

§ 82.16

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substance not governed by paragraphs (g)(1) through (3) of this section (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction; for use as a refrigerant in equipment manufactured before January 1, 2020; for export to Article 5 Parties under § 82.18(a); as a transshipment or heel; or for exemptions permitted in paragraph (f) of this section.

(5) Effective January 1, 2030, no person may introduce into interstate commerce or use any class II controlled substance (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction; for export to Article 5 Parties under § 82.18(a); as a transshipment or heel; or for exemptions permitted in paragraph (f) of this section.

(6) Effective January 1, 2040, no person may introduce into interstate com-

merce or use any class II controlled substance (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction, as a transshipment or heel, or for exemptions permitted in paragraph (f) of this section.

[68 FR 2848, Jan. 21, 2003, as amended at 69 FR 34031, June 17, 2004; 71 FR 41171, July 20, 2006; 74 FR 66445, Dec. 15, 2009]

§ 82.16 Phaseout schedule of class II controlled substances.

(a) *Calendar-year allowances.* (1) In each control period as indicated in the following tables, each person is granted the specified percentage of baseline production allowances and baseline consumption allowances for the specified class II controlled substances apportioned under §§ 82.17 and 82.19:

CALENDAR-YEAR HCFC PRODUCTION ALLOWANCES

| Control period | Percent of HCFC-141b | Percent of HCFC-22 | Percent of HCFC-142b | Percent of HCFC-123 | Percent of HCFC-124 | Percent of HCFC-225ca | Percent of HCFC-225cb |
|----------------|----------------------|--------------------|----------------------|---------------------|---------------------|-----------------------|-----------------------|
| 2003           | 0                    | 100                | 100                  |                     |                     |                       |                       |
| 2004           | 0                    | 100                | 100                  |                     |                     |                       |                       |
| 2005           | 0                    | 100                | 100                  |                     |                     |                       |                       |
| 2006           | 0                    | 100                | 100                  |                     |                     |                       |                       |
| 2007           | 0                    | 100                | 100                  |                     |                     |                       |                       |
| 2008           | 0                    | 100                | 100                  |                     |                     |                       |                       |
| 2009           | 0                    | 100                | 100                  |                     |                     |                       |                       |
| 2010           | 0                    | 41.9               | 0.47                 | 125                 | 125                 | 125                   | 125                   |
| 2011           | 0                    | 32.0               | 4.9                  | 125                 | 125                 | 125                   | 125                   |
| 2012           | 0                    | 17.7               | 4.9                  | 125                 | 125                 | 125                   | 125                   |
| 2013           | 0                    | 30.1               | 4.9                  | 125                 | 125                 | 125                   | 125                   |
| 2014           | 0                    | 26.1               | 4.9                  | 125                 | 125                 | 125                   | 125                   |

CALENDAR-YEAR HCFC CONSUMPTION ALLOWANCES

| Control period | Percent of HCFC-141b | Percent of HCFC-22 | Percent of HCFC-142b | Percent of HCFC-123 | Percent of HCFC-124 | Percent of HCFC-225ca | Percent of HCFC-225cb |
|----------------|----------------------|--------------------|----------------------|---------------------|---------------------|-----------------------|-----------------------|
| 2003           | 0                    | 100                | 100                  |                     |                     |                       |                       |
| 2004           | 0                    | 100                | 100                  |                     |                     |                       |                       |
| 2005           | 0                    | 100                | 100                  |                     |                     |                       |                       |
| 2006           | 0                    | 100                | 100                  |                     |                     |                       |                       |
| 2007           | 0                    | 100                | 100                  |                     |                     |                       |                       |
| 2008           | 0                    | 100                | 100                  |                     |                     |                       |                       |
| 2009           | 0                    | 100                | 100                  |                     |                     |                       |                       |
| 2010           | 0                    | 41.9               | 0.47                 | 125                 | 125                 | 125                   | 125                   |
| 2011           | 0                    | 32.0               | 4.9                  | 125                 | 125                 | 125                   | 125                   |
| 2012           | 0                    | 17.7               | 4.9                  | 125                 | 125                 | 125                   | 125                   |
| 2013           | 0                    | 18.0               | 4.9                  | 125                 | 125                 | 125                   | 125                   |
| 2014           | 0                    | 14.2               | 4.9                  | 125                 | 125                 | 125                   | 125                   |

(2) *Recoupment allowances.* In the control period beginning January 1, 2013 and ending December 31, 2013, and

again in the control period beginning January 1, 2014 and ending December 31, 2014, certain companies are granted

HCFC consumption and production allowances in addition to the percentage of baseline listed in the table at paragraph (a)(1) of this section. The following companies will receive the amounts listed below in both 2013 and 2014: 2,374,846 kg of HCFC-22 consumption allowances and 2,305,924 kg of HCFC-22 production allowances to Arkema; 1,170 kg of HCFC-142b consumption allowances to DuPont; 29,146 kg of HCFC-142b consumption allowances and 53,549 kg of HCFC-142b production allowances to Honeywell; 578,948 kg of HCFC-22 consumption allowances to Solvay Fluorides; and 144,900 kg of HCFC-142b production allowances to Solvay Solexis.

(b) Effective January 1, 2003, no person may produce HCFC-141b except for use in a process resulting in its transformation or its destruction, for export under § 82.18(a) using unexpended Article 5 allowances, for export under § 82.18(b) using unexpended export production allowances, for HCFC-141b exemption needs using unexpended HCFC-141b exemption allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2003, no person may import HCFC-141b (other than transshipments, heels or used class II controlled substances) in excess of the quantity of unexpended HCFC-141b exemption allowances held by that person except for use in a process resulting in its transformation or its destruction, or for exemptions permitted in § 82.15(f).

(c) Effective January 1, 2010, no person may produce HCFC-22 or HCFC-142b for any purpose other than for use in a process resulting in their transformation or their destruction, for use in equipment manufactured before January 1, 2010, for export under § 82.18(a) using unexpended Article 5 allowances, or for export under § 82.18(b) using unexpended export production allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2010, no person may import HCFC-22 or HCFC-142b (other than transshipments, heels or used class II controlled substances) for any purpose other than for use in a process resulting in their transformation or their destruction, for exemptions permitted in § 82.15(f), or for

use in equipment manufactured prior to January 1, 2010.

(d) Effective January 1, 2015, no person may produce class II controlled substances not previously controlled, for any purpose other than for use in a process resulting in their transformation or their destruction, for use as a refrigerant in equipment manufactured before January 1, 2020, for export under § 82.18(a) using unexpended Article 5 allowances, or for export under § 82.18(b) using unexpended export production allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2015, no person may import class II controlled substances not subject to the requirements of paragraph (b) or (c) of this section (other than transshipments, heels or used class II controlled substances) for any purpose other than for use in a process resulting in their transformation or their destruction, for exemptions permitted in § 82.15(f), or for use as a refrigerant in equipment manufactured prior to January 1, 2020.

(e) Effective January 1, 2020, no person may produce HCFC-22 or HCFC-142b for any purpose other than for use in a process resulting in their transformation or their destruction, for export under § 82.18(a) using unexpended Article 5 allowances, or for export under § 82.18(b) using unexpended export production allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2020, no person may import HCFC-22 or HCFC-142b for any purpose other than for use in a process resulting in their transformation or their destruction, or for exemptions permitted in § 82.15(f).

(f) Effective January 1, 2030, no person may produce class II controlled substances, for any purpose other than for use in a process resulting in their transformation or their destruction, for export under § 82.18(a) using unexpended Article 5 allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2030, no person may import class II controlled substances for any purpose other than for use in a process resulting in their transformation or their destruction, or for exemptions permitted in § 82.15(f).

(g) Effective January 1, 2040, no person may produce class II controlled

substances for any purpose other than for use in a process resulting in their transformation or their destruction, or for exemptions permitted in §82.15(f).

(h) Petition for HCFC-141b exemption allowances.

(1) Effective January 21, 2003, a formulator of HCFC-141b, an agency, department, or instrumentality of the U.S., or a non-governmental space vehicle entity, may petition EPA for HCFC-141b exemption allowances for the production or import of HCFC-141b after the phaseout date, in accordance with this section. Except as provided in paragraphs (h)(4) and (7) of this section, a petitioner must submit the following information to the Director of EPA's Office of Atmospheric Programs no later than April 21, 2003, for the 2003 control period; and, for any subsequent control period, no later than October 31st of the year preceding the control period for which the HCFC-141b exemption allowances are requested:

(i) Name and address of the HCFC-141b formulator, U.S. government entity or non-governmental space vehicle entity;

(ii) Name of contact person, phone number, fax number and e-mail address;

(iii) Quantity (in kilograms) of HCFC-141b needed for each relevant calendar year, supported by documentation about past use for at least the previous three years;

(iv) Quantities of HCFC-141b, if any, contained in systems that were sold to other systems houses for at least the previous three years;

(v) Description of the markets and applications served by the use of HCFC-141b or systems based on HCFC-141b;

(vi) Technical description of processes in which HCFC-141b is being used;

(vii) Technical description of the specific conditions under which the product will be applied;

(viii) Technical description of why alternatives and substitutes are not sufficient to eliminate the use of HCFC-141b;

(ix) Amount of stockpiled HCFC-141b (on-hand, taken title to, or available from a supplier) along with a detailed analysis showing why stockpiled, recovered or recycled quantities are

deemed to be unavailable, or technically or commercially infeasible for use (for example, taking into consideration undue costs for storage and transportation);

(x) An estimate of the number of control periods over which such an exemption would be necessary;

(xi) A detailed description of continuing investigations into and progress on possible alternatives and substitutes;

(xii) A list of alternatives considered, purchased or sampled, including dates and copies of receipts for verification;

(xiii) A summary of the petitioner's in-house development program including summaries of all relevant test results and their significance to subsequent decision-making and technology selection. Full supporting test data must be available on request including alternative tested and date on which it was tested;

(xiv) A clear statement of the preferred technical option(s) being pursued at the time of the petition and the reasoning for this selection;

(xv) A summary of product test results conducted on the preferred technical option(s) by accredited organizations in order to determine whether products meet applicable codes. Relevant test reports and certifications must be made available on request; and

(xvi) A description of the further development testing to be carried out over the number of control periods identified under paragraph (h)(1)(x) of this section.

(2) Within 21 business days of receipt of the petition, the Director of EPA's Office of Atmospheric Programs will issue to a HCFC-141b formulator, agency, department, or instrumentality of the U.S., or non-governmental space vehicle entity that has petitioned for HCFC-141b exemption allowances, based on information received in accordance with paragraph (h)(1) of this section, a notice indicating one of the following:

(i) A determination by the Director of EPA's Office of Atmospheric Programs to grant a specific quantity of HCFC-141b exemption allowances (in kilograms) for the production or import of HCFC-141b in a specified control period based on an assessment that

HCFC-141b is necessary to maintain either safety, or operational or technical viability;

(ii) A determination by the Director of EPA's Office of Atmospheric Programs to request additional information because the information received in accordance with paragraph (h)(1) of this section is not sufficient to decide whether to grant or deny HCFC-141b exemption allowances. The Director of EPA's Office of Atmospheric Programs will decide whether to grant or deny HCFC-141b exemption allowances within 30 days of receipt of the additional information. However, if the petitioner fails to submit the additional information within 20 days of the request, such failure constitutes a basis for denying the petition for HCFC-141b exemption allowances.

(iii) A determination by the Director of EPA's Office of Atmospheric Programs to deny a grant of HCFC-141b exemption allowances due to one or more of the following reasons:

(A) The needs can be met by the use of a substance other than HCFC-141b;

(B) The needs can be met by the use of existing supplies of HCFC-141b;

(C) There is evidence of fraud or misrepresentation;

(D) Approval of the HCFC-141b exemption allowances would be inconsistent with U.S. obligations under the provisions of the Montreal Protocol (including Decisions agreed by the Parties);

(E) Approval of the HCFC-141b exemption allowances would be inconsistent with the Clean Air Act;

(F) There is an inadequate demonstration of efforts undertaken to research and implement alternatives; or

(G) Granting the HCFC-141b exemption allowances may reasonably be expected to endanger human health or the environment.

(3) Within ten working days after receipt of a notice outlining a determination by the Director of EPA's Office of Atmospheric Programs to deny a grant of HCFC-141b exemption allowances due to one or more of the reasons in paragraph (h)(2)(iii) of this section, the petitioner may file with the Director of EPA's Office of Atmospheric Programs a one-time appeal with elaborated information. The Director of EPA's Of-

fice of Atmospheric Programs may affirm the determination to deny a grant of HCFC-141b exemption allowances or make a determination to grant HCFC-141b exemption allowance, in light of the available evidence submitted with the appeal. If no appeal is submitted by the tenth day after receipt of the notice outlining a determination by the Director of EPA's Office of Atmospheric Programs to deny a grant of HCFC-141b exemption allowances, the denial will be final on that day.

(4) Any entity that has previously petitioned for HCFC-141b exemption allowances under paragraph (h)(1) of this section may file a petition for renewal for a subsequent control period by October 31st of the year preceding that control period. The petition for renewal must contain the following information:

(i) Name and address of the HCFC-141b formulator, U.S. government entity or non-governmental space vehicle entity;

(ii) Name of contact person, phone number, fax number and e-mail address;

(iii) Quantity (in kilograms) of HCFC-141b needed for the control period;

(iv) Description of markets and applications being served by the use of HCFC-141b;

(v) A technical description of the process in which HCFC-141b is still being used;

(vi) A technical description of the specific conditions under which the product is still being applied;

(vii) Technical description of why alternatives and substitutes are still not sufficient to eliminate the use of HCFC-141b;

(viii) Amount of stockpiled HCFC-141b (on-hand, taken title to, or available from a supplier) along with a detailed analysis showing why stockpiled, recovered or recycled quantities are deemed to be technically or economically infeasible for use; and

(ix) A detailed description of continuing investigations into and progress on possible alternatives and substitutes and how this activity differs from information given in the previous request.

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(5) A person granted HCFC-141b exemption allowances by the Director of EPA's Office of Atmospheric Programs under paragraph (h)(2)(i) or (h)(3) of this section may request a quantity of HCFC-141b be produced or imported in the specified control period listed in the notice by conferring the rights to produce or import to a producer or importer.

(6) The HCFC-141b exemption allowances held by one entity do not automatically transfer to an acquiring entity. Any entity acquiring another company holding HCFC-141b exemption allowances must submit a renewal application in accordance with paragraph (h)(4) of this section at the time of the acquisition in order to qualify for the HCFC-141b exemption allowances.

(7) A formulator for, or an agency, department, or instrumentality of the U.S., or a non-governmental space vehicle entity that has previously petitioned for and been granted HCFC-141b exemption allowances under paragraphs (h)(1) through (4) of this section is granted, on January 1 of each control period beginning January 1, 2007, HCFC-141b exemption allowances equivalent to 10% more than the highest amount previously granted under paragraphs (h)(1) through (4) of this section to that petitioner for space vehicle uses or defense applications.

(8) A formulator for, or an agency, department, or instrumentality of the U.S.; or a non-governmental space ve-

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hicle entity that has previously petitioned for and been granted HCFC-141b exemption allowances under paragraphs (h)(1) through (4) of this section but now seeks to obtain allowances in addition to those granted under paragraph (h)(7) of this section must submit a new petition in accordance with paragraph (h)(1) of this section.

[68 FR 2848, Jan. 21, 2003, as amended at 71 FR 41171, July 20, 2006; 74 FR 66446, Dec. 15, 2009; 76 FR 47467, Aug. 5, 2011; 78 FR 20027, Apr. 3, 2013]

**§ 82.17 Apportionment of baseline production allowances for class II controlled substances.**

The following persons are apportioned baseline production allowances for HCFC-22, HCFC-141b, HCFC-142b, HCFC-123, HCFC-124, HCFC-225ca, and HCFC-225cb, as set forth in the following table:

| Person                  | Controlled substance | Allowances (kg) |
|-------------------------|----------------------|-----------------|
| AGC Chemicals Americas. | HCFC-225ca .....     | 266,608         |
|                         | HCFC-225cb .....     | 373,952         |
| Arkema .....            | HCFC-22 .....        | 46,692,336      |
|                         | HCFC-141b .....      | 24,647,925      |
|                         | HCFC-142b .....      | 484,369         |
| DuPont .....            | HCFC-22 .....        | 42,638,049      |
|                         | HCFC-124 .....       | 2,269,210       |
| Honeywell .....         | HCFC-22 .....        | 37,378,252      |
|                         | HCFC-141b .....      | 28,705,200      |
|                         | HCFC-142b .....      | 2,417,534       |
| MDA Manufacturing ...   | HCFC-124 .....       | 1,759,681       |
|                         | HCFC-22 .....        | 2,383,835       |
| Solvay Solexis .....    | HCFC-142b .....      | 6,541,764       |

[76 FR 47467, Aug. 5, 2011]

**§ 82.18 Availability of production in addition to baseline production allowances for class II controlled substances.**

(a) *Article 5 allowances.* (1) Effective January 1, 2003, a person apportioned baseline production allowances for HCFC-141b, HCFC-22, or HCFC-142b under § 82.17 is also apportioned Article 5 allowances, equal to 15 percent of their baseline production allowances, for the specified HCFC for each control period up until December 31, 2009, to be used for the production of the specified HCFC for export only to foreign states

listed in Annex 4 of Appendix C to this subpart.

(2) Effective January 1, 2010, a person apportioned baseline production allowances under § 82.17 for HCFC-141b, HCFC-22, or HCFC-142b is also apportioned Article 5 allowances, equal to 10 percent of their baseline production allowances, for the specified HCFC for each control period up until December 31, 2019, to be used for the production of the specified HCFC for export only to foreign states listed in Annex 4 of Appendix C to this subpart.