and costs as presented in the RIA for the Framework Rule. First, we are providing an analysis of the incremental change in benefits and costs associated with the proposed adjustment to the consumption baseline from 2024 through 2050 relative to the benefits and costs estimate for the same time period as estimated in the supporting analysis for the Framework Rule. Secondly and separately, we have adjusted estimated costs associated with the HFC phasedown from 2024 through 2050 due to updating assumptions for an abatement option used in the analysis.

This analysis is intended to provide the public with updated information on the relevant costs and benefits of this action and to comply with Executive Orders. The analysis does not form a basis or rationale for any of the actions EPA is proposing in this rulemaking. The Framework Rule, its RIA, and supporting documentation provide more detail on our analysis methodology of the costs and benefits of the HFC phasedown between 2022 and 2050, and are available in the docket for this action (Docket ID No. EPA–HQ–OAR–

2022–0430). More information on the analysis for this action is available in an addendum to the Framework Rule's RIA in the docket for this action.

As discussed in section IV of this preamble, this rule proposes to reduce the consumption baseline by 3.6 million metric tons of exchange value equivalent (MMTEVe) (approximately 1.2 percent) relative to the baseline codified in the Framework Rule at 40 CFR 84.7(b)(2). With a lower consumption baseline, more abatement will be necessary in each year starting in 2024 to reduce HFC consumption from its business-as-usual level to a level below the maximum allowed consumption. However, for the years 2029 through 2035, the abatement options modeled previously using the higher baseline had already lowered consumption below the maximum consumption allowed. This ''overshoot'' reached a level of consumption that is already below the maximum consumption that would be allowed with the lowered baseline, so no additional abatement options are needed in these years and no incremental costs are accrued. More detail is provided in the RIA addendum for this rule. Assuming EPA finalizes the proposed change, using the same abatement option approach as used in the Framework Rule RIA, we estimate consumption will decrease relative to the business-as-usual forecast by an additional 22.3 MMTEVe through 2050 (*i.e.,* 7,183 MMTEVe compared with the previous estimate of 7,160 MMTEVe).

Reducing the consumption of HFCs reduces the emissions of HFCs, although the time profile of emissions reduction can vary depending on the application the HFCs are used in because consumption in some applications, *e.g.,* aerosols, may result in an immediate emissions release, while others, *e.g.,* closed-cell foams, emit the HFCs used to produce them over many years. Thus, the percentage reduction in a discounted stream of consumption may not match the percentage reduction in a discounted stream of emissions. EPA's Vintaging Model is used to calculate consumption and emissions under a ''business-as-usual'' forecast and an alternative scenario in which the AIM Act allowance allocation phasedowns are in effect and abatement options are undertaken. The difference results in the reduction in consumption as well as the reduction of emissions of HFCs in each year. The 2024–2050 total reduction in emissions of regulated HFCs from the proposed reduction in the consumption baseline is estimated to be 2 MMTEVe fewer relative to the previous estimate from the Framework Rule. By multiplying the change in emissions of each HFC in each year by the social cost of HFCs for that HFC for that year, the monetary value of the climate benefits of the emissions reduction can be estimated. These reductions in HFC consumption, emissions, and associated climate benefits, are all attributable to the baseline adjustment. From 2024 through 2050 at a discount rate of 3 percent in 2020 dollars and discounted to 2022, this proposed baseline adjustment would result in incremental climate benefits of $125 million, costs of $1.2 billion, and a net cost of $1.1 billion. Relative to the present value of cumulative net benefits for the HFC Allocation Program between 2022 and 2050, this increase represents a 0.4 percent decrease in cumulative net benefits. Although EPA is using the social costs of HFCs for purposes of this analysis, this proposed action does not rely on the estimates of these costs as a record basis for the Agency action, and EPA would reach the proposal conclusion even in the absence of the social costs of HFCs.

EPA also updated an abatement option used in the analysis to reflect the most recently available information. Specifically, the previous analysis assumed that some consumption of HFC–134a could be abated by transitioning the foam-blowing agent used to produce extruded polystyrene (XPS) boardstock foam. If XPS foam producers shifted from using a combination of HFC–134a and carbon dioxide to a mixture of liquid carbon dioxide (LCD) and alcohol, all of the HFC consumption associated with producing XPS foam could be avoided. However, EPA received comment from two foam manufacturers that the abatement option of using LCD/alcohol has not been proven to meet the safety and performance standards required in the United States and would not be a viable option. While the LCD/alcohol technology is successfully used in other countries, we understand that U.S. companies expect XPS foam production to transition from using HFC-34a/CO_2 to blends containing a hydrochlorofluoroolefin (HCFO) and/or a hydrofluoroolefin (HFO). This revision of an abatement option did not result in any changes to the emissions or benefits, because these options are applied to reduce consumption to the respective phasedown step. The updated assumption resulted in a cost increase of $2.7 billion from 2024–2050 at a 3 percent discount rate relative to the prior estimate provided with the Framework Rule RIA. The effect is a one percent change in the estimated net benefit of the HFC phasedown in 2022–2050. This revision solely reflects a change in assumptions. It is not the result of a regulatory change and does not reflect a change in costs from actions proposed in this rule. EPA requests comment on this assumption, including on the modeled transition and estimated cost, and other transition scenarios described in the RIA addendum in the docket.

For informational purposes, considering the incremental change to the consumption baseline associated with this proposed rule and the separate update to the analytical model described further in the addendum in the docket for this rulemaking, the present value of cumulative net benefits for the HFC Allocation Program between 2022 and 2050 is now estimated to be $268.9 billion.

X. How is EPA considering environmental justice?

As part of the RIA addendum for this proposed rule, EPA updated the environmental justice analysis that was previously conducted for the Framework Rule. The updated environmental justice analysis used the same analytical approach used previously, along with updated data on cancer and respiratory risks. The analysis also includes the addition of another facility that reported HFC production. Furthermore, as described in section VI.D of this preamble, EPA is also proposing to require that HFC production facilities report annual emissions of HAP, ODS, and HFCs from their HFC production lines.

Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14008 (86 FR 7619, January 27, 2021) establish Federal executive policy on environmental justice. Executive Order 12898's main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on people of color and low-income populations in the United States. EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws,

regulations, and policies.[54] Meaningful involvement means that: (1) Potentially affected populations have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory Agency's decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the rule-writers and decision-makers seek out and facilitate the involvement of those potentially affected.[55] The term ''disproportionate impacts'' refers to differences in impacts or risks that are extensive enough that they may merit Agency action. In general, the determination of whether there is a disproportionate impact that may merit Agency action is ultimately a policy judgment which, while informed by analysis, is the responsibility of the decision-maker. The terms ''difference'' or ''differential'' indicate an analytically discernible distinction in impacts or risks across population groups. It is the role of the analyst to assess and present differences in anticipated impacts across population groups of concern for both the baseline and proposed regulatory options, using the best available information (both quantitative and qualitative) to inform the decision-maker and the public.[56]

A regulatory action may involve potential environmental justice concerns if it could: (1) Create new disproportionate impacts on people of color, low-income populations, and/or indigenous peoples; (2) exacerbate existing disproportionate impacts on people of color, low-income populations, and/or indigenous peoples; or (3) present opportunities to address existing disproportionate impacts on people of color, low-income populations, and/or indigenous peoples through the action under development.

Executive Order 14008 calls on agencies to make achieving environmental justice part of their missions ''by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.'' Executive Order 14008 further declares a policy ''to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and under-investment in housing, transportation, water and wastewater infrastructure, and health care.'' In addition, the Presidential Memorandum on Modernizing Regulatory Review calls for procedures to ''take into account the distributional consequences of regulations, including as part of a quantitative or qualitative analysis of the costs and benefits of regulations, to ensure that regulatory initiatives appropriately benefit, and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities.'' EPA also released its June 2016 ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis'' (2016 Technical Guidance) to provide recommendations that encourage analysts to conduct the highest quality analysis feasible, recognizing that data limitations, time and resource constraints, and analytic challenges will vary by media and circumstance.

In the Framework Rule, EPA established the baselines for the production and consumption of regulated substances, determined the quantity of allowances that would be available nationwide according to the AIM Act's phasedown schedule, and created an allowance allocation and trading program. EPA also summarized the public health and welfare effects of GHG emissions (including HFCs), including findings that certain parts of the population may be especially vulnerable to climate change risks based on their characteristics or circumstances, including the poor, the elderly, the very young, those already in poor health, the disabled, those living alone, and/or indigenous populations dependent on one or limited resources due to factors including but not limited to geography, access, and mobility (86 FR 55124–55125). Potential impacts of climate change raise environmental justice issues. Low-income communities can be especially vulnerable to climate change impacts because they tend to have more limited capacity to bear the costs of adaptation and are more dependent on climate-sensitive resources such as local water and food supplies. In corollary, some communities of color, specifically populations defined jointly by both ethnic/racial characteristics and geographic location, may be uniquely vulnerable to climate change health impacts in the United States.

EPA has not assessed climate-based impacts to communities that surround HFC production facilities for this rule or as part of the Framework Rule. The location of HFC production facilities has no significant bearing on the climate impacts that these communities will experience.

As detailed in the Framework Rule and its accompanying RIA, the phasedown of HFCs in the United States will achieve significant benefits associated with reducing climate change. However, as described in the RIA for the Framework Rule and in the addendum for this proposed rule, there continues to be significant uncertainty about how the phasedown of HFC production, the issuance of allowances, and market trends independent of this proposed rulemaking could affect production of HFCs and HFC substitutes—and associated air pollution emissions—at individual facilities, particularly in communities that are disproportionately burdened by air pollution. The manner in which producers transition from high-GWP HFCs could drive changes in future risk for communities living near facilities that produce HFCs, to the extent the use of toxic feedstocks, byproducts, or catalysts changes and those chemicals are released into the environment with adverse local effects.

For the environmental justice analysis performed to support the Framework Rule, as a starting point for assessing the need for a more detailed environmental justice analysis, EPA reviewed the available evidence from the published literature and from community input on what factors may make population groups of concern more vulnerable to adverse effects (*e.g.,* cumulative exposure from multiple stressors), including but not limited to the 2009 and 2016 Endangerment Findings and the reports from IPCC, the U.S. Global Change Research Program, and the National Research Council. It was also important to evaluate the data and methods available for conducting an environmental justice analysis.

EPA's 2016 Technical Guidance does not prescribe or recommend a specific approach or methodology for conducting an environmental justice analysis, though a key consideration is consistency with the assumptions underlying other parts of the regulatory analysis when evaluating the baseline

[54] See, *e.g.,* ''Environmental Justice.'' *Epa.gov,* EPA, 4 Mar. 2021, *www.epa.gov/environmentaljustice.*

[55] The criteria for meaningful involvement are contained in EPA's May 2015 guidance document ''Guidance on Considering Environmental Justice During the Development of an Action.'' *Epa.gov,* EPA, 17 Feb. 2017, *www.epa.gov/environmentaljustice/guidance-considering-environmental-justice-during-development-action.*

[56] The definitions and criteria for ''disproportionate impacts,'' ''difference,'' and ''differential'' are contained in EPA's June 2016 guidance document ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis.'' *Epa.gov,* EPA, *https://www.epa.gov/sites/production/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf.*

and regulatory options. Where applicable and practicable, the Agency's RIA examined certain metrics for an environmental justice analysis comprising more than just climate change effects, including: the proximity of entities receiving allowances to populations disaggregated by race and ethnicity, low-income populations, and/or indigenous peoples; the number of entities receiving allowances that may be adversely affecting population groups of concern; the nature, amounts, and location of regulated HFC production that may adversely affect population groups of concern; and potential exposure pathways associated with the production of the regulated HFCs or with chemicals used as feedstocks, catalysts, or byproducts of HFC production unique to particular populations (*e.g.,* workers). The environmental justice analysis is described in the RIA for the Framework Rule and is based on public data from the TRI, GHGRP, EJSCREEN (an environmental justice mapping and screening tool developed by EPA), Enforcement and Compliance History Online (ECHO), and Census data. In addition, the analysis integrated suggestions received during the public comment period to the extent possible. The environmental justice analysis also contains information on non-production releases (as defined by TRI), water releases, and offsite disposal for chemicals used in HFC production. The analysis of potential environmental justice concerns focused mainly on characterizing baseline emissions of air toxics that are also associated with chemical feedstock use for HFC production. As noted in the RIA for the Framework Rule, there is uncertainty around the role that HFC production plays in emissions of these air toxics. In addition, EPA conducted a proximity analysis to examine community characteristics within one and three miles of these facilities. The Agency also explored larger radii (5 and 10 miles) in response to public comments that releases from these facilities may travel longer distances.

The relatively small number of facilities directly affected by this rule enabled EPA to assemble a uniquely granular assessment of the characteristics of these facilities and the communities where they are located. The environmental justice analysis, which examines racial and economic demographic and health risk information, found heterogeneity in community characteristics around individual facilities. The analysis showed that the total baseline cancer risk and total respiratory risk from air toxics (not all of which are due to emissions from HFC production) varies, but is generally higher, and in some cases much higher, within one to ten miles of an HFC production facility. The analysis also found that higher percentages of both low-income and Black or African American individuals live near several HFC production facilities compared with the appropriate national and state level average. EPA noted in the final rulemaking, and reiterates here, that it is not clear the extent to which these baseline risks are directly related to HFC production, but some feedstocks, catalysts, and byproducts are toxic, particularly with respect to potential carcinogenicity (*e.g.,* carbon tetrachloride, tetrachloroethylene, and trichloroethylene). All HFC production facilities are near other industrial facilities that could contribute to the AirToxScreen cumulative cancer and respiratory risk; the number of neighboring TRI facilities within one mile of an HFC production facility ranges from 2 to 14, within 3 miles there are 2 to 19 neighboring TRI facilities, within 5 miles there are 2 to 34 neighboring TRI facilities, and within 10 miles there are 6 to 66 neighboring TRI facilities.

At this time, it is not clear how emissions related to HFC production compare to other chemical production at the same or nearby facilities. Additionally, some HFC alternatives, such as hydrofluoroolefins (HFOs), use the same chemicals as feedstocks in their production or release the same chemicals as byproducts, potentially raising concerns about local exposure. Emissions from production facilities manufacturing non-fluorinated substitutes (*e.g.,* hydrocarbons, ammonia) could also be affected by the phasedown of HFCs. However, there is still limited information regarding how much of each substitute would be produced, which substitutes would be used, and what other factors might affect production and emissions at those locations, so it continues to be unclear to what extent this rule may affect baseline risks from hazardous air toxics for communities. Further, the HFC phasedown schedule prescribed by Congress—with a 40 percent reduction by 2024, a 70 percent reduction by 2029, an 80 percent reduction by 2034 and an 85 percent reduction by 2036—may also reduce the potential for a facility to increase emissions above current levels for a prolonged period, if at all.

For this proposed rulemaking, EPA is updating the environmental justice analysis that was done as part of the Framework Rule. Not much time has elapsed since this rule was signed last September, and the Agency still does not have enough data to determine how the implementation of the HFC phasedown may affect production and emissions at facilities that produce HFCs and their substitutes. For this reason, EPA is following the analytical approach used in the Framework Rule RIA to provide updated data on the total number of TRI facilities near HFC production facilities and the cancer and respiratory risks to surrounding communities. This update includes the use of the most recent data available for the AirToxScreen data set from 2017, replacing the 2014 NATA data used in the previous analysis. Additionally, EPA is updating the list of HFC production facilities as part of this analysis to include an additional ninth facility that reported production of HFCs in 2022.

Finally, EPA is including a demonstration of a microsimulation approach to analyze the proximity of communities to potentially affected HFC production facilities. Microsimulation is a technique relying upon advanced statistics and data science to combine disparate survey and geospatial data. It has long been used in a variety of economic and social science research and has been used before by EPA (in the context of understanding the implications of underground storage tank impacts on groundwater). Recent advances in data science and computational power have increased the availability of microsimulation for applications such as environmental justice analysis. The demonstration analysis included in the RIA addendum contributes to understanding communities that may warrant further environmental justice analysis.

The updated environmental justice analysis found that for eight of the nine facilities identified as HFC producers, the demographic data are identical to that included in the Framework Rule RIA. The racial, ethnic, and income figures for the 8 communities within 1, 3, 5, and 10 miles of the respective facilities are drawn from the most recent American Communities Survey data from 2019. Using the updated 2017 AirToxScreen data, the total cancer risk and total respiratory risk generally decreased compared with the previous analysis for the communities surrounding several production facilities. The exception is the apparent rise in total cancer risk within one mile of the Mexichem Fluor facility in St. Gabriel, LA. The total cancer risk identified using the 2014 NATA data was 180 per million at a one-mile

radius. Using the 2017 AirToxScreen dataset, the total cancer risk rises within one mile of the facility to 200 per million. However, further from the facility, the total cancer risk was lower using the updated 2017 AirToxScreen data compared with that identified using the 2014 NATA data. In particular, the total cancer risk drops to 130 per million from 140 per million within the three-mile radius, 120 per million from 140 per million within the five-mile radius, and further to 82 per million from 98 per million within the 10-mile radius. The total respiratory risk near the facility appears lower using the new data. Additionally, looking across the nine HFC production facilities, the risks from air emissions (not all of which necessarily stem from HFC production), while varied, were still generally higher, and in some cases much higher, within one to three miles of an HFC production facility and compared with the overall national and state averages.

For the additional ninth facility, Islechem, the total cancer risk and total respiratory risk within 1 to 10 miles of the facility were similar to or lower than the risks based on the national and state average. The proportion of low-income and Black or African American and other communities of color were lower than the national and state averages and increased with increasing distance from this facility.

As mentioned above in this section, emissions from facilities producing fluorinated and non-fluorinated substitutes may also be affected by the phasedown of HFCs. For the forthcoming proposed technology transitions rulemaking under the AIM Act, EPA is conducting an environmental justice analysis to assess the potential impacts of that proposed rule by examining the characteristics of communities near facilities producing HFC substitutes (*e.g.,* hydrocarbons, CO_2, ammonia, HFOs) used in the sectors or subsectors addressed in the petitions. More information will be provided in conjunction with that proposed rule, which the Agency anticipates publishing later this year.

EPA seeks input on the environmental justice analysis contained in the RIA addendum for this proposed rule, as well as broader input on other health and environmental risks the Agency should assess. To support the development of comments, EPA is seeking data or analysis to identify whether it is reasonable to expect net increases in emissions, and if so how we might isolate the impacts of this program (*e.g.,* effects resulting from the phasedown itself, the trading of production allowances, or some other factor) that would enable the Agency to conduct a more nuanced analysis of changes in releases associated with chemical feedstocks and byproducts for HFC substitutes, given the inherent uncertainty regarding where, and in what quantities, substitutes will be produced.

EPA seeks comment and further discussion of the use of microsimulation approaches and techniques for regulatory impact analysis and other program activities. For example, what microsimulation tools are appropriate for better understanding the burdens faced by communities, and in what circumstances? The demonstration analysis presented in this RIA addendum uses a dataset of ''synthetic households'' based on geospatial data combined through microsimulation techniques with information from the U.S. Decennial Census and the American Communities Survey (ACS). What other surveys or other geospatial datasets should be the focus of EPA efforts to combine with the ACS and/or Decennial Census data? How can microsimulation tools supplement other EPA tools for understanding demographics, multiple burdens facing communities, and assessing the impact of EPA programs? Can microsimulation and other techniques to use current survey information be used to identify data gaps which might be filled with refinements or improvements to existing survey tools?

For the final rule, EPA is also considering updating the analysis to estimate exposure of the communities near the identified facilities to toxics using the Risk Screening Environmental Index Geographic Microdata (RSEI–GM). The Agency seeks comment on whether updating the analysis provided with the Framework Rule would be useful and what additional insight it might provide for the environmental justice analysis.

EPA is taking comment on whether the proposal to require annual reporting of certain emissions, as described in more detail above in section VI.D of this preamble, would allow for the effective monitoring of these emissions and their localized impacts of the HFC phasedown on surrounding communities. EPA is also taking comment on whether there are other authorities that would allow for the reporting of emissions tied to HFC and HFC substitute production. Finally, EPA is seeking comment in order to aid our efforts to understand further cumulative impacts and how they might be addressed. Since the updated environmental justice analysis and proposed reporting requirement are focused on chemical stressors, the Agency is requesting additional information on how both the chemical and non-chemical stressors associated with the HFC phasedown can alter the cumulative impacts experienced by communities surrounding HFC production facilities, how the Agency can share this information with the public, and whether and how the Agency can assess and measure cumulative impacts in the context of the HFC phasedown.

XI. Statutory and Executive Order Review

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. A summary of the potential costs and benefits associated with this action is included in the section titled, ''What are the costs and benefits of this proposed action?'' of this proposed rulemaking, and EPA prepared an analysis of the potential costs and benefits associated with this action, which is available in Docket ID No. EPA–HQ–OAR–2022–0430.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The ICR document that EPA prepared has been assigned EPA ICR number 2685.03 and proposes to revise OMB Control No. 2060–0734. You can find a copy of the ICR in the docket for this rule (Docket ID. No. EPA–HQ–OAR–2022–0430), and it is briefly summarized here.

Subsection (d)(1)(A) of the AIM Act specifies that on a periodic basis, but not less than annually, each person that, within the applicable reporting period, produces, imports, exports, destroys, transforms, uses as a process agent, or reclaims a regulated substance shall submit to EPA a report that describes, as applicable, the quantity of the regulated substance that the person: produced, imported, and exported; reclaimed; destroyed by a technology approved by the Administrator; used and entirely consumed (except for trace quantities) in the manufacture of another chemical; or, used as a process agent. EPA collects such data regularly to support implementation of the AIM Act's HFC

phasedown provisions. EPA requires quarterly reporting to ensure that annual production and consumption limits are not exceeded. It is also needed for EPA to be able to review allowance transfer requests, of which remaining allowances is a major component of EPA's review. In addition, EPA collects information in order to calculate allowances, to track the movement of HFCs through commerce, and to require auditing. Collecting these data elements allows EPA to ensure that the annual quantity of all regulated substances produced or consumed in the United States does not exceed the cap established by the AIM Act, consistent with subsection (e)(2)(B) of the Act. As described above in this preamble, EPA proposes revisions to the recordkeeping and reporting requirements and new requirements, including annual reporting of estimated emissions from HFC production facilities and recordkeeping of analysis results on regulated substances.

All information sent by the submitter electronically is transmitted securely to protect information that is CBI or claimed as CBI consistent with the confidentiality determinations made in the Framework Rule. The reporting tool guides the user through the process of submitting such data. Documents containing information claimed as CBI must be submitted in an electronic format, in accordance with the recordkeeping requirements.

For reference, EPA continued to use data collected under the ICR for the GHGRP (OMB Control No. 2060–0629) as well as the associated reporting tool, the e-GGRT in developing this proposed rulemaking. EPA also earlier requested an emergency ICR for a one-time collection request pertaining to data necessary to establish the U.S. consumption and production baselines as well as to determine potential producers, importers, and application-specific end users who were not subject to the GHGRP (OMB Control No. 2060–0732). EPA is not revising either ICR through this proposed rule.

Respondents/affected entities: Respondents and affected entities will be individuals or entities that produce, import, export, transform, distribute, destroy, or reclaim certain HFCs that are defined as a regulated substance under the AIM Act. Respondents and affected entities will also be individuals and entities who produce, import, or export products in six statutorily specified applications: a propellant in metered dose inhalers; defense sprays; structural composite preformed polyurethane foam for marine and trailer use; the etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the semiconductor manufacturing sector; mission-critical military end uses, such as armored vehicle and shipboard fire suppression systems and systems used in deployable and expeditionary applications; and, on board aerospace fire suppression.

Respondent's obligation to respond: Mandatory (AIM Act).

Estimated number of respondents: 10,195.

Frequency of response: Quarterly, biannual, annual, and as needed depending on the nature of the report.

Total estimated burden: 57,617 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $7,765,111 per year, includes $817,607 annualized capital or operation & maintenance costs.

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 in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to EPA using the docket identified at the beginning of this rule. EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. OMB must receive comments no later than January 3, 2023.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities (SISNOSE) under the RFA. The small entities subject to the requirements of this action include those that may produce, import, export, destroy, use as a feedstock or process agent, reclaim, or recycle HFCs. EPA estimates that approximately 32 of the 279 potentially affected small businesses could incur costs in excess of one percent of annual sales and that approximately 28 small businesses could incur costs in excess of three percent of annual sales. Because there is not a significant number of small businesses that may experience a significant impact, it can be presumed that this action will have no SISNOSE. Details of this analysis are presented in ''*Economic Impact Screening Analysis for Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years.*'' (Docket ID EPA–HQ–OAR–2022–0430).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments.

E. Executive Order 13132: Federalism

This action 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.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action. EPA periodically updates tribal officials on air regulations through the monthly meetings of the National Tribal Air Association and has shared information on this rulemaking through this and other fora.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is an economically significant regulatory action as defined by Executive Order 12866, and EPA believes that the environmental health or safety risk addressed by this action has a disproportionate effect on children. Accordingly, EPA has evaluated the environmental health and welfare effects of climate change on children.

GHGs, including HFCs, contribute to climate change. The GHG emissions reductions resulting from implementation of this rule would further improve children's health. The assessment literature cited in EPA's

2009 and 2016 Endangerment Findings concluded that certain populations and life stages, including children, the elderly, and the poor, are most vulnerable to climate-related health effects. The assessment literature since 2016 strengthens these conclusions by providing more detailed findings regarding these groups' vulnerabilities and the projected impacts they may experience.

These assessments describe how children's unique physiological and developmental factors contribute to making them particularly vulnerable to climate change. Impacts to children are expected from heat waves, air pollution, infectious and waterborne illnesses, and mental health effects resulting from extreme weather events. In addition, children are among those especially susceptible to most allergic diseases, as well as health effects associated with heat waves, storms, and floods. Additional health concerns may arise in low-income households, especially those with children, if climate change reduces food availability and increases prices, leading to food insecurity within households. More detailed information on the impacts of climate change to human health and welfare is provided in section I.C of this preamble.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action applies to certain regulated substances and certain applications containing regulated substances, none of which are used to supply or distribute energy.

I. National Technology Transfer and Advancement Act (NTTAA) and Incorporation by Reference

This action involves a technical standard. EPA is proposing to require laboratory testing be conducted by a laboratory that is accredited to ISO 17025 and accordingly is incorporating by reference ISO/IEC 17025:2017, ''General requirements for the competence of testing and calibration laboratories'', Third Edition, November 2017. ISO/IEC 17025:2017 specifies general requirements for competence, impartiality, and consistent operation of laboratories. The standard is applicable to all organizations performing laboratory activities, regardless of the number of personnel. This standard is available for purchase from Techstreet at 3025 Boardwalk Drive, Suite 220, Ann Arbor, MI 48108; tel.: 855.999.9870; email: *store@techstreet.com;* website: *http://www.techstreet.com/,* or *https://www.techstreet.com/standards/iso-iec-17025-2017?product_id=2000100.* The cost of an electronic copy of ISO 17025:2017 is approximately $162. The cost of obtaining this accreditation standard is not a significant financial burden for laboratories. Therefore, EPA concludes that the ISO 17025 standard being incorporated by reference is reasonably available.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that it is not feasible to determine whether this action has disproportionately high and adverse effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This rule would continue to reduce emissions of potent GHGs, which as noted earlier in section I of this preamble will reduce the effects of climate change, including the public health and welfare effects on overburdened and underserved communities, including low-income communities and communities of color, and/or indigenous peoples. At the same time, the Agency recognizes that phasing down the production of HFCs may cause significant changes in the location and quantity of production of both HFCs and their substitutes, and that these changes may in turn affect emissions of HAP at chemical production facilities. EPA carefully evaluated available information on HFC production facilities and the characteristics of nearby communities to evaluate these impacts. In the Framework Rule, EPA also solicited comment on whether these changes pose risks to communities with environmental justice concerns and what steps, if any, should be taken either under the AIM Act or under EPA's other statutory authorities to address any concerns that might exist. Based on EPA's analysis, EPA finds evidence of environmental justice concerns near HFC production facilities from cumulative exposure to existing environmental hazards in these communities. Given uncertainties about which and in what quantities HFC substitutes will be produced, EPA cannot determine how this rule would affect existing disproportionate adverse effects on communities of color and low-income people as specified in Executive Order 12898. However, the Agency is proposing to require additional reporting on emissions from HFC production facilities and is taking comment on its revised analysis for this rule. A summary of the Agency's approach for considering potential environmental justice concerns as a result of this rulemaking can be found in section X of this preamble, and our environmental justice analysis can be found in the RIA addendum, available in the docket for this rulemaking.

List of Subjects in 40 CFR Part 84

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Climate Change, Emissions, Imports, Incorporation by Reference, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons set out in the preamble, EPA proposed to amend 40 CFR part 84 as follows:

PART 84—PHASEDOWN OF HYDROFLUOROCARBONS

■ 1. The authority citation for part 84 continues to read as follows:

Authority: Pub. L. 116–260, Division S, Sec. 103.

Subpart A—[Amended]

■ 2. Amend § 84.3 by adding the definitions ''batch'', ''berth'', ''certificate of analysis'', ''commonly owned'', ''expend'', ''laboratory testing'', ''majority owned'', and ''representative sample'' in alphabetical order to read as follows:

§ 84.3 Definitions.

* * * * *

Batch means a vessel, container, or cylinder from which a producer, importer, reclaimer, recycler, or repackager transfers regulated substances directly for sale or distribution, or for repackaging for sale or distribution; or a population of small vessel(s), container(s), or cylinder(s) that a producer, importer, reclaimer, recycler, or repackager directly offers for sale or distribution.

Berth means to moor a ship in its allotted place at a wharf or dock.

* * * * *

Certificate of Analysis means a document that certifies the contents of an import meets recognized specifications following sampling and testing methodology in appendix A to 40 CFR part 82 and the testing methodology in appendix A to 40 CFR part 82 or EPA Method 18 for the

appropriate regulated substance or mixture of regulated substances.

* * * * *

Commonly Owned: An entity that is related to another entity by a shared individual natural person(s), where either (a) there is at least a single individual that owns 30 percent or more of each entity or (b) individuals that share a direct family relationship (parent, child, sibling, or spouse) own a majority of each entity.

* * * * *

Expend means to subtract the number of allowances required for the production or import of regulated substances under this part from a person's unexpended allowances.

* * * * *

Laboratory testing means the use of the sampling and testing methodology prescribed in § 84.5(i)(c) by a laboratory that is accredited to ISO 17025 (incorporated by reference, see § 84.37).

Majority owned means when a corporate entity has at least a fifty percent stake in another entity.

* * * * *

Representative sample means a sample collected from a container offered for sale or distribution using a sampling method that obtains all components of regulated substance(s) in an unbiased and precise manner; and a sample that can be used to infer that the composition of regulated substance(s) in a population of containers offered for sale or distribution that constitute, or are derived from, the batch, are within stated tolerances.

* * * * *

■ 3. Amend § 84.5 by:

■ a. In (b)(1), adding ''either as a single component or a multicomponent substance,'' before the word ''except'';

■ b. Revising paragraph (b)(1)(i);

■ c. In (b)(1)(iii), removing ''or''

■ d. In (b)(1)(iv), replacing ''.'' with ''; or''

■ e. Adding paragraphs (b)(1)(v) and (vi);

■ f. Redesignating (b)(2) through (b)(6) as paragraphs (b)(3) through (b)(7) and adding a new paragraph (b)(2);

■ g. Revising the newly redesignated paragraph (b)(3); and

■ h. Revising paragraphs (d) and (i).

The additions and revisions read as follows:

§ 84.5 Prohibitions relating to regulated substances.

* * * * *

(b) * * *

(1) * * *

(i) If the importer of record possesses at the time they are required to submit reports to EPA pursuant to § 84.31(c)(7), and expends at the time of ship berthing for vessel arrivals, border crossing for land arrivals such as trucks, rails, and autos, and first point of terminus in U.S. jurisdiction for arrivals via air, consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported, whether present as a single component or a multicomponent blend. The required amount of allowances must be calculated to the tenth, but a minimum expenditure of 0.1 allowances is required for any import of regulated substances;

(A) The calendar year of the expended allowances must be for the same calendar year in which the ship containing regulated substances berthed for sea arrivals, at the border crossing for land arrivals, or in which an air arrival first reached its point of terminus in U.S. jurisdiction;

(B) [Reserved]

* * * * *

(v) In the case of a heel when the precise quantity is unknown or has not been measured prior to import, if the importer of record expends, at the time of the import, consumption or application-specific allowances in a quantity equal to 10 percent of the total potential volume of the container in exchange value-weighted equivalent terms for the regulated substance contained therein.

(vi) All imports pursuant to paragraphs (b)(1)(i) or (v) of this section must be accompanied by a certificate of analysis.

(2) No person may attempt to land bulk regulated substances on, bring regulated substances into, or introduce regulated substances into, any place subject to the jurisdiction of the United States without meeting one of the categories set forth in § 84.5(b)(1).

(3) Each person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that the importer of record possessed and expended allowances in accordance with the requirement outlined in (b)(1)(i) or (v) or another party who meets the definition of an importer met one of the exceptions set forth in (b)(1)(ii) through (iv) of this section.

* * * * *

(d) *Calendar-year allowances.* All production, consumption, and application-specific allowances may only be expended for production or import occurring in the calendar year for which the allowances are allocated (*i.e.,* January 1 through December 31). No person may expend, transfer, or confer a production, consumption, or application-specific allowance after December 31 of the year for which it was issued. Entities may transfer or confer their production, consumption, or application-specific allowances before January 1 of the calendar year for which the allowances were allocated.

* * * * *

(i) *Labeling.* (1) As of January 1, 2022, no person may sell or distribute, offer for sale or distribution, or import containers containing a regulated substance that lacks a permanent label stating the common name(s), chemical name(s), or ASHRAE designation of the regulated substance(s) or blend contained within, and the percentages of the regulated substances if a blend. Removing or tampering with this permanent label is prohibited. The permanent label must be:

(i) Durable and printed or otherwise labeled on, or affixed to, the external surface of the bulk regulated substance container;

(ii) Readily visible and legible;

(iii) Able to withstand open weather exposure without a substantial reduction in visibility or legibility;

(iv) Displayed on a background of contrasting color; and

(v) If a container of a regulated substances is contained within a box or other overpack, the exterior packaging must contain legible and visible information in at least 20-point font of what regulated substance is contained within.

(2) No person other than the importer of record may repackage or relabel regulated substances that were initially unlabeled or mislabeled. In order to repackage the regulated substances, the importer must either:

(i) Expend consumption allowances equal to the amount of allowances that would be required if each cylinder were full of HFC-23; or

(ii) Verify the contents with independent laboratory testing results and affix a correct label on the container that matches the lab-verified test results before the date of importation (consistent with the definition at 19 CFR 101.1) of the container.

(3)(i) No person producing, importing, reclaiming, recycling for fire suppression, or repackaging regulated substances may sell or distribute, or offer for sale or distribution, regulated substances without first testing a representative sample of the regulated substances that they are producing, importing, reclaiming, recycling for fire suppression, or repackaging to verify

that the composition of the regulated substance(s) matches the container labeling using the sampling and testing methodology prescribed in 40 CFR part 82, subpart F appendix A for regulated substances offered for sale and distribution as refrigerants and using the following testing method for regulated substances offered for non-refrigerant uses:

TABLE 1 TO PARAGRAPH (d)(3)(i)—NON-REFRIGERANT REGULATED SUBSTANCE TESTING METHODS

Regulated substance	Testing method
HFC-23, HFC-134, HFC-125, HFC-143a, HFC-41, HFC-152a	Part 7 of *2008 Appendix C for Analytical Procedures For AHRI Standard 700–2014,* incorporated by reference in 40 CFR part 82, subpart F, appendix A.
HFC-134a, HFC-143, HFC-245fa, HFC-32, HFC-152	Part 9 of *2008 Appendix C for Analytical Procedures For AHRI Standard 700–2014,* incorporated by reference in 40 CFR part 82, subpart F, appendix A.
HFC-227ea, HFC-236cb, HFC-236ea, HFC-236fa, HFC-245ca, HFC-365mfc, HFC-43-10mee.	EPA Method 18; Appendix A–6 to 40 CFR part 60—Test Methods 16 through 18.

(ii) No person may sell or distribute, or offer for sale or distribution, regulated substances as a refrigerant that do not meet the specifications in appendix A to 40 CFR part 82, subpart F—Specifications for Refrigerants that are applicable to that regulated substance or mixture containing regulated substance(s). For persons who are producing, importing, reclaiming, recycling for fire suppression, or repackaging regulated substances, the applicable specifications must be verified using the sampling and testing methodology prescribed in appendix A to 40 CFR part 82, subpart F.

* * * * *

■ 4. Amend § 84.7 by

■ a. In (b)(2), removing ''303,887,017'' and adding in its place ''300,257,386''; and

■ b. Revising the table in paragraph (b)(3).

The addition and revision read as follows:

§ 84.7 Phasedown schedule.

* * * * *

(b) * * *

(3) * * *

TABLE 2 TO PARAGRAPH (b)(3)

Year	Total production (MTEVe)	Total consumption (MTEVe)
(i) 2022–2023	344,299,157	273,498,315
(ii) 2024–2028	229,532,771	180,154,432
(iii) 2029–2033	114,766,386	90,077,216
(iv) 2034–2035	76,510,924	60,051,477
(v) 2036 and thereafter	57,383,193	45,038,608

■ 5. Amend § 84.9 by:

■ a. In paragraph (a) introductory text, add ''2022 and 2023'' after the words ''calendar year''; and

■ b. Redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b).

The addition reads as follows:

§ 84.9 Allocation of calendar-year production allowances.

* * * * *

(b) Starting with the allocation of 2024 calendar years allowances, the relevant Agency official will issue, through a separate notification, calendar year production allowances to entities that produced a regulated substance in 2021 or 2022, or both 2021 and 2022. The allocation of calendar year 2024, 2025, 2026, 2027, and 2028 production allowances is calculated as follows for each entity:

(1) Take the average of the three highest annual exchange value-weighted production amounts that each eligible entity reported to the Agency for calendar years 2011 through 2019;

(2) Sum every entity's average values determined in paragraph (b)(1) of this section and determine each entity's percentage of that total;

(3) Determine the amount of general pool production allowances by subtracting the quantity of application-specific allowances for that year as determined in accordance with § 84.13 from the production cap in § 84.7(b)(3);

(4) Determine individual entities' production allowance quantities by multiplying each entity's percentage determined in (b)(2) of this section by the amount of general pool allowances determined in (b)(3) of this section.

* * * * *

■ 6. Amend § 84.11 by:

■ a. In paragraph (a) introductory text, add ''2022 and 2023'' after the words ''calendar year''; and

■ b. Removing paragraph (c), redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b).

The addition reads as follows:

§ 84.11 Allocation of calendar-year consumption allowances.

* * * * *

(b) Starting with the allocation of 2024 calendar years allowances the relevant Agency official will issue, through a separate notification, calendar year consumption allowances. The allocation of calendar year 2024, 2025, 2026, 2027, and 2028 consumption allowances is calculated as follows for each entity:

(1) For new market entrants that were allocated allowances pursuant to § 84.15(e)(3), take the allowances allocated for calendar year 2023 and divide that value by the proportion of calendar year 2023 consumption allowances received by general pool allowance holders pursuant to paragraph (a) of this section relative to their high three average calculated pursuant to paragraph (a)(2) of this section;

(2) For entities that produced or imported a regulated substance in 2021 or 2022, or both 2021 and 2022, and have not been allocated allowances pursuant to § 84.15(e)(3), the relevant Agency official will calculate and issue allowances to a single entity if multiple importers are related through shared corporate or common ownership. The relevant Agency official will take the average of the three highest annual exchange value-weighted consumption amounts, which for entities related through shared corporate or common ownership or control would be aggregated and averaged at the corporate or common ownership level, that each eligible entity reported to the Agency for calendar years 2011 through 2019;

(3) If an entity has a value calculated under (b)(1) of this section and (b)(2) of this section, take the single higher value;

(4) Sum every entity's values as determined in (b)(1), (2), and (3) of this section and determine each entity's percentage of that total;

(5) Determine the amount of general pool consumption allowances by subtracting the quantity of application-specific allowances for that year as determined in accordance with § 84.13 from the consumption cap in § 84.7(b)(3);

(6) Determine individual entities' consumption allowance quantities by multiplying each entity's percentage determined in (b)(3) of this section by the amount of general pool allowances determined in (b)(4) of this section.

■ 7. Amend § 84.17 by:

■ a. Revising paragraphs (a)(8) and (9).

■ b. Adding paragraphs (a)(10) through (13).

The revisions and additions read as follows:

§ 84.17 Availability of additional consumption allowances.

* * * * *

(a) * * *

(8) A copy of the bill of lading and the invoice indicating the net quantity (in kilograms) of regulated substances shipped and documenting the sale of the regulated substances to the purchaser;

(9) The Harmonized Tariff Schedule codes of the regulated substances exported;

(10) Internal Transaction Numbers for all shipments;

(11) Conveyance names;

(12) International Maritime Organization number of the marine vessel(s) carrying the export, if applicable; and

(13) Container numbers.

* * * * *

■ 8. Amend § 84.19 by adding paragraph (a)(5) to read as follows:

§ 84.19 Transfers of allowances.

(a) * * *

(5) An entity does not need to follow the procedures in this paragraph to expend allowances possessed by another entity that is majority owned by it, it majority owns, related to it through majority ownership, or commonly owned with it.

* * * * *

■ 9. Amend § 84.25 by revising paragraph (a)(1)(v) to read as follows:

§ 84.25 Required processes to import regulated substances as feedstocks or for destruction.

(a) * * *

(1) * * *

(v) The U.S. port of entry for the import, the expected date of import, and the vessel transporting the material. If at the time of submitting the petition the importer does not know this information, and the importer receives a non-objection notice for the individual shipment in the petition, the importer is required to notify the relevant Agency official of this information prior to the date of importation (consistent with the definition at 19 CFR 101.1) of the individual shipment into the United States;

* * * * *

■ 10. Amend § 84.31 by:

■ a. Revising paragraphs (b)(2)(i), (ii), (iii), (ix), (x), and adding paragraph (b)(2)(xi);

■ b. Redesignating (b)(3) through (5) as paragraphs (b)(4) through (6) and adding a new paragraph (b)(3);

■ c. Revising newly designated paragraph (b)(4)(xi);

■ d. Redesignating (b)(4)(xiv) through (b)(4)(xv) as paragraphs (b)(4)(xv) through (b)(4)(xvi) and adding a new paragraph (b)(4)(xiv);

■ e. In paragraph (c)(1) adding ''record of'' after ''importer of'';

■ f. Redesignating (c)(1)(ix) as (c)(1)(x) and adding a new paragraph (c)(1)(ix);

■ g. Redesignating paragraphs (c)(2)(xvii) through (xix) as paragraphs (c)(2)(xviii) through (xx) and adding a new paragraph (c)(2)(xvii);

■ h. In newly redesignated paragraph (c)(2)(xix) adding '', including instrument calibration, sample testing data files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review'' after ''distribution'';

■ i. In paragraph (c)(3)(i)(D) adding ''(consistent with the definition at 19 CFR 101.1)'' after ''date of importation'';

■ j. Revising paragraph (c)(7);

■ k. Adding paragraphs (c)(9), (10), and (11);

■ l. Revising paragraph (i)(4)(i);

■ m. Revising paragraph (j)(3); and

■ n. Redesignating paragraph (k) as paragraph (l) and adding a new paragraph (k).

The additions and revisions read as follows:

§ 84.31 Recordkeeping and reporting.

* * * * *

(b) * * *

(2) * * *

(i) The quantity (in kilograms) of production of each regulated substance used in processes resulting in their transformation by the producer; for any regulated substance that is used in processes resulting in their transformation at a facility that differs from the facility of production, but both facilities are owned by the producer, the name, quantity (in kilograms), and recipient facility of each regulated substance; and the quantity (in kilograms) intended for transformation by a second party;

(ii) The quantity (in kilograms) of production of each regulated substance used in processes resulting in their destruction by the producer; for any regulated substance that is used in processes resulting in their destruction at a facility that differs from the facility of production, but both facilities are owned by the producer, the name, quantity (in kilograms), and recipient facility of each regulated substance; and the quantity (in kilograms) intended for destruction by a second party;

(iii) The quantity (in kilograms) of production of each regulated substance used as a process agent by the producer; for any regulated substance that is used as a process agent at a facility that differs from the facility of production, but both facilities are owned by the producer, the name, quantity (in kilograms), and recipient facility of each regulated substance; and the quantity (in kilograms) intended for use as a process agent by a second party;

(ix) A list of the entities conferring application-specific allowances from whom orders were placed, and the quantity (in kilograms) of specific regulated substances produced for those listed applications;

* * * * *

(x) Daily dated records required to be maintained pursuant to paragraph (b)(4)(xiv) of this section of the quantity of allowances expended for the production of regulated substances for all dates falling within the reported quarter and a certification that such allowances were expended on the specified date; and

(xi) For the fourth quarter report only, the quantity of each regulated substance held in inventory on December 31.

(3) *Annual report.* Within 45 days after the end of the fourth quarter, each producer of a regulated substance must provide to the relevant Agency official a report of emissions on a regulated substance production line and emissions unit basis for each facility that produces regulated substances. This report must contain the following:

(i) Quantity (in pounds) of each of the following emitted in the prior calendar year on a regulated substance production line basis: hazardous air pollutants initially identified in section 112 of the CAA, and as revised through rulemaking and codified in 40 CFR part 63; regulated substances listed in Appendix A to 40 CFR part 84; and ozone-depleting substances listed in appendix F of 40 CFR part 82, subpart A; and

(ii) Quantity (in pounds) of each such substance listed in paragraph (b)(3)(i) of this section emitted in the prior calendar year on an emission unit basis from each regulated substance production line.

(4) * * *

(xi) Dated records of batch tests of regulated substances packaged for sale or distribution, including instrument calibration, sample testing data files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review;

* * * * *

(xiv) On any day allowances are expended for the production of regulated substances, record, on that same day, the date, quantity, and type of allowances expended.

* * * * *

(c) * * *

(1) * * *

(ix) Daily dated records required to be maintained pursuant to (2)(xvii) of this paragraph of the quantity of allowances expended for the import of regulated substances for all dates falling within the reported quarter and a certification that such allowances were expended on the specified date.

* * * * *

(2) * * *

(xvii) On any day allowances are expended for the import of regulated substances, record on that same day, the date, quantity, and type of allowances expended.

* * * * *

(7) *Additional reporting for importers.* The importer of record, or their authorized agent, must include the following no later than 14 days if arriving by marine vessel or 5 days for non-marine vessel prior to the date of importation (consistent with the definition at 19 CFR 101.1), via a U.S. Customs and Border Protection-authorized electronic data interchange system, such as the Automated Broker Interface:

(i) Cargo Description;

(ii) Net weight, or if importing a heel when the precise quantity is unknown or has not been measured, the number equivalent to net weight if the volume of the container was 10 percent full;

(iii) Container number(s), as applicable;

(iv) Vessel name, for maritime shipments;

(v) International Maritime Organization number, for maritime shipments;

(vi) Gross Weight, or if importing a heel when the precise quantity is unknown or has not been measured, the number equivalent to gross weight if the volume of the container was 10 percent full;

(vii) Weight Unit of Measure;

(viii) Port of Entry;

(ix) Scheduled Entry Date;

(x) Harmonized Tariff Schedule (HTS) code;

(xi) Harmonized Tariff Schedule (HTS) Description;

(xii) Origin Country;

(xiii) Importer Name and Importer Number;

(xiv) Consignee Entity Name;

(xv) CAS Number(s) of the regulated substance(s) imported and, for regulated substances that are in a mixture, either the ASHRAE numerical designation of the refrigerant or the percentage of the mixture containing each regulated substance;

(xvi) If importing regulated substances for transformation or destruction, a copy of the non-objection notice issued consistent with § 84.25;

(xvii) If importing regulated substances as a transhipment, a copy of the confirmation documenting the importer reported the transhipment consistent with paragraph (c)(3)(i) of this section; and

(xviii) A certificate of analysis.

* * * * *

(9) *Importer of record information.* (i) Any entity that falls under any of the following criteria must submit the information outlined in paragraph (c)(9)(ii) of this section:

(A) That anticipates being the importer of record for a shipment of regulated substances must, by November 15 of the prior calendar year; or

(B) That is not issued allowances by EPA, but receives transferred or conferred allowances must, within 15 calendar days of receiving a non-objection notice for conferral of application-specific allowances pursuant to § 84.13(h) or for inter-company transfer of consumption allowances pursuant to § 84.19(a).

(ii) The following information must be submitted to EPA by the date specified under paragraph(c)(9)(i) of this section:

(A) Names of all subsidiaries,

(B) Entities commonly owned or majority owned by the same person or persons,

(C) Alternative names under which the entity does business,

(D) Importer of record numbers, and

(E) If providing information under (b)(9)(i)(A), (B), or (C) of this section:

(*1*) the relationship between the allowance holder and each subsidiary and each entity commonly owned or majority owned by the same person or persons, including alternative names under which each listed entity does business;

(*2*) if applicable, the identity of owners and their respective percentage of ownership; and

(*3*) The quantity and type of allowances to be expended in the calendar year by each affiliated entity, identified by name and importer of record number(s).

(iii) If changes occur to the information previously provided to the Agency, such changes must be transmitted to the Agency at least 21 days prior to expenditure of allowances pursuant to § 84.5(b)(1)(i).

(10) Each person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (c)(1) of this section, unless they can demonstrate that the importer of record fulfilled the requirements in paragraph (c)(1) of this section.

(11) Each person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (c)(7) of this section, unless they can demonstrate that the importer of record or the importer of record's authorized agent fulfilled the requirements of paragraph (c)(7) of this section.

* * * * *

(i) * * *

(4) * * *

(i) Reclaimers must maintain records, by batch, of the results of the analysis conducted to verify that reclaimed regulated substance meets the necessary specifications in appendix A to 40 CFR part 82, subpart F (based on AHRI

Standard 700–2016), including instrument calibration, sample testing data files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review. Such records must be maintained for five years.

* * * * *

(j) * * *

(3) *Recordkeeping.* (i) Recyclers must maintain records of the names and addresses of persons sending them material for recycling and the quantity of the material (the combined mass of regulated substance and contaminants) by regulated substance sent to them for recycling. Such records must be maintained on a transactional basis for five years.

(ii) Recyclers must maintain dated records of batch tests of regulated substances packaged for sale or distribution, including instrument calibration, sample testing data files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review.

(k) *Repackagers.* Persons who transfer regulated substances, either alone or in a mixture, from one container to another container prior to sale or distribution or offer for sale or distribution must comply with the following recordkeeping requirements:

(1) *Recordkeeping.* Repackagers must maintain dated records of batch tests of regulated substances packaged for sale or distribution, including instrument calibration, sample testing data files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review.

(2) [Reserved]

* * * * *

■ 11. Add § 84.37 to read as follows:

§ 84.37 Incorporation by Reference.

(a) Certain material is incorporated by reference into this subpart part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at EPA and at the National Archives and Records Administration (NARA). Contact EPA at: U.S. EPA's Air and Radiation Docket; EPA West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the source(s) in the following paragraphs of this section.

(b) International Organization for Standardization (ISO), Chemin de Blandonnet 8, CP 401—1214 Vernier, Geneva, Switzerland; tel.: + 41 22 749 01 11; fax: + 41 22 733 34 30; email: *central@iso.org;* website: *www.iso.org.*

(1) ISO/IEC 17025:2017 (ISO 17025), ''General requirements for the competence of testing and calibration laboratories'', Third Edition, November 2017; IBR approved for § 84.3.

(2) [Reserved]

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