

141b, HCFC-22, and HCFC-142b. Included in today's allocation are allowances for a new entrant to the HCFC market in accordance with the proposal. EPA is allocating the full amount of the U.S. consumption cap by distributing allowances on a pro-rata basis to the listed allowance-holders above their highest historical consumption and after the needs of new entrants have been addressed. EPA will not reserve any allowances as credits for reductions of substitutes regulated under Title VI that are created as by-product(s) in producing HCFCs.

EPA will continue to monitor HCFC market trends and consider whether to adjust the allowance allocations through notice and comment rulemaking to ensure the U.S. meets its obligations under the Protocol.

2. Production Allowances

Using the formula agreed to by the Parties in 1999 for calculating the production cap, U.S. production would be frozen at 15,537 metric tonnes through the various phaseout years beginning with 2004. The United States' formal obligation to comply with the cap would begin following Senate ratification of this change to the Protocol and the deposit of the U.S. instrument of ratification with the United Nations. Today's rule avoids any actions that would be inconsistent with this obligation. If the Parties change the current provisions associated with the production cap, EPA will amend its regulations to reflect any changes in U.S. obligations under the Protocol.

Since the aggregate of each company's historical production is below the production cap, EPA proposed allocating 100 percent of each company's historical production level as the baseline for production allowances. One producer who noted that the aggregate of production baselines was well below the production cap proposed using the difference between the aggregate and the cap solely for HCFC-141b because the commenter felt the HCFC-141b sector is clearly underserved versus current market demand. Since EPA anticipates the need to allocate allowances for narrow post-phaseout uses of HCFC-141b, EPA is establishing a petition process for HCFC-141b exemption allowances, as discussed below in Section E. The quantity of HCFC-141b exemption allowances that will be allocated for narrow post-phaseout uses will be determined after review of the petitions.

Nine commenters were concerned about what would happen if a producer chose not to use all of its allowances or decided to permanently discontinue

production of an HCFC. Three were in favor of retiring unused allowances. Some of these commenters believed a company that restricted production in order to create a larger market share for an alternative would receive a financial windfall. By discontinuing production, a company could create a larger market share for a higher-priced alternative it preferred to promote. They also felt that granting allowances to a company that had ceased production meant rewarding the company with marketable assets it did not deserve. These commenters were concerned that allowing a company to hold back its allowances could create HCFC shortages and price increases. Six were in favor of reallocating the unused allowances to the remaining allowance holders of that specific HCFC to prevent market shortages or price increases. One commenter also suggested that any unused HCFC-141b production allowances should be reallocated on a pro-rata basis among HCFC-141b allowance-holders rather than among all HCFC allowance-holders.

Since baselines were determined on the basis of the highest historical production for each company in the years 1994 through 1997, EPA believes that allocating to all the companies active in those years will provide a potential supply of HCFCs that exceeds the historical demand but that most accurately reflects the true HCFC market in the United States during that period. Although the Agency proposed allocating each company its highest production during the particular years, resulting in an aggregate U.S. production less than the U.S. cap, with today's action EPA is allocating each company an additional pro-rata amount above their highest historical production which brings the U.S. aggregate allocation up to and equal to the cap. Because allocating allowances up to the cap should ensure a more than adequate supply of HCFCs, EPA is not including provisions in today's action that would require reallocation of production allowances that have not been used. Finally, today's action makes allowances easily tradable with minimal regulatory interference and oversight, thereby encouraging companies to make business decision as they would in an unregulated industry.

Because production will be frozen at a constant level throughout the various phaseout years, EPA is granting export production allowances so that U.S. producers can manufacture and export the phased-out HCFCs following the respective production phaseouts. Beginning January 1, 2004, export production allowances can only be used

to produce for export either to: (1) Parties listed in Appendix L who are also listed in Appendix C as having ratified the Beijing Amendments or (2) Parties not listed in Appendix L that are listed in Appendix C as having ratified the Copenhagen Amendments. Prior to January 1, 2004, there is no HCFC trade restriction under the Montreal Protocol. A more detailed discussion concerning the allocation and expending of export production allowances can be found in Section III.H. below.

E. Will There Be HCFC-141b Exemption Allowances for Continuing Needs?

1. Who May Submit a Petition for HCFC-141b Exemption Allowances Beyond January 1, 2003

On July 20, 2001, EPA proposed to provide space vehicle/defense allowances for HCFC-141b to a U.S. agency, department or instrumentality, or related entities involved in space vehicle endeavors. EPA proposed allocating these exemption allowances for extremely narrow needs after a demonstration by petition to EPA that no viable alternative exists for HCFC-141b and that space vehicle or national security viability is at issue if HCFC-141b cannot be used for the specified purpose (66 FR 38064). EPA also proposed to provide allowances to U.S. military departments for extremely narrow needs after a demonstration by petition to EPA that no viable alternative exists for HCFC-141b in narrow defense uses such as cleaning of oxygen equipment and aircraft parts. Based on information provided to the Agency prior to the proposal, through comments on the ANPRM published in the **Federal Register** on April 5, 1999 (64 FR 16373), EPA believed that the National Aeronautics and Space Administration (NASA), the U.S. Air Force, and the U.S. Navy were the only entities with continuing needs for HCFC-141b beyond January 1, 2003.

Because no other sectors submitted comments to the ANPRM identifying technical constraints of transitioning from HCFC-141b to alternatives, the Agency believed that technically feasible alternatives would be available for other uses and did not propose post-phaseout allowances for any other uses of HCFC-141b. However, through comments on the NPRM on July 20, 2001 (66 FR 38064) and as part of a separate action under the Agency's Significant New Alternatives Policy (SNAP) program (65 FR 42653), EPA received information to suggest that certain polyurethane foam applications, such as spray foam used for roof and wall insulation, have technical