

8. Offset for a Transfer of Allowances

Section 607(c) of the CAA requires that transfers result in a greater environmental benefit than would occur in the absence of such a transfer. This can be achieved by an offset for inter-pollutant and inter-company transfers. However, inter-pollutant transfers combined with inter-company transfers would only require one offset. Since international transfers are governed by Section 616 of the CAA and that section does not contain similar requirements for an environmental benefit, no offset was proposed for such transfers.

EPA proposed a 0.1 percent offset be applied to inter-pollutant and inter-company transfers to afford an environmental benefit associated with domestic transfers. Of the ten commenters on transfers, three commenters supported the proposed 0.1 percent offset while one commenter proposed a 0.05 percent offset. EPA believes that the 0.1 percent offset reflects the lower ODP of class II controlled substances compared to class I substances; allows for simplicity in calculation; and still provides an environmental benefit associated with domestic transfers. EPA believes that a lower offset, such as the 0.05 percent proposed by a commenter would reflect the lower ODP of class II controlled substances but provide such a small environmental benefit as to be valueless. The remaining commenters did not mention the offset. One of the supporters of the 0.1 percent offset suggested no offset at all for intra-company transfers, a one-time offset for inter-company transfers, and only a one-time offset over the lifetime of a permanent transfer. This suggestion could not meet the requirement of Section 607(a) of the CAA. That section requires EPA's regulations to ensure that "transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II controlled substances that would occur in that year in the absence of such transactions." Intra-company transfers are transactions "under the authority of" Section 607 of the Act. They are specifically provided for in Section 607(b). Thus, it is not possible to waive the offset requirement entirely for intra-company transfers. In addition, a one-time offset for other types of transfers would not ensure "greater total reductions" in subsequent years and thus would not meet the requirements of Sections 607(a) and (c).

EPA is requiring a 0.1 percent offset for inter-pollutant and inter-company transfers. Inter-pollutant transfers combined with inter-company transfers

would be treated as a single transaction and therefore require only a 0.1 percent offset. International transfers will require no offset.

H. Will Production for Export Be Allowed After Each Phaseout?

Because the U.S. is phasing out HCFCs chemical-by-chemical rather than by percentage, it is possible to produce an HCFC for export even after it is phased out domestically. To differentiate pre-phaseout allowances from post-phaseout allowances, a new type of allowance was necessary for the phased-out HCFCs and EPA proposed creation of an "export production allowance." The first HCFC scheduled for phaseout in the U.S. is HCFC-141b. EPA believes that foreign demand for HCFC-141b will continue in years beyond the U.S. 2003 phaseout.

1. Exports to Parties

Since production and consumption allowances for HCFC-141b will no longer exist as of January 1, 2003, but the potential for overseas markets for HCFC-141b will still exist, EPA proposed allowing production for export only to Parties that had ratified the Copenhagen Amendments. EPA proposed allocating "export production allowances" equal to 100 percent of baseline production allowances for HCFC-141b with the requirement that HCFC-141b produced in the U.S. under these allowances be exported to Parties listed in Appendix C as having ratified the Copenhagen Amendments.

Two commenters were concerned that EPA would cease allocating export production allowances for HCFC-141b as early as December 31, 2009, and requested that allowances be available until December 31, 2029. One commenter suggested that since exports from the European Union are allowed through 2025, the U.S. should follow suit and not unfairly prejudice U.S. business. In the NPRM, EPA proposed that these allowances would remain available at least until December 31, 2009, and that EPA expected to re-evaluate the availability of export production allowances for HCFC-141b, HCFC-22, and HCFC-142b. EPA had planned to issue a rule prior to 2010 which would allocate export production allowances for subsequent control periods, taking into account any relevant modifications to the Protocol or the CAA. With today's action, EPA is allocating export production allowances until 2030 for HCFC-141b, HCFC-22 and HCFC-142b. If the Protocol modifies the formula for the production cap, EPA will modify the allocation of export production allowances through

notice and comment rulemaking accordingly. One commenter agreed with the proposal to provide for export production allowances as long as the exports were exported to Parties that have ratified the Beijing Amendments. EPA proposed to limit exports to Parties that have ratified the Copenhagen Amendments. The issue of limiting exports to certain Parties arises because at the eleventh meeting in 1999, the Parties agreed to an amendment to the Protocol requiring that, beginning January 1, 2004, each Party shall ban HCFC imports from and exports to countries that have not ratified the amendments that contain control measures for HCFCs. This ban reflects a strategy by the Parties to encourage ratification of the Protocol and each successive package of amendments. The majority of the control measures for HCFCs are contained in the Copenhagen Amendments. However, the control measures to cap HCFC production were included with the trade ban provisions in the Beijing Amendments. After further review, EPA has decided that the proposed interpretation of the trade ban was incorrect. However, EPA is not adopting the commenter's interpretation. EPA has concluded that the trade ban should be interpreted such that countries need only have ratified the amendments that contain controls measures relevant to that country. EPA believes the HCFC production control measures are only relevant to countries that produce HCFCs and therefore believes the trade ban should differentiate between countries that produce HCFCs, and those that do not produce HCFCs. Today's action lists countries that produce HCFCs in Appendix L, according to the UNEP Ozone Secretariat's compilation of information submitted in accordance with Article 7 of the Montreal Protocol. With today's action, starting January 1, 2004, trade in HCFCs with producing countries will be restricted to only those that have ratified the Beijing Amendments. If a country is not an HCFC producer, then trade in HCFCs will be restricted to only those that have ratified the Copenhagen Amendments. Article 4, paragraph 8 of the Protocol recognizes that countries may actually be complying with relevant control measures without having officially ratified the Protocol or its relevant Amendments and permits the Parties to meet and determine that imports from and exports to these countries is permitted. With today's action, EPA is also including the potential for a country to be determined by the Parties to be complying with the relevant