



HEATING AIR-CONDITIONING REFRIGERATION DISTRIBUTORS INTERNATIONAL

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November 15, 2018

Mr. Jeremy Arling  
U.S. EPA  
Stratospheric Protection Division  
Office of Atmospheric Programs  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Submitted electronically

RE: Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program's Extension to Substitutes [Docket ID: EPA-HQ-OAR-2017-0629]

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Dear Mr. Arling,

On behalf of Heating, Air-conditioning & Refrigeration Distributors International (HARDI) I write to offer comments on the Environmental Protection Agency's (EPA) proposed regulation for the Revisions to the Refrigerant Management Program's Extension to Substitutes [Docket ID: EPA-HQ-OAR-2017-0629].

HARDI is a trade association comprised of nearly 1,000 member companies, nearly 500 of which are U.S.-based wholesale distribution companies. More than 80 percent of HARDI's distributor members are classified as small businesses that collectively employ over 35,000 U.S. workers, representing more than \$35 billion in annual sales and an estimated 80 percent of the U.S. wholesale distribution market of heating, ventilation, air-conditioning and refrigeration (HVACR) equipment, supplies, and controls.

HARDI appreciates EPA's request for comments on whether to withdraw the extension of the full set of subpart F<sup>1</sup> provisions to non-exempt substitute refrigerants. HARDI has long

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<sup>1</sup> 40 CFR Part 82, subpart F - Recycling and Emissions Reduction

advocated for an update to Section 608 requirements of the Clean Air Act<sup>2</sup> and, while we believe there are still some areas where EPA could have made further progress than contained in the final 2016 rule<sup>3</sup>, we believe the extension of subpart F to substitute refrigerants is correct and necessary in order to maintain compliance with the prohibition on venting of refrigerants including substitutes under Section 608 of the Clean Air Act. For this reason, HARDI firmly opposes the withdrawal of the extension of 40 CFR Part 82, subpart F in its entirety to substitute refrigerants.

### **Section 608 Prohibition on Venting**

As part of the passage of the Clean Air Act Amendments of 1990<sup>4</sup>, no person is allowed to knowingly vent refrigerant from appliances including air-conditioners, chillers, freezers, or refrigerators [emphasis added]:

(2) Effective 5 years after November 15, 1990, *paragraph (1) shall also apply to the venting, release, or disposal of any substitute substance* for a class I or class II substance by any person maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration which contains and uses as a refrigerant any such substance, unless the Administrator determines that venting, releasing, or disposing of such substance does not pose a threat to the environment. For purposes of this paragraph, the term “appliance” includes any device which contains and uses as a refrigerant a substitute substance and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

This extension of the prohibition on venting to include substitute refrigerants gives the EPA the authority to use regulations designed to prevent venting of ozone depleting substances (ODS) to apply to substitute refrigerants.

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<sup>2</sup> 42 USC §7671g. National recycling and emission reduction program

<sup>3</sup> Protection of Stratospheric Ozone: Update to the Refrigerant Management Requirements under the Clean Air Act, Docket ID: EPA-HQ-OAR-2015-0453

<sup>4</sup> Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990

Additionally, the Senate debate accompanying the conference report<sup>5</sup> goes into further detail explaining the intention of including substitute refrigerants in the venting prohibition to prevent venting of substances with potential to cause climate change:

This is an important provision because many of the substitutes being developed do not have ozone depleting properties but they are “greenhouse gases” and have radiative properties that are expected to exacerbate the problem of global climate change. The prohibition shall apply to all such substitute substances except where the Administrator determines that the venting, release or disposal of a particular substitute substance does not pose a threat to the environment.

The Administrator shall consider long term threats, such as global warming, as well as acute threats. The fact that a particular substance has been identified by the Administrator as a “safe substitute” for purposes of section 612 does not affect the requirement for a separate determination under this section. The purpose of section 612 and of this section are different and substances approved under section 612 will not automatically qualify for exclusion from the prohibition on venting that is included in this section.

This important inclusion in the Senate report makes it clear that the law intended to give the EPA the authority to regulate substitutes to prevent any release, regardless of ozone depleting potential, with the exception of those refrigerants that do “not pose a threat to the environment.”<sup>6</sup>

### **EPA regulations to stop venting**

EPA’s first rule (58 FR 28660) under Section 608, finalized on May 14, 1993, created requirements for technicians to recover and recycle ODS refrigerants and prevent the venting of all non-exempt refrigerants. In order to minimize the possibility of the release of refrigerants, all technicians must be certified through an examination created by the EPA. Additionally, the rule limited the sale of refrigerants to certified technicians after November 14, 1993 in order avoid

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<sup>5</sup> A Legislative history of the Clean Air Act Amendments of 1990, together with a section-by-section index. Environment and Natural Resources Policy Division of the Congressional Research Service of the Library of Congress. Page 929. Accessed via:

[https://babel.hathitrust.org/cgi/pt?id=uc1.\\$b561714;view=1up;seq=1](https://babel.hathitrust.org/cgi/pt?id=uc1.$b561714;view=1up;seq=1)

<sup>6</sup> 42 USC §7671g (c)(2)

venting during the charging process and required refrigerants in appliances be recovered before recycling. To help facilitate these requirements, the rule also required all equipment be manufactured with an appropriate service aperture to allow recovery and recycling of refrigerants. Additional rulemakings have added certain requirements including the use of certified recovery and recycling equipment, require certification of reclaimers of refrigerants and sales of reclaimed refrigerant, set requirements for refrigerant evacuation from equipment prior to opening, and set maintenance and leak rate detection thresholds for equipment. All of these regulations, collectively referred to as subpart F, ensures that no individual knowingly vents ODS refrigerants. The most recent rulemaking in 2016<sup>7</sup>, extended these requirements to non-exempt substitute refrigerants including HFCs and HFOs.

### **Knowingly venting of refrigerants**

The legislative language of Section 608 relies heavily on the term “knowingly vent” in “the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration” in determining if a party is violating the section. The proposed rule seeks to undo part of the 2016 ruling pertaining to appliance maintenance and leak repair. Under a very narrow reading of the statutory language, a leak not occurring during “the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration” would not meet the requirements for knowingly venting a refrigerant. If the basis of the proposed rule is such a narrow interpretation of the language, severing the appliance maintenance and leak repair portion of subpart F from the remaining regulations impacting non-exempt substitute refrigerants seems appropriate. However, HARDI encourages EPA to evaluate alternative ways to ensure

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<sup>7</sup> Protection of Stratospheric Ozone: Update to the Refrigerant Management Requirements under the Clean Air Act, Docket ID: EPA-HQ-OAR-2015-0453

owners are maintaining equipment to prevent leaks, and believes the remaining regulations under subpart F should apply to non-exempt refrigerants to prevent any knowingly venting of refrigerants by untrained individuals.

### **Increasing training requirements for technicians**

Under the current Section 608 technician certification requirements, a technician can pass any of the certification types and never need to recertify except to gain an additional certification type. This means a technician working today could have been certified as far back as 1993 (or grandfathered in prior to the 1993 rule) and at no point has been recertified using an updated test to reflect newer refrigerants. While most refrigerants currently in use are classified as A1<sup>8</sup> by American Society of Heating Refrigeration and Air-conditioning Engineers (ASHRAE) Standard 34 and have generally similar safety requirements, refrigerants classified as A2L and A3 will enter usage in coming years. A2L refrigerants are considered “mildly flammable” and A3 refrigerants are considered to have “higher flammability.”

Due to the changing nature of refrigerants and the different best practices for using A2L or A3 from current A1 refrigerants, HARDI requests the EPA examine changes to the Section 608 certification to require retesting to maintain certification. Retesting is a minimal burden on highly trained technicians in a changing field and refrigerant changes happen over many years providing a lengthy period of time before retesting would need to happen. An examination of future refrigerant changes should be conducted to determine an appropriate retesting interval.

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<sup>8</sup> A1 indicates that the refrigerant has low toxicity and no ability to propagate flame under the test conditions of the Standard

## Conclusion

HARDI strongly encourages the EPA to maintain the extension of subpart F to non-exempt substitute refrigerants to keep venting of refrigerants below the *de minimis* threshold. Allowing untrained individuals to attempt to recover refrigerants would be dangerous to the individual and the environment. EPA has the authority under Section 608 to regulate non-exempt substitutes to prevent venting including those regulations in subpart F.

Once again, thank you for the opportunity to comment on this proposed rule and HARDI looks forward to continuing to work with the EPA on refrigerant management policy.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Alex Ayers', with a long horizontal flourish extending to the right.

Alex Ayers  
Director of Government Affairs  
Heating, Air-conditioning, & Refrigeration Distributors International