

[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 Appendix E 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 Appendix E to this subpart.

(3) Effective January 1, 2015, a person apportioned baseline production allowances under § 82.17 for HCFC-123, HCFC-124, HCFC-225ca, and HCFC-225cb 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 Appendix E to this subpart.

(b) *Export Production Allowances.* (1) Effective January 1, 2003, a person apportioned baseline production allowances for HCFC-141b under § 82.17 is also apportioned export production allowances, equal to 100 percent of their baseline production allowances, for HCFC-141b for each control period up until December 31, 2009, to be used for the production of HCFC-141b for export only, in accordance with this section.

(2) [Reserved]

(c) *International trades of production allowances, export production allowances and Article 5 allowances.* (1) A person may increase or decrease their produc-

tion allowances, export production allowances, or Article 5 allowances, for a specified control period through trades with a foreign state that is Party to the Beijing Amendment or is complying with the Beijing Amendment as defined in this subpart. The foreign state must agree either to trade to the person for the current control period some quantity of production that the foreign state is permitted under the Montreal Protocol or to receive from the person for the current control period some quantity of production that the person is permitted under this subpart. The person must expend their consumption allowances allocated under § 82.19, or obtained under § 82.20 in order to produce with the additional production allowances.

(2) *Trade from a Party—Information requirements.* (i) A person requesting a trade from a Party must submit to the Administrator a signed document from the principal diplomatic representative in that nation's embassy in the U.S. stating that the appropriate authority within that nation will establish or revise production limits for the nation to equal the lowest of the following three production quantities:

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

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

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

(ii) A person requesting a trade from a Party 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 production being traded;

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

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

(G) 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.

(3) *Trade to a Party—Information requirements.* A person requesting a trade to a Party must submit a request that sets forth the following information to the Administrator:

(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 and quantity (in kilograms) of allowable production being traded; and

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

(4) *Review of international trade request to a Party.* After receiving a trade request that meets the requirements of paragraph (c)(3) of this section, the Administrator may, at his/her discretion, consider the following factors by seeking concurrence from the Department of Commerce, the United States Trade Representative, and the Department of State, where appropriate, in deciding whether to approve such a trade:

(i) Possible creation of domestic economic hardship;

(ii) Possible effects on trade;

(iii) Potential environmental implications; and

(iv) The total quantity of unexpended production allowances held by U.S. entities.

(5) *Notice of trade.* If the request meets the requirement of paragraph (c)(2) of this section for trades from Parties and paragraphs (c)(3) and (4) of this section for trades to Parties, the Administrator will issue the person a notice. The notice will either grant or deduct production allowances or export production allowances or Article 5 allowances and specify the control period to which the trade applies. The Administrator may disapprove the trade request contingent on the consideration

of factors listed in paragraph (c)(4) of this section for trades to Parties.

(i) For trades from a Party, the Administrator will issue a notice revising the allowances held by the recipient of the trade to equal the unexpended production allowances, unexpended export production allowances, or unexpended Article 5 allowances held by the recipient of the trade under this subpart plus the quantity of allowable production traded from the Party.

(ii) For trades to a Party, the Administrator will issue a notice revising the production limit for the trader to equal the lesser of:

(A) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the trade or minus the quantity traded; or

(B) The unexpended production allowances held by the trader minus the amount by which the U.S. average annual production of the class II controlled substance being traded for the three years prior to the trade is less than the total allowable production of that class II controlled substance under this subpart minus the amount traded; or

(C) The total U.S. allowable production of the class II controlled substance being traded minus the three-year average of the actual annual U.S. production of the class II controlled substance prior to the control period of the trade.

(6) Revised notices of production limits for subsequent traders. If after one person obtains approval of a trade of allowable production of a class II controlled substance to a Party and other persons obtain approval for trades of the same class II controlled substance during the same control period, the Administrator will issue revised notices. The notices will revise the production limits for each of the other persons trading to equal the lesser of:

(i) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the trader under this subpart minus the quantity traded; or

(ii) The result of the following set of calculations:

(A) The total U.S. allowable production of the class II controlled substance

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minus the three-year average of the actual annual U.S. production of the class II controlled substance prior to the control period of the trade;

(B) The quantity traded divided by the total quantity traded by all the other persons trading the same class II controlled substance in the same control period;

(C) The result of paragraph (c)(6)(ii)(A) of this section multiplied by the result of paragraph (c)(6)(ii)(B) of this section;

(D) The quantity derived in paragraph (c)(6)(i) of this section, minus the result of paragraph (c)(6)(ii)(C) of this section;

(7) Production limit for previous traders. The Administrator will also issue a notice revising the production limit for each trader who previously obtained approval of a trade of the class II controlled substance to a Party in the same control period to equal the result of the following set of calculations:

(i) The total U.S. allowable production of the class II controlled substance minus the three-year average of the actual annual U.S. production of the class II controlled substance prior to the control period of the trade;

(ii) The quantity traded by the person divided by the quantity traded by all the persons who have traded that class II controlled substance in that control period;

(iii) The result of paragraph (c)(7)(i) of this section multiplied by the result of paragraph (c)(7)(ii) of this section.

(iv) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the person plus the result of paragraph (c)(7)(iii) of this section;

(8) Effective date of revised production limits. The change in production allowances, export production allowances or Article 5 allowances will be effective on the date that the notice is issued.

[68 FR 2848, Jan. 21, 2003, as amended at 74 FR 66446, Dec. 15, 2009; 79 FR 16687, Mar. 26, 2014]

§ 82.19 Apportionment of baseline consumption allowances for class II controlled substances.

The following persons are apportioned baseline consumption 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)
ABCO Refrigeration Supply	HCFC–22	279,366
	HCFC–225ca	285,328
	HCFC–225cb	286,832
Altair Partners	HCFC–22	302,011
	HCFC–22	48,637,642
Arkema	HCFC–141b	25,405,570
	HCFC–142b	483,827
	HCFC–124	3,719
	HCFC–22	54,088
Carrier	HCFC–141b	20,315
Continental Industrial Group	HCFC–141b	16,097,869
Coolgas, Inc	HCFC–22	1,040,458
Coolgas Investment Property	HCFC–123	19,980
	HCFC–124	3,742
	HCFC–141b	994
Discount Refrigerants	HCFC–22	38,814,862
DuPont	HCFC–141b	9,049
	HCFC–142b	52,797
	HCFC–123	1,877,042
	HCFC–124	743,312
H.G. Refrigeration Supply	HCFC–22	40,068
	HCFC–22	35,392,492
Honeywell	HCFC–141b	20,749,489
	HCFC–142b	1,315,819
	HCFC–124	1,284,265
ICC Chemical Corp	HCFC–141b	81,225
ICOR	HCFC–124	81,220
Mexichem Fluor Inc	HCFC–22	2,546,305
Kivlan & Company	HCFC–22	2,081,018
MDA Manufacturing	HCFC–22	2,541,545
Mondy Global	HCFC–22	281,824