

group. With today's action, allowance holders may trade allowances among HCFCs. The offset EPA has selected to impose on transfers should not be a burden or hinder the flexibility of the system (Section III.G.8).

#### *C. Will Allowances Be Distributed on a One-Time Basis?*

EPA proposed allocating HCFC allowances on a one-time basis. This would mean the allocations would remain the same from control period to control period (one calendar year to the next) until each chemical is phased out or until the percentage of baseline allowances is reduced to ensure compliance with the Protocol cap. Only through permanent transfers of allowances would a company's baseline allocation be changed.

Of the eight commenters on this issue, seven were in favor of a one-time allocation. One commenter believed that a one-time distribution of allowances is the simplest allocation method from both the EPA's and the company's perspective. Many of those that favored a one-time allocation expressed a concern that the long-term use of one-time allocations would not adequately reflect future market needs.

One commenter proposed that EPA allocate on a year-by-year or period-by-period basis, with each period covering 2–3 years. EPA believes that both of these methods would create much uncertainty in the industry and require constant readjustment of baselines by EPA and industry. EPA believes that a year-by-year allocation would hamper allowance holders' long-term planning for production or import. EPA also believes that allocating every two or three years would only be a minor improvement over the year-by-year method and create administrative burden for both the Agency and industry. Therefore, EPA is not adopting either of these methods.

One producer noted the critical need for reallocation prior to 2010 for on-going service needs for equipment manufactured prior to December 31, 2009. This commenter favored a one-time allocation of the full 10 percent permitted at least one year prior to the 2010 phaseout date. EPA recognizes the need to determine the allocation level for the 2010 reduction step in HCFC-22 and HCFC-142b allowances and will monitor the market to determine the quantity needed for servicing equipment manufactured before December 31, 2009. EPA intends to achieve this reduction step through notice and comment prior to 2010 and will likely implement the reduction by simply listing a percent of baseline allowances

to be granted in Section 82.16 for years after 2009.

EPA proposed distributing baseline allowances for all HCFCs but believes that the continuously developing HCFC market would be hampered by such a distribution. Many commenters favored changing the baseline allocations at some future date to reflect shifts in the market. EPA is therefore distributing baseline HCFC allowances only for HCFC-141b, HCFC-22 and HCFC-142b on a one-time basis. The reductions and phaseout of these three HCFCs are earlier than for the other HCFCs because they are more damaging to the ozone layer. EPA believes that the HCFC market may continue to evolve and that some sectors may switch from the higher ozone-depleting HCFCs, such as HCFC-141b, HCFC-22, and HCFC-142b to the lower ozone-depleting HCFCs, such as HCFC-123, HCFC-124, and HCFC-225ca and HCFC-225cb. EPA believes that the current market proportions of these lower-ODP HCFCs do not reflect the needs of a rapidly expanding market and that distributing allowances for these HCFCs at this time would unnecessarily restrict their supply and impede transitions to less ozone-depleting substances. EPA intends to continue to monitor the market trends as more users transition to less ozone-depleting HCFCs and as more non-ozone-depleting alternatives become available.

#### *D. Will 100 Percent of the U.S. Cap Be Allocated?*

EPA proposed allocating 100 percent of historical HCFC activity in the U.S. after determining that the aggregate of each individual company's highest consumption and production would be below the caps.

Thirteen commenters agreed that EPA should allocate at least 99 or 100 percent of the consumption and production caps to maximize the available material to meet the needs of the marketplace. Producers, importers, and users were unanimous in this respect. They believed that allocating less could result in artificial shortages or increase the price of HCFCs. Three of the commenters had no objection to allocating allowances to new entrants or narrow post-phaseout uses of HCFC-141b but felt that the remaining allowances under the cap should be reallocated. They argued that not allocating those allowances would leave a shortfall in the marketplace and place unnecessary pressure on users.

One importer believed that EPA should determine a fair allocation to eligible late entrants and then determine if this method provided an equitable

allocation before allocating 100 percent of baseline consumption. This commenter believed that small and disadvantaged businesses did not have the economic resources of the larger multinational companies, especially the producers. According to the commenter, such small businesses would have the ability to continue their business and meet their business plan if they receive an equitable allocation.

#### *1. Consumption Allowances*

EPA proposed allocating 100 percent of each company's historical consumption as the baselines for all class II controlled substances and reserving the remaining amount above these aggregate baselines and below the cap for eligible late entrants into the HCFC market and as credits for reductions of substitutes regulated under Title VI that are created as by-product(s) in the manufacture of HCFCs (Section III.M). EPA proposed that new entrants would be small businesses that began importing after the end of 1997 and before April 5, 1999, the date of publication of the ANPRM. EPA believes that such small businesses might not have been aware of the impending rulemaking that would affect their ability to continue in the HCFC market.

Although all commenters indicated a preference for allocating 100 percent of the allowances under the consumption cap, some were willing to grant allowances to late entrants and narrow post-phaseout uses of HCFC-141b. A commenter from the user community of HCFCs had no objection to allocating to new entrants but felt that the remaining allowances after that allocation is completed should be distributed to avoid unnecessary pressure on users. Another commenter from the same community suggested a formula for distributing remaining allowances under the cap after the need for narrow post-phaseout uses of HCFC-141b was satisfied. That same commenter also felt that the amount for narrow post-phaseout uses of HCFC-141b should not exceed 2 to 5 percent. None commented on credits for reductions of substitutes regulated under Title VI that are created as by-product(s) in producing HCFCs. There were also no commenters on the possibility of auctioning off the remaining allowances. Most commenters were in favor of re-allocating the remaining allowances to listed allowance-holders.

With today's action, EPA is allocating up to 100 percent of the U.S. consumption cap by allocating consumption allowances to listed individual companies only for HCFC-