

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

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 conferred unexpended essential-use allowances or exemptions under this section, the amount of unexpended Article 5 allowances as allocated under §82.9, or the amount of conferred unexpended destruction and transformation credits as obtained under §82.9 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.

(c)(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 or (except for transshipments, heels or used controlled substances) import, at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended consumption allowances held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production or importation (other than transshipments, heels or used controlled substances) constitutes a separate violation of this subpart.

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

(d) 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 import (except for transshipments or heels), at any time in any control period (except for controlled substances that are transformed or destroyed, or transfers of essential-use CFCs) in excess of the amount of unexpended essential-use allowances or exemptions as allocated under this section, or the amount of unexpended destruction and transformation credits obtained under §82.9 held by that person under the au-

thority of this subpart at that time for that control period. Every kilogram of excess importation (other than transshipments or heels) constitutes a separate violation of this subpart. It is a violation of this subpart to obtain unused class I ODSs under the general laboratory exemption in excess of actual need and to recycle that material for sale into other markets.

(e) Effective January 1, 1996, no person may place an order by conferring essential-use allowances for the production of the class I controlled substance, at any time in any control period, in excess of the amount of unexpended essential-use allowances, held by that person under the authority of this subpart at that time for that control period. Effective January 1, 1996, no person may import a class I controlled substance with essential-use allowances, at any time in any control period, in excess of the amount of unexpended essential-use allowances, held by that person under the authority of this subpart at that time for that control period. No person may import or place an order for the production of a class I controlled substance with essential-use allowances, at any time in any control period, other than for the class I controlled substance(s) for which they received essential-use allowances under paragraph (u) of this section. Every kilogram of excess production ordered in excess of the unexpended essential-use allowances conferred to the producer constitutes a separate violation of this subpart. Every kilogram of excess import in excess of the unexpended essential-use allowances held at that time constitutes a separate violation of this subpart.

(f) Effective January 1, 1996, no person may place an order by conferring transformation and destruction credits for the production of the class I controlled substance, at any time in any control period, in excess of the amount of transformation and destruction credits, held by that person under the authority of this subpart at that time for that control period. Effective January 1, 1996, no person may import class I controlled substance, at any time in any control period, in excess of the amount of transformation and destruction credits, held by that person under

the authority of this subpart at that time for that control period. No person may import or place an order for the production of a class I controlled substance with transformation and destruction credits, at any time in any control period, other than for the class I controlled substance(s) for which they received transformation and destruction credits as under § 82.9(f). Every kilogram of excess production ordered in excess of the unexpended transformation and destruction credits conferred to the producer constitutes a separate violation of this subpart. Every kilogram of excess import in excess of the unexpended transformation and destruction credits held at that time constitutes a separate violation of this subpart.

(g) Effective January 1, 1996, the U.S. total production and importation of a class I controlled substance (except Group VI) as allocated under this section for essential-use allowances and exemptions, and as obtained under § 82.9 for destruction and transformation credits, may not, at any time, in any control period until January 1, 2000, exceed the percent limitation of baseline production in appendix H of this subpart, as set forth in the Clean Air Act Amendments of 1990. No person shall cause or contribute to the U.S. exceedance of the national limit for that control period.

(h) In addition to total production permitted under paragraph (f) of this section, effective January 1, 1996, for class I, Group I, Group III, Group IV and Group V controlled substances, and effective January 1, 1995, for class I, Group II, a person may, at any time, in any control period until January 1, 2000, produce 10 percent of baseline production as apportioned under § 82.5 for export to Article 5 countries. In addition to total production permitted under paragraph (f) of this section, effective January 1, 2001, for class I, Group VI controlled substances, a person may, at any time, until January 1, 2002, produce 15 percent of baseline production as apportioned under § 82.5 for export to Article 5 countries. No person may, at any time, in any control period until January 1, 2000, produce class I, Group I, Group II, Group III, Group IV, and Group V controlled substances, and

no person may, at any time until January 1, 2002, produce class I Group VI controlled substances for export to Article 5 countries in excess of the Article 5 allowances allocated under § 82.9(a). No person may sell in the U.S. any class I controlled substance produced explicitly for export to an Article 5 country.

(i) Effective January 1, 1995, no person may import, at any time in any control period, a heel of any class I controlled substance that is greater than 10 percent of the volume of the container in excess of the amount of unexpended consumption allowances, or unexpended destruction and transformation credits held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess importation constitutes a separate violation of this subpart.

(j) Effective January 1, 1995, no person may import, at any time in any control period, a used class I controlled substance, without having received a non-objection notice from the Administrator in accordance with § 82.13(g)(2) and (3). A person who receives a non-objection notice for the import of an individual shipment of used controlled substances may not transfer or confer the right to import, and may not import any more than the exact quantity, in kilograms, of the used controlled substance cited in the non-objection notice. Every kilogram of importation of used controlled substance in excess of the quantity cited in the non-objection notice issued by the Administrator in accordance with § 82.13(g)(2) and (3) constitutes a separate violation.

(k)(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, a person may not use production allowances to produce a quantity of a class I controlled substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances unless the person holds under authority of this subpart

at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, prior to January 1, 1996, for all class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, only consumption allowances are required to import, with the exception of transshipments, heels, and used controlled substances. Effective January 1, 1996, for all Groups of class I controlled substances, except Group VI, only essential-use allowances or exemptions are required to import class I controlled substances, with the exception of transshipments, heels and used controlled substances.

(2) Notwithstanding paragraph (k)(1) of this section, effective January 1, 2003, for class I, Group VI controlled substances, consumption allowances are not required to import quantities solely for quarantine or preshipment applications as defined in this subpart.

(l) Every kilogram of a controlled substance, and every controlled product, imported or exported in contravention of this subpart constitutes a separate violation of this subpart, thus no person may:

(1) Import or export any quantity of a controlled substance listed in Class I, Group I or Group II, in appendix A to this subpart from or to any foreign state not listed as a Party to the 1987 Montreal Protocol unless that foreign state is complying with the 1987 Montreal Protocol (See appendix C, Annex 2 of this subpart);

(2) Import or export any quantity of a controlled substance listed in Class I, Group III, Group IV or Group V, in appendix A to this subpart, from or to any foreign state not Party to the London Amendments (as noted in appendix C, Annex 1, to this subpart), unless that foreign state is complying with the London Amendments (as noted in appendix C, Annex 2, to this subpart); or

(3) Import a controlled product, as noted in appendix D, Annex 1 to this subpart, from any foreign state not Party to the 1987 Montreal Protocol (as noted in appendix C, Annex 1, to this subpart), unless that foreign state is complying with the Protocol (as noted in appendix C, Annex 2, to this subpart).

(4) Import or export any quantity of a controlled substance listed in Class I, Group VII, in Appendix A to this subpart, from or to any foreign state not Party to the Copenhagen Amendments (as noted in Appendix C, Annex 1, to this subpart), unless that foreign state is complying with the Copenhagen Amendments (as noted in Appendix C, Annex 2, to this subpart).

(m) Effective October 5, 1998, no person may export a controlled product to a Party listed in Appendix J of this subpart in any control period after the control period in which EPA publishes a notice in the FEDERAL REGISTER listing that Party in Appendix J of this subpart. EPA will publish a notice in the FEDERAL REGISTER that lists a Party in Appendix J if the Party formally presents to the U.S. a government document through its embassy in the United States stating that it has established a ban on the import of controlled products and a ban on the manufacture of those same controlled products.

(n) Effective January 1, 1996, essential-use allowances are apportioned to a person under paragraphs (t)(2) and (t)(3) of this section for the exempted production or importation of specified class I controlled substances solely for the purposes listed in paragraphs (t)(1)(i) through (iii) of this section.

(1) Essential-uses for the production or importation of controlled substances as agreed to by the Parties to the Protocol and subject to the periodic revision of the Parties are:

(i) Metered dose inhalers (MDIs) for the treatment of asthma and chronic obstructive pulmonary disease that were approved by the Food and Drug Administration before December 31, 2000.

(ii) Space Shuttle—solvents.

(iii) Essential Laboratory and Analytical Uses (Defined at appendix G of this subpart).

(2) Persons in the following list are allocated essential-use allowances or exemptions for quantities of a specific class I controlled substance for a specific essential-use (the Administrator reserves the right to revise the allocations based on future decisions of the Parties).

TABLE I—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2003

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC-11 or CFC-12 or CFC-114	574
Aventis	CFC-11 or CFC-12 or CFC-114	48
Boehringer Ingelheim Pharmaceuticals	CFC-11 or CFC-12 or CFC-114	907
GlaxoSmithKline	CFC-11 or CFC-12 or CFC-114	535
Schering-Plough Corporation	CFC-11 or CFC-12 or CFC-114	937
Sidmak Laboratories	CFC-11 or CFC-12 or CFC-114	136
3M Pharmaceuticals	CFC-11 or CFC-12 or CFC-114	133
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket	Methyl Chloroform	9.8
United States Air Force/Titan Rocket	Methyl Chloroform	3.4

(3) A global exemption for class I controlled substances for essential laboratory and analytical uses shall be in effect through December 31, 2005 subject to the restrictions in appendix G of this subpart, and subject to the record keeping and reporting requirements at §82.13(u) through (z). There is no amount specified for this exemption.

(4) Any person acquiring unused class I ODSs produced under the authority of essential-use allowances or the essential-use exemption in paragraph (t)(3) of this section for use in anything other than an essential-use (i.e. for uses other than those specifically listed in paragraph (t)(1) of this section) is in violation of this subpart. Each kilogram of unused class I ODS produced or imported under the authority of essential-use allowances or the essential-use exemption and used for a non-essential-use is a separate violation of this subpart. Any person selling unused class I material produced or imported under the authority of essential-use allowances or the essential-use exemption for uses other than an essential-use is in violation of this subpart. Each kilogram of unused class I ODS produced under the authority of essential-use allowances or the essential-use exemption and sold for a use other than an essential-use is a separate violation of this subpart. It is a violation of this subpart to obtain unused class I ODSs

under the exemption for laboratory and analytical uses in excess of actual need and to recycle that material for sale into other markets.

- (o) [Reserved]
- (p) Critical use exemption. [Reserved]
- (q) Emergency use exemption. [Reserved]

[60 FR 24986, May 10, 1995, as amended at 63 FR 4363, Jan. 28, 1998; 63 FR 41642, Aug. 4, 1998; 63 FR 53290, Oct. 5, 1998; 64 FR 1096, Jan. 7, 1999; 65 FR 728, Jan. 6, 2000; 65 FR 40535, June 30, 2000; 65 FR 70803, Nov. 28, 2000; 66 FR 1470, Jan. 8, 2001; 66 FR 14770, Mar. 13, 2001; 66 FR 37767, July 19, 2001; 67 FR 6359, Feb. 11, 2002; 67 FR 79511, Dec. 27, 2002; 67 FR 79872, Dec. 31, 2002; 68 FR 251, Jan. 2, 2003; 68 FR 2848, Jan. 21, 2003]

§82.5 Apportionment of baseline production allowances for class I controlled substances.

Persons who produced controlled substances in Group I or Group II in 1986 are apportioned baseline production allowances as set forth in paragraphs (a) and (b) of this section. Persons who produced controlled substances in Group III, IV, or V in 1989 are apportioned baseline production allowances as set forth in paragraphs (c), (d), and (e) of this section. Persons who produced controlled substances in Group VI and VII in 1991 are apportioned baseline allowances as set forth in paragraphs (f) and (g) of this section.