

§ 82.9

40 CFR Ch. I (7-1-08 Edition)

[69 FR 77003, Dec. 23, 2004, as amended at 70 FR 49844, Aug. 24, 2005; 70 FR 73614, Dec. 13, 2005; 70 FR 77052, Dec. 29, 2005; 71 FR 6005, Feb. 6, 2006; 71 FR 25078, Apr. 28, 2006; 71 FR 58514, Oct. 4, 2006; 71 FR 75403, Dec. 14, 2006; 72 FR 32222, June 12, 2007; 72 FR 73268, Dec. 27, 2007; 72 FR 74146, Dec. 28, 2007; 73 FR 33013, June 11, 2008]

§ 82.9 Availability of production allowances in addition to baseline production allowances for class I controlled substances.

(a) Every person apportioned baseline production allowances for class I controlled substances under § 82.5 (a) through (f) of this subpart is also granted Article 5 allowances equal to:

(1) 10 percent of their baseline production allowances listed for class I, Group I, Group III, Group IV, and Group V controlled substances listed under § 82.5 of this subpart for each control period ending before January 1, 1996;

(2) 15 percent of their baseline production allowances for class I, Group VI controlled substances listed under § 82.5 of this subpart for each control period ending before January 1, 2005;

(3) 15 percent of their baseline production allowances for class I, Group II controlled substances listed under § 82.5 of this subpart for each control period beginning January 1, 1994, until January 1, 2003;

(4) 15 percent of their baseline production allowances for Class I, Group IV and Group V controlled substances listed under § 82.5 of this subpart for each control period beginning January 1, 1996 until January 1, 2010;

(b) Effective January 1, 1995, a person allocated Article 5 allowances may produce class I controlled substances for export to Article 5 countries as under § 82.11 and transfer Article 5 allowances as under § 82.12.

(c) A company may increase or decrease its production allowances, its Article 5 allowances by trading with another Party to the Protocol according to the provision under this paragraph (c). A company may increase or decrease its essential-use allowances for CFCs for use in essential MDIs according to the provisions under this paragraph (c). A nation listed in appendix C to this subpart (Parties to the Montreal Protocol) must agree either

to transfer to the person for the current control period some amount of production or import that the nation is permitted under the Montreal Protocol or to receive from the person for the current control period some amount of production or import that the person is permitted under this subpart. If the controlled substance is produced under the authority of production allowances and is to be returned to the Party from whom production allowances are received, the request for production allowances shall also be considered a request for consumption allowances under § 82.10(c). If the controlled substance is produced under the authority of production allowances and is to be sold in the United States or to another Party (not the Party from whom the allowances are received), the U.S. company must expend its consumption allowances allocated under § 82.6 and § 82.7 in order to produce with the additional production allowances.

(1) 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 or essential-use allowance 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 or essential-use allowances that are 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 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:

(i) The identity and address of the person;

(ii) The identity of the Party;

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

(iv) The chemical type, type of allowance being transferred, and the level of allowances being transferred;

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

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

(vii) In the case of transferring essential-use allowances, the transferor must include a signed document from the transferee identifying the CFC MDI products that will be produced using the essential-use allowances.

(2) For trades to a Party, a person must submit a transfer request that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

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

(iv) The chemical type, type of allowance being transferred, and the level of allowances being transferred; and

(v) The control period(s) to which the transfer applies.

(3) After receiving a transfer request that meets the requirements of paragraph (c)(2) of this section, the Administrator may, at his discretion, consider the following factors in deciding whether to approve such a transfer:

(i) Possible creation of economic hardship;

(ii) Possible effects on trade;

(iii) Potential environmental implications; and

(iv) The total amount of unexpended production or essential-use allowances held by a U.S. entity.

(v) In the case of transfer of essential-use allowances the Administrator may consider whether the CFCs will be used for production of essential MDIs.

(4) The Administrator will issue the person a notice either granting or deducting production allowances, Article 5 allowances, or essential-use allowances, and specifying the control period to which the transfer applies, provided that the request meets the requirement of paragraph (c)(1) of this section for trades from Parties and paragraph (c)(2) of this section for trades to Parties, unless the Administrator has decided to disapprove the trade under paragraph (c)(3) of this section. For a trade from a Party, the Administrator will issue a notice that revises the allowances held by the person

to equal the unexpended production, Article 5, or essential-use allowances held by the person under this subpart plus the level of allowable production transferred from the Party. For a trade to a Party, the Administrator will issue a notice that revises the production limit for the person to equal the lesser of:

(i) The unexpended production allowances, essential-use allowances, or Article 5 allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances, essential-use allowances, or Article 5 allowances held by the person under this subpart minus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total production allowable for that substance under this subpart minus the amount transferred. The change in allowances will be effective on the date that the notice is issued.

(5) If after one person obtains approval for a trade of allowable production of a controlled substance to a Party, one or more other persons obtain approval for trades involving the same controlled substance and the same control period, the Administrator will issue notices revising the production limits for each of the other persons trading that controlled substance in that control period to equal the lesser of:

(i) The unexpended production allowances or Article 5 allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances or Article 5 allowances held by the person under this subpart minus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production for that substance under this subpart multiplied by the amount transferred divided by the total amount transferred by all the other persons trading the same controlled substance in the same control period minus the amount transferred by that person.

(iii) The Administrator will also issue a notice revising the production limit for each person who previously obtained approval of a trade of that substance in that control period to equal the unexpended production allowances or unexpended Article 5 allowances held by the person under this subpart plus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production under this subpart multiplied by the amount transferred by that person divided by the amount transferred by all of the persons who have traded that controlled substance in that control period. The change in production allowances or Article 5 allowances will be effective on the date that the notice is issued.

(d) Effective January 1, 1996, there will be no trade in production or consumption allowances with other Parties to the Protocol for class I controlled substances, except for class I, Group VI, methyl bromide.

(e) Until January 1, 1996 for all class I controlled substances, except Group VI, and until January 1, 2005 for class I, Group VI, a person may obtain production allowances for that controlled substance equal to the amount of that controlled substance produced in the United States that was transformed or destroyed within the United States, or transformed or destroyed by a person of another Party, in the cases where production allowances were expended to produce such substance in the U.S. in accordance with the provisions of this paragraph. A request for production allowances under this section will be considered a request for consumption allowances under § 82.10(b).

(1) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2005, for class I, Group VI, a person must submit a request for production allowances that includes the following:

(i) The name, address, and telephone number of the person requesting the allowances, and the Employer Identification Number if the controlled substance is being exported;

(ii) The name, quantity, and level of controlled substance transformed or

the name, quantity and volume destroyed, and the commodity code if the substance was exported;

(iii) A copy of the invoice or receipt documenting the sale of the controlled substance, including the name, address, contact person and telephone number of the transformer or destroyer;

(iv) A certification that production allowances were expended for the production of the controlled substance, and the date of purchase, if applicable;

(v) If the controlled substance is transformed, the name, quantity, and verification of the commercial use of the resulting chemical and a copy of the IRS certificate of intent to use the controlled substance as a feedstock; and,

(vi) If the controlled substance is destroyed, the verification of the destruction efficiency.

(2) Until January 1, 1996 for all class I controlled substances, except Group VI, and until January 1, 2005, for class I, Group VI, the Administrator will review the information and documentation submitted under paragraph (e)(1) of this section and will assess the quantity of class I controlled substance that the documentation and information verifies was transformed or destroyed. The Administrator will issue the person production allowances equivalent to the controlled substances that the Administrator determines were transformed or destroyed. For controlled substances completely destroyed under this rule, the Agency will grant allowances equal to 100 percent of volume intended for destruction. For those controlled substances destroyed at less than a 98 percent destruction efficiency, the Agency will grant allowances commensurate with that percentage of destruction efficiency that is actually achieved. The grant of allowances will be effective on the date that the notice is issued.

(3) Until January 1, 1996 for all class I controlled substances, except Group VI, and until January 1, 2005, for class I, Group VI, if the Administrator determines that the request for production allowances does not satisfactorily substantiate that the person transformed or destroyed controlled substances as claimed, or that modified allowances were not expended, the Administrator

will issue a notice disallowing the request for additional production allowances. 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.

(f) Effective January 1, 1996, and until January 1, 2000, a person who was nominated by the United States to the Secretariat of the Montreal Protocol for an essential use exemption may obtain destruction and transformation credits for a class I controlled substance (except class I, Group VI) equal to the amount of that controlled substance produced in the United States that was destroyed or transformed within the United States in cases where the controlled substance was produced for other than destruction or transformation in accordance with the provisions of this subpart, subtracting an offset of 15 percent.

(1) Effective January 1, 1996, and until January 1, 2000, a person must submit a request for destruction and transformation credits that includes the following:

(i) The identity and address of the person and the essential-use exemption and years for which the person was nominated to the Secretariat of the Montreal Protocol;

(ii) The name, quantity and volume of controlled substance destroyed or transformed;

(iii) A copy of the invoice or receipt documenting the sale or transfer of the controlled substance to the person;

(iv) A certification of the previous use of the controlled substance;

(v) For destruction credits, a certification that the controlled substance was destroyed and a certification of the efficiency of the destruction process; and

(vi) For transformation credits, an IRS certificate of feedstock use or transformation of the controlled substance.

(2) Effective January 1, 1996, and until January 1, 2000, the Adminis-

trator will issue the person destruction and transformation credits equivalent to the class I controlled substance (except class I, Group VI) recovered from a use system in the United States, that the Administrator determines were destroyed or transformed, subtracting the offset of 15 percent. For controlled substances completely destroyed under this rule, the Agency will grant destruction credits equal to 100 percent of volume destroyed minus the offset. For those controlled substances destroyed 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; 70 FR 77047, Dec. 29, 2005]

§ 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