



December 18, 2023  
*Via Regulations.gov*

Attn: Christian Wisniewski  
Stratospheric Protection Division  
Office of Atmospheric Protection  
U.S. Environmental Protection Agency  
Mail Code 6205A  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Re: Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under Subsection (h) of the American Innovation and Manufacturing Act of 2020, Docket ID No. EPA-HQ-OAR-2022-0606

Dear Mr. Wisniewski:

The Food Industry Association (FMI), the Retail Industry Leaders Association (RILA), the National Retail Federation (NRF), and the National Grocers Association (NGA) (collectively, the Associations) appreciate the opportunity to jointly submit comments on the U.S. Environmental Protection Agency's (EPA or Agency) proposed Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under Subsection (h) of the American Innovation and Manufacturing (AIM) Act of 2020,<sup>1</sup> 88 Fed. Reg. 72,216 (Oct. 19, 2023) (hereinafter, the Proposed Rule).

The Associations represent a broad cross-section of the U.S. economy, from large national supermarket and retail chains to small businesses and grocers.<sup>2</sup> Collectively, the Associations' members sell food, household items, clothing, appliances, electronics, tools, auto parts, pet supplies, as well as a number of other essential consumer products that Americans use and rely on in daily life. While the Associations' members, and the grocery and retail industries more broadly, are not among the largest contributors to greenhouse gas (GHG) emissions, they are nonetheless working diligently to address and reduce climate change impacts related to their operations.

The Associations will be significantly impacted by the Proposed Rule because their members depend upon extensive use of food refrigeration, HVAC, and fire suppression systems throughout

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<sup>1</sup> 42 U.S.C. § 7675.

<sup>2</sup> FMI, RILA, and NRF (along with the National Association of Chain Drug Stores) submitted comments on EPA's Technology Transitions Proposed Rule earlier this year. *See* Joint Retail Associations, Comments on Technology Transitions Proposed Rule (Jan. 30, 2023), Comment ID EPA-HQ-OAR-2021-0643-0209, available [here](#). Background on FMI, RILA, and NRF is provided on page 2 of the Technology Transitions Proposed Rule comments. This background is incorporated by reference herein. NGA represents independent community grocery stores across the country, as well as the wholesalers that service them. NGA exclusively focuses on representing the independent sector of the food industry, and its membership includes over 21,000 stores.

their networks of stores and distribution centers across the United States. The Associations' members for years have been managing these systems according to best industry practices and consistent with existing regulatory requirements for appliances containing class I or class II refrigerants and their substitutes at 40 C.F.R. Part 82, Subpart F (EPA's regulations for the Protection of Stratospheric Ozone, hereinafter, Subpart F). Many of the Associations' members participate in voluntary partnership programs like the GreenChill Program to reduce refrigerant emissions, including both hydrofluorocarbons (HFCs) and ozone-depleting substances (ODSs). Through this participation, these members have worked cooperatively with EPA to transition to environmentally friendlier refrigerants, to develop state-of-the-art leak detection and repair programs, and to adopt advanced refrigeration technologies and best practices.

The Associations' members fully support EPA efforts to ensure consistent and effective management of HFC and ODS refrigerants to minimize releases and to enhance opportunities for refrigerant recycling and reclamation. However, if finalized in its current form, the Proposed Rule would place significant and disproportionate burdens on the grocery industry and other retailers. These new compliance and administrative burdens created by the Proposed Rule would lead to increased costs of doing businesses that would ultimately be passed on to consumers, an effect that would be felt the most in stores that are in minority and economically-stressed communities.

### **Executive Summary**

The following comments address areas where EPA should improve upon the Proposed Rule to optimize compliance and to ensure a better balance between regulatory costs and benefits.

**First, the Proposed Rule exceeds EPA's AIM Act authority and would undermine key flexibilities intended by Congress in phasing down HFCs.** Subsection (h), the authority for this rulemaking, does not authorize the Agency to compel retrofit of existing refrigeration systems with lower-global warming potential (GWP) refrigerants, to require system retrofit or retirement where leaks cannot be addressed within narrow timeframes, or to arbitrarily single out certain industrial sectors to require use of reclaimed HFCs. If finalized, these requirements would contravene congressional intent that EPA establish a market-based mechanism to phase down HFCs in an economically efficient manner and that existing systems be exempt from technology-forcing regulations, which are only authorized under in Subsection (i) of the Act.

**Second, the Proposed Rule requirements are unnecessary and could undermine incentives to adopt new technologies that may become available in the future.** In the Proposed Rule, the Agency unnecessarily uses a heavy-handed regulatory approach instead of complementing the strong non-regulatory incentives that owners and operators already have to conduct repairs, minimize leaks, and use reclaimed HFCs. Further, EPA does not consider that the onerous maintenance requirements in the Proposed Rule would likely incentivize system owners and operators to prematurely replace existing HFC systems with new HFC systems, rather than awaiting the commercial availability of technologies that use more environmentally friendly refrigerants.

**Third, implementation of the Proposed Rule requirements would be impracticable.** Notably, the applicability threshold for the proposed maintenance requirements is unnecessarily broad, the proposed leak rate calculation process is overly complicated, the proposed leak rate thresholds are unworkable, and EPA's proposed compliance timeframes will be impossible to meet. The

Associations provide specific suggestions to modify these and other aspects of its proposal to facilitate compliance.

**Fourth, implementation of the Proposed Rule requirements would unduly burden already disadvantaged communities.** Compliance with the Proposed Rule requirements will almost certainly require closure of numerous grocery stores and other retailers that communities depend upon for basic necessities. Rural and poor communities are most likely to be impacted by store closures that will be necessitated by the significantly increased costs of doing business, given the tighter profit margins for stores operating in these communities and that these stores are likely to have older systems that would have to be retrofitted or replaced under the Proposed Rule.

**Fifth, EPA should not finalize the proposed container tracking requirements.** Not only are these proposed requirements beyond EPA's AIM Act authority, as confirmed in a recent decision by the U.S. Circuit Court of Appeals for the District of Columbia (D.C. Circuit), but they will be logistically challenging and will create costly administrative burdens for retailers, who—compared to others in the HFC supply chain—are least equipped to ensure that HFC containers are appropriately labeled and that suppliers, recyclers, and reclaimers have appropriate EPA registrations.

**Sixth, EPA should clarify the proposed disposable cylinder return and HFC reclamation requirements.** Clarifications are needed to provide certainty on discrete issues such as who will be the owner of reclaimed product recovered from a disposable cylinder, which entity is responsible for the return, and how EPA intends to accommodate any patent issues that may arise in carrying out reclamation activity required under the regulations.

**Seventh, EPA's economic impact and benefit analysis reflects that the Agency significantly underestimated compliance burdens and costs.** Key drivers of these burdens and costs include the tight compliance timeframes that EPA has proposed, which will necessitate the allocation of personnel and financial resources; the increased demand for and limited supply of reclaimed and/or recycled HFCs, as well as automatic leak detection systems; training costs for technicians and maintenance personnel; and the required retrofit and/or retirement of appliances with leaks that cannot be repaired in accordance with the proposed repair systems.

**Eighth, EPA should not undertake a separate rulemaking to establish separate technician training and/or certification requirements under AIM Act Subsection (h).** Owners and operators of equipment regulated under Clean Air Act (CAA) Section 608 have already invested significant resources in technician training and certification, and these programs are entirely adequate to ensure technician safety and competence. Additional separate training and certification requirements would only add to compliance burdens without environmental or safety benefits. We thus request that EPA make an express determination in the Final Rule that technicians trained and certified by a certifier approved under existing refrigerant management programs do not require separate training/certification under AIM Subsection (h) and that EPA to refrain from undertaking a separate rulemaking on this topic.

Each of these points is discussed in more detail below.

## Comments

### **1. The Proposed Rule Exceeds EPA’s AIM Act Authority and Would Undermine Key Flexibilities Intended by Congress in Phasing Down HFCs.**

#### **a. The Proposed Rule exceeds EPA’s authority Under AIM Act Subsection (h).**

Under AIM Act Subsection (h), EPA is directed to “promulgate regulations to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment” for the specific “purposes of maximizing reclaiming and minimizing the release of a regulated substance from equipment and ensuring the safety of technicians and consumers.”<sup>3</sup> The AIM Act does not, however, confer limitless authority for EPA to impose the expansive and unnecessarily burdensome leak detection and repair requirements set forth in the Proposed Rule.

For example, Congress carefully crafted a statutory scheme to grandfather equipment (except for retrofit applications) already in existence before passage of the Act in December 2020 from application of any EPA requirements established under Subsection (i) of the AIM Act, which otherwise provides EPA authority to regulate the use of HFC in various sectors or subsectors. The provisions in the Subsection (h) Proposed Rule, however, would require extensive, burdensome retrofits and retirements of existing systems. This is EPA’s attempt to circumvent the Subsection (i) limitation on regulating grandfathered systems, which are currently exempt from the Technology Transitions Rule,<sup>4</sup> by forcing those systems to be retired and then replaced with new systems that will be subject to that Rule.

Further, for reasons discussed in these comments, the requirements of the Proposed Rule are not “appropriate.”<sup>5</sup> Even if EPA has broad authority to set repair standards, EPA lacks the authority to compel retrofit of existing systems to use refrigerants with a lower GWP. Similarly, nothing grants EPA the authority to require companies to retire their systems if leaks cannot be addressed within fixed time frames.

Neither is EPA’s AIM Act authority to maximize reclamation a license for the Agency to mandate the use of reclaimed HFCs by a handful of industrial sectors that are arbitrarily selected by the Agency. The Proposed Rule must be grounded firmly in Section (h)’s stated purpose as to both new and existing equipment, not as a means to accelerate the HFC phasedown, which is authority granted under other sections of the Act. Congress set forth a specific time frame for phasing down HFC production and consumption, and it provided specific circumstances for an accelerated phasedown that are not applicable here.

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<sup>3</sup> 42 U.S.C. § 7675(h)(1).

<sup>4</sup> See EPA, *Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under the American Innovation and Manufacturing Act of 2020, Final Rule*; 88 Fed. Reg. 73,098, 73,209 (40 C.F.R. § 84.56(a)(1)) (Oct. 24, 2023) (the Technology Transitions Rule).

<sup>5</sup> 42 U.S.C. § 7675(h)(1).

## **b. The Proposed Rule contravenes congressional intent in the AIM Act.**

The AIM Act establishes a cap-and-trade program, relying on market forces to ensure that the HFC phasedown imposes minimal impacts on the U.S. economy. This market-based mechanism ensures that HFC allocations will be used in the most economically efficient manner as they are phased down. The overly prescriptive proposed leak repair requirements undermine this intent by preventing businesses from having the flexibility intended by Congress to decide the most effective distribution and use of HFCs. Not only does this contravene the statute, but it will lead to significant economic inefficiencies that Congress sought to avoid in creating a cap-and-trade approach.

Repairing, retrofitting, or retiring leaky systems within the fixed time periods that EPA proposes will likely lead to significant economic inefficiencies. For example, given the long time frames associated with planning, permitting, and constructing new grocery stores, it will often be more efficient to keep an older store using HFC systems online for a few years, and then replace it with a new store and a new non-HFC system, rather than repair, retrofit, or retire the older store's systems under a regulatory mandate.

## **2. The Proposed Rule Requirements Are Unnecessary and Will Create Costs and Administrative Burdens Without Commensurate Benefits.**

As the phasedown will create a limited supply of HFCs in future years, businesses will already be well-incentivized to conduct repairs, minimize leaks, and use reclaimed HFCs, meaning that the regulatory mandates that EPA proposes are unnecessary. The requirements in the Proposed Rule would add significant regulatory burdens for little practical gain. The Proposed Rule's costs and administrative burdens are not justified for equipment that will be obsolete by the end of the HFC phasedown mandated in the Act.

Most strikingly, the proposed leak repair standard would likely force many companies to replace HFC appliances with new HFC appliances in the next three years, because no options exist to retrofit with a lower GWP refrigerant, nor are there code-approved A2L appliances.<sup>6</sup> As a result, if system owners and operators cannot not repair a leak in the timeframes allowed, they will have no other option but to replace their existing HFC systems with new HFC systems. This is not only cost-prohibitive but entirely contrary to the goals of the AIM Act.

## **3. Implementation of the Proposed Rule Requirements Would Be Impracticable.**

### **a. The applicability threshold for Subpart C maintenance requirements is unnecessarily broad.**

EPA proposes that the new Subpart C leak detection and repair requirements would apply to refrigerant-containing appliances with a full charge of 15 or more pounds of HFC refrigerants or substitutes with a GWP greater than 53.<sup>7</sup> This scope is significantly broader than current Subpart F,

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<sup>6</sup> We note, for example, that transcritical CO<sub>2</sub> is not a viable option in warm climates because of the penalty and increase in water usage.

<sup>7</sup> See 40 C.F.R. § 84.106(a) (proposed).

which applies to appliances with a full charge of 50 or more pounds of Class I or Class II refrigerants or blends containing such refrigerants.<sup>8</sup> Given this discrepancy, the Proposed Rule would sweep in appliances containing 15 - 49 pounds of HFC refrigerants (or their substitutes) for the first time, whereas similarly-sized appliances containing only ODS refrigerants are not covered.

Further, by triggering requirements for HFC substitutes with a GWP greater than 53, the Proposed Rule requirements apply much more broadly than the use restrictions in the Technology Transitions Rule, which will apply to products or systems containing substances with a GWP above 150 for most sectors, including grocery and other retailers.<sup>9</sup> To maintain regulatory consistency between the two rules and to encourage the rapid transition of existing systems to alternative refrigerants like HFOs, the Associations suggest that EPA change its proposal to apply to appliances containing substitutes with a GWP greater than 150.

EPA's proposed broad application of Subpart C maintenance requirements would significantly and unnecessarily expand the number of covered appliances, causing confusion and frustrating compliance efforts. One member estimates that with the 15-pound threshold that EPA has proposed, the number of covered appliances for its enterprise would increase more than ten-fold (from 600 to 6,100 individual units). This member expects that such a dramatic increase in the number of covered appliances would result in approximately \$1 billion in additional capital costs to the company over the next 10 years. Another member estimates that conducting site surveys of all of its stores identify newly-covered appliances under the 15-pound threshold would cost roughly \$500 to \$1,000 per site, depending on location and size. When multiplied across many sites, this would lead to significant costs just to identify newly covered equipment.

Many retailers are currently managing appliances under Subpart F based upon the 50-pound threshold and have trained their technicians on maintenance practices for these appliances based upon that threshold. EPA's proposal to capture appliances with full charge of 15 - 49 pounds of HFC or substitute refrigerants would require a resource-intensive effort to re-train technicians on maintenance practices for this group of smaller appliances with doubtful commensurate environmental benefit, given that larger systems (over 50-pound charge size) account for the majority of leaks.

By setting a 50-pound threshold across the board, EPA could establish consistent applicability of maintenance requirements for refrigerant-containing appliances. The Agency could also eliminate confusion about which HVAC appliances are exempt as "refrigerant-containing appliances used for the residential and light commercial air conditioning and heat pumps subsector."<sup>10</sup>

As a practical matter, regulating small, packaged units, variable refrigerant flow (VRF) systems, and mini-splits would greatly increase the recordkeeping burden on owner and operators under the regulations, and would increase costs for inspections and carrying out retrofit and/or retirement plans. Many HVAC appliances contain multiple circuits within a unit. For example, a packaged HVAC unit may have four independent circuits inside of it, each one an appliance in and of itself

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<sup>8</sup> See 40 C.F.R. § 82.157(a).

<sup>9</sup> See 88 Fed. Reg. at 73,206-209 (40 C.F.R. § 84.54).

<sup>10</sup> See 88 Fed. Reg. at 72,301 (proposed § 84.106(a)(3)(ii)).

with its own recordkeeping obligations and its own leak rate. If one circuit leaks and is required to be retrofitted and/or retired under the regulations, it is technically feasible to do that in some cases, but can be impractical and cause difficulties in running what remains of the unit.

Given the HFC phasedown and the Technology Transitions Rule prohibition on new installations of HVAC appliances using high-GWP refrigerants as of 2025, implementing the low charge size threshold that EPA has proposed for regulated appliances, especially HVAC, is unnecessary. As discussed elsewhere in these comments, there is very little incentive for owners or operators to tolerate refrigerant leaks on any appliance using an HFC refrigerant due to the expense of repairs and replacement refrigerant, as well as the impact to stores and customers that occurs when refrigeration and/or HVAC equipment is not functioning properly.

Finally, the Associations note that EPA's proposal would expand the scope of covered appliances well beyond the previous iterations of the Subpart F maintenance and repair requirements for appliances containing ODS refrigerants without clear justification for doing so. Even EPA's ambitious 2016 Final Rule that extended maintenance requirements to appliances containing non-ODS refrigerants, including HFCs, did not cover equipment with a full charge less than 50 pounds.<sup>11</sup> In that Final Rule, mid-size appliances—namely, those containing more than 5 and less than 50 pounds of refrigerant—were subject only to recordkeeping requirements triggered by disposal.<sup>12</sup> Under these previous requirements, technicians evacuating refrigerant from appliances with a full charge of more than five and less than 50 pounds of refrigerant for purposes of disposal of that appliance had to keep records for three years documenting various data points, including company name; location of the appliance; date of recovery; the type of refrigerant recovered for each appliance; the total quantity of refrigerant, by type, recovered from all disposed appliances in each calendar month; and the quantity of refrigerant, by type, transferred for reclamation and/or destruction, the person to whom it was transferred, and the date of transfer.<sup>13</sup> Further, owners and operators were only required to maintain these records for medium-sized appliances if they directly employed the technician that performed the evacuation and recovery of refrigerant prior to appliance disposal.<sup>14</sup> The Associations maintain that these requirements are much more sensible for mid-sized appliances than application of the full suite of leak detection and repair requirements that EPA proposes.

We request that EPA modify its Subpart C proposal such that any leak detection and repair requirements in the Final Rule apply to appliances with a full charge of 50 or more pounds of refrigerant, the applicability threshold for existing Subpart F requirements.

**b. The leak rate calculation process is overly complicated, creating likely compliance issues.**

The proposed leak rate calculation methodologies are unduly complicated, resource-intensive, and pose significant compliance challenges for companies that have multiple sites with appliances subject to these requirements. EPA could greatly simplify compliance by allowing owners and

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<sup>11</sup> See EPA, *Protection of Stratospheric Ozone: Update to the Refrigerant Management Requirements Under the Clean Air Act; Final Rule*, 81 Fed. Reg. 82,272 (Nov. 18, 2016).

<sup>12</sup> See *id.* at 82,354 (§ 82.156(a)(3)).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 82,311.

operators to calculate leak rates (and by setting compliance obligation triggers) based upon the percentage of total full charge that an appliance has leaked, cumulatively, during a calendar year.<sup>15</sup> This would not only allow owners and operators to determine more easily the applicable appliance leak rate but would also provide clarity in a situation where a technician finds and repairs multiple separate leaks at the same time but adds refrigerant to the appliance only once.

For example, under the proposed calculation methods, if a technician finds a leaking liquid line drier and a leaking discharge line Schrader during a leak inspection—two totally separate leaks on totally separate components—and repairs them both at the same time, and then adds an amount of refrigerant that exceeds the 20% threshold for commercial refrigeration equipment, it is unclear how the owner/operator would document the refrigerant add. Under EPA’s proposed methodologies, it appears that each leak must be documented separately, with its own verification tests. It would, however, be impossible to know how much refrigerant leaked as a result of each individual leak because they were repaired at the same time. Accordingly, finalizing the proposed approach would be arbitrary and capricious. The simplified annual percentage calculation proposed by the Associations would alleviate this issue.

EPA should adopt a more simplified methodology, but at a minimum the Associations request clarification on the proper calculation procedures for the scenario described, namely: Should the owner/operator put the entire refrigerant add on one leak, or split it across the two leaks? What if splitting it across the two leaks would mean that each leak is below the applicable percentage? Would this be a permissible way of determining the leak rate?

**c. The proposed leak rate thresholds are unworkable and will not yield lower leak rates overall.**

According to EPA, the typical food retail store refrigeration system leaks an estimated 25% of refrigerant annually.<sup>16</sup> Yet, EPA proposes to establish a leak rate threshold at 20% for commercial refrigeration equipment.<sup>17</sup> If EPA finalizes this rate as proposed, it would mean that the average supermarket system would exceed the leak rate threshold from the outset, triggering the framework for repair, verification, and potentially retrofit or retirement planning almost immediately.

Given the short compliance date proposed for the new leak detection and repair requirements (60 days from Final Rule publication in the *Federal Register* for supermarket systems) and the short timeframes proposed for bringing leaking systems into compliance, the average U.S. grocery store would need to conduct repairs and, for many, potentially develop retrofit and repair plans within only a few months of Final Rule publication. Due to current technician and supply chain constraints, it is unlikely that the industry would be able to meet these deadlines. At minimum, EPA should set the applicable leak rate higher than the national average for commercial

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<sup>15</sup> This calculation would mirror the process that owners/operators use to calculate whether the 125% chronically leaking appliance threshold is met or exceeded. The Associations support EPA’s proposal to consider an appliance to be chronically leaking if it leaks 125% or more of its full charge within a calendar year, given that this threshold is already used under Subpart F and significant confusion would be created if the Agency finalized a lower threshold for equipment containing HFC refrigerants or their substitutes.

<sup>16</sup> EPA, “Prioritizing Leak Tightness During Commercial Refrigeration Equipment Installation,” available [here](#).

<sup>17</sup> See 88 Fed. Reg. at 72,301 (proposed § 84.106(c)(2)(i)).



refrigeration systems or eliminate the requirements to repair, retire, and/or retrofit within the tight timeframes that EPA has proposed.

Alternatively, the Associations recommend that EPA eliminate the leak rate thresholds altogether and allow owners and operators to perform a simple calendar year leak rate calculation each time they add refrigerant. Stores are already well-incentivized to repair leaks promptly, given that lost refrigerant is expensive to replace and that leaking appliances (and loss of refrigeration and/or cooling functions) disrupt store operations. When a refrigeration appliance is low on refrigerant, remote cases holding refrigerated product will start to warm, meaning that a store will be faced with either loss of product or having to move product elsewhere. When comfort cooling appliances leak, the store becomes warm, disrupting shopping and making customer uncomfortable. Thus, as a practical matter, system owners and operators have very little incentive to delay necessary leak repairs.<sup>18</sup>

If EPA removes the trigger leak rate thresholds, and if it allows owners/operators to use a simple calendar year leak rate calculation for the appliance each time refrigerant is added (*i.e.*, pounds added per leak event divided by the charge size = leak rate), there would no longer be a need to calculate the rate of loss for a particular leak if an owner/operator is obligated to repair the leak upon detection. EPA could similarly use this simplified leak rate calculation method as the basis for repair requirements for appliances using an Automatic Leak Detection (ALD) system. For example, the Agency could require repairs for any leak detected by the system that exceeds a certain concentration level or a specified percentage of the total charge.

The Associations clarify that they only support EPA adopting this alternative if the Agency increased charge size thresholds to 50 pounds, as discussed above in Section 3.a., and if it allowed use of a calendar year leak rate calculation to determine the relevant leak rate. Further, any obligation make prompt repair of any identified leaks should make an exception for *de minimis* leaks (*e.g.*, those that reflect less than 5% of total charge lost since the last refrigerant addition).

**d. The proposed compliance timeframes for new Subpart C Requirements are unreasonable.**

A number of the compliance dates and timeframes proposed for the new requirements in the Proposed Rule are unclear or infeasible. They should be extended in recognition of the need for adequate time for market development and compliance strategy implementation, as well as to minimize operational disruptions that could impact product availability and delivery schedules. Specifically, the Associations request that EPA make the following adjustments to the compliance timeframes it has proposed:

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<sup>18</sup> Further, the only way an owner/operator knows exactly how much refrigerant an appliance has leaked is, in most cases, by adding refrigerant. Adding refrigerant without first finding and repairing a leak runs counter to both the CAA Section 608 venting prohibition and the logic for verification testing, as it is only after pinpointing and repairing a leak—and then passing the initial verification test—that a tech can add refrigerant to an appliance. This is because, if the appliance fails the initial verification test, the refrigerant added would presumably leak back out. Eliminating repair trigger leak rate thresholds would harmonize the refrigeration addition process with the leak repair process in that an owner/operator would have no reason to add refrigerant without first finding and repairing a leak (except for seasonal variances).

### **i. Compliance Dates for Maintenance Requirements.**

The Proposed Rule preamble states that “[a]ppliances containing 50 pounds or more of a refrigerant containing an HFC or a substitute for an HFC with a GWP above 53 would be required to comply with the [proposed leak detection and repair requirements] on the effective date for the final rule.”<sup>19</sup> Yet the regulatory text in proposed § 84.106(a)(4) states that these new requirements would apply to appliances with a full charge of  $\geq 50$  pounds “as of 60 days after” the date of *Federal Register* publication.<sup>20</sup>

The Associations request that EPA provide clarity in the Final Rule by adopting a compliance date of no less than 18 months from the date of Final Rule publication for appliances with  $\geq 50$  pounds of refrigerant, and an additional year (*i.e.*, 30 months from Final Rule publication) for appliances with 15 - 49 pounds, if EPA determines these smaller appliances are appropriately within the scope of regulations, which the Associations maintain they are not. This additional time will be needed for equipment owners and operators to gather all necessary information at their sites to determine which appliances are newly subject to leak detection and repair requirements and to implement a compliance plan.

### **ii. Timeframe for Identifying and Repairing Leaks.**

EPA proposes to require that leaks be identified and repaired within 30 days (or 120 days if industrial process shutdown is required) of when refrigerant is added to an appliance that has exceeded the applicable leak rate.<sup>21</sup> Given the complexity and size of supermarket systems, the current shortage of technicians, and the long lead time for obtaining replacement equipment, this is not a feasible timeframe in which to conduct a repair, and compliance could cause operational disruptions. The proposed extension under § 84.106(f)(1)(iii) where replacement components are unavailable will likely not be sufficient, as this extension is limited to 180 days—and many replacement components will likely take longer than this to source, order, receive, and install. Further, the proposed extension covers only component and not technician unavailability.

The Associations would support a requirement that all but *de minimis* leaks be identified and repaired “promptly” without a specified deadline, and that the 30-day deadline be applied to require an owner/operator to report to EPA on the progress of its repair efforts, without setting an arbitrary mandatory deadline for completing the repair.

Alternatively, if EPA determines to go forward with a specified repair deadline such as 30 days, the Associations request that the Final Rule provide that the clock does not begin with detection of a leak but rather the time that the leak is pinpointed (*i.e.*, the exact leak location is determined). Once the exact location of a leak is determined, an owner/operator has very little incentive to delay repair give that refrigerant losses are costly and disruptive to store operations. Also, once a leak is pinpointed, a technician can take interim steps to mitigate it. EPA should keep in mind that even where a leak cannot be immediately repaired, a technician can usually mitigate it, but that this analysis can only be done once the exact location of the leak is identified.

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<sup>19</sup> 88 Fed. Reg. 72,238.

<sup>20</sup> *Id.* at 72,301 (emphasis added).

<sup>21</sup> 88 Fed. Reg. at 72,301 (proposed § 84.106(d)).

### **iii. Timeframes for Developing and Completing a Retrofit or Retirement Plan.**

EPA proposes to require that owners or operators create a retrofit or retirement plan within 30 days of a failed verification test and other circumstances where the appliance continues leaking above the applicable leak rate.<sup>22</sup> For something as complex as a supermarket system, and particularly considering the community importance of grocery stores and the long-range planning needed to replace such stores, 30 days is a wholly inadequate time to develop such a plan. The requirement to include detailed and complex information in the plan also makes it highly unlikely to be fully developed within a 30-day period.

EPA also proposes to require that retrofit or retirement plans provide a maximum one-year schedule for completing the appliance retirement or retrofit.<sup>23</sup> Again, given the complexity of the systems at issue, technician and equipment shortages, and impact of the recently finalized Technology Transitions Rule, it will be very difficult for stores to meet this deadline and very likely that they will incur significant excess costs to do so. Although EPA proposes to allow owners or operators to request an extension of the one-year retrofit or retirement schedule, no criteria are specified for approval or disapproval of such requests. Because, as proposed, the decision to grant or deny an extension request would be entirely within EPA's discretion, there would be significant uncertainty about the timeframes that industry will be forced to meet.

The Associations request that EPA provide at least 90 days for preparation of a retrofit or retirement plan, running from an owner or operator's decision to retrofit or retire the system after discovery and unsuccessfully attempting to repair a leak that is causing the loss of a certain percentage of the appliance full charge (using the simplified calendar year calculation methodology proposed above in Sections 3.b and 3.c). This, coupled with an allowance to seek relief from the retrofit or retirement plan if the appliance has a 0% leak rate for the first 180 days of the following calendar year (discussed in more detail below in Section 3.e), would provide more realistic timing for retrofit or retirement planning, leading to greater compliance and more thoughtful planning decisions.

### **iv. Compliance Dates for Installing Automatic Leak Detection Systems.**

EPA proposes to require the use of ALD systems for new and existing industrial process refrigeration (IPR) and commercial refrigeration appliances containing  $\geq 1,500$  lbs. of refrigerant or substitute with GWP  $> 53$ . The proposed compliance dates for ALD system installation are unclear and appear to be woefully inadequate given the anticipated new demand for ALD systems that these requirements will create.

For new systems, EPA states in the Proposed Rule preamble that "Beginning on January 1, 2025, for new refrigerant-containing appliances, EPA is proposing that an ALD system be installed as part of the overall appliance installation, either during the installation of the new appliance or within 30 days from when the new appliance is installed."<sup>24</sup> This is inconsistent with the proposed regulatory text, which provides that owners and operators of systems installed on or after 60 days

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<sup>22</sup> *Id.* at 72,302 (proposed § 84.106(h)).

<sup>23</sup> *Id.* (proposed § 84.106(h)(2)(vii)).

<sup>24</sup> *Id.* at 72,248.

from Final Rule publication must install and use ALD systems within 30 days of appliance installation, notwithstanding the January 1, 2025 start date for this requirement stated in the preamble.<sup>25</sup>

For existing systems, EPA proposes to require ALD installation within one year of Final Rule publication.<sup>26</sup>

It is important for EPA to recognize that nearly all supermarkets would require ALD systems under the proposed requirements. Some systems may have to be custom-built or, in the case of an ‘off-the-shelf’ system, may require significant modifications. Given the number of refrigeration systems that will be subject to the ALD requirements, the short compliance periods proposed are likely to exacerbate technician and supply chain shortages, making it impracticable for industry to comply on time. The anticipated surge in demand for ALD systems due to the rule will also likely create compliance costs that are significantly higher than what EPA projects.

Further, it is important for EPA to recognize what will be required from a technical standpoint to meet the proposed ALD requirements. In a retail environment, refrigeration systems can have 30-50 cases, each with an evaporator, as well as multiple walk-in boxes each containing evaporators. Retail industry stakeholders are not aware of any systems that currently exist to continuously monitor such a large number of components with many sensors per system. Each system is anticipated to require a unique design, procurement, and installation process, reasonably anticipated to take at least ten months per system. Developing and deploying such systems at every location where they are required within one year would likely be impossible. Thus the Associations request that, if EPA finalizes an ALD requirement, the compliance date for new systems be no earlier than January 1, 2029 and no earlier than five years after the Final Rule effective date for existing systems.

**e. The circumstances triggering retrofit or retirement planning requirements are too restrictive.**

EPA proposes to require that system owners or operators prepare a retrofit or retirement plan within 30 days of a failed verification test and other circumstances where a leak is detected above the applicable leak rate.<sup>27</sup> On complex systems, multiple repair attempts may be necessary to effectuate a repair. However, under EPA’s proposal, companies would not have the opportunity to conduct multiple repair attempts, as they would have to proceed immediately with developing a retrofit and repair plan once a subsequent leak is detected above the applicable leak rate.

While EPA proposes to allow system owners or operators to seek relief from the obligation to retrofit or retire an appliance if it is brought into compliance within 180 days, a company would likely still need to begin engineering, design, permitting, or sourcing work in parallel with attempting subsequent repairs. This creates a significant waste of resources that could be avoided if EPA provided additional time or allowed multiple repair attempts for detected leaks before the

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<sup>25</sup> See *id.* at 72,305 (proposed § 84.108(b)(1)).

<sup>26</sup> See *id.* (proposed § 84.108(b)(2)).

<sup>27</sup> See *id.* at 72,302 (proposed § 84.106(h)).

retrofit/repair planning obligation is triggered. It also makes it more likely that companies will simply replace their leaking system with a new HFC system.

As an alternative, the Associations suggest that EPA consider requiring retrofit or retirement planning only if an appliance has two or more leaks during which a certain percentage of the full charge is lost in a calendar year period. For an alternative relief provision, EPA could provide that an owner/operator may request relief from the plan if the appliance has a 0% leak rate for the first 180 days of the following calendar year.

The Agency could also use this simplified approach for determining when leak inspections are required by similarly providing that leak inspections must be performed on regulated appliances that have leaked a certain percentage or more of their charge during the calendar year. For example, instead of requiring use of the rolling average or annualizing leak calculation methodology, the Associations suggest that EPA could require that if an appliance has leaked a certain percentage of its charge, cumulatively, during the last 365 days or since the last leak repair, the appliance is subject to leak inspections on regular intervals. The leak rate would then be set back to zero on January 1 of the following calendar year.

**f. The retrofit provisions in the Proposed Rule should be clarified.**

EPA proposes to require owners and operators to create a retrofit plan under circumstances where they intend to retrofit the appliance by converting it from one refrigerant to another, rather than repair the leak. The proposal should be clarified to avoid confusion. One cannot retrofit an appliance to a different type of refrigerant in lieu of performing a leak repair. The leak will have to be repaired, one way or the other, as part of the retrofit—otherwise, the new refrigerant added during the retrofit would leak right back out. EPA should thus clarify the retrofit provisions in the rule to state that an owner/operator may elect to exceed the 30-day repair deadline where a leak is detected above the applicable leak rate, provided that the appliance is retrofitted to a different refrigerant with one year, but that the leak must be repaired prior to the retrofit.

Further, the Associations do not support a general requirement to retrofit only with lower-GWP refrigerants, nor a requirement to recover refrigerants as part of the retrofit or retirement plan, given the logistical challenges, supply constraints, and significantly increased costs that would be associated with such requirements.

**g. The proposed ALD system installation requirements will be unduly burdensome for retailers with large refrigeration systems.**

EPA's proposal to require ALD systems for new and existing IPR and commercial refrigeration appliances containing  $\geq 1,500$  lbs. of refrigerant will impose significant costs on the food and grocery retail sectors, as discussed in more detail below in Section 7. Also as discussed above in Section 3.d.iv, the tight compliance timeframes that EPA proposes for ALD requirements on new and existing systems will mean that stores face extremely high equipment and technician costs due to ALD system demand, making it potentially impossible to comply within the timeframes proposed. The Associations request that EPA alleviate these compliance burdens by requiring ALD systems only for IPR and commercial refrigeration appliances containing  $\geq 2,000$  lbs. of

refrigerant in lieu of the 1,500-lb. threshold that the Agency proposed.<sup>28</sup>

Further, the complex requirements associated with monitoring and tracking the leak rate of systems based on ALDs will be costly, burdensome, and expensive for companies to implement. Thus, the Associations request that EPA allow companies to rely on the leak rate calculation methodologies in the Proposed Rule (and the alternative calculation methodology proposed herein), even if their systems are equipped with ALDs.

If EPA goes forward with an ALD requirement, the Associations would support EPA's proposal to allow either direct or indirect ALD systems. However, the Associations request that EPA state in any final rule that a multiple-appliance or "full store" system meeting the required parameters would be compliant and that each individual appliance need not be monitored by its own ALD system. In other words, we request that EPA expressly provide in the Final Rule that an ALD system meeting the monitoring, detection, and alert threshold requirements in Section 84.108 for multiple appliances (and their components) at the same time would satisfy the requirement in Section 84.108(a) to "install and use an [ALD] system." We also request that EPA expressly clarify in the Final Rule that ALD systems that monitor the enclosed components of a partly-enclosed system will be deemed to meet the requirements of Section 84.108, and that outdoor equipment need not be monitored.<sup>29</sup>

The Associations also support EPA's proposed approach of not requiring ALD system alerts to be reported to the Agency and would oppose including any such reporting requirement in the Final Rule. As EPA notes in the Proposed Rule preamble, the proposed requirements for reporting chronically leaking appliances are sufficient for verifying that appropriate repairs are undertaken when a refrigerant-containing appliance has a significant history of leaks.<sup>30</sup> There would be no additional benefit to requiring reporting every time the ALD system alerts. In such events, owners and operators would be required to perform a leak rate calculation and perform appropriate repairs—or, alternatively, to preemptively repair the leak—and maintain detailed records in accordance with Section 84.106(l). If the Agency has the need to review these records, they can always be requested from a facility rather than imposing an additional administrative burden on owners/operators and on EPA by requiring a report of every ALD alert. As explained elsewhere in these comments, system owners and operators are already well-motivated to respond to alerts and address leaks in a timely manner, thus a requirement to report all ALD system alerts would create regulatory burdens with no discernible benefit.

Relatedly, the Associations do not support lowering alert trigger thresholds below those that EPA has proposed, as lower thresholds could result in more frequent alarms, potentially leading to operational disruptions and false positives.

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<sup>28</sup> A 2,000-lb. threshold for ALD requirements would better align with the California Air Resources Board (CARB) requirements for refrigeration units that are located (or have components located) inside an enclosed building. *See* 17 CCR § 95385(a).

<sup>29</sup> EPA proposes to provide in Section 84.108(e) that ALD systems "are required to monitor components located inside an enclosed building or structure." 88 Fed. Reg. at 72,305. The Associations request clarification that an ALD system may be compliant with Section 84.108 even where it monitors a system where some components are located outside (*e.g.*, a rack system that does not have an enclosed condenser, compressor, etc.), so long as the enclosed components are monitored in accordance with the rule's requirements.

<sup>30</sup> *See id.* at 72,251-22.

**h. A requirement to use only reclaimed HFC refrigerants in servicing and repairing refrigeration systems would impose unfair, unnecessary, and undue burdens on the RACHP sector.**

EPA proposes to require that servicing and repair of refrigerant-containing appliances in certain subsectors and applications in the Refrigeration, Air Conditioning, and Heat Pumps (RACHP) sector must be done with reclaimed HFCs starting January 1, 2028.<sup>31</sup> The affected subsectors would include stand-alone retail food refrigeration, supermarket systems, refrigerated transport, and automatic commercial ice makers.<sup>32</sup>

As an initial matter, EPA’s proposed regulatory language in Sections 84.112(e) and (f) could be read to require that refrigerant-containing appliances in the identified subsectors may *only* be initially charged and serviced/repared with reclaimed HFCs, to the exclusion of substitutes.<sup>33</sup> Based upon the Proposed Rule preamble, this does not appear to have been EPA’s intent.<sup>34</sup> If EPA finalizes the proposed requirement to use reclaimed HFCs, which we do not support for the reasons stated herein, the Associations request that EPA revise its proposed language in Sections 84.112(e) and (f) to specify that all permissible substitutes will continue to be allowed for initial charge and servicing/repair.

Aside from this interpretive issue, the Associations maintain that EPA’s proposal to mandate the use of reclaimed HFCs in initial charge and servicing/repair for certain subsectors exceeds EPA’s authority in Subsection (h) of the AIM Act, as the Act provides no authority for the Agency to single out specific subsectors to shoulder the increased costs of using reclaimed HFC refrigerants. Subsection (i) of the statute provides specific authority for EPA to “restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used.”<sup>35</sup> And EPA has used that authority to promulgate specific requirements for subsectors in the Technology Transitions Rule. However, Subsection (h), the authority for this rulemaking, does not refer to “sectors” or “subsectors,” giving no basis for EPA to treat subsectors differently in requiring the use of reclaimed HFCs. Accordingly, this action exceeds the scope of EPA’s AIM Act authority and is arbitrary and capricious within the meaning of the Administrative Procedure Act.<sup>36</sup>

A robust demand for reclaimed HFC refrigerant already exists and will continue to grow significantly due to the AIM Act’s phasedown of HFCs. Consequently, if part of EPA’s objective is to stimulate demand for reclaimed HFCs, these requirements are unnecessary. EPA has not provided sufficient evidence that the supply of reclaimed HFC refrigerants will be adequate to meet demand in the targeted subsectors by 2028. Nor has EPA proposed regulatory mechanisms to ensure there will be sufficient supply or to address situations where demand exceeds supply,

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<sup>31</sup> See *id.* at 72,307 (proposed § 84.112(f)).

<sup>32</sup> *Id.*

<sup>33</sup> See *id.* (proposed § 84.112(e) and (f), stating that “As of January 1, 2028, reclaimed refrigerant *must be used*” in initial charge or servicing/repair) (emphasis added).

<sup>34</sup> See *id.* at 72.252 (“In this rulemaking, EPA is not considering establishing requirements for the use of reclaimed HFC substitutes. Substitutes for HFCs, for the purposes of this proposal, range from fluorinated chemistry (e.g., HFOs), non-fluorinated chemistry (e.g., hydrocarbons), and not-in-kind substitutes. In this proposed rulemaking, EPA determined it would be prudent to limit the proposed requirements to HFCs . . .”).

<sup>35</sup> 42 U.S.C. § 7675(i)(1).

<sup>36</sup> See 5 U.S.C. § 706(2)(A).

which is of particular concern given the short compliance timeframe that EPA proposes. At a minimum, EPA should include a regulatory exception to relieve the obligation to comply with this requirement where there is an inadequate supply of reclaimed HFCs to meet service and repair needs in the identified subsectors.

EPA has singled out retail food as among the few subsectors that will be required to use reclaimed HFC refrigerants in servicing and repair. As written, the proposed requirements to use only reclaimed refrigerants would affect the vast majority of commercial refrigeration systems in the country. From a practical standpoint, the cost of reclaimed HFC refrigerants will always be at least as expensive as, but likely more expensive than, new HFCs. This is because industries that are not required to use reclaimed HFC refrigerant will procure either new or used HFCs, depending on which is cheaper, so the price of reclaimed HFC refrigerant will always be at least as high as new HFCs. However, given the artificial demand for reclaimed HFC refrigerant that will be created by the proposed requirements, there will be more demand for reclaimed HFC refrigerant than new HFC refrigerant, meaning that it will likely cost more. EPA's proposal to push these additional costs on to the retail food sector is particularly inappropriate considering:

- The sector's low profit margins.
- The direct impacts that higher costs in the retail food sector will have on the average American consumer (such as stores having longer, more frequent shutdowns, more frequent repairs, greater food safety risks, and increased chances of stores reducing or removing refrigerated sections, etc.).
- The fact that consumers are already struggling at the grocery store due to the recent impacts of inflation on food prices.

The increased financial burden on older stores will likely be too great to overcome, leading to store closures. As discussed below in Section 4 of these comments, these effects will be felt most acutely in minority and economically stressed communities that depend upon the availability of affordable fresh food at their local grocery stores. Further, the use of reclaimed HFCs for equipment servicing and repair may be technically infeasible for custom-built equipment, particularly when upgrading or replacing components. A limited supply of niche HFCs or blends not manufactured or reclaimed in significant volumes but essential for specific subsectors may also create compliance challenges.

In light of these factors, if EPA goes forward with these requirements, it should:

- Make grant funding available to offset the increased costs associated with purchasing reclaimed HFC refrigerant, and the requirement should be imposed only on grant recipients.
- Provide an express exception for certain newer and commonly used low-GWP refrigerants such as R448A/R449A and R407A, given that they are unlikely to be reclaimed in sufficient quantity to satisfy industry needs, as these substances have only recently started to be used in newly installed or retrofitted in commercial refrigeration systems. Further, these refrigerants are subject to patents held by their manufacturers, thus not all reclaimers can legally formulate their blends, which will constrict supply.
- Move the January 1, 2028 compliance date back at least two years to allow for development of the necessary supply of reclaimed HFC refrigerants on the market.



Finally, the Associations would not support a phased approach whereby EPA uses subsector percentages to work gradually towards 100% use of reclaimed HFCs in servicing and/or repair, given the administrative burdens necessary to track and verify compliance that are noted in the Proposed Rule.<sup>37</sup>

**i. EPA should clarify that it will not presume a failed repair where leaks are detected on different components of a complex system.**

EPA proposes to codify a presumption that a leak is repaired “if there is no further addition of refrigerant to the equipment for 12 months after the repair or if there are no leaks identified by either the required periodic leak inspection(s) or an ALD system, where applicable.”<sup>38</sup> As a corollary, EPA states in the Proposed Rule preamble that—whether or not ALD system is used voluntarily or required under the rule—if the system detects a leak in the 12-month period after leak repair, the repair is presumed to have subsequently failed unless the owner or operator can document that the leak detection was due to a new leak unrelated to the previously-repaired one.<sup>39</sup>

EPA’s proposed presumptions are illogical and will confuse compliance efforts. The Associations maintain that leaks should be treated individually, with their own dates of detection and verification tests, whereas the “whole appliance” should be considered in terms of total leak rate for purposes of creating retrofit/retirement plans and chronic leak reporting. There is no need to conflate the two concepts.

An individual leak should be presumed repaired upon passing a follow-up verification test. Whether there is another leak elsewhere on the appliance at a different date for a different reason should have nothing to do with whether the original leak is deemed repaired. The Associations request that EPA expressly clarify in the Final Rule that leaks identified on different components of the same refrigeration system within a 12-month period would not create a presumption that an individual repair has failed. Commercial supermarket refrigeration is a complex system of compressors, condensers, evaporators, valves, pipe fittings, and hundreds of feet of piping—any of which can leak at a given time. By creating an illogical assumption that any refrigerant addition or any leak identified necessarily means that a previous leak repair has failed, EPA fails to account for the complexity of these systems and the many components they contain.

We request that EPA eliminate from the Final Rule any presumption of repair failure for an initial leak whenever refrigerant is added or where a subsequent, unrelated leak is found in a complex system.

**j. EPA should amend its proposed leak detection and repair recordkeeping requirements to facilitate implementation.**

While most of the recordkeeping obligations associated with the proposed leak detection and repair requirements would fall on the appliance owner or operator, the Proposed Rule would require third party vendors who install, service, repair, or dispose of a regulated appliance to provide a record

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<sup>37</sup> See 88 Fed. Reg. at 72,259.

<sup>38</sup> See *id.* at 72,241; 72,301 (§ 84.106(d)(2)).

<sup>39</sup> *Id.* at 72,241.

to the owner or operator documenting the work performed.<sup>40</sup> Given the tight compliance deadlines proposed for leak repair, verification testing, and other maintenance requirements in the Proposed Rule, EPA should consider requiring third party vendors to provide these records promptly so that the owner/operator can meet its compliance obligations within the timeframes specified in the regulations.

**k. The Final Rule should expressly preserve the ability to use substitutes for initial installation and servicing/repair of fire suppression equipment.**

EPA proposes to provide, starting January 1, 2025, that “recycled regulated substances must be used” for the initial installation of new fire suppression equipment and the servicing and/or repair of existing fire suppression equipment.<sup>41</sup> As with the proposal for use of reclaimed HFCs in Section 84.112 (e) and (f) in certain refrigeration equipment (discussed above in Section 3.h of these comments), the proposed regulatory language could be read to suggest that *only* recycled regulated substances, and not their substitutes, could be used to fill and/or service fire suppression equipment. This result was likely unintended because it overlooks the potential use of HFC substitutes in fire suppression equipment, which in some cases may be more environmentally friendly than recycled HFCs. The Associations request that EPA amend Section 84.110(c) to clarify that fire suppression equipment must be initially charged and serviced with recycled HFCs or allowable HFC substitutes, as such substitutes become available on the market.

**4. Implementation of the Proposed Rule Requirements Would Unduly Burden Disadvantaged Communities.**

Due to the complex and integrated nature of grocery store refrigeration systems, in many cases it may not be economically viable to retrofit, retire, or replace an existing system to comply with the mandates in the Proposed Rule. In such a case, the owner would be forced to close the store.

Rural and poor communities are more likely to have older stores with older systems that leak at a higher rate than average. These stores also have tighter profit margins, making it harder for store owners to pay for extensive repairs, retrofits, or replacements of their refrigeration systems. The expenses associated with system maintenance under the proposed requirements would also increase the chances that store owners would be unable to keep less profitable stores open. Those stores that remain open would be forced to raise food prices in disadvantaged areas and, in some situations, exacerbate the “food desert” problem in certain areas of the country.

**5. EPA Should Not Finalize the Proposed Container Tracking Requirements.**

EPA proposes detailed and onerous requirements for various entities along the HFC supply chain to track, provide, and update information about the sale, distribution, and purchase of HFC containers.<sup>42</sup> Among other things, EPA proposes to require that all containers of regulated substances entering U.S. commerce that could be used in the servicing, repair, or installation of refrigerant-containing equipment or fire suppression equipment (with limited exceptions) have a

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<sup>40</sup> See *id.* at 72,304 (proposed § 84.106(l)(3)).

<sup>41</sup> See *id.* at 72,305 (proposed § 84.110(c)).

<sup>42</sup> See *id.* at 72,307 (proposed § 84.118).

machine-readable tracking identifier affixed to them. The Agency proposes a schedule to phase in this requirement, starting with containers offered for sale by producers and importers as of January 1, 2025. This proposal is substantially similar to the provisions of EPA’s AIM Act Allocation Framework Final Rule (requiring containers of bulk regulated substances entering and moving in U.S. commerce to be equipped with a QR code for tracking and identification<sup>43</sup>) that was vacated and held to be outside of EPA’s AIM Act Authority in *Heating, Air Conditioning & Refrigeration Distributors Int’l v. EPA*.<sup>44</sup> In *HARDI v. EPA*, the D.C. Circuit held that EPA failed to identify any AIM Act authority for the QR code requirements finalized in the Allocation Framework Rule.<sup>45</sup> As observed by the Court, the AIM Act “says nothing about complementary measures, refillable cylinders, or QR codes.”<sup>46</sup> Imposition of these requirements at significant cost to the regulated industry was thus determined to be outside of EPA’s authority.<sup>47</sup>

Undeterred, EPA proposes very similar container identification and tracking requirements here. Despite the clear precedent in *HARDI v. EPA*, EPA defends its proposal by explaining that the D.C. Circuit’s decision “rested on limitations on the scope of EPA’s authority under [AIM Act] subsection (e)(2)(B) in particular, and it does not apply to other parts of the AIM Act.”<sup>48</sup> This is an overly narrow reading of the Court’s decision in *HARDI v. EPA*, which was based upon EPA’s failure to identify *any* “statute authorizing its QR-code and refillable-cylinder regulations.”<sup>49</sup> The Court in fact considered the “rest of the statute,” but found no basis for EPA’s proposed tracking requirements in the AIM Act.<sup>50</sup>

It is thus unclear why the Agency believes that the proposed machine-readable tracking identifier requirements would withstand scrutiny under the AIM Act. EPA states in the Proposed Rule that the proposed requirements are defensible because “they are being proposed under a different statutory provision,”<sup>51</sup> namely subsection (h)(i), which authorizes the Agency to promulgate regulations to “control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment” containing HFCs and/or substitutes.<sup>52</sup> This provision authorizes regulations pertaining to HFC-containing “equipment” and provides no authority for EPA to regulate HFC containers, much less the imposition of costly and burdensome tracking and identification requirements.

Indeed, managing the tracking of containers as they move through the supply chain would be

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<sup>43</sup> EPA, *Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act; Final rule*, 86 Fed. 55,116, 55,211 (Oct. 5, 2021) (finalizing 40 C.F.R. § 84.23 (“Certification identification generation and tracking”).

<sup>44</sup> 71 F.4th 59, 68 (D.C. Cir. 2023) (*HARDI v. EPA*).

<sup>45</sup> *Id.* (“The EPA has not identified a statute authorizing its QR-code and refillable-cylinder regulations. We therefore vacate those parts of the Phasedown Rule and remand to the agency.”).

<sup>46</sup> *Id.* at 67.

<sup>47</sup> *Id.* (observing that the refillable-cylinder requirements alone were likely to imposed between \$441 million and \$2 billion in costs on the regulated industry and that “[i]t is unlikely that Congress would have granted the agency authority to pass a rule of that magnitude in a provision of the statute that says nothing about complementary measures, refillable cylinders, or QR Codes”).

<sup>48</sup> 88 Fed. Reg. at 72,266.

<sup>49</sup> 71 F.4th at 68.

<sup>50</sup> *Id.* at 67.

<sup>51</sup> *See* 88 Fed. Reg. at 72,266.

<sup>52</sup> 42 U.S.C. § 7675(h)(i).

logistically challenging and will lead to delays and significant administrative burdens for retailers, who are the least equipped to ensure that containers of HFCs used to service their systems are appropriately labeled and that suppliers, reclaimers, and recyclers have appropriate EPA registrations. Further, adapting to new tracking technologies and ensuring compatibility with existing systems may require significant adjustments and investments in technology for retailers, the costs of which will necessarily be passed on to consumers.

Given the significant administrative and logistical challenges that these proposed requirements would create for retailers, and the fact that such requirements are not authorized under the AIM Act, the Associations request that EPA eliminate these obligations from the Final Rule, including tracking requirements for anyone receiving or purchasing HFC containers and any responsibility for ensuring machine-readable tracking identifiers on the containers received. The Associations also request that EPA eliminate any requirement to ascertain the registration status of suppliers, reclaimers, and recyclers. Finally, the Associations request that EPA clarify in the Final Rule that “purchasers” of HFCs are not required to register in the EPA tracking system.<sup>53</sup>

## **6. The Proposed Disposable Cylinder Return and HFC Reclamation Requirements Should be Clarified.**

EPA proposes to require that any person who uses a disposable cylinder must send it to a certified reclaimer or fire suppressant recycler when it contains a regulated substance that was used in the servicing, repair, or installation of refrigerant-containing or fire suppression equipment and will no longer be used.<sup>54</sup> It is unclear under this proposal who will be deemed to be the owner of reclaimed product as well as which entity is responsible for return as between the equipment owner or operator and a third-party contractor who conducted the installation, servicing, or repair.<sup>55</sup>

Further, the Proposed Rule does not clarify EPA’s analysis with respect to patent issues that may arise through HFC users (or reclaimers) carrying out reclamation activity as required under the regulation.

If EPA determines to go forward with these requirements, which the Associations do not support, the compliance date should be no earlier than January 1, 2028 due to supply chain constraints and the new processes and equipment that would be required to implement the proposed requirements (*e.g.*, suitable trucks for transport, new reclaim facilities, etc.).

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<sup>53</sup> In the Proposed Rule preamble, EPA states that it is “proposing to require that any person who purchases, sells, distributes, or offers for sale or distribution, regulated substances that could be used in the servicing, repair, or installation of refrigerant-containing equipment or fire suppression equipment must register with EPA in the tracking system no later than the first time the person would be required to update tracking information in the system.” 88 Fed. Reg. at 72,270 (emphasis added). Yet the proposed regulatory text in 40 C.F.R. §§ 84.118(b)(2) and 84.118(d)(6) contain no references to purchasers, reflecting what appears to be EPA’s intent to require only supplier registration.

<sup>54</sup> 88 Fed. Reg. at 72,307 (proposed § 84.116(a)).

<sup>55</sup> If EPA’s intent is to place the responsibility for return to a certified reclaimer or recycler on the equipment owner or operator, the Associations urge the Agency to examine the potential emission impacts from transportation that would result in determining the environmental benefits of the rule, as well as the elimination of circular uses of containers (*i.e.*, recycled scrap metal).

## **7. EPA Underestimates the Significant Compliance Burdens and Costs Associated with Proposed Rule.**

As explained in these comments, the proposed new requirements will impose significant costs on the operations of the Associations' members that EPA does not account for in its Analysis of Economic Impact and Benefits technical support document (TSD) or its Regulatory Impact Analysis Addendum (RIA Addendum) to the Allocation Framework Rule RIA. Key drivers of compliance costs will be:

- Tight compliance timeframes that will necessitate allocation of personnel and financial resources.
- Increased demand for and limited supply of reclaimed and/or recycled HFCs.
- Increased demand for and limited supply of ALD systems.
- The installation, training, and maintenance costs associated with ALD installation.
- The need to re-train technicians and maintenance personnel.
- Required retrofit or retirement of appliances with leaks that cannot be repaired in accordance with the proposed repair standard.

As explained in the Joint Retail Associations' comments on the Technology Transitions Proposed Rule, that regulatory program will undoubtedly place a significant strain on supply chains and technicians, driving up costs. EPA's proposal to impose additional sweeping, mandatory system repair requirements in the near future will further drive a surge in demand for technicians, equipment, and refrigerants.

Further, the proposed new requirements—and their varying compliance timeframes, applicability thresholds, recordkeeping, and reporting requirements—will introduce administrative complexity. This additional burden is particularly pronounced for the Associations' members who are managing compliance for different sites in multiple states, each of which are equipped with different types of regulated appliances.

## **8. A Separate Rulemaking to Establish New Technician Training and Service Requirements Would Be Unnecessary and Exceeds EPA's Authority.**

In the Proposed Rule, EPA requests advance comment on whether the Agency should establish requirements for RACHP technician training and/or certification to address servicing equipment using ASHRAE 2, 2L, and 3 refrigerants, and if so, potential approaches for doing so.<sup>56</sup> EPA states that it is particularly seeking advance comment on whether through a separate rulemaking, the Agency should propose to establish training and/or certification requirements for technicians under subsection (h), and, if so, how such a training and/or certification program might be managed, and to what extent or for which types of HFCs and/or their substitutes such requirements should apply.

EPA also requests advance comment on whether technicians who are currently trained and certified under CAA sections 608 (for servicing of stationary refrigeration appliances) and/or CAA section 609 (for servicing of MVAC systems) should be required to be certified under subsection (h) of the AIM Act, and whether any future technician training requirements should also be

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<sup>56</sup> See 88 Fed. Reg. at 72,295.

incorporated into the proposed 40 C.F.R. Part 266, subpart Q requirements for ignitable spent refrigerants being recycled for reuse, or if the Agency should provide grandfathering for technicians certified by an approved CAA section 608 or 609 certifier.

The Associations do not support EPA establishing separate technician training and certification requirements under AIM Act Subsection (h) or under its Part 266 regulations. Owners and operators of equipment regulated under CAA Section 608 and Subpart F have already invested significant resources in technician training and certification, and these programs are entirely adequate to ensure technician safety and competence. Additional separate training and certification requirements would only add to compliance burdens without environmental or safety benefits. The Associations thus request that EPA make an express determination in the Final Rule that technicians trained and certified by a certifier approved under existing refrigerant management programs do not require separate training/certification under AIM Subsection (h) or Part 266. We also urge EPA to refrain from undertaking a separate rulemaking on this topic.

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The Associations share EPA's concerns about climate change and support the Agency's efforts to reduce GHG emissions. We urge EPA to reconsider its proposed approach, however, and the potential unintended consequences of forcing the closure of existing stores, and deterring the opening of new stores, in particular in rural, geographically isolated, and economically disadvantaged communities. The Proposed Rule will impose inordinate costs on grocery and other retailers who serve these populations, costs that will necessarily be reflected in higher prices for food and other essential goods.

We appreciate this opportunity to provide comments and suggestions on how EPA could improve its proposal, and we look forward to further engagement with the Agency on these issues. If you have any questions or wish to discuss these comments, please contact Susan Kirsch, Vice President, Regulatory Affairs, RILA at [susan.kirsch@rila.org](mailto:susan.kirsch@rila.org) (202-866-7477); Jonathan Gold, Vice President, Supply Chain and Customs Policy, NRF at [goldj@nrf.com](mailto:goldj@nrf.com) (202-626-8193); Stephanie Harris, Chief Regulatory Officer & General Counsel, FMI at [sbharris@fmi.org](mailto:sbharris@fmi.org) (202-220-0614); and Chris Jones, Senior Vice President, Government Relations & Counsel, NGA at [cjones@nationalgrocers.org](mailto:cjones@nationalgrocers.org) (202-938-2570).

Respectfully Submitted,

FMI – The Food Industry Association  
Retail Industry Leaders Association  
National Retail Federation  
National Grocers Association