

## § 82.1

APPENDIX F TO SUBPART G OF PART 82—UNACCEPTABLE SUBSTITUTES LISTED IN THE JANUARY 26, 1999 FINAL RULE, EFFECTIVE JANUARY 26, 1999

APPENDIX G TO SUBPART G OF PART 82—SUBSTITUTES SUBJECT TO USE RESTRICTIONS AND UNACCEPTABLE SUBSTITUTES LISTED IN THE MARCH 3, 1999, FINAL RULE, EFFECTIVE APRIL 2, 1999

APPENDIX H TO SUBPART G OF PART 82—SUBSTITUTES SUBJECT TO USE RESTRICTIONS AND UNACCEPTABLE SUBSTITUTES, EFFECTIVE MAY 28, 1999

APPENDIX I TO SUBPART G OF PART 82—SUBSTITUTES SUBJECT TO USE RESTRICTIONS, LISTED IN THE APRIL 26, 2000, FINAL RULE, EFFECTIVE MAY 26, 2000

APPENDIX J TO SUBPART G OF PART 82—SUBSTITUTES LISTED IN THE JANUARY 29, 2002 FINAL RULE, EFFECTIVE APRIL 1, 2002

APPENDIX K TO SUBPART G OF PART 82—SUBSTITUTES SUBJECT TO USE RESTRICTIONS AND UNACCEPTABLE SUBSTITUTES LISTED IN THE JULY 22, 2002, FINAL RULE, EFFECTIVE AUGUST 21, 2002

APPENDIX L TO SUBPART G OF PART 82—SUBSTITUTES LISTED IN THE JANUARY 27, 2003, FINAL RULE, EFFECTIVE MARCH 28, 2003

### Subpart H—Halon Emissions Reduction

82.250 Purpose and scope.

82.260 Definitions.

82.270 Prohibitions.

AUTHORITY: 42 U.S.C. 7414, 7601, 7671-7671q.

SOURCE: 57 FR 33787, July 30, 1992, unless otherwise noted.

### Subpart A—Production and Consumption Controls

SOURCE: 60 FR 24986, May 10, 1995, unless otherwise noted.

#### § 82.1 Purpose and scope.

(a) The purpose of the regulations in this subpart is to implement the Montreal Protocol on Substances that Deplete the Ozone Layer and sections 602, 603, 604, 605, 606, 607, 614 and 616 of the Clean Air Act Amendments of 1990, Public Law 101-549. The Protocol and section 604 impose limits on the production and consumption (defined as production plus imports minus exports, excluding transshipments and used controlled substances) of certain ozone-depleting substances, according to specified schedules. The Protocol also requires each nation that becomes a Party to the agreement to impose cer-

## 40 CFR Ch. I (7-1-03 Edition)

tain restrictions on trade in ozone-depleting substances with non-Parties.

(b) This subpart applies to any person that produces, transforms, destroys, imports or exports a controlled substance or imports or exports a controlled product.

[63 FR 41642, Aug. 4, 1998]

#### § 82.2 [Reserved]

#### § 82.3 Definitions for class I and class II controlled substances.

As used in this subpart, the term:

*Administrator* means the Administrator of the United States Environmental Protection Agency or his authorized representative. For purposes of reports and petitions, the Administrator must be written at the following mailing address: EPA (6205J), Global Programs Division, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

*Applicator* means the person who applies methyl bromide.

*Article 5 allowances* means the allowances apportioned under § 82.9(a) and § 82.18(a).

*Baseline consumption allowances* means the consumption allowances apportioned under § 82.6 and § 82.19.

*Baseline production allowances* means the production allowances apportioned under § 82.5 and § 82.17.

*Calculated level* means the weighted amount of a controlled substance determined by multiplying the amount (in kilograms) of the controlled substance by that substance's ozone depletion potential (ODP) weight listed in appendix A or appendix B to this subpart.

*Class I* refers to the controlled substances listed in appendix A to this subpart.

*Class II* refers to the controlled substances listed in appendix B to this subpart.

*Commodity Owner, Shipper or their Agent* means the person requesting that an applicator use methyl bromide for quarantine or preshipment applications.

*Completely destroy* means to cause the expiration of a controlled substance at a destruction efficiency of 98 percent or greater, using one of the destruction technologies approved by the Parties.

*Complying with the Protocol*, when referring to a foreign state not Party to the 1987 Montreal Protocol, the London Amendments, or the Copenhagen Amendments, means that the non-Party has been determined as complying with the Protocol, as indicated in appendix C to this subpart, by a meeting of the Parties as noted in the records of the directorate of the United Nations Secretariat.

*Confer* means to shift the essential-use allowances obtained under § 82.4(t) from the holder of the unexpended essential-use allowances to a person for the production of a specified controlled substance, or to shift the HCFC-141b exemption allowances granted under § 82.16(h) from the holder of the unexpended HCFC-141b exemption allowances to a person for the production or import of the controlled substance.

*Consumption* means the production plus imports minus exports of a controlled substance (other than transshipments, or used controlled substances).

*Consumption allowances* means the privileges granted by this subpart to produce and import controlled substances; however, consumption allowances may be used to produce controlled substances only in conjunction with production allowances. A person's consumption allowances for class I substances are the total of the allowances obtained under §§ 82.6 and 82.7 and 82.10, as may be modified under § 82.12 (transfer of allowances). A person's consumption allowances for class II controlled substances are the total of the allowances obtained under §§ 82.19 and 82.20, as may be modified under § 82.23.

*Control period* means the period from January 1, 1992 through December 31, 1992, and each twelve-month period from January 1 through December 31, thereafter.

*Controlled product* means a product that contains a controlled substance listed as a Class I, Group I or II substance in appendix A to this subpart. Controlled products include, but are not limited to, those products listed in appendix D to this subpart.

Controlled products belong to one or more of the following six categories of products:

(1) Automobile and truck air conditioning units (whether incorporated in vehicles or not);

(2) Domestic and commercial refrigeration and air-conditioning/heat pump equipment (whether containing controlled substances as a refrigerant and/or in insulating material of the product), e.g. Refrigerators, Freezers, Dehumidifiers, Water coolers, Ice machines, Air-conditioning and heat pump units;

(3) Aerosol products, except medical aerosols;

(4) Portable fire extinguishers;

(5) Insulation boards, panels and pipe covers;

(6) Pre-polymers.

*Controlled substance* means any substance listed in appendix A or appendix B to this subpart, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Thus, any amount of a listed substance in appendix A or appendix B to this subpart that is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a "controlled substance." The inadvertent or coincidental creation of insignificant quantities of a listed substance in appendix A or appendix B to this subpart; during a chemical manufacturing process, resulting from unreacted feedstock, from the listed substance's use as a process agent present as a trace quantity in the chemical substance being manufactured, or as an unintended byproduct of research and development applications, is not deemed a controlled substance. Controlled substances are divided into two classes, Class I in appendix A to this subpart, and Class II listed in appendix B to this subpart. Class I substances are further divided into seven groups, Group I, Group II, Group III, Group IV, Group V, Group VI, and Group VII, as set forth in appendix A to this subpart.

*Copenhagen Amendments* means the Montreal Protocol on Substances That Deplete the Ozone Layer, as amended

at the Fourth Meeting of the Parties to the Montreal Protocol in Copenhagen in 1992.

*Destruction* means the expiration of a controlled substance to the destruction efficiency actually achieved, unless considered completely destroyed as defined in this section. Such destruction does not result in a commercially useful end product and uses one of the following controlled processes approved by the Parties to the Protocol:

- (1) Liquid injection incineration;
- (2) Reactor cracking;
- (3) Gaseous/fume oxidation;
- (4) Rotary kiln incineration;
- (5) Cement kiln;
- (6) Radio frequency plasma; or
- (7) Municipal waste incinerators only for the destruction of foams.

*Distributor of methyl bromide* means the person directly selling a class I, Group VI controlled substance to an applicator.

*Essential Metered Dose Inhaler (Essential MDI)* means metered dose inhalers for the treatment of asthma and chronic obstructive pulmonary disease, approved by the Food and Drug Administration or by another Party's analogous health authority before December 31, 2000, and considered to be essential by the Party where the MDI product will eventually be sold. In addition, if the MDI product is to be sold in the U.S., the active moiety contained in the MDI must be listed as essential at 21 CFR 2.125(e).

*Essential-Use Allowances* means the privileges granted by § 82.4(t) to produce class I substances, as determined by allocation decisions made by the Parties to the Montreal Protocol and in accordance with the restrictions delineated in the Clean Air Act Amendments of 1990.

*Essential-Use Chlorofluorocarbons (Essential-use CFCs)* are the CFCs (CFC-11, CFC-12, or CFC-114) produced under the authority of essential-use allowances and not the allowances themselves. Essential-use CFCs include CFCs imported or produced by U.S. entities under the authority of essential-use allowances for use in essential metered dose inhalers, as well as CFCs imported or produced by non-U.S. entities under the authority of privileges granted by the Parties and the national authority

of another country for use in essential metered dose inhalers.

*Essential-Uses* means those uses of controlled substances designated by the Parties to the Protocol to be necessary for the health and safety of, or critical for the functioning of, society; and for which there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health. Beginning January 1, 2000 (January 1, 2002 for methyl chloroform) the essential use designations for class I substances must be made in accordance with the provisions of the Clean Air Act Amendments of 1990.

*Export* means the transport of virgin or used controlled substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use.

*Exporter* means the person who contracts to sell controlled substances for export or transfers controlled substances to his affiliate in another country.

*Export production allowances* means the privileges granted by § 82.18(b) to produce HCFC-141b for export following the phaseout of HCFC-141b on January 1, 2003.

*Facility* means any process equipment (e.g., reactor, distillation column) used to convert raw materials or feedstock chemicals into controlled substances or consume controlled substances in the production of other chemicals.

*Foreign state* means an entity which is recognized as a sovereign nation or country other than the United States of America.<sup>1</sup>

*Foreign state not Party to or Non-Party* means a foreign state that has not deposited instruments of ratification, acceptance, or other form of approval with the Directorate of the United Nations Secretariat, evidencing the foreign state's ratification of the provisions of the 1987 Montreal Protocol, the London Amendments, or of the Copenhagen Amendments, as specified.

<sup>1</sup>Taiwan is not considered a foreign state.

*Formulator* means an entity that distributes a class II controlled substance(s) or blends of a class II controlled substance(s) to persons who use the controlled substance(s) for a specific application identified in the formulator's petition for HCFC-141b exemption allowances.

*HCFC-141b exemption allowances* means the privileges granted to a HCFC-141b formulator; an agency, department, or instrumentality of the U.S.; or a non-governmental space vehicle entity by this subpart to order production of or to import HCFC-141b, as determined in accordance with § 82.16(h).

*Heel* means the amount of a controlled substance that remains in a container after it is discharged or off-loaded (that is no more than ten percent of the volume of the container) and that the person owning or operating the container certifies the residual amount will remain in the container and be included in a future shipment, or be recovered for transformation, destruction or a non-emissive purpose.

*Individual shipment* means the kilograms of a used controlled substance for which a person may make one (1) U.S. Customs entry as, as identified in the non-objection letter from the Administrator under §§ 82.13(g) and 82.24(c)(4).

*Import* means 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 whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with the following exemptions:

(1) Off-loading used or excess controlled substances or controlled products from a ship during servicing.

(2) Bringing controlled substances into the U.S. from Mexico where the controlled substance had been admitted into Mexico in bond and was of U.S. origin, and

(3) Bringing a controlled product into the U.S. when transported in a consignment of personal or household effects or in a similar non-commercial situa-

tion normally exempted from U.S. Customs attention.

*Importer* means the importer of record listed on U.S. Customs Service forms for imported controlled substances, used controlled substances or controlled products.

*London Amendments* means the Montreal Protocol, as amended at the Second Meeting of the Parties to the Montreal Protocol in London in 1990.

*Montreal Anniversary amendments* means the Montreal Protocol, as amended at the Ninth Meeting of the Parties to the Montreal Protocol in Montreal in 1997.

*Montreal Protocol* means the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by the Parties thereto and amendments that have entered into force.

*1987 Montreal Protocol* means the Montreal Protocol, as originally adopted by the Parties in 1987.

*Nations complying with, but not joining, the Protocol* means any nation listed in Appendix C, Annex 2, to this subpart.

*Non-Objection notice* means the privilege granted by the Administrator to import a specific individual shipment of used controlled substance in accordance with §§ 82.13(g) and 82.24(c)(3) and (4).

*Party* means any foreign state that is listed in Appendix C to this subpart (pursuant to instruments of ratification, acceptance, or approval deposited with the Depositary of the United Nations Secretariat), as having ratified the specified control measure in effect under the Montreal Protocol. Thus, for purposes of the trade bans specified in § 82.4(l)(2) pursuant to the London Amendments, only those foreign states that are listed in Appendix C to this subpart as having ratified both the 1987 Montreal Protocol and the London Amendments shall be deemed to be Parties.

*Person* means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of

the United States; and any officer, agent, or employee thereof.

*Plant* means one or more facilities at the same location owned by or under common control of the same person.

*Preshipment applications*, with respect to class I, Group VI controlled substances, are those non-quarantine applications applied within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority.

*Production* means the manufacture of a controlled substance from any raw material or feedstock chemical, but does not include:

(1) The manufacture of a controlled substance that is subsequently transformed;

(2) The reuse or recycling of a controlled substance;

(3) Amounts that are destroyed by the approved technologies; or

(4) Amounts that are spilled or vented unintentionally.

*Production allowances* means the privileges granted by this subpart to produce controlled substances; however, production allowances may be used to produce controlled substances only in conjunction with consumption allowances. A person's production allowances for class I substances are the total of the allowances obtained under §§ 82.5, 82.7 and 82.9, and as may be modified under § 82.12 (transfer of allowances). A person's production allowances for class II controlled substances are the total of the allowances obtained under § 82.17 and as may be modified under §§ 82.18 and 82.23.

*Quarantine applications*, with respect to class I, Group VI controlled substances, are treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (1) Official control is that performed by, or authorized by, a national (including state, tribal or local) plant, animal or environmental protection or health authority; (2) quarantine pests are pests of potential importance to the areas endangered

thereby and not yet present there, or present but not widely distributed and being officially controlled. This definition excludes treatments of commodities not entering or leaving the United States or any State (or political subdivision thereof).

*Source facility* means the location at which a used controlled substance was recovered from a piece of equipment, including the name of the company responsible for, or owning the piece of equipment, a contact person at the location, the mailing address for that specific location, and a phone number and a fax number for the contact person at the location.

*Space vehicle* means a man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with tests, transport, and storage, which through contamination can compromise the space vehicle performance.

*Transform* means to use and entirely consume (except for trace quantities) a controlled substance in the manufacture of other chemicals for commercial purposes.

*Transshipment* means the continuous shipment of a controlled substance, from a foreign state of origin through the United States or its territories, to a second foreign state of final destination, as long as the shipment does not enter into United States jurisdiction. A transshipment, as it moves through the United States or its territories, cannot be re-packaged, sorted or otherwise changed in condition.

*Unexpended Article 5 allowances* means Article 5 allowances that have not been used. At any time in any control period a person's unexpended Article 5 allowances are the total of the level of Article 5 allowances the person has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced in that control period until that time.

*Unexpended consumption allowances* means consumption allowances that have not been used. At any time in any

control period a person's unexpended consumption allowances are the total of the level of consumption allowances the person has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced or imported (not including transshipments and used controlled substances) in that control period until that time.

*Unexpended destruction and transformation credits* means destruction and transformation credits that have not been used. At any time in any control period a person's unexpended destruction and transformation credits are the total of the level of destruction and transformation credits the person has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced or imported (not including transshipments and used controlled substances) in that control period until that time.

*Unexpended essential-use allowances* means essential-use allowances that have not been used. At any time in any control period a person's unexpended essential-use allowances are the total of the level of essential-use allowances the person has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has imported or had produced in that control period until that time.

*Unexpended export production allowances* means export production allowances that have not been used. A person's unexpended export production allowances are the total of the quantity of the export production allowances the person has authorization under § 82.18(h) to hold for that control period, minus the quantity of class II controlled substances that the person has produced at that time during the same control period.

*Unexpended HCFC-141b exemption allowances* means HCFC-141b exemption allowances that have not been used. A person's unexpended HCFC-141b exemption allowances are the total of the quantity of the HCFC-141b exemption allowances the person has authorization under § 82.16(h) to hold for that

control period, minus the quantity of HCFC-141b that the person has had produced or has had imported at that time during the same control period.

*Unexpended production allowances* means production allowances that have not been used. At any time in any control period a person's unexpended production allowances are the total of the level of production allowances he has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced in that control period until that time.

*Used controlled substances* means controlled substances that have been recovered from their intended use systems (may include controlled substances that have been, or may be subsequently, recycled or reclaimed).

[60 FR 24986, May 10, 1995, as amended at 63 FR 41642, Aug. 4, 1998; 66 FR 37767, July 19, 2001; 67 FR 6359, Feb. 11, 2002; 67 FR 79872, Dec. 31, 2002; 67 FR 251, Jan. 2, 2003; 68 FR 2847, Jan. 21, 2003]

#### § 82.4 Prohibitions for class I controlled substances.

(a)(1) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, no person may produce, at any time in any control period, (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of unexpended production allowances or unexpended Article 5 allowances for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production constitutes a separate violation of this subpart.

(2) Effective January 1, 2003, production of class I, Group VI controlled substances is not subject to the prohibitions in paragraph (a)(1) of this section if it is solely for quarantine or preshipment applications as defined in this subpart.

(b) Effective January 1, 1996, for any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, and effective January 1, 2005, for any class I, Group VI controlled substances, no person may