

Environmental Protection Agency

§ 82.23

(2) The Administrator will review the information and documentation submitted under paragraph (a)(1) of this section and will issue a notice.

(i) The Administrator will determine the quantity of class II controlled substances that the documentation verifies was exported and issue consumption allowances equivalent to the quantity of class II controlled substances that were exported.

(A) The grant of the consumption allowances will be effective on the date the notice is issued.

(B) The consumption allowances will be granted to the person the exporter indicates, whether it is the producer or the exporter.

(ii) The Administrator will issue a notice that the consumption allowances are not granted if the Administrator determines that the information and documentation do not satisfactorily substantiate the exporter's claims.

(b) *International trades of consumption allowances.* (1) A person may increase its consumption allowances for a specified control period through trades with another Party to the Protocol as set forth in this paragraph (b). A person may only receive consumption from Poland or Norway, or both, and only if the nation agrees to trade to the person for the current control period some quantity of consumption that the nation is permitted under the Montreal Protocol.

(2) Trade from a Party—Information requirements. A person must submit the following information to the Administrator:

(i) A signed document from the principal diplomatic representative in the Polish or Norwegian embassy in the U.S. stating that the appropriate authority within that nation will establish or revise consumption limits for the nation to equal the lowest of the following three consumption quantities:

(A) The maximum consumption that the nation is allowed under the Protocol minus the quantity (in kilograms) traded;

(B) The maximum consumption that is allowed under the nation's applicable domestic law minus the quantity (in kilograms) traded; or

(C) The average of the nation's actual consumption level for the three years prior to the trade minus the consumption traded.

(ii) A person requesting a consumption trade from Poland or Norway must also submit to the Administrator a true copy of the document that sets forth the following:

(A) The identity and address of the person;

(B) The identity of the Party;

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

(D) The chemical type and quantity (in kilograms) of consumption being traded;

(E) Documentation that the Party possesses the necessary quantity of unexpended consumption rights;

(F) The control period(s) to which the trade applies; and

(3) *Notice of trade.* If the request meets the requirement of paragraph (b)(2) of this section for trades from Parties, the Administrator will issue the person a notice. The notice will grant consumption allowances and specify the control period to which the trade applies. The Administrator may disapprove the trade request if it does not meet the requirements of paragraph (b)(2) of this section.

(4) *Trade from a Party.* The Administrator will issue a notice revising the allowances held by the recipient of the trade to equal the unexpended consumption allowances held by the recipient of the trade under this subpart plus the quantity of allowable consumption traded from the Party.

(5) *Effective date of revised consumption limits.* The change in consumption allowances will be effective on the date that the notice is issued.

[68 FR 2848, Jan. 21, 2003]

§ 82.21 [Reserved]

§ 82.22 [Reserved]

§ 82.23 **Transfers of allowances of class II controlled substances.**

(a) *Inter-company transfers.* Effective January 1, 2003, a person ("transferor") may transfer to any other person ("transferee") any quantity of the

transferor's class II consumption allowances, production allowances, export production allowances, or Article 5 allowances for the same type of allowance as follows:

(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 class II controlled substances for which allowances are to be transferred;

(D) The quantity (in kilograms) of allowances being transferred;

(E) The control period(s) for which the allowances are being transferred;

(F) The quantity of unexpended allowances of the type and for the control period being transferred that the transferor holds under authority of this subpart on the date the claim is submitted to EPA; and

(G) For trades of consumption allowances, production allowances, export production allowances, or Article 5 allowances, the quantity of the 0.1 percent offset applied to the unweighted quantity traded that will be deducted from the transferor's allowance balance.

(ii) The Administrator will determine whether the records maintained by EPA indicate that the transferor possesses unexpended allowances sufficient to cover the transfer claim on the date the transfer claim is processed. The transfer claim is the quantity (in kilograms) to be transferred plus, in the case of transfers of production or consumption allowances, 0.1 percent of that quantity. The Administrator will take into account any previous transfers, any production, and allowable imports and exports of class II controlled substances reported by the transferor. Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(A) The Administrator will issue a notice indicating that EPA does not object to the transfer if EPA's records show that the transferor has sufficient unexpended allowances to cover the

transfer claim. In the case of transfers of production or consumption allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. In the case of transfers of export production or Article 5 allowances, EPA will reduce the transferor's balance of unexpended allowances, respectively, by the quantity to be transferred. The transferor and the transferee may proceed with the transfer when EPA issues a no objection notice. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee, where applicable, will be held liable for any knowing violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(B) The Administrator will issue a notice disallowing the transfer if EPA's records show that the transferor has insufficient unexpended allowances to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination. Either party may file a notice of appeal, with supporting reasons, with the Administrator within 10 working days after receipt of notification. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) The transferor and transferee may proceed with the transfer if the Administrator does not respond to a transfer claim within the three working days specified in paragraph (a)(1)(ii) of this section. In the case of transfers of production or consumption allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. In the case of transfers of export production allowances or Article 5 allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. If EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor

and/or the transferee, where applicable, will be held liable for any knowing violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(b) *Inter-pollutant transfers.* (1) Effective January 1, 2003, a person (transferor) may convert consumption allowances or production allowances for one class II controlled substance to the same type of allowance for another class II controlled substance listed in Appendix B of this subpart, following the procedures described in paragraph (b)(3) of this section.

(2) Inter-pollutant transfers will be permitted at any time during the control period and during the 30 days after the end of a control period.

(3) The transferor must submit to the Administrator a transfer claim that includes the following:

(i) The identity and address of the transferor;

(ii) The name and telephone number of a contact person for the transferor;

(iii) The type of allowances being converted, including the names of the class II controlled substances for which allowances are to be converted;

(iv) The quantity (in kilograms) and type of allowances to be converted;

(v) The quantity (in kilograms) of allowances to be subtracted from the transferor's unexpended allowances for the first class II controlled substance, to be equal to 100.1 percent of the quantity of allowances converted;

(vi) The quantity (in kilograms) of allowances to be added to the transferee's unexpended allowances for the second class II controlled substance, to be equal to the quantity (in kilograms) of allowances for the first class II controlled substance being converted multiplied by the quotient of the ozone depletion potential of the first class II controlled substance divided by the ozone depletion potential of the second class II controlled substance, as listed in Appendix B to this subpart;

(vii) The control period(s) for which the allowances are being converted; and

(viii) The quantity (in kilograms) of unexpended allowances of the type and for the control period being converted that the transferor holds under author-

ity of this subpart as of the date the claim is submitted to EPA.

(4) The Administrator will determine whether the records maintained by EPA indicate that the convertor possesses unexpended allowances sufficient to cover the transfer claim on the date the transfer claim is processed (*i.e.*, the quantity (in kilograms) to be converted plus 0.1 percent of that quantity (in kilograms)). EPA will take into account any previous transfers, and any production, imports (not including transshipments or used class II controlled substances), or exports (not including transshipments or used class II controlled substances) of class II controlled substances reported by the convertor. Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the convertor as follows:

(i) The Administrator will issue a notice indicating that EPA does not object to the transfer if EPA's records show that the convertor has sufficient unexpended allowances to cover the transfer claim. EPA will reduce the transferor's balance of unexpended allowances by the quantity to be converted plus 0.1 percent of that quantity (in kilograms). When EPA issues a no objection notice, the transferor may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(ii) The Administrator will issue a notice disallowing the transfer if EPA's records show that the transferor has insufficient unexpended allowances to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination. The transferor may file a notice of appeal, with supporting reasons, with the Administrator within 10 working days after receipt of notification. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) The transferor may proceed with the transfer if the Administrator does not respond to a transfer claim within the three working days specified in paragraph (b)(4) of this section. EPA will reduce the transferor's balance of unexpended allowances by the quantity (in kilograms) to be converted plus 0.1 percent of that quantity (in kilograms). The transferor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer if EPA ultimately finds that the transferor did not have sufficient unexpended allowances or credits to cover the claim.

(c) *Inter-company transfers and Inter-pollutant transfers.* If a person requests an inter-company transfer and an inter-pollutant transfer simultaneously, the quantity (in kilograms) subtracted from the transferor's unexpended production or consumption allowances for the first class II controlled substance will be equal to 100.1 percent of the quantity (in kilograms) of allowances that are being converted and transferred.

(d) A person receiving a permanent transfer of baseline production allowances or baseline consumption allowances (the transferee) for a specific class II controlled substance will be the person who has their baseline allowances adjusted in accordance with phaseout schedules in this section.

[68 FR 2848, Jan. 21, 2003]

§ 82.24 Recordkeeping and reporting requirements for class II controlled substances.

(a) *Recordkeeping and reporting.* Any person who produces, imports, exports, transforms, or destroys class II controlled substances must comply with the following recordkeeping and reporting requirements:

(1) Reports required by this section must be mailed to the Administrator within 30 days of the end of the applicable reporting period, unless otherwise specified.

(2) Revisions of reports that are required by this section must be mailed to the Administrator within 180 days of the end of the applicable reporting period, unless otherwise specified.

(3) Records and copies of reports required by this section must be retained for three years.

(4) Quantities of class II controlled substances must be stated in terms of kilograms in reports required by this section.

(5) Reports and records required by this section may be used for purposes of compliance determinations. These requirements are not intended as a limitation on the use of other evidence admissible under the Federal Rules of Evidence. Failure to provide the reports, petitions and records required by this section and to certify the accuracy of the information in the reports, petitions and records required by this section, will be considered a violation of this subpart. False statements made in reports, petitions and records will be considered violations of Section 113 of the Clean Air Act and under 18 U.S.C. 1001.

(b) *Producers.* Persons ("producers") who produce class II controlled substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) *Reporting—Producers.* For each quarter, each producer of a class II controlled substance must provide the Administrator with a report containing the following information:

(i) The quantity (in kilograms) of production of each class II controlled substance used in processes resulting in their transformation by the producer and the quantity (in kilograms) intended for transformation by a second party;

(ii) The quantity (in kilograms) of production of each class II controlled substance used in processes resulting in their destruction by the producer and the quantity (in kilograms) intended for destruction by a second party;

(iii) The expended allowances for each class II controlled substance;

(iv) The producer's total of expended and unexpended production allowances, consumption allowances, export production allowances, and Article 5 allowances at the end of that quarter;

(v) The quantity (in kilograms) of class II controlled substances sold or transferred during the quarter to a person other than the producer for use in