



THE VOICE OF FOOD RETAIL

Feeding Families  Enriching Lives

February 27, 2012

The Honorable Lisa P. Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Re: Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export; 77 Fed. Reg. 237 (January 4, 2012)

Docket No. EPA-HQ-OAR-2011-0354

Dear Administrator Jackson:

On January 4, 2012, the Environmental Protection Agency (EPA) published a proposed rule in the Federal Register which would adjust the allowance system controlling U.S. consumption and production of hydrochlorofluorocarbons (HCFCs) as a result of a recent court decision vacating a portion of the rule titled "Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import and Export; Final Rule." EPA interprets the court's vacatur as applying to the part of the rule that establishes the company-by-company baselines and calendar-year allowances for HCFC-22 and HCFC-142b. Following the August 5, 2011, interim final rule allocating allowances for 2011, this action proposes to relieve the regulatory ban on production and consumption of these two chemicals following the court's vacatur by establishing company-by-company HCFC-22 and HCFC-142b baselines. We appreciate the opportunity to comment on this important matter.

The Food Marketing Institute (FMI) conducts programs in public affairs, food safety, research, education and industry relations on behalf of its nearly 1,250 food retail and wholesale member companies in the United States and around the world. FMI's U.S. members operate more than 25,000 retail food stores and almost 22,000 pharmacies with a combined annual sales volume of nearly \$650 billion. FMI's retail membership is composed of large multi-store chains, regional firms and independent operators. Its international membership includes 126 companies from more than 65 countries. FMI's nearly 330 associate members include the supplier partners of its retail and wholesale members.

The Proposed Rule Will Impose Substantial Burdens on Food Retailers and Wholesalers

Competition in the supermarket industry is fierce. Retailers and wholesalers know that in order to succeed in the marketplace, they have to deliver the freshest food possible to meet consumer demands. Commercial refrigeration is the lifeblood of the industry and refrigeration equipment is among the most expensive in the store.

With profit margins in the industry at about a penny on the dollar, increased costs for refrigeration operations can have a very significant impact on the bottom line.

The mere publication of the Proposed Rule has resulted in an enormous spike in the cost of HCFC-22 (R-22) refrigerant, the refrigerant most commonly used in the supermarket industry. Since January, prices have increased 200-300 percent per cylinder or jug. In fact, FMI is hearing from members in the industry that it is becoming difficult to find any R-22 period. If the Proposed Rule is not rescinded or significantly changed, many retailers and wholesalers will face hundreds of thousands or millions of dollars of new costs.

Uncertainty will Increase Costs

One retailer has informed FMI that uncertainty in production quotas for 2012 as a consequence of the Proposed Rule will likely increase operating costs by more than \$500,000. As this retailer is one of the smaller HCFC users in the commercial refrigeration sector, FMI knows that other retailers will face hundreds of thousands of dollars more in costs.

HCFC Shortages

Potential 2012 HCFC shortages will likely result in large sales disruptions caused by extended system downtimes or higher refrigerant prices due to unavailable HCFC refrigerants. Shortages could even result in higher leak rates due to emergency or expedited retrofits under non-ideal conditions. Emergency retrofits will require additional capital thus negatively impacting available capital for retro-commissioning and planned system maintenance, resulting in higher energy usage and higher long-term operational costs.

Costly Refrigeration Retrofits

The Proposed Rule could require retailers to retrofit many of their systems. Refrigeration retrofits are costly, often running in excess of \$50,000 per system. For a retailer with only 100 HFC systems these costs could easily reach \$5 million. Larger retailers could be facing costs amounting to tens of millions of dollars. Expedited retrofits may be funded at the expense of other maintenance leak reduction initiatives

and energy improvement projects. Incurring this cost over a short timeframe will negatively impact financial performance.

Higher Energy Usage and Increased Carbon Emissions

A lack of true equal capacity HCFC replacement 'drop-in' refrigerants for packaged HVAC units will result in higher energy usage and increased carbon emissions while lowering the ability of the system to meet store condition requirements. Inability to meet store requirements will additionally increase refrigeration system energy usage.

Lack of Time to Assess Options Will Lead to Suboptimal Results

Refrigerant selection is not a one-size-fits-all proposition, each end user must decide what HCFC retrofit refrigerant best fits their operational, climatic and GWP requirements. Accelerated retrofits will likely result in higher energy usage as retailers are forced to retrofit without complete evaluation of all potential refrigerants.

Use of New and Unproven Technologies Could Result in More Emissions

Additional pricing pressures will likely cause a rush to implement new and unproven technologies to reduce refrigerant charge without thorough testing. This will likely result in additional emissions due to unproven technology (e.g. micro channel condenser leaks).

Existing Plans Provide Adequate Protection

As stated in the United Nations Environment Programme (UNEP) Synthesis Report titled HFCs: A Critical Link in Protecting Climate and the Ozone Layer: "The Montreal Protocol is working as intended and expected. The depletion of the stratospheric ozone layer has been curtailed and is expected to recover to its 1980 levels during this century." The existing allowance system provides adequate protection and the accelerated schedule in the Proposed Rule is not necessary. The accelerated schedule has the negative impacts noted both in the UNEP report and our above comments. We urge the agency to revisit the Proposed Rule.

Hon. Lisa P. Jackson
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We appreciate your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik R. Lieberman". The signature is fluid and cursive, with the first name "Erik" being the most prominent.

Erik R. Lieberman
Regulatory Counsel