

MEMORANDUM: Overview of the Final Rule Regarding HCFC Allowances for 2012, 2013 and 2014

On January 4, 2012, EPA proposed and requested comment on a number of options for issuing HCFC-22 and HCFC-142b allowances for 2012-2014 (77 FR 237). Since this rulemaking only addresses HCFC-22 and HCFC-142b, baseline and calendar-year allocations for all other HCFCs are the same as in the 2009 Final Rule (74 FR 66412). Via this final rule, titled “Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export,” EPA has decided to:

- (1) Continue to use the same HCFC-22 and HCFC-142b baselines established in the 2011 Interim Final Rule (76 FR 47451)
- (2) Provide the same number of HCFC-142b consumption and production allowances as the agency did in the 2011 Interim Final Rule
- (3) Provide *fewer* HCFC-22 consumption allowances relative to the 2009 Final Rule
- (4) Provide *the same* percentage of baseline for HCFC-22 production allowances relative to the 2009 Final Rule in 2013-2014
- (5) Provide recoupment allowances to address the U.S. Court of Appeals for the D.C. Circuit’s decision in *Arkema v. EPA*
- (6) Clarify EPA’s position on inter-pollutant transfers in the regulations

A summary of each decision is provided below. Full discussion, including a summary of comments received and EPA’s response to those comments, can be found in the Final Rule preamble, and the accompanying Response to Comments document (see docket EPA-HQ-OAR-2011-0354).

1) Baselines are the same as set in the 2011 IFR

- a. 2008 inter-pollutant trades made by Arkema and Solvay are reflected in the finalized baselines, consistent with the decision in *Arkema v. EPA*
- b. Single-pollutant, inter-company trades that occurred after the 2009 Final Rule are reflected
- c. All other baselines are the same as in the 2009 Final Rule

2) Annual HCFC-142b Allocation

	2012		2013		2014	
	MT	ODP MT	MT	ODP MT	MT	ODP MT
Consumption	100	7	100	7	100	7
Production	463	30	463	30	463	30
% of Baseline Allocated	4.9%		4.9%		4.9%	

NB: The numbers listed here are rounded and do not include recoupment allowances.

3) Annual HCFC-22 Consumption Allocation

To account for changes in the marketplace, EPA is finalizing HCFC-22 consumption allocations for 2012-2014 that are almost 30 percent lower than the amounts provided in the 2009 Final Rule.

	2012		2013		2014	
	MT	ODP MT	MT	ODP MT	MT	ODP MT
Consumption	25,100	1,400	25,500	1,400	20,200	1,100
% of Baseline Allocated	17.7%		18.0%		14.2%	

NB: The numbers listed here are rounded and do not include recoupment allowances.

4) Annual HCFC-22 Production Allocation

EPA is using the same percentage of baseline as used in the 2009 Final Rule for 2013 and 2014. Since the baseline amount is higher, the number of HCFC-22 production allowances provided is higher relative to the 2009 Final Rule in 2013-2014. For 2012, the agency is issuing production allowances commensurate with the amount of production authorized in the January 20, 2012, No Action Assurance.

	2012		2013		2014	
	MT	ODP MT	MT	ODP MT	MT	ODP MT
Production	22,800	1,300	38,900	2,100	33,700	1,900
% of Baseline Allocated	17.7%		30.1%		26.1%	

NB: The numbers listed here are rounded and do not include recoupment allowances.

5) Addressing 2010 Allowances

To address the Court's decision in *Arkema*, the agency is providing "recoupment" allowances to the following entities:

Company	Chemical	Consumption Allowances (MT)	Production Allowances (MT)
Arkema	HCFC-22	4,750	4,612
DuPont	HCFC-142b	2	0
Honeywell	HCFC-142b	58	107
Solvay Fluorides	HCFC-22	1,158	0
Solvay Solexis	HCFC-142b	0	290

NB: The numbers listed here are rounded.

The agency is providing these allowances "in addition to the pie" over the course of two years, issuing half to each company in 2013 and the other half in 2014.

6) Inter-pollutant transfers

As proposed, EPA is clarifying that future inter-pollutant transfers of baseline allowances are not allowed.