

with the remaining production allowances. EPA received one comment on the proposed method of determining the trader's balance of production allowances, pointing out that the provided formula could result in a negative number. EPA tested the formula and is adjusting it accordingly to prevent any negative result. In today's rule EPA is finalizing the method of calculating the trader's balance as follows: the Administrator would issue a notice revising the trader's balance of production allowances to equal the lesser of: (a) The unexpended production allowances held by the trader minus the quantity of production allowances traded; or (b) the unexpended production allowances held by the trader minus the amount by which the U.S. average annual production of the HCFC being traded for the three years prior to the trade is less than the total allowable production of the controlled substance under this subpart minus the amount traded. For those more comfortable with formulas, the method can be expressed in this manner:

$$f = (a - d), \text{ if } c \leq b$$

or

$$f = a - [(c - b) - d], \text{ if } c > b$$

where a=the person's unexpended production allowances, b=the U.S. 3-year average production for that HCFC, c=the total allowable U.S. production for that HCFC, and d=the actual quantity being traded, and f=the person's revised production allowance level. This formula is based on the language of Section 616 of the CAA.

The single dissenting commenter encouraged prohibiting trades of production because of the economic hardship that such trades can produce for American workers, users of HCFCs and suppliers to plants that produce HCFCs. This commenter felt that trades of production away from the U.S. can reduce the total amount of allowable production, thereby distorting markets and the availability of a substance. The legal framework in which EPA proposed the system for international trades of HCFC production is governed by the Protocol and the CAA. The Parties to the Protocol met in 1999 and decided to allow for trades of production rights between Parties because they recognized the need for industrial rationalization. The Parties acknowledged that companies would likely want to consolidate HCFC production in different countries so that a company could achieve economies of scale. In addition, Section 616 of the CAA indicates that Congress contemplated trades of production rights between the

U.S. and other Parties to the Protocol. There have been international trades of class I production allowances since the establishment of the allowance system for class I ozone-depleting substances. EPA received many comments on the NPRM supporting flexible trade mechanisms because they reduce regulatory interference in the global HCFC market. In following the model established for class I ozone-depleting substance, the Agency will consider (1) possible creation of economic hardship; (2) possible effects on trade; (3) potential environmental implications, and (4) the total amount of unexpended production allowances held by United States entities, by asking for concurrence on international trades from the Department of Commerce, the United States Trade Representative, and the Department of State.

The commenter also considered approvals of international trades a significant administrative action and believed that publishing the proposed trade in the **Federal Register** would allow users and other affected persons an opportunity to comment on the economic impact of the proposed international trade. EPA did not adopt such procedures for international trades under the class I system and believes that they would cause excessive delays in acting on requests for international trades which is contrary to the desire of almost all commenters for a flexible, unburdensome system.

Beginning January 1, 2004, EPA will only allow international trades of production allowances to and from Parties that are either: (1) Listed in Appendix L and have ratified the Beijing Amendments as listed in Appendix C, or (2) not listed in Appendix L but are listed in Appendix C as having ratified the Copenhagen Amendments. EPA will revise the production limits for all traders trading production allowances in the same control period following the calculations discussed above.

6. Transfers of Current-Year Allowances

A transfer of current-year allowances means the allowances being traded can only be expended for production or import in that specific control year. Transfers of current-year allowances do not permanently change the quantity of baseline allowances assigned to a company. A transfer of current-year allowances is a temporary transfer and is reflected in a company's balance of allowances for the control period in which the transfer occurred. EPA proposed allowing transfers of current-year allowances and of the ten commenters on transfers, two explicitly

avored current-year transfers of allowances. One of the two favorable commenters stated that the transfer should be subject to the minimum possible offset. The rest of the commenters generally supported all kinds of transfers that might confer the maximum degree of flexibility in the transfer system.

EPA will allow trades of current year allowances so companies will have flexibility to respond to market forces and achieve economies of scale in production and import.

7. Permanent Transfers of Baseline Allowances

The permanent transfer of baseline allowances is a lasting shift of some quantity of a company's allowances to another company. The permanent nature of the transfer makes it different from the transfer of current-year allowances. In all relevant subsequent years, the transferor's quantity of baseline allowances would be permanently reduced, while the transferee's quantity of baseline allowances would be permanently increased. For example, if a person transfers baseline allowances of HCFC-22, their baseline would be decreased permanently by the transfer amount, and the recipient would gain HCFC-22 baseline allowances, minus the offset, on a permanent basis. Subsequent inter-pollutant transfers of these baseline allowances would also be permitted. However, at the time of a reduction step or a phaseout of the substance, the current holder of baseline allowances that were received in a permanent transfer would be the person who would have them deducted.

EPA proposed allowing such permanent transfers of allowances for HCFCs. Only two of the ten commenters on transfers singled out permanent transfers for favorable comment. One commenter felt that they should be subject to the minimum possible offset. The other commenter believed that as the industry evolves and the companies with it, allowing permanent transfers may enable better production techniques and/or streamlining of facilities. The rest of the commenters generally supported all kinds of transfers that might confer the maximum degree of flexibility in the transfer system. EPA will allow permanent transfers of baseline allowances with those allowances disappearing at the phaseout date for the specific HCFC, regardless of what inter-pollutant transfers had taken place.