Executive Orders 12866, 13563 and 14904

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is that the naming of national cemeteries and features is an internal operations function that only affects VA national cemeteries and did not require a regulation to effectuate. This rule revokes the existing regulation and will have no economic impact on small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and Tribal governments, or on the private sector.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 3, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, and under the authority of 38 U.S.C. 501, the Department of Veterans Affairs amends 38 CFR part 38 as follows:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 continues to read as follows:

Authority: 38 U.S.C. 107, 501, 512, 2306, 2400, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

§ 38.602 [Removed]

■ 2. Remove § 38.602.

[FR Doc. 2023–14517 Filed 7–11–23; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 84

[EPA–HQ–OAR–2023–0286; FRL–10894–02–OAR]

Phasedown of Hydrofluorocarbons: Adjustment to the Hydrofluorocarbon Production Baseline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency is taking final action to correct the production baseline to reflect corrected calculations for the phasedown of hydrofluorocarbons pursuant to the American Innovation and Manufacturing Act.

DATES: This final rule is effective on September 11, 2023.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2023–0286. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard-copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

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: Acronyms that are used in this rulemaking that may be helpful include:

AIM Act—American Innovation and Manufacturing Act of 2020
CAA—Clean Air Act
CBI—Confidential Business Information
CFR—Code of Federal Regulations
CRA—Congressional Review Act
e-GGRT—Electronic Greenhouse Gas Reporting Tool
EPA—U.S. Environmental Protection Agency
FR—Federal Register
GHGRP—Greenhouse Gas Reporting Program
GWP—Global Warming Potential
HFC—Hydrofluorocarbon
ICR—Information Collection Request
MTEVe—Metric Tons of Exchange Value Equivalent
NAICS—North American Industry Classification System
PRA—Paperwork Reduction Act
RFA—Regulatory Flexibility Act

RIA—Regulatory Impact Analysis
SISNOSE—Significant Economic Impact on a Substantial Number of Small Entities
UMRA—Unfunded Mandates Reform Act

Regulated Entities. You may be potentially affected by this action if you produce 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.
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.

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.**

I. Background

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). 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). 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.

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. Under the terms of subsection (e)(2)(D)(ii), these allowances do not constitute a property right, but rather 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 Allocation Framework Rule), that, among other things, established the HFC production and consumption baselines and codified the phasedown schedule at 40 CFR 84.7. Unless otherwise stated in the sections included in this notice, EPA's corrections are based on the same interpretations of the AIM Act, and the Clean Air Act (CAA) as applicable under subsection (k) of the AIM Act, as discussed in the Allocation Framework Rule.

II. How is EPA correcting the production baseline?

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 Allocation Framework Rule, EPA initially calculated and codified the production and consumption baselines according to the formulas outlined in subsection (e)(1) of the AIM Act. The AIM Act instructs EPA to calculate the production and consumption baseline by, among other things, using the average annual quantity of all regulated substances produced and consumed in the United States from January 1, 2011, through December 31, 2013. In subsection (e)(2)(C) of the AIM Act, Congress provided the HFC phasedown schedule measured as a percentage of the baseline. In the Allocation Framework Rule EPA codified the production and consumption baselines at 40 CFR 84.7(b)(2) and the total allowance quantities that could be allocated for each year at 40 CFR 84.7(b)(3). A complete description of EPA's process in developing the codified baseline figures can be found in the Allocation Framework Rule at 86 FR 55137–55142.

After EPA finalized the Allocation Framework Rule, one company informed EPA that the 2011 and 2012 HFC import data that it had reported to the Greenhouse Gas Reporting Program (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. The company submitted and certified revised reports to the GHGRP for the relevant years on March 16, 2022. 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 then submitted and certified revised reports. EPA verified the corrected data by reviewing the importer's invoices and comparing the reported data to import data provided by CBP. In a separate rulemaking, ''Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years'' (87 FR 66372, November 3, 2022), the Agency proposed to revise

[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, for example, 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 rule. 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.

the consumption baseline and its associated phasedown schedule to account for corrected data. Specifically, EPA proposed to revise the consumption baseline from 303,887,017 metric tons of exchange value equivalent (MTEVe) to 300,257,386 MTEVe, a decrease of 3,629,631 MTEVe, to account for that error. The Agency also stated that it would include any additional verified data revisions from the 2011 through 2013 timeline in the revision to the consumption baseline. Because the erroneous data related only to imports, EPA did not propose to reopen the production baseline in that rulemaking.

As described in that proposal, EPA separately requested entities verify, and if necessary correct, the data [5] 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 production or 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.[6] EPA provided further notice through the aforementioned November 3, 2022 proposal of a final opportunity to submit corrected data to the Agency through the electronic Greenhouse Gas Reporting Tool (e-GGRT) by the close of the comment period on December 19, 2022, in the case that any entity with historic activity related to regulated substances from 2011 through 2021 did not receive a letter or electronic communication from EPA.

As part of EPA's review process of the data corrections and submissions while preparing to finalize the revised consumption baseline, EPA also identified an additional correction to be made to the baseline calculation necessary to maintain accuracy. Specifically, EPA reviewed offsite transformation and destruction totals reported by companies for the 2011–2013 period and made the following additional calculation steps:

(1) Eliminated redundant totals already reported elsewhere as onsite transformation and destruction

(2) eliminated redundant totals sent to another facility for destruction and that are already excluded from reported production because the gases are removed from the production process as a byproduct or other waste

(3) took the remaining reported offsite transformation and destruction totals and subtracted that from overall production.

Previously, offsite transformation and destruction totals had not been factored into the calculation as EPA did not have sufficient verification of this data. However, during this most recent review of the baseline calculation and underlying data, EPA was able to conduct additional data verification to determine the quantity of material sent offsite which was not reported elsewhere and therefore should be subtracted from total production. Specifically, for all companies with offsite transformation and destruction activity from 2011–2013, EPA reviewed reporting forms which identify the facility to which material was sent for offsite transformation or destruction. EPA then determined whether these recipient facilities separately report activity to 40 CFR part 98, subpart OO. If a recipient facility did not separately report destruction activity, EPA subtracted totals of material sent offsite for destruction from total production.

This corrected calculation step led to a corrected input that is used in both the production and consumption baselines since the same calculation step was used to determine both the production and consumption baselines in the Allocation Framework Rule. Accordingly, in this rulemaking EPA is correcting the codified production baseline and the associated phasedown schedule. Specifically, EPA is correcting the production baseline to be 382,535,439 MTEVe, down from the originally codified figure of 382,554,619 MTEVe. This correction of the production baseline amounts to a 0.005 percent change in the baseline. Once EPA applies the relevant phasedown step to the baseline and then allocates the resulting allowances among eligible recipients, the change in the production baseline is expected to have an extremely small effect on individual entities' allocations. This corrected production baseline starts 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 reasonable expectation of allowance allocation levels for any individual entity. Therefore, this alteration of the production baseline will not affect any reasonable reliance interests of the regulated communities.

Correcting the production baseline changes the total consumption cap in MTEVe for regulated substances in the United States in each year. Therefore, EPA is correcting the table of production and consumption limits at 40 CFR 84.7(b)(3) by replacing the previously codified total production values in Table 2, column 2 of this preamble with the corrected total production values in column 3.

TABLE 2—CORRECTED LIMIT OF TOTAL PRODUCTION ALLOWANCES

Year	Previously codified total production (MTEVe)	Corrected total production (MTEVe)
2024–2028	229,532,771	229,521,264
2029–2033	114,766,386	114,760,632
2034–2035	76,510,924	76,507,088
2036 and thereafter	57,383,193	57,380,316

III. Good Cause Findings

EPA is promulgating this rule as a final action without prior notice or opportunity for public comment because the good cause exception under APA section 553(b)(B), 5 U.S.C. 553(b)(B), applies here. If APA section 553(b)(B) did not apply, this rule would be subject to the rulemaking procedures

[5] These data were certified per 40 CFR 98.4(e)(1) by the importer as true and accurate under penalty of the CAA at the time of original submission.

[6] 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. EPA notes that failure to submit a report or submitting a fraudulent report may be considered a violation of the CAA subject to penalties and fines.

in CAA section 307(d).[7] However, CAA section 307(d) does not apply ''in the case of any rule or circumstance referred to in [APA section 553(b)(B)]'' [8]—*i.e.,* the good cause exception noted above—making this rule subject to the rulemaking procedures in APA section 553 instead, other than subsection 553(b).[9] APA section 553(b)(B) allows an agency to promulgate a rule without providing prior notice and opportunity for public comment ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

EPA finds that there is good cause for promulgating this final rule without providing prior notice and an opportunity for public comment because providing such notice and opportunity for comment, with respect to the amendments promulgated in this action, is impracticable, unnecessary, and contrary to the public interest. The correction made through this rulemaking is necessary to maintain accuracy of EPA's internal processing of data used to calculate the AIM Act production baseline. The overall formula used to calculate the production baseline was defined by Congress in the statute, and therefore EPA has no discretion in the formula used to calculate the production baseline. Accordingly, there would be no purpose in seeking public comment on a formula prescribed by statute to calculate the production baseline.

The data that is input into this formula is based on individual company reports on historic production of HFCs. This is relevant to EPA's good cause finding for several reasons. First, company-level production data has been regulatorily determined to be CBI. As a result, company-specific data, including production data, used to establish the baselines are confidential and cannot be publicly released. As discussed in the Allocation Framework Rule (86 FR 55192), many of the data elements reported to 40 CFR part 98, subpart OO were determined to be, and are treated as, confidential by EPA (see, *e.g.,* 76 FR 30782, May 26, 2011; 76 FR 73886, November 29, 2011; 77 FR 48072, August 13, 2012, 78 FR 71904, November 29, 2013; and, 81 FR 89188, December 9, 2016).[10] Given the confidentiality of most data involved in the Agency's baseline calculation, EPA cannot release detailed demonstrations of the baseline calculation. This has limited the information provided in prior notices on EPA's baseline calculations such that under any rulemaking scenario, the public does not have full access to view the Agency's baseline calculations given the need to respect existing confidentiality determinations and governing regulations.

Second, EPA has already gone through significant effort to ensure that this historic production data is as accurate as possible. EPA published a notice of data availability concerning this specific data on February 11, 2021 (86 FR 9059). EPA also requested, and received, new and revised versions of the data at issue in this rulemaking in response to the notice of proposed rulemaking for the Allocation Framework Rule. As described earlier in this notice, EPA requested that entities verify, and if necessary correct, the data [11] available to EPA on those entities' historic production 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 production 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.[12] Therefore, there is no reasonable basis to expect correction to the baseline calculation inputs if EPA were to provide for notice and comment of this action.

Third, when EPA initially established the production baseline for the phasedown of HFCs, the Agency did so through a notice and comment rulemaking process. Accordingly, the public has already had an opportunity to review and comment on EPA's general approach to establishing the production baseline. This rulemaking simply corrects the baseline calculation to maintain accuracy.

EPA has also determined that it is in the public interest to correct the production baseline such that the change can take effect ahead of EPA's allocation of production allowances on or before October 1, 2023. 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. The quantity of production allowances available each year is based on taking a percentage of the calculated baseline. The Agency intends to issue allowances for the 2024 calendar year no later than October 1, 2023. As noted in the Allocation Framework Rule, while the Kigali Amendment adopted under the Montreal Protocol has certain marked differences from the AIM Act, the two documents have a nearly identical list of HFCs to be phased down following the same schedule. The United States ratified the Kigali Amendment on October 31, 2022, and according to obligations pursuant to that ratification, provided the Secretariat to the Montreal Protocol with the country's calculated consumption and production baselines on April 28, 2023. The production baseline provided to the Secretariat matches the production baseline being finalized in this rulemaking. There are important policy reasons to align the operative production baselines for domestic and international purposes. If the production baseline correction is not effective by October 1, 2023, EPA would allocate 229,532,771 MTEVe production allowances. However, the United States would have an international obligation under the Kigali Amendment to not produce more than 229,521,264 MTEVe of HFCs. Unaligned production baselines would mean that the United States domestic system would allow for production of 11,507 MTEVe of HFCs beyond the international obligation. There would not be sufficient time to allow for public notice and comment on the correction to the production baseline made through this rulemaking for AIM Act purposes and still have the baseline correction effective in time for allocation of calendar year 2024 allowances. Therefore, EPA has determined it is contrary to public interest to provide an opportunity for comment in this instance.

Finally, as noted earlier in this notice, the alteration made to the production baseline is very small. Specifically, the

[7] The AIM Act provides that the Clean Air Act's § 307 ''shall apply to'' actions under the AIM Act ''as though [Section 7675] were expressly included in title VI'' of the Clean Air Act. 42 U.S.C. 7675(k)(1)(C). Clean Air Act Section 307(d) applies to ''promulgation or revision of regulations under subchapter VI of [the CAA].'' 307(d)(1)(I). See also CAA section 307(d)(3); 42 U.S.C. 7607(d)(3) (requiring publication of a proposed rule with an opportunity for public comment).

[8] See CAA section 307(d)(1); 42 U.S.C. 7607(d)(1).

[9] APA section 553(b) generally requires notice-and-comment rulemaking procedures unless, as here, an exception applies under section 553(b)(A) or (B). 5 U.S.C. 553(b).

[10] For a summary, see *https://www.epa.gov/sites/production/files/2020-09/documents/ghgrp_cbi_tables_for_suppliers_8-28-20_clean_v3_508c.pdf.*

[11] These data were certified per 40 CFR 98.4(e)(1) by the producer as true and accurate under penalty of the CAA at the time of original submission.

[12] 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. EPA notes that failure to submit a report or reporting a fraudulent report may be considered a violation of the CAA subject to penalties and fines.

change is a 0.005 percent reduction in the production baseline. EPA does not anticipate that any stakeholder would be meaningfully affected by this baseline correction and therefore EPA has determined that providing notice and an opportunity for comment is unnecessary.

Thus, EPA finds good cause under APA section 553(b)(B) to take this final action without prior notice or opportunity for comment because providing notice and an opportunity for comment would be unnecessary, impracticable, and contrary to the public interest.

IV. Judicial Review

The AIM Act provides that certain sections of the CAA ''shall apply to'' the AIM Act and actions ''promulgated by the Administrator of [EPA] pursuant to [the AIM Act] as though [the AIM Act] were expressly included in title VI of [the CAA].'' 42 U.S.C. 7675(k)(1)(C). Among the applicable sections of the CAA is section 307, which includes provisions on judicial review. Section 307(b)(1) provides, in part, that petitions for review must only be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).

The final action herein noticed is ''nationally applicable'' within the meaning of CAA section 307(b)(1). The AIM Act imposes a national cap on the total number of allowances available for each year for all entities nationwide. 42 U.S.C. 7675(e)(2)(B)–(D). In this rulemaking, EPA is adjusting the production baseline from which the total number of production allowances is derived. In the alternative, to the extent a court finds the final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that the action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1).[13] In deciding to invoke this exception, the Administrator has taken into account a number of policy considerations, including his judgment regarding the benefit of obtaining the D.C. Circuit's authoritative centralized review, rather than allowing development of the issue in other contexts, in order to ensure consistency in the Agency's approach to allocation of production allowances in accordance with EPA's national regulations in 40 CFR part 84. The final action treats all affected entities consistently in how the 40 CFR part 84 regulations are applied. The Administrator finds that this is a matter on which national uniformity is desirable to take advantage of the D.C. Circuit's administrative law expertise and facilitate the orderly development of the basic law under the AIM Act and EPA's implementing regulations. The Administrator also finds that consolidated review of the action in the D.C. Circuit will avoid piecemeal litigation in the regional circuits, further judicial economy, and eliminate the risk of inconsistent results for different regulated entities. The Administrator also finds that a nationally consistent approach in this rulemaking constitutes the best use of agency resources. The Administrator is publishing his finding that the action is based on a determination of nationwide scope or effect in the **Federal Register** as part of this notice. For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and finds that the final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the **Federal Register**. Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by September 11, 2023.

V. Statutory and Executive Order Review

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined under section 3(f) of Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0734. There are no additional or revisions to existing reporting or recordkeeping requirements associated with this rule, which simply corrects the production baseline.

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. This action will not impose any requirements on small entities because there are no small entities subject to this rule.

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. EPA is not aware of tribal businesses engaged in activities that would be directly affected by this action. Based on the Agency's assessments, the Agency also does not believe that potential effects, even if direct, would be substantial. Accordingly, this action 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

[13] In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As noted, the production baseline correction is only 0.005 percent so is not anticipated to have meaningful impact on children.

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 and Incorporation by Reference

This rulemaking does not involve technical standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) 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 minority populations (people of color and/or Indigenous peoples) and low-income populations.

EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or Indigenous peoples. EPA did extensive environmental justice analysis as part of the Allocation Framework Rule, which is documented in the preamble to that rulemaking and in the associated RIA.

This action is not likely to result in new disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 84

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

Michael S. Regan,

Administrator.

For the reasons set out in the preamble, EPA is amending 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 § 84.7 by:

■ a. In paragraph (b)(1), removing the language ''382,554,619'' and adding in its place ''382,535,439'';

■ b. Revising the table in paragraph (b)(3) to 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	229,521,263	182,332,210
(iii) 2029–2033	114,760,632	91,166,105
(iv) 2034–2035	76,507,088	60,777,403
(v) 2036 and thereafter	57,380,316	45,583,053

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