

section and subject to any acceleration as authorized by Section 606.

Section 606 allows for acceleration of the phaseout of ODSs based on a decision by EPA or to conform to any acceleration under the Protocol.

Section 607 of the Act requires EPA to permit the transfer of any class II allowances on an ODP-weighted basis with an offset. The transfer plus the offset must result in greater total reduction in production in that year than would otherwise occur, to provide an environmental benefit.

Section 616 allows the U.S. to transfer allowances to another Party under certain conditions. Although the language in paragraph 5 bis of Article 2 of the Protocol restricts the U.S. from trading away HCFC consumption allowances to another Party because of the U.S. per capita consumption of CFCs in 1989, it is possible for the U.S. to trade production allowances.

### III. Discussion of Comments on the July 20, 2001, Notice of Proposed Rulemaking (NPRM)

EPA published an NPRM on July 20, 2001, proposing an allowance allocation system and a petition process for HCFC-141b (66 FR 38064). Thirty-three comments were filed in Docket A-98-33 and fourteen of the forty attendees spoke at the public hearing held on August 27, 2001, in Washington, DC. The comments that arrived after the close of the comment periods were filed in the docket. Five producers and three importers were among the commenters; at times the producers who are also importers commented as members of the second group. Sixteen of the commenters were either distributors or users of HCFCs and four commenters were trade associations representing producers, importers, users, or a combination of the three. Four of the companies had more than one representative send in comments.

For a more detailed discussion of the options for an allowance allocation system that led to the proposal, refer to the ANPRM (Advance Notice of Proposed Rulemaking) published April 5, 1999 (64 FR 16373).

#### *A. Will Production and Consumption Allowances Be Available?*

EPA created a unit of measure called an allowance to control production and consumption of class I substances and made it equal to one kilogram of the ODS. An allowance represented the marketable rights and privileges granted to a company to produce or import a specific quantity of the specific substance. There were two types of

allowances: production allowances and consumption allowances.

In the allowance system for class I ODSs, a company was required to expend both production and consumption allowances to be able to produce. A company was required to expend consumption allowances to be able to import. Consumption allowances were refunded or returned to the exporting company for future use in the same calendar year after EPA received proper documentation reflecting an export.

EPA proposed to use both production and consumption allowances in the HCFC allowance system. EPA proposed requiring a company to expend both consumption and production allowances to be able to produce HCFCs. To be able to import, EPA proposed requiring a company to expend consumption allowances. EPA proposed that after submitting the proper documentation verifying an export, the company would be refunded consumption allowances. Besides seeking comment on the inclusion of production and consumption allowances in an HCFC allowance system, EPA also requested comment on the potential value of an allowance. The proposal asked for comment on the potential value of an allowance and whether it would take into account the differing ozone depletion potentials of each HCFC and each HCFC's impending phaseout date.

Only two commenters chose to mention production and/or consumption allowances. One commenter generally supported having production and consumption allowances in the HCFC allowance system. The other commenter was only concerned about production allowances for HCFC-141b.

With today's action, EPA is including consumption and production allowances in the HCFC allowance system for several reasons. The consumption cap that is already in place and the production cap that will be effective in 2004 necessitate the allocation of both types of allowances. Because many companies receiving allowances are familiar with the class I system of allowances, EPA believes their experience with the class I system will simplify the management of the class II allowance system. EPA is also requiring a company to expend both consumption and production allowances to be able to produce. To be able to import, EPA is requiring a company to expend consumption allowances. EPA is requiring a company to submit the proper documentation to EPA to verify an export for the refund

of the consumption allowances associated with the quantity of HCFC exported.

#### *B. Will Allowances Be Tracked Chemical-by-Chemical?*

As in the class I allowance system, EPA is assigning each allowance a value of one kilogram of a class II controlled substance. To produce or import, companies will expend allowances by kilograms.

EPA proposed instituting a chemical-by-chemical absolute kilogram system for allocating and transferring allowances rather than an ODP-weighted approach. Of the ten commenters who commented on this issue, five were in favor of the ODP-weighted approach and five in favor of the chemical-by-chemical approach. One of the commenters favoring the chemical-by-chemical approach believed that it was the simplest for accounting purposes and would provide EPA with the least amount of recordkeeping. This commenter also believed that it provided less chance of error from a company using the wrong formula to convert ODP weighting between chemicals. Flexibility in trading allowances was an important concern for all the commenters. Three of the commenters supporting the ODP-weighted system felt the chemical-by-chemical system would be acceptable as long as maximum flexibility in trading was retained.

Since the U.S. is implementing the phaseout on a chemical-by-chemical basis as discussed in the proposal, EPA will need to monitor production and consumption of each chemical. As one commenter pointed out, a "chemical-by-chemical allowance system will promote chemical-by-chemical recordkeeping and reporting." A more detailed discussion of the need for a chemical-by-chemical approach is contained in the proposal.

EPA is establishing the chemical-by-chemical absolute kilogram system to allocate and transfer allowances in the HCFC allowance system. The production of one kilogram of HCFC would require the expenditure of one production allowance and one consumption allowance. The import of one kilogram of HCFC would require the expenditure of one consumption allowance.

Part of the flexibility included in the HCFC allowance system in response to the commenters' concern about ease of transferring allowances is EPA's decision not to group HCFCs (Section III.G.1). Class I substances were grouped and transfers were only permitted among class I substances in the same