

avoid a shortfall in the supply of HCFCs. With today's action, EPA is in fact pro-rating historical levels and allocating additional allowances up to the U.S. cap after the late entrants receive their allocations to address concerns about a shortfall in supply.

One commenter requested a definition of "primary source" regarding the source of income from HCFCs for late entrants. EPA believes that if a company is obtaining 80 percent or more of its business income from the HCFC market, then the HCFC market is that business' "primary source" of income. EPA is granting available allowances to late entrants subject to the conditions discussed above. One late entrant submitted the required documentation demonstrating that: (1) They began importation of HCFCs in March 1999 after formation in February 1999; (2) they accurately reported all relevant required quarterly import information to EPA prior to the publication date of the NPRM, July 20, 2001; and (3) their refrigerant imports represented 96 percent of their gross refrigerant volume. In addition to meeting the criteria stated above, this company also demonstrated that they are a woman-owned, small and disadvantaged business enterprise; and although aware of regulatory requirements regarding the importing of refrigerant, they were unaware of the impending ANPRM, April 5, 1999. The allowances allocated to this late entrant are included in the list of consumption allowance holders in this document.

The list of consumption allowance-holders in this document includes an importer that did not appear in the NPRM. This importer was in the market during the years 1994, 1995, 1996, and 1997 but EPA requested additional information in order to verify the import records prior to publication of the NPRM. EPA did not receive this company's documentation in time to verify the data and assign them a baseline in the NPRM. Subsequent to publication of the NPRM the requisite information was submitted and verified by EPA. Based on this information, EPA is establishing baseline allowances for this company with today's action.

#### *G. Will I Be Able to Transfer Allowances?*

EPA proposed processing all transfers of allowances within three working days from when EPA receives an e-mail or fax or a written request for an inter-pollutant or inter-company transfer. EPA will send a reply showing the new balance of unexpended allowances. EPA's decision to propose such a fast processing time was intended to ensure

that transfers are easy and EPA's role is not disruptive to market transactions. EPA believes that it will have sufficient time to ensure that the company making the transfer has the requisite number of unexpended allowances. Two commenters supported this proposed procedure. One commenter felt this was a reasonable turnaround time, as long as EPA can tolerate the work load and that the three days should not put undue burden on requesting companies. EPA will process all transfers in the time period discussed above.

Of the nine addressing transfers, seven commenters advocated maximum flexibility in transferring allowances. This flexibility was considered imperative if tracking were done on the proposed chemical-by-chemical basis instead of the ODP-weighted option. The commenters also said that an offset ratio no higher than the proposed 0.1 percent would also contribute to flexibility in the system. Three commenters favored allowing transfers of Article 5 allowances to increase the flexibility of the transfer system. One of the three commenters felt this is an appropriate policy that will encourage Article 5 countries to transition within their economic means to less ozone-depleting chemicals without undue social burden and still achieve the goal of reducing ozone-depleting chemicals worldwide. EPA agrees with the commenters and is establishing procedures for transfers with maximum flexibility within the constraints of the allowance system.

#### *1. Transfers Within Groups of HCFCs*

EPA is permitted to establish groups of HCFCs under Section 607(b)(3) of the Act. Within such a framework, inter-pollutant transfers of allowances would be limited to chemicals within an assigned group. The Act does not require any such grouping for HCFCs and EPA did not propose to group. EPA believed that limiting transfers by grouping HCFCs would decrease the flexibility many commenters requested. Therefore, HCFCs will not be grouped and allowance holders will be able to transfer among all HCFCs as long as the resulting HCFC has not been phased out.

#### *2. Inter-Pollutant Transfers*

Section 607(b) of the Act permits inter-pollutant transfers of ODSs. An inter-pollutant transfer is the transfer of an allowance of one substance to an allowance of another substance on an ODP-weighted basis. In addition, Section 607 requires that any transfer result in a benefit to the environment.

The offset contained in today's action is intended to fulfill this mandate.

Inter-pollutant transfers are sometimes called intra-company transfers because a company might shift allowances internally from one ODS to another to react to shifts in demand. For example, a company might wish to transfer 10,000 kilograms of HCFC-142b allowances for HCFC-22 allowances, which would result in 11,818 kilograms of HCFC-22 because of the adjustment for the ODPs of the two chemicals. The calculation would proceed like this: the 10,000 kilograms of HCFC-142b allowances are multiplied by the ODP of HCFC-142b (0.065) and then divided by the ODP of HCFC-22 (0.055), yielding 11,818 kilograms of HCFC-22 allowances. The 0.1 percent offset is then subtracted from 11,818 kilograms.

EPA proposed allowing inter-pollutant transfers (or intra-company transfers) in conjunction with the chemical-by-chemical tracking system. One commenter felt this reasonable proposal will easily enable companies to take advantage of the capability for transfers without undue burden. Only one commenter preferred no inter-pollutant transfers because of the belief that allowing such transfers would reduce the sense of urgency in researching alternatives to HCFCs. Inter-pollutant transfers allow companies to respond to market forces and achieve economies of scale in production and import, but as the phaseouts and reductions in consumption proceed, the opportunities for inter-pollutant transfers will decrease over time. This tightening of the ability to transfer allowances parallels the tightening of the overall quantity of allowances, leading to greater incentives for research into and development of alternatives. In addition, companies that wish to continue to supply their customers will have incentives to research and develop alternatives over the long term while conducting inter-pollutant transfers during the short term.

Because the consumption and production allowances for a specific HCFC disappear after its phaseout date, inter-pollutant transfers of those allowances will no longer be possible after the phaseout date. For example, after HCFC-141b is phased out on January 1, 2003, a company cannot transfer ODP-weighted HCFC-141b production or consumption allowances for HCFC-22 allowances. No production or consumption allowances for HCFC-141b will exist after December 31, 2002.

EPA will process inter-pollutant transfers within three working days from when EPA receives a fax or a request for the transfer. EPA will send