

disadvantage many. EPA believes that by not selecting a year after 1997 it will avoid creating an uneven playing field that skews allocations to those companies with ample resources and good access to information. As a result, EPA proposed allocating allowances to every company based on their individual highest ODP-weighted consumption among the years 1989, and 1994 through 1997. More information on why EPA selected these particular years is contained in the proposal (66 FR 38071). EPA believes that selecting the year of highest activity for individual companies over a range of years creates less of a disadvantage to the industry and the HCFC market as a whole than selecting a single year.

Many of the sixteen commenters were either concerned about adequate future supplies for their industries or maximum market share for HCFCs with later phaseout dates. Two commenters generally supported the years selected by EPA but felt these years might not adequately serve future demand. The remainder objected to the inclusion of 1989, believed that only 1997 would be the most representative of the market, or felt that none of those years were representative and only the "most recent" year would serve. Two commenters agreed with EPA that selecting any year from 1998 on would create a windfall for those who increased their activity after a series of stakeholder meeting discussing the impending allowance allocation system. Three commenters requested that EPA ensure the accuracy of the allocation figures before finalizing the proposed rule. Two producers proposed allowing companies to select another year besides their highest consumption year. They stated that it would allow the company a better mix of HCFCs for their market and perhaps benefit the environment or the rest of the market if the difference in allowances were reallocated.

EPA agrees with commenters that the future evolution of the HCFC market requires an allocation different than proposed and for that reason is only apportioning allowances at this time for the most ozone-depleting HCFCs (HCFC-141b, HCFC-22 and HCFC-142b). In addition, EPA is committed to monitoring future HCFC market demand and may consider future changes to allowance allocations through future notice and comment rulemaking.

EPA tried to ensure the accuracy of the consumption figures, especially those for small businesses, by verifying database records against the paper records submitted by the pertinent company. In many cases this involved painstakingly correlating revisions to

reporting forms sent in a year later than the original report.

EPA understands the concern of those who believed that a fixed allocation will not fully address future market demands. EPA believes that incorporating a high degree of flexibility in the transfers of allowances, especially its decision not to group HCFCs and restrict transfers to those within the same group, will assist in responding to market decisions and trends. The ability to import used HCFCs and to use stockpiled material after the phaseout dates are other factors that will likely avoid significant disruption of use. Finally, today's action apportions each company a quantity of allowances that exceeds its historical activity because of the pro-rating up to the U.S. cap, thereby further addressing concerns about a shortage in supply. As discussed above, EPA intends to continue to monitor the market trends as more users transition to less ozone-depleting HCFCs and more non-ozone-depleting alternatives become available.

With today's action, EPA is assigning individual consumption baseline years to each company by selecting its highest ODP-weighted consumption year from among the years 1994, 1995, 1996, and 1997. EPA is also assigning individual production baseline years to each company by selecting its highest ODP-weighted production year from among the years 1994, 1995, 1996, and 1997. EPA's decision to remove 1989 from the range of years for the selection of consumption and production baselines was based on reassessments after numerous commenters indicated the marked difference between the HCFC market in 1989 versus the more recent evolving HCFC market. The mix of HCFCs being produced in 1989 would markedly constrain the market and its participants compared to the more recent mix of HCFCs needed to support current uses. Allowance holders to which EPA proposed to grant allowances for their 1989 activity as their best consumption year will receive their best consumption year from among 1994, 1995, 1996, and 1997. By not establishing baselines in this action for the HCFCs with relatively low ozone depleting potential, EPA is preserving more flexibility for companies whose mix of HCFCs is currently in flux. In addition, companies that wish to obtain allowances for different HCFCs may take advantage of the transfer provisions. EPA proposed an exception to its policy to not use 1998 or later years as part of a company's baseline in an effort to assist small businesses in the HCFC market who might not have been familiar with EPA's plans to develop an

allowance system for HCFCs. EPA proposed granting available HCFC consumption allowances to late entrants into the import market that met certain conditions: (1) The HCFC market is their primary source of business income; (2) they began importing HCFCs after the end of 1997 but before the publication of the ANPRM on April 5, 1999, and (3) they accurately reported all relevant required quarterly import information to EPA prior to the publication date of the NPRM, July 20, 2001.

EPA received eight comments on granting available HCFC allowances to late entrants. Two producers and one importer opposed the proposal. They believed that companies that failed to take the trouble to know and comply with the rules to report HCFCs should not be rewarded with allowances and that the proposal was an attempt to artificially create a basis for allocation. The third criterion listed above is intended to ensure that companies are not rewarded for a failure to file required reports. In addition, EPA believes that compliance with reporting requirements does not automatically deliver information about additional regulations under consideration. EPA also believes that small businesses may have been disadvantaged regarding the changeable nature of regulations and the need for monitoring the **Federal Register** for notices of proposed regulations.

One commenter stated that opening up 1998 as a baseline year for new entrants justified including that year for all companies receiving baseline allowances. EPA does not equate late entrants with companies that were notified about and/or attended the stakeholder meetings. The companies that were notified of or attended stakeholder meetings in early 1998 were given information about how EPA would establish HCFC baselines. Immediately following these meetings, several companies significantly increased their production/imports. Because late entrants were not actively participating in the HCFC market in the early and mid-1990s they were therefore presumably unaware of the baseline-setting procedures being considered by EPA. As a result of their late entrance into the HCFC market there are fewer years from which EPA can make a baseline determination than for companies with an established history in the HCFC market.

The remaining five commenters, made up of users of HCFCs and trade associations, were mainly concerned that after late entrants received their allocations, any allowances left be reallocated to the rest of the field to