

at less than a 98 percent destruction efficiency, the Agency will grant destruction credits commensurate with that percentage of destruction efficiency that is actually achieved minus the offset. The grant of credits will be effective on the date that the notice is issued.

(3) Effective January 1, 1996, and until January 1, 2000, if the Administrator determines that the request for destruction and transformation credits does not satisfactorily substantiate that the person was nominated for an essential-use exemption by the United States to the Secretariat for the Montreal Protocol for the control period, or that the person destroyed or transformed a class I controlled substance as claimed, or that the controlled substance was not recovered from a U.S. use system the Administrator will issue a notice disallowing the request for additional destruction and transformation credits. Within ten working days after receipt of notification, the person may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm the disallowance or grant an allowance, as she/he finds appropriate in light of the available evidence. If no appeal is taken by the tenth day after notification, the disallowance will be final on that day.

(g) *International transfer of essential-use CFCs.* (1) For trades of essential-use CFCs where the transferee or the transferor is a person in another nation (Party), the persons involved in the transfer must submit the information requested in § 82.12(d)(2) and (d)(3), along with a signed document from the principal diplomatic representative in the Party's embassy in the United States stating that the appropriate authority within that nation has approved the transfer of the essential-use CFCs.

(2) If the transfer claim is complete, and EPA does not object to the transfer, then EPA will issue letters to the transferor and the transferee indicating that the transfer may proceed. EPA reserves the right to disallow a transfer if the transfer request is incomplete, or if it has reason to believe that the transferee plans to produce MDIs that are not essential MDIs. If

EPA objects to the transfer, EPA will issue letters to the transferor and transferee stating the basis for disallowing the transfer. The burden of proof is placed on the transferee to retain sufficient records to prove that the transferred essential-use CFCs are used only for production of essential MDIs. If EPA ultimately finds that the transferee did not use the essential-use CFCs for production of essential MDIs then the transferee is in violation of this subpart.

[60 FR 24986, May 10, 1995, as amended at 63 FR 41643, Aug. 4, 1998; 63 FR 53290, Oct. 5, 1998; 65 FR 70804, Nov. 28, 2000; 67 FR 6360, Feb. 11, 2002; 67 FR 21134, Apr. 29, 2002]

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances for class I controlled substances.

(a) Until January 1, 1996 for all class I controlled substances, except Group VI, and until January 1, 2005, for class I, Group VI, any person may obtain, in accordance with the provisions of this subsection, consumption allowances equivalent to the level of class I controlled substances (other than used controlled substances or transshipments) that the person has exported from the United States and its territories to a Party (as listed in appendix C to this subpart).

(1) Until January 1, 1996 for all class I controlled substances, except Group VI, and until January 1, 2005, for class I, Group VI, to receive consumption allowances in addition to baseline consumption allowances, the exporter of the class I controlled substances must submit to the Administrator a request for consumption allowances setting forth the following:

(i) The identities and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The names and telephone numbers of contact persons for the exporter and the recipient;

(iv) The quantity and type of controlled substances exported;

(v) The source of the controlled substance and the date purchased;

(vi) The date on which, and the port from which, the controlled substances

were exported from the United States or its territories;

(vii) The country to which the controlled substances were exported;

(viii) A copy of the bill of lading and the invoice indicating the net quantity of controlled substances shipped and documenting the sale of the controlled substances to the purchaser.

(ix) The commodity code of the controlled substance exported; and

(x) Written statement from the producer that the controlled substance was produced with expended allowances.

(2) The Administrator will review the information and documentation submitted under paragraph (a)(1) of this section and will assess the quantity of controlled substances that the documentation verifies was exported. The Administrator will issue the exporter consumption allowances equivalent to the level of controlled substances that the Administrator determined were exported. The grant of the consumption allowances will be effective on the date the notice is issued. If the Administrator determines that the information and documentation does not satisfactorily substantiate that the person exported controlled substances as claimed the Administrator will issue a notice that the consumption allowances are not granted.

(b) Until January 1, 1996, a person may obtain consumption allowances for a class I controlled substance (and until January 1, 2005 for class I, Group VI) equal to the amount of a controlled substance either produced in, or imported into, the United States that was transformed or destroyed in the case where consumption allowances were expended to produce or import such substance in accordance with the provisions of this paragraph. However, a person producing or importing a controlled substance (except class I, Group VI) that was transformed or destroyed must submit to the Administrator the information described under § 82.13 (f)(3) (i) and (ii).

(c) A company may also increase its consumption allowances by receiving production from another Party to the Protocol for class I, Group I through Group V and Group VII controlled substances until January 1, 1996 and for

class I, Group VI controlled substances until January 1, 2005. A nation listed in appendix C to this subpart (Parties to the Montreal Protocol) must agree to transfer to the person for the current control period some amount of production that the nation is permitted under the Montreal Protocol. If the controlled substance is to be returned to the Party from whom allowances are received, the request for consumption allowances shall also be considered a request for production allowances under § 82.9(c). For trades from a Party, the person must obtain from the principal diplomatic representative in that nation's embassy in the United States a signed document stating that the appropriate authority within that nation has established or revised production limits for the nation to equal the lesser of the maximum production that the nation is allowed under the Protocol minus the amount transferred, the maximum production that is allowed under the nation's applicable domestic law minus the amount transferred, or the average of the nation's actual national production level for the three years prior to the transfer minus the production allowances transferred. The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

(1) The identity and address of the person;

(2) The identity of the Party;

(3) The names and telephone numbers of contact persons for the person and for the Party;

(4) The chemical type and level of production being transferred;

(5) The control period(s) to which the transfer applies; and

(6) For increased production intended for export to the Party from whom allowances would be received, a signed statement of intent to export to this Party.

(d) On the first day of each control period, until January 1, 1996, the Agency will grant consumption allowances to any person that produced and exported a Group IV controlled substance in the baseline year and that was not granted baseline consumption allowances under § 82.5.

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(1) The number of consumption allowances any such person will be granted for each control period will be equal to the number of production allowances granted to that person under § 82.7 for that control period.

(2) Any person granted allowances under this paragraph must hold the same number of unexpended consumption allowances for the control period for which the allowances were granted by February 15 of the following control period. Every kilogram by which the person's unexpended consumption allowances fall short of the amount the person was granted under this paragraph constitutes a separate violation.

[60 FR 24986, May 10, 1995, as amended at 65 FR 70804, Nov. 28, 2000]

§ 82.11 Exports of class I controlled substances to Article 5 Parties.

(a) If apportioned Article 5 allowances under § 82.9(a), a person may produce class I controlled substances, in accordance with the prohibitions in § 82.4, to be exported (not including exports resulting in transformation or destruction, or used controlled substances) to foreign states listed in appendix E to this subpart (Article 5 countries).

(1) A person must submit a notice to the Administrator of exports to Article 5 countries (except exports resulting in transformation or destruction, or used controlled substances) at the end of the quarter that includes the following:

(i) The identities and addresses of the exporter and the Article 5 country recipient of the exports;

(ii) The exporter's Employee Identification Number;

(iii) The names and telephone numbers of contact persons for the exporter and for the recipient;

(iv) The quantity and the type of controlled substances exported, its source and date purchased;

(v) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(vi) The Article 5 country to which the controlled substances were exported;

(vii) A copy of the bill of lading and invoice indicating the net quantity shipped and documenting the sale of

the controlled substances to the Article 5 purchaser;

(viii) The commodity code of the controlled substance exported; and

(ix) A copy of the invoice or sales agreement covering the sale of the controlled substances to the recipient Article 5 country that contains provisions forbidding the reexport of the controlled substance in bulk form and subjecting the recipient or any transferee of the recipient to liquidated damages equal to the resale price of the controlled substances if they are reexported in bulk form.

(2) [Reserved]

(b) [Reserved]

§ 82.12 Transfers of allowances for class I controlled substances.

(a) Inter-company transfers. (1) Until January 1, 1996, for all class I controlled substances, except for Group VI, and until January 1, 2005, for Group VI, any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's consumption allowances or production allowances, and effective January 1, 1995, for all class I controlled substances any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's Article 5 allowances. After January 1, 2002 any essential-use allowance holder (including those persons that hold essential-use allowances issued by a Party other than the United States) ("transferor") may transfer essential-use allowances for CFCs to a metered dose inhaler company solely for the manufacture of essential MDIs.

(i) The transferor must submit to the Administrator a transfer claim setting forth the following:

(A) The identities and addresses of the transferor and the transferee;

(B) The name and telephone numbers of contact persons for the transferor and the transferee;

(C) The type of allowances being transferred, including the names of the controlled substances for which allowances are to be transferred;

(D) The group of controlled substances to which the allowances being transferred pertains;

(E) The amount of allowances being transferred;