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BAN ON THE SALE OR DISTRIBUTION
OF PRE-CHARGED APPLICANCES

EPA Building
1310 L Street, N.W.
Washington, D.C.

Wednesday, January 7, 2009
9:06 a.m.

The above-entitled matter convened at
9:06 a.m., Ross Brennan, Branch Chief, SPIB,
Stratospheric Protection Division, presiding.

1 PROCEEDINGS

2 (9:06 a.m.)

3 MR. BRENNAN: Folks, if you could take
4 your seats, we're going to get started in a couple of
5 minutes with the hearing.

6 (Pause.)

7 Good morning, everybody. Happy New Year.

8 I'd like to welcome you to this morning's
9 hearing. My name is Ross Brennan. I'm the Branch
10 Chief in the Stratospheric Protection Division at
11 EPA. I'd also like to direct your attention to Cindy
12 Newberg, my fellow Branch Chief here in the
13 Stratospheric Protection Division. Cindy is the
14 author and the lead technical expert and contact on
15 the Pre-charged Appliances Proposed Rule that we're
16 going to be discussing today.

17 I'm also joined at the front of the room
18 by the rest of the team, who is going to be working
19 on the packages, including the package that we're
20 going to be talking about this afternoon.

21 Jeremy Arling is the Regulation Manager
22 for the Stratospheric Ozone Protection Program,

1 Stacey Gatica, also a reg writer, and involved in the
2 team, so they're at the front of the room, and we're
3 going to be running the hearing this morning.

4 This morning's hearing, I'm just going to
5 state for the record, is to address comments on the
6 Pre-charged Appliances Proposed Rule that EPA
7 published on December 23rd.

8 The docket for this rulemaking is 2007-
9 0163, and the proposal has a comment period that
10 goes until February 6th. The purpose of the
11 rulemaking, once finalized, would be to restrict the
12 sale and distribution in interstate commerce,
13 including the export and import of appliances that
14 have been pre-charged with HCFC-22, HCFC-142B, or a
15 mixture of those substances.

16 It would also restrict the sale and
17 distribution of appliances that are designed
18 exclusively for use with those refrigerants, and it
19 would apply to appliances that are manufactured
20 after January 1st, 2010.

21 The Proposed Rule, once finalized, would
22 impose restrictions on the sale or distribution of

1 these appliances, effective on January 1st, 2010.

2 That's all information that's in the Proposed Rule.

3 I'd like to spend a moment drawing a
4 comparison to the proposal that's going to be
5 discussed this afternoon. As most of you no doubt
6 know, we're also have a Proposed Rule Hearing this
7 afternoon at 1:00 in the same room, to discuss what
8 we refer to as the 2010 Allocation Proposal.

9 That proposal also was published on
10 December 23rd, and has a somewhat different docket
11 number and different comment period. That proposal
12 would implement the Montreal protocol phase-down for
13 the production and import of HCFCs, through the
14 allowance system that EPA currently has in place.

15 We see the two Rules, the one being
16 discussed this morning and the one being discussed
17 this afternoon, as complementary, yet it is
18 important to note that they are, each of them,
19 stand-alone rulemakings. Either of them could be
20 finalized without the other, or one could be
21 finalized before the other.

22 Nevertheless, we believe it is fortunate

1 that they were signed and published on the same day, and
2 it's also fortunate that we were able to hold the
3 hearings for both of the packages, on the same day,
4 given the commonality of interest between the two
5 packages.

6 The purpose of this hearing, just to
7 clarify, is to allow interested parties to provide
8 verbal comments to EPA, verbal comments on the Pre-
9 charged Appliances proposal. Whatever you say in
10 this hearing, will be transcribed by our Court
11 Reporter and made a part of the public docket for
12 this rulemaking.

13 If, by any chance, you've brought
14 handouts -- and some folks occasionally bring
15 handouts to public hearings -- you are welcome to
16 put those at the back of the room. We will take
17 those handouts and also provide them for the public
18 record as part of the docket.

19 If you have provided a written copy of
20 your testimony, we would ask that you provide that
21 to the Court Reporter, to make it easier to enter
22 that information into the record.

1 As we assemble the final rulemaking for
2 Pre-charged Appliances, we'll consider the verbal
3 comments that we receive today, in an identical
4 fashion to written comments that are provided during
5 the comment period.

6 A transcript will be provided to the
7 docket and you'll be able to read the transcript and
8 hear exactly what was said today. If, for some
9 reason, you have to abbreviate your comments this
10 morning because of time considerations, feel free to
11 do so, feel free to provide a longer version of
12 those comments to the public docket.

13 You are welcome to provide both verbal
14 comments at this morning's hearing, and written
15 comments to the docket. And if you're not speaking
16 this morning, you're still welcome to provide
17 written comments to the docket.

18 This is not, however, a forum for
19 discussing the proposals with EPA staff. This is a
20 very formal public hearing where we stand back and
21 we listen to you speak for the record.

22 We certainly do, however, welcome

1 stakeholder interactions. We would invite you to
2 touch base with me or one of the three folks at the
3 front of the room, if, number one, you have
4 questions about what's in either of the packages;
5 number two, if you wish to set up a more formal
6 meeting.

7 If you do want to meet with the Agency
8 during this comment period, you're welcome to come
9 on in and talk to us, and we would document that
10 meeting for the public docket, but we do welcome
11 stakeholder interaction, apart from the forum that's
12 planned for this particular hearing.

13 A few notes on process: When you came in
14 the room, you signed in and you also indicated
15 whether or not you plan to speak at the hearing.
16 Our plan is to simply go through that list of
17 speakers in order, starting at the very top of the
18 list and going right through it.

19 When you come to the front of the room,
20 we would ask that you stand at the podium here, that
21 you start by giving us your name and your
22 affiliation, the organization you represent. If

1 your name is complicated, we would ask that you
2 spell it out for the Court Reporter.

3 Although we don't have formal time limits
4 on comments, we would ask that you keep your
5 comments to a reasonable length. You may get some
6 verbal cues from the EPA folks in the front of the
7 room or from your colleagues in the audience --

8 (Laughter.)

9 MR. BRENNAN: -- if, in fact, it becomes
10 appropriate for you to abbreviate and provide the
11 rest of your comments for the written record.

12 A few logistical notes: I know many of
13 you are new to this building, this EPA location.
14 Number one, this is a crowded and a hot room. I
15 think that when we asked the facilities folks to set
16 the room up for us, they thought that EPA
17 hospitality meant a nice, comfortable, warm
18 temperature and nice, really large cushioned chairs,
19 in order to facilitate the best dialogue.

20 We've actually swapped out with smaller,
21 somewhat less comfortable chairs, and we have asked
22 the facilities folks to come by and drop the

1 temperature by about 20 degrees.

2 (Laughter.)

3 MR. BRENNAN: I apologize for not only
4 the spacing and the visual challenges that we're
5 under, but also for the temperature. Let's hope
6 that at least that gets fixed fairly soon.

7 Bathrooms are right outside. the Men's
8 Room is down the corridor here; for the Women's
9 Room, go back toward the double doors toward the
10 lobby and you'll see the Women's Room on the right.

11 Vending machines are also right in back
12 of this room as you go down the hall. We don't have
13 breaks planned, but certainly if folks need to get up
14 and do things during the hearing, that's fine.

15 Lunch, if you're interested in lunch
16 options, we recommend you just walk outside the
17 door, turn left on L Street, and there's a few
18 coffee shops and cafes along L, as well as along
19 Vermont Avenue and 14th Street, if you want to
20 explore the neighborhood in the rain.

21 Finally, just as a process matter, I want
22 to remind you that this hearing is being transcribed

1 by our Court Reporter, so please do speak clearly,
2 speak as everything you say, will be entered into a
3 transcript and be made available to the public. That
4 transcript will be made available within probably a
5 couple of weeks of this hearing, and it's something
6 that you can log on to the docket and see.

7 So, with that, I'd like to begin at the
8 very top of our list, and if I could get a hold of
9 the list, I'd just move through it in order.

10 (Pause.)

11 And what we'll do -- and, of course, as
12 somebody who's name begins with B, I'm also
13 gratified to see that the alphabet does make a
14 difference. We're going to start with the letter A
15 and just work our way through the alphabet.

16 I'd like to begin with Karim Amrane.
17 Please come to the microphone and provide your
18 comments to the Agency.

19 MR. AMRANE: Thank you. Good morning.

20 My name is Karim Amrane, and I'm the Vice
21 President of Regulatory and Research at the Air
22 Conditioning, Heating, and Refrigeration Institute.

1 AHRI is a national trade association of
2 manufacturers of residential and commercial HVAC
3 equipment, and AHRI's 350 member companies come from
4 more than 90 percent of the residential and
5 commercial air conditioning, space heating, water
6 heating, and commercial refrigeration equipment
7 manufactured and sold in North America.

8 AHRI appreciates the opportunity to
9 appear before you and to provide input on the Notice
10 of Proposed Rule regarding the ban on the sale or
11 distribution of pre-charged appliances.

12 AHRI has a long history in support of
13 environmental issues. We supported the phaseout
14 dates of the Clean Air Act for refrigerants that
15 deplete the ozone layer.

16 We have worked very closely with EPA on
17 issues related to refrigerant purity, recovery and
18 recycling equipment, and technician certification.
19 AHRI has been the recipient of five EPA
20 stratospheric ozone protection awards, including the
21 Best of the Best Award for its leadership in helping
22 the air conditioning and refrigeration industry move

1 away from ozone-depleting substances.

2 MR. BRENNAN: Sorry to interrupt, but
3 could you speak into the microphone so that people
4 in the back can hear?

5 MR. AMRANE: Sure.

6 AHRI supported the EPA regulations
7 implementing various provisions of the Clean Air Act
8 Amendments of 1990, including the protection and
9 consumption phaseout scheduled for Class II Ozone-
10 Depleting Substances.

11 We were among the first calling for
12 regulation that would prevent pre-charged air
13 conditioning and refrigeration equipment with R-22,
14 R142B, and their blends, from entering the United
15 States after January 1st, 2010.

16 We believe that closing the loophole on
17 imported products, is very important, as it provides
18 a more equitable treatment of domestically-
19 manufactured and imported equipment.

20 However, the Proposed Rule goes well
21 beyond its original intent. By proposing an
22 unconventional definition of the term,

1 "manufacture," and by extending the ban on pre-
2 charged appliances to equipment specifically
3 intended for export, EPA is significantly penalizing
4 the U.S. domestic air conditioning and refrigeration
5 industry.

6 In fact, based on its interpretation of
7 the term, "manufacture," EPA is proposing, effective
8 January 1st, 2010, to ban the installation of certain
9 air conditioning and refrigeration equipment such as
10 condensing units, even if the equipment entered
11 interstate commerce prior to January 1st, 2010.

12 If we understand the Proposed Rule
13 correctly, EPA is proposing to ban the installation
14 of certain products that would have been placed into
15 initial inventory before January 1st, 2010.

16 Not allowing products placed in inventory
17 prior to January 1st, 2010, to be installed after
18 January 1st, 2010, will have a devastating impact on
19 the industry, and is contrary to the provisions of
20 the Clean Air Act, as it will effectively accelerate
21 the phaseout date of R-22 by six months to a year.

22 Given that over two million R-22

1 condensing units are expected to be manufactured in
2 2009 alone, the stranded inventory costs could well
3 be in excess of \$500 million, enough to bankrupt
4 several manufacturers and distributors.

5 As drafted, we believe that the Proposed
6 Rule is subject to the requirements of Section 202
7 or 205 of the Unfunded Mandates Reform Act and that
8 EPA is also required to prepare regulatory
9 flexibility analysis to assess the impact on small
10 businesses.

11 EPA also fails to recognize that under
12 the Regulatory Flexibility Act requirements, that
13 small distributors and contractors are affected by
14 this Rule.

15 A simple and elegant way to resolve this
16 issue, would be for EPA to use a more conventional
17 definition for the term, "manufacture." More
18 specifically, we urge EPA to define the term,
19 "manufacture," to mean when the product leaves the
20 manufacturer's final assembly process, is packaged
21 for shipment and placed into initial inventory.

22 Using this new definition, will allow for

1 the sale and installation of products which have been
2 placed in inventory prior to January 1st, 2010. For
3 imported products, AHRI recommends that the term
4 "manufacture" be defined to mean when the product
5 enters the customs territory of the United States.
6 This meaning of the term, is also consistent with the
7 Department of Energy regulations.

8 AHRI recognizes that EPA attempted to
9 finalize this Rule more than 18 months ago, but was
10 delayed by interagency administrative reviews. Had
11 this Rule been finalized 18 months ago, it is quite
12 possible industry could have planned in time to
13 successfully manage it, however, it is unfair to
14 expect industry to pay for nearly two years of delay
15 with a Rule that effectively now accelerates the
16 phaseout by six to 12 months.

17 It is also unfortunate that after 14
18 years of responsible industry investment, technology
19 development and product planning that will
20 successfully enable the phaseout of R-22, the final
21 months have been thrown in chaos by new rules of the
22 game.

1 By EPA's own admission, this Rule will
2 not be finalized until the Summer of 2009, by which
3 time the field inventory of R-22 products, will be
4 full and potentially put into obsolescence by this
5 Rule.

6 Given the consequences, industry must
7 know and plan now. Components for the manufacture
8 of R-22 systems, have already been built and are
9 AHRI members' factories, waiting to be made into
10 systems. The summer of 2009 will be far too late.

11 For this reason, we urge EPA to
12 immediately clarify its definition of "manufacture,"
13 as we propose.

14 AHRI seriously questions EPA's rationale
15 to extend the ban on pre-charged appliances to
16 products intended solely for export from the United
17 States. We fail to understand why EPA is attempting
18 to prevent U.S. manufacturers from exporting pre-
19 charged equipment with HCFCs to Article V countries,
20 where it is perfectly legal to use these
21 refrigerants.

22 By extending the ban to products intended

1 solely for export, EPA is, in fact, disadvantaging
2 and penalizing U.S. manufacturers who are globally
3 competing against non-U.S. manufactures selling in
4 Article V countries.

5 EPA's assumption that somehow the share
6 of U.S. HCFC products exported to Article V
7 countries, will be replaced by non-HCFC products, is
8 unrealistic and unreasonable, and is not in
9 accordance with the facts facing the industry.

10 We expect U.S. manufacturers to lose a
11 significant percentage of their market share in
12 Article V countries, as HCFC products are
13 significantly less expensive than products operating
14 with alternative refrigerants.

15 The net effect will be the export of U.S.
16 manufacturing jobs. Again, we believe that the
17 Proposed Rule is subject to the requirement of
18 Sections 202 or 205 of the Unfunded Mandates Reform
19 Act, as the loss of market share for exports will
20 easily exceed the \$500 million threshold.

21 We urge EPA to exempt products intended
22 solely for export, from this Rule.

1 AHRI is also concerned with EPA's
2 decision to exempt newly-manufactured equipment
3 charged with recycled or reclaimed refrigerant from
4 the proposed regulation.

5 We believe that this requirement is
6 unenforceable. The more effective way to ensure a
7 level playing field among manufacturers, would be to
8 extend the ban to new products using recycled and
9 reclaimed, as well as virgin R-22, 142B and their
10 blends.

11 Finally, we wanted to caution EPA on
12 possible unintended consequences that the Proposed
13 Rule could have on consumers, if the ban is extended
14 to all pre-charged components. A strict
15 interpretation of the proposed definition of "pre-
16 charged appliance component," would, for example,
17 ban the sale and distribution of thermostatic
18 expansion valves, TXVs, pre-charged with R-22.

19 Some TXVs use a very small refrigerant
20 charge -- less than an ounce -- to properly operate,
21 and are needed to regulate the refrigerant flow of
22 air conditioning and refrigeration systems.

1 Banning their use after January 1st,
2 2010, will have a significant impact on consumers in
3 need of a TXV or coil replacement. We recommend
4 that EPA either exclude pre-charged components from
5 the Rule, or, alternatively, develop a list of
6 components such as TXVs, that should be exempted
7 from the requirements.

8 Thank you for the opportunity to present
9 our views. We will provide more detailed comments
10 in writing.

11 MR. BRENNAN: Thank you. Now I'd like to
12 ask James Burke to come to the front of the room. As
13 a process note, I'd let folks know that we have about
14 15 folks who have signed up to provide comments.
15 We'll just go through the alphabet and call your
16 names.

17 If, for some reason, you haven't
18 indicated yet that you wish to provide comments, if
19 we have time at the end of the hearing, we'll open
20 it up and other people can also come to the front of
21 the room and provide comments to the Agency.

22 Mr. Burke?

1 MR. BURKE: Good morning, everybody. My
2 name is James Burke. I sell and recover gas. I
3 recover gas in the marketplace.

4 My concern is about the Rule, is, demand
5 for refrigerant is the best thing to keep the
6 product from being vented into the atmosphere. I'm
7 afraid that if we lose too much application, because
8 people have to abandon all this R-22 equipment that
9 they are producing in 2009, that that equipment now
10 will have no opportunity to be filled with HCFCs that
11 manufacturers have stockpiled to put into those
12 units.

13 That gas has been manufactured, those
14 manufacturers have prepared themselves to put that
15 gas in that equipment.

16 If you get rid of that equipment, that
17 gas has no place to go. You could have a glut of
18 inventory, no value to the inventory, it's not good
19 for the atmosphere.

20 The Rule that was in place, was in a
21 place a long time, and it's a good Rule, all right?
22 You know, as a manufacturer, if there is no R-22,

1 you will not make any R-22 equipment, so if you're
2 not going to be making any R-22 equipment, by just
3 the nature of economics, you will stop making the
4 equipment as soon as the product is not there, but
5 as long as the product is available -- and the
6 product is not a bad product, R-22 is not a bad
7 product, all right?

8 Yes, it's an ozone-depleter, but it was a
9 replacement for the CFC-12s.

10 One thing I want to bring up, is a little
11 history here. R-12, when it got abandoned,
12 everybody had to get out of the R-12 after market
13 quickly. OE had to get rid of cars in 1992, '93 and
14 '94, very abruptly.

15 The EPA said we're not going to do that
16 with 22; we're going to spread it out over a long
17 period of time, so we have a nice, smooth
18 transition. We're having a nice, smooth transition.

19 If you have any 22 equipment, you can
20 continue to put 22 in that, as long as the product,
21 in 2010, was before 2009 inventory or recovered.
22 The Rule was good.

1 I think we should try to keep it. That's
2 all I have to say. Thank you.

3 MR. BRENNAN: Thanks. I'd now like to
4 ask Jesse Combs to come up.

5 UNIDENTIFIED PARTICIPANT: Jesse's not
6 here this morning. His comments were for this
7 afternoon.

8 MR. BRENNAN: Very good, thank you, thank
9 you for clarifying.

10 As a process note, we're using, in some
11 respects, some of the advance information we got on
12 participants for today, to apply to both the Pre-
13 charged Appliances and the 2010 Rulemakings.

14 One of the lists we have, does not
15 distinguish between whether or not you've signed up
16 to speak this morning or this afternoon, so there
17 will be times, for example, when I may call your
18 name and you may, in fact, not be testifying in this
19 morning's hearing, but, instead, be testifying in
20 this afternoon's hearing.

21 I would also, just as a note, remind
22 folks that this afternoon's hearing will be dealing

1 with the 2010 Phaseout Rule. Wherever possible, I
2 think it will be helpful for you to draw a
3 distinction in your comments, between those issues
4 that are addressed in the Pre-charged Appliances
5 Rulemaking this morning, versus those issues that
6 are addressed in the Phaseout Rule this afternoon.

7 As a process matter, it makes it much
8 easier to go through and respond to the comments.

9 So, with that, we'll go to the next name
10 on our list, and I'm wondering whether Jim Crawford
11 has comments on the proposal for this morning?

12 MR. CRAWFORD: I'm Jim Crawford, I'm the
13 Director of Regulatory Affairs for the Trane Company
14 of Ingersoll Rand, and Dr. Amrane did such an
15 excellent job of presenting the case this morning,
16 that most of my comment is "no comment."

17 The one elaboration I would like to make,
18 is that Dr. Amrane mentioned many, many aspects that
19 deserve reconsideration, perhaps, and the point
20 should be made that these are interactive.

21 Near the end of his intervention, he made
22 the point about expanding the ban to include

1 recycled refrigerants, and I think that that's
2 broadly endorsed, if some of the other provisions
3 that he mentioned, are taken into consideration and
4 resolved appropriately. Thank you.

5 MR. BRENNAN: I have Adam Devoe's name
6 checked on the list.

7 UNIDENTIFIED PARTICIPANT: His comments
8 are for this afternoon.

9 MR. BRENNAN: Thank you very much for
10 clarifying. Tony Digmanese, do you have comments
11 for this morning's hearing?

12 (No response.)

13 MR. BRENNAN: If not, we'll move on to -
14 -

15 UNIDENTIFIED PARTICIPANT: Here he comes.

16

17 MR. BRENNAN: Great.

18 MR. DIGMANESE: Good morning. My name is
19 Tony Digmanese. I work for Johnson Controls. In fact,
20 most of my comments actually supported what Dr. Karim
21 Amrane was saying.

22 But, however, we do have an issue with

1 one of the items there, which is the use of
2 reclaimed refrigerants.

3 Johnson Controls is of the opinion that
4 there should not, really, at this moment, be any ban
5 on any of the reclaimed refrigerants. The reclaimed
6 refrigerants at this moment, is a very, very small
7 percentage of the -- it's something like two to four
8 percent of the sale of refrigerants in the United
9 States.

10 Then there is a task force of ARI that
11 has suggested, that has encouraged and promoted the
12 use of reclaimed refrigerants. At this moment, if
13 we strangle the use of the reclaimed refrigerants,
14 we would discourage any of the investments, and then
15 we would not see new investments coming for the
16 reclaiming industry.

17 This is the only point that I wanted to
18 make. Thank you.

19 MR. BRENNAN: Thanks, Mr. Digmanese. I'd
20 now like to ask Talbot Gee to come to the front of
21 the room.

22 MR. GEE: Thank you very much. Good

1 morning. I am Talbot Gee, Vice President of the
2 Heating, Air Conditioning, and Refrigeration
3 Distributors International, and the acronym is
4 HARDI.

5 Thank you for the opportunity to present
6 HARDI's comments and concerns regarding these two
7 proposed Rules for the next stages of the U.S.'s
8 phaseout of HCFC substances.

9 We understand that there are two separate
10 rulemakings that have been proposed, but we believe
11 the two proposals are inexorably linked, and, as
12 such, please accept the following statements, as they
13 apply to both rulemakings.

14 HARDI is the result of a 2003
15 consolidation of the North American Heating,
16 Refrigeration, and Air Conditioning Wholesalers and
17 the Air Conditioning and Refrigeration Wholesalers
18 International.

19 HARDI is an international trade
20 association of over 1,000 member companies, over 450
21 of which are U.S. based wholesale distributors of
22 heating, ventilation, air conditioning, and

1 refrigeration, HVACR, equipment, supplies, and
2 controls, the majority of which are for residential
3 applications.

4 HARDI's distributor members, 80 percent
5 of which, I note, are fewer than 100 employees, have
6 revenues of over \$20 billion, which represents
7 nearly 90 percent of the U.S. HVACR market, and
8 employ over 30,000 people.

9 Page 78712 of the Proposed Pre-charged
10 Rule, states "this Proposed Rule does not affect the
11 servicing of air conditioning or refrigeration
12 appliances manufactured prior to January 1, 2010."
13 HARDI supports this stated intent by the EPA, as
14 well as the broader objective to phase out the use
15 of ozone-depleting substances, in accord with the
16 Montreal Protocol and the Clean Air Act.

17 However, as we have interpreted the
18 Allocation Rule's definition of "manufactured,"
19 meaning the closing of the refrigeration loop, that
20 Rule would ban the disruption of the loop after
21 January 1, 2010, as we understand it, for all
22 existing systems, for even the most simple repairs

1 such as compressor replacements.

2 This incongruity between the Pre-charged
3 Rule's stated intent not to prohibit or affect
4 servicing of existing systems and the Allocation
5 Rule's extremely broadened definition of
6 "manufactured," combined with the newly-proposed
7 sale and distribution ban on products that use
8 newly-produced R-22 and 142B, has caused rampant
9 confusion and panic among our wholesale distribution
10 community and our customers.

11 Since the EPA first identified certain
12 refrigerants as ozone-depleting, HARDI members have
13 worked diligently to drive the transition to non-
14 ODS refrigerant systems in both commercial and
15 residential applications.

16 HARDI members are a primary source of
17 contractor and technician technical and sales
18 training, which have been key elements in the
19 progress the industry has made during this
20 transition.

21 Further, HARDI members offer extensive
22 support to their contractor customers, to educate

1 end customers about the benefits of purchasing non-
2 ODS refrigeration and air conditioning systems.

3 HARDI members have incurred a financial
4 burden during this transition period. We have had
5 to carry a duplicate inventory of products to
6 accommodate the market's demand for both repair and
7 replacement of existing ODS-using systems and the
8 market's need for non-ODS equipment.

9 There is no financial incentive for
10 carrying the two inventories, and there is little
11 cost advantage between the two product offerings,
12 however, with 60 to 70 million homes and millions of
13 businesses equipped with ODS-using equipment, it
14 will be several years before the market is able to
15 completely transition.

16 After a closer view of the two proposed
17 Rules, HARDI believes that EPA has overestimated the
18 ability of the industry and end customers, to
19 execute an overly aggressive transition from the use
20 of HCFCs in air conditioning and refrigeration.

21 Until the release of the pre-copies of
22 the two Proposed Rules, our members believed that

1 HCFC-using equipment, could be manufactured through
2 the end of 2009 and then sold through until existing
3 stocks were depleted, and there was no reason to
4 believe there would be any prohibition on the sale or
5 use of repair components.

6 The EPA is now proposing to ban not the
7 manufacture, sale, and distribution, but also the
8 installation and servicing of HCFC system after
9 January 1, 2010, as we understand it.

10 This departure from any established
11 regulatory practice our industry has experienced,
12 including the phaseout of CFCs, present significant
13 issues for U.S. consumers and businesses.

14 Though the transition to non-ODS systems
15 has been ongoing for several years, most American
16 homes and businesses, have HCFC systems in place
17 right now.

18 There is a significant cost difference to
19 changing out an entire system, compared to repairing
20 an existing system. What's an American homeowner to
21 do, who had an R-22 air conditioning system installed
22 during the last few years, should the unit break

1 down?

2 Over 30 million residential units were
3 installed during the last five years, which are
4 still under active warranties. Are these warranties
5 now void under the Proposed Rules?

6 Can a convenience store owner remain
7 viable, when, rather than replacing the condensing
8 unit in one display case, she must now have the
9 resources to replace the entire refrigeration
10 system?

11 HARDI does not believe that these
12 examples are the intent of the EPA or the Montreal
13 protocol, and the Pre-Charge states such, but these
14 Proposed Rules, when considered together, will
15 penalize those citizens who purchased and installed
16 systems in accordance with federal law at that time.

17

18 In the pre-charged ban Rule, Section 3
19 outlines how the consumption allowances of HCFCs
20 established in the Allocation Rule, are restricted
21 to, quote, "servicing the existing base of air
22 condition and refrigeration appliances, in

1 particular, the units that are charged onsite but
2 not limited to chillers and residential unitary
3 units."

4 However, the definition of "manufactured
5 prior to," established in the Allocation Rule, bans
6 the use of virgin refrigerants in each of these
7 applications. Our industry has effectively complied
8 with the past federal regulation that has always used
9 the date of factory production for enforcement.

10 Neither changes in appliance efficiency
11 standards, nor the phaseout of CFCs prohibited the
12 sell-through of equipment and components in
13 inventory prior to the regulation's effective dates.

14 Widely considered one of the greatest
15 environmental regulatory successes, the Montreal
16 Protocol has, to this point, accelerated the
17 transition away from ODS refrigerants, without
18 jeopardizing the viability of the very businesses
19 required to implement such policies, because it has
20 not attempted to obsolesce equipment or components
21 already in stock or in service.

22 To be clear, the sale and installation of

1 new, non-ODS air conditioning and refrigeration
2 systems, is a desired and profitable business for
3 HARDI distributors and their contractor customers,
4 however, prohibiting the servicing of existing R-22
5 systems, puts at risk, the invaluable trust of end
6 customers that our industry toils every day to earn.

7 Should our industry be prevented from
8 servicing legally installed R-22 systems after
9 January 1, 2010, the cost to American home and small
10 business owners, alone, will exceed, in our
11 estimation, over \$100 million in 2010, alone.

12 Further, the simple economic
13 impossibility for many customers to replace existing
14 R-22 systems that they may have installed in just the
15 last few years, has the potential to create a massive
16 black market for R-22 components, which runs contrary
17 to the best interests of our industry, the EPA, and
18 the environment.

19 It is important, in HARDI's opinion, that
20 EPA look beyond the ramifications these proposed
21 regulations would have on the residential markets.
22 The complexity and customized nature of commercial

1 air conditioning and refrigeration systems, makes it
2 impossible to expect owners to replace the entire
3 supermarket racks, because of single failed R-22
4 compressor.

5 These owners are currently able to
6 depreciate these systems over 39 years, which
7 essentially establishes the useful life of these
8 systems. To attempt to force the replacement of a
9 system that may be only one-third through its
10 depreciable life, is unrealistic.

11 It is essential that the servicing of
12 existing systems after 2010, remain legal, including
13 the purchasing and distribution of servicing
14 components such as compressors and line sets.

15 We estimate that in a normal year, an
16 average of 20 percent of distributor member
17 purchases, go unsold and are carried over to the
18 next season. The year 2009, by every forecast,
19 appears to have severe economic challenges for
20 consumers and businesses.

21 The proposed ban on the sale and
22 distribution of R-22 equipment and components after

1 January 1, 2010, combined with the proposed
2 Allocation Rule's prohibition on the closing of r-
3 22 refrigerant loops after that same date, will
4 result in HVACR distributors having to write off
5 millions of dollars of inventory values.

6 One distributor member estimated that,
7 should the company purchase no more R-22 equipment
8 or components in 2009, it would still be forced to
9 eliminate five to ten percent of its workforce to
10 offset the inventory losses it would experience from
11 these Rules being enacted.

12 The wholesale distribution job loss
13 ramifications these Rules create, runs directly
14 opposite to the objectives of the bold energy and
15 environmental plans set forth by the new
16 Administration.

17 HARDI recommends that the EPA amend and
18 clarify these proposed rulemakings, to address two
19 basic realities of the HVACR market: HVACR system
20 repair components, such as residential and
21 commercial condensing units, compressors, line sets,
22 TXV valves, to name a few, must be legal to sell,

1 distribute, and use to repair systems already in
2 service prior to January 1, 2010.

3 As we have already stated, there is no
4 way that most system owners, residential or
5 commercial, could possibly afford to replace a
6 failed R-22 air conditioning or refrigeration
7 system, with a non-ODS system, when a much less
8 expensive compressor replacement could complete the
9 repair.

10 Further, many of these systems in
11 operation today, are covered by valid and current
12 warranties that bound the contractor, distributor,
13 and manufacturer, to repair the system, usually
14 involving the replacement of an essential ODS-using
15 component.

16 HARDI does not support the continued
17 factory production of new, complete R-22 condensing
18 units, whether they are pre-charged or not, after
19 January 1, 2010, however, HARDI believes it is vital
20 that condensing units previously in stock, be legal
21 to distribute and sell after January 1, 2010.

22 HARDI urges the EPA to quickly clarify

1 that condensing units already in inventory, coupled
2 with the current proposal's production ban,
3 effective January 1, 2010, can be sold and installed
4 in 2010 and beyond.

5 HARDI appreciates the challenge facing
6 the U.S. to comply with the major reduction in HCFC
7 substances in 2010, and our membership welcomes the
8 ongoing transition. We have every economic and
9 environmental reason to transition away from ODS
10 refrigerants as soon as possible, but we are also
11 bound by our obligation to our customers, the
12 consumer, and the difficult economic realities that
13 make it impossible to completely cease the use of
14 ODS air condition and refrigeration systems in less
15 than 12 months.

16 HARDI will see members suffer financial
17 losses that will lead to the elimination of good-
18 paying jobs and even the potential that many
19 businesses will have to close their doors, should
20 these regulations go into effect. The question is
21 not if, but when the American HVACR market
22 transitions from the use of ODS substances, but,

1 like the phaseout of CFCs, it does not happen
2 overnight, and absolutely cannot be executed in less
3 than 12 months.

4 These regulations, in their current form,
5 represent the greatest economic threat our
6 membership and its employees have ever seen. With
7 the American economy struggling to recover, this is
8 no time to jeopardize the viability of so many small
9 businesses and the thousands of workers they employ.

10 Finally, we have real concerns over
11 distributors being omitted as recognized
12 stakeholders, as it pertains to the regulatory
13 flexibility analysis. Potential losses for our
14 members as a result of this proposal, is estimated
15 to exceed \$100 million alone in 2010, in lost inventory.

16 I thank you for the opportunity to
17 express these concerns, and for your attention to
18 them. As always, HARDI and its membership, stand
19 eager and anxious to work with the EPA to assist in
20 the expedient phaseout of HCFC refrigerants, but we
21 hope we've made clear today, that doing so without
22 regard to the realities of the marketplace, will not

1 only debilitate our membership, but also our
2 industry, our economy, our customers, and while
3 costing many American jobs. Thank you.

4 MR. BRENNAN: Thank you, Mr. Gee. I'd
5 like to ask Christopher Johnson whether he has
6 comments for this morning's hearing.

7 MR. JOHNSON: Good morning. My name is
8 Christopher Johnson, Senior Manager, Regulatory
9 Affairs, at LG Electronics. We're a Korean-based
10 global company.

11 In addition to our portfolio of consumer
12 electronics and appliances, we're also the number
13 one manufacturer of room air conditioners in the
14 world, so we obviously have an interest in this
15 rulemaking.

16 We support the Rule, as proposed, so long
17 as the allowance --

18 MR. BRENNAN: Mr. Johnson, could you
19 speak up a little bit?

20 MR. JOHNSON: I'm sorry. We support the
21 Rule, as proposed, so long as there's an allowance
22 for sell-through of inventory, which our

1 understanding is that there is one.

2 We do have an issue, however, in the
3 discussion in the companion rule on "manufactured,"
4 and on page 78699, when talking about pre-charged
5 refrigeration and air conditioning units, the Rule
6 says "for some appliances such as condensing outside
7 units for split-system air conditioners, refrigerant
8 charge is often included in the product during the
9 manufacturing process, but then is typically adjusted
10 in the field to account for different line sizes in
11 indoor unit configurations. EPA would consider the
12 manufacturer of this type of appliance, similar to
13 that for field-charged equipment, that is,
14 manufacture would not be complete until the device is
15 installed in the field, connected to the indoor unit
16 and charged to the proper level."

17 To us, that's incorrect. First of all,
18 that's more of a servicing function. Second of all,
19 I don't think anybody would purchase a central air
20 conditioning unit, if it was illegal to install it,
21 so we think that interpretation of 605(e) is
22 incorrect, and we'll submit comments to that effect.

1 Thank you.

2 MR. BRENNAN: Thanks, Mr. Johnson.

3 Clearly, one thing we've seen this morning, is that
4 folks are alluding to some of the common issues
5 between the two rulemaking packages, and providing
6 some comments that pertain to the 2010 Proposed
7 Rule, the Allocation Rule, for this afternoon.

8 Certainly, some of those cross references
9 are appropriate in the hearing, but we would
10 certainly encourage folks to limit their comments,
11 wherever possible, to the Pre-Charged Appliances
12 Rule, and to the extent that they do have comments on
13 the 2010 allocation, to ensure that those comments
14 are provided this afternoon.

15 Nevertheless, we recognize that there is
16 the commonality of issues and sometimes it's
17 difficult to pry the two apart.

18 I would like to ask Kelly Kline whether
19 she would like to provide comments this morning.

20 MS. KLINE: Hello. My name is Kelly
21 Kline. I'm with General Electric, the Consumer and
22 Industrial Division, and the Consumer and Industrial

1 Division of GE makes, among other things, residential
2 refrigerators, room air conditioners, and portable
3 air conditioners that would be covered by the Rule.

4 We thank you for the opportunity to be
5 here to submit comments this morning. We support
6 EPA's determination that the Rule would not apply to
7 products manufactured before January 1st, 2010, and
8 believe that's supported by sound public policy, and
9 we'll be submitting comments to that effect, and want
10 to hit a few of the highlights here.

11 We do not share some of the concerns
12 related to the definition of "manufacture," that
13 have been discussed already here this morning. As
14 we understand the definition of "manufacture," it
15 would apply favorably to room air conditioners,
16 dehumidifiers, and portable air conditioners, which
17 are essentially ready to plug in for use by the
18 consumer, after purchase.

19 But in terms of the public policy
20 rationale for exempting products produced prior to
21 January 1st, 2010, we think that's very important,
22 given that air conditioners are seasonal products

1 that often have a huge carryover from year to year,
2 and that there's a real risk of potentially large
3 carryover of product, if provisions like that don't
4 exist for allowance for sell-through of in-stock
5 inventories.

6 There's also a very significant number of
7 units that would be stocked at dealers, stores, and
8 warehouses, currently, and we believe that the
9 financial and environmental costs of making
10 obsolete, this significant volume of existing
11 product, would be huge.

12 We think that, in terms of the definition
13 of "manufacture," that the date of manufacture
14 provides a straightforward and simple methodology for
15 determining the applicability of the Rule.

16 With our products, at least, the date of
17 manufacture can be found on the nameplate of the
18 product, and we believe it would provide a
19 straightforward way of demonstrating compliance.
20 We'll be submitting comments on all of these points.

21 We are concerned, however, that the
22 preamble language has created some ambiguity around

1 what is otherwise, I think, very clear proposed
2 regulatory language. We urge EPA to immediately
3 clarify its intent and provide to some clarity on
4 how the sell-through provisions or the applicability
5 will work in the Final Rule.

6 Given the timing of the proposal, retail
7 orders have already been placed and manufacturing
8 production has already been finalized for 09
9 production, and would result in very significant
10 economic harm to manufacturers, if an adequate
11 period for the sale of this existing product is not
12 allowed.

13 Given the short notice of the proposal,
14 without the sell-through provision or adequate sell-
15 through periods being provided, it would be
16 fundamentally unfair to manufacturers and retailers
17 who will not have received adequate time or notice
18 to plan their manufacturing decisions appropriately.

19 Therefore, we support EPA's proposed
20 regulatory language related to the Rule not applying
21 to products manufactured prior to January 1st, 2010,
22 and we will be following up with more specific

1 written comments. Thank you.

2 MR. BRENNAN: Thanks, Ms. Kline. Does
3 April Langford have comments to provide this
4 morning?

5 MS. LANGFORD: My name is April Langford
6 and I represent the Product Management team for
7 Electrolux major appliances and their Home Comfort
8 Division, and I'm here to read our prepared
9 statement.

10 Electrolux appreciates the opportunity to
11 comment on the EPA's Proposed Rule banning the sale
12 or distribution of pre-charged appliances. Our
13 company is a global leader in home appliances and
14 appliances for professional use, selling more than 40
15 million products to customers in more than 150
16 markets around the world.

17 In 2007, Electrolux had global sales of
18 \$15 billion and 57,000 employees. Our product lines
19 include a substantial quantity of pre-charged
20 appliances that will be banned by this Rule, thus,
21 we are a major stakeholder in the rulemaking.

22 In North America, we meet consumer and

1 professional needs under the Electrolux icon,
2 Electrolux, Eureka, and Frigidaire brands, as well
3 as the private label brands of major retailers.
4 Electrolux U.S. manufacturing locations produce
5 refrigerators, freezers, dishwashers, gas and
6 electric ranges, and washers and dryers.

7 With five major appliance factories in
8 five states and approximately 10,000 employees, the
9 group's North American sales in 2007, were
10 approximately \$5 billion.

11 Electrolux provides consumer energy-
12 efficient options in every appliance category, and
13 offers Energy Star-rated products in every
14 applicable product line. Electrolux is included in
15 the most recent Dow Jones Sustainability World
16 Index.

17 Also, Electrolux North American
18 operations share the same comment -- sorry,
19 commitment to sustainability that has earned
20 Electrolux global recognition from governments, non-
21 governmental organizations, and investors for our
22 social responsibility and environmental performance.

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Electrolux has a number of global initiatives in place to reduce our impact from our plants and processes on the environment. In North America, we are working hard to support the Electrolux sustainability objectives, including contributing to Electrolux's goal to cut companywide energy consumption by 15 percent by 2009, from a 2005 base.

Electrolux purchasing policy requires our external sources to comply with Electrolux's environmental policy and code of conduct. We require the sustainable and responsible practices from all of our partners who are part of the Electrolux North America supply chain.

It is with this background as context, that Electrolux provides the following preliminary comments on the Proposed Rule banning the sale or distribution of pre-charged appliances.

Okay. As we read the current Draft Rule, EPA is proposing to ban the sale or distribution of pre-charged appliances containing HCFC-22 and HCFC

1 142B or blends containing one or both of these
2 substances that are manufactured after January 1st,
3 2010.

4 Electrolux agrees with this approach
5 because it will provide added protection of the
6 ozone layer and, at the same time, allow for an
7 orderly transition to alternative products.

8 Like others who have commented,
9 Electrolux is concerned that language in the
10 preamble regarding a sell-through period or
11 grandfathering, creates some ambiguity as to whether
12 or not the EPA will allow the continued sale beyond
13 January 1st, 2010, of appliances which are
14 manufactured before January 1st, 2010.

15 Electrolux asks that the EPA amend its
16 Fact Sheet on this Rule, to confirm that the Rule,
17 as currently written, does not limit the sell-
18 through period for those pre-charged appliances
19 manufactured before January 1st, 2010.

20 Further, we believe that any limitation
21 on the sell-through period will present serious
22 economic consequences for manufacturers and

1 retailers of room air conditioning products, who are
2 already suffering from the current economic downturn
3 and it will achieve no added protection of the ozone
4 layer.

5 Electrolux intends to submit more
6 detailed written comments outlining this and other
7 concerns, during the comment period, however, we
8 also wanted to make the EPA and other stakeholders
9 aware of this issue, at this public hearing.

10 As those in the air conditioning sector
11 know, all purchasing and manufacturing decisions for
12 2009, were made by the Summer and Fall of 2008; in
13 other words, more than half the 2009 product is
14 already manufactured, ordered, and ready to be
15 delivered to U.S. customers. The remaining half
16 will be manufactured and delivered by April 2009.

17 Limiting the sell-through period and
18 requiring all products to be sold by January 1st,
19 2010, would impact manufacturers, retailers large
20 and small, who typically end the season with a large
21 percentage of unsold product, carried over one year
22 to the next.

1 Since purchasing decisions have already
2 been made for the 2009 season, potentially requiring
3 all parties sell through, all inventors by January
4 1st, 2010, would be disastrous. Businesses
5 purchasing equipment, risk ending the 2009 sales
6 season holding significant amounts of inventory with
7 no ability to sell through it by January 1st 2010.

8 Manufacturers and suppliers risk that
9 purchasers may seek to cancel already-confirmed
10 orders for the 2009 season. Either way, the
11 economic consequences will be far reaching.

12 Electrolux has many small customers who
13 sometimes hold product in inventory for several
14 years before selling, due to their handling of
15 product in their warehouses and other inventories.

16 Due to the highly seasonal nature of the
17 room air conditioning business, all it would take,
18 would be one cool Summer for the resulting carryover
19 inventory to drive small businesses out of business
20 during this economic environment.

21 In addition to harming local economies,
22 such likely impacts place in doubt, EPA's

1 certification under the Regulatory Flexibility Act,
2 that the Proposed Rule will not have a significant
3 economic impact on a substantial number of small
4 entities.

5 Also, some manufacturers would potentially
6 suffer significant economic losses, as some large
7 retailers would return unsold product. Large
8 retailers have, in seasons past, had over 200,000
9 units to return or carry over from one year to the
10 next, depending on the weather that year.

11 A potentially worthless inventory would
12 need to be properly disposed of by evacuation of the
13 refrigerant, in addition to the proper disposal of
14 materials. This would cause greater strain on
15 smaller businesses, as the larger ones are better
16 equipped to have more improved processes to handle
17 seasonal businesses.

18 Finally, limiting the sell-through period
19 will not achieve any added protection of the ozone
20 layer, and could inadvertently have a negative
21 impact. Once an appliance has been charged and put
22 into inventory for sale, the HCFC will remain in the

1 appliance, unless it leaks or the gas is removed from
2 the appliance that is taken out of service.

3 Consequently, use of the product by the
4 consumer, will cause no greater release of the
5 HCFCs, than if the product remains in inventory or
6 is exported and used in another country.

7 If purchasers were to wind up with a
8 excess inventory of product that could not be
9 legally sold, there would be incentive for illegal
10 disposal of the products, which could have the
11 negative effect of releasing the gas into the
12 environment, in larger quantities, all at once.

13 Electrolux believes that the more prudent
14 and responsible course, is to allow for the more
15 gradual and predictable use and retirement of these
16 appliances over their useful life, as contemplated by
17 the current Rule and as was done with the CFC-charged
18 appliances.

19 In conclusion, Electrolux supports EPA's
20 decision to ban the sale or distribution of pre-
21 charged appliances, and the terms of the ban in the
22 current proposed rulemaking.

1 Given the seasonal characteristics of the
2 room air conditioning business, it is critical that
3 the Proposed Rule not limit the sell-through of HCFC-
4 22, based on product manufactured prior to January
5 1st, 2010.

6 This presents the best option for the
7 environment and for the economy overall. Thank you.

8 MR. BRENNAN: We have about three or four
9 more folks on our list, and then we can open the
10 floor to other folks who would like to provide
11 comments, as well.

12 I'd like to invite Sean McKay, if Sean
13 has comments, to come to the front of the room.

14 (No response.)

15 MR. BRENNAN: If not, we'll move on to
16 Charlie McCrudden. Mr. McCrudden, do you have
17 comments on the pre-charged appliances proposal?

18 Here he comes.

19 MR. MCCRUDDEN: Can you hear me in the
20 back? Does it work? Okay.

21 My name is Charlie McCrudden, and I'm
22 here representing the Air Conditioning Contractors

1 of America.

2 For more than 40 years, the Air
3 Conditioning Contractors of America has served the
4 nationwide educational, policy, and technical
5 interests of the small businesses who design,
6 install, and maintain indoor air environments like
7 this one.

8 ACCA has --

9 (Laughter.)

10 MR. McCRUDDEN: But my members did not
11 make it so hot in here.

12 (Laughter.)

13 MR. McCRUDDEN: ACCA has a longstanding
14 history of developing a superior class of air
15 conditioning and refrigeration technicians and
16 professionals. As creators of the original and most
17 popular EPA certification training program and
18 tests, ACCA has certified over 300,000 people to
19 work on air conditioning and refrigeration equipment
20 under the Section 608 program.

21 Every day, thousands of ACCA members help
22 homeowners, building managers, and small and large

1 businesses, realize the comfort, cost benefits, and
2 convenience of energy-efficient heating, ventilation,
3 air conditioning, and refrigeration equipment.

4 ACCA members characterize the extent of
5 America's economic diversity. The typical ACCA
6 contractor member employees less than ten people,
7 but many of our members have hundreds of workers.

8 We appreciate the opportunity to appear
9 at this hearing on the Ban on Sale or Distribution
10 of Pre-Charged Appliances Pre-Charged Rule.

11 ACCA and its members have many concerns
12 about this Proposed Rule and the unintended
13 consequences it will have on the large and small
14 businesses of the air conditioning and refrigeration
15 industry and the customers they serve.

16 ACCA is most concerned about the
17 rulemaking process and timeframe, the omission of
18 small business stakeholders in the economic and
19 regulatory analysis, and the nature and scope of the
20 sales ban.

21 As the last point in the distribution
22 channel before the consumer, ACCA members are

1 concerned that the proposed allocation rule, along
2 with the proposed adjustment -- along with the
3 proposed allocation rule, will cause confusion and
4 unnecessarily and uncertain -- with -- confusion and
5 unnecessary uncertainty with regard to the industry.

6 The Notice of the Proposed Allocation
7 Rule, appeared in the Federal Register on December
8 23rd, 2008, just 15 days ago. In the interim, two
9 weekends and two federal holidays mean that just
10 nine business days have passed since the release of
11 the Proposed Rule.

12 Indeed, many offices and businesses were
13 closed more days than this. ACCA has made a good-
14 faith effort to solicit comments from its members in
15 preparation for this hearing, and we hope to include
16 subsequent comments for the regulatory docket.

17 We would have preferred that the format
18 of this hearing would have allowed for a dialogue to
19 immediately answer stakeholder questions on this
20 fast-tracked Rule.

21 ACCA notes that this Proposed Rule must
22 be enacted in less than one year, in order to meet

1 the HCFC phaseout obligations under the Montreal
2 Protocol. ACCA members are currently in the process
3 of making inventory decision regarding the equipment
4 and refrigerants dealt with in this Proposed Rule.

5 Air conditioning and refrigeration
6 contractors are not listed as regulated entities in
7 Section 1 of the Proposed Rule Notice, and while the
8 Notice mentions that, quote, "Other types of
9 entities not listed, could be affected," unquote,
10 the omission of air conditioning and refrigeration
11 contractors from this list, greatly concerns the
12 membership.

13 In relying on the five listed categories
14 of impacted entities, EPA has overlooked the impact
15 this Proposed Rulemaking will have on a significant
16 -- that will have a significant economic impact on a
17 substantial number of small businesses.

18 ACCA feels that the EPA should have
19 completed a review of the impacts of this
20 rulemaking, as required under the Regulatory
21 Flexibility Act.

22 According to the rulemaking of the

1 allocation Rule, EPA intends to interpret
2 "manufactured," in a way that would include the
3 activities of air conditioning and refrigeration
4 contractors.

5 Under this interpretation, would this
6 qualify contractors under the NAICS Code of
7 manufacturers of air conditioning and refrigerators?

8 Cinderella's coach: The Proposed Rule
9 would ban the sale of HCFC equipment at the stroke
10 of midnight on December 31st, 2009, in effect,
11 turning all inventoried equipment into pumpkins.

12 (Laughter.)

13 MR. McCRUDDEN: ACCA recommends EPA
14 utilize a manufacturing ban for the HCFC equipment,
15 because it has less impact on the entire supply
16 chain, including contractors that ultimately sell
17 the equipment to the end user.

18 EPA should revisit its consideration of
19 allowing a sell-through or grandfather approach,
20 which has been used in the past to ensure a smooth
21 transition.

22 Contractors don't keep a large inventory,

1 and we rely on our distributor partners to carry the
2 overhead and inventory burdens, however, no ACCA
3 member wants to be left holding worthless equipment
4 that represents a serious investment of capital.

5 When contractors do carry and inventory,
6 it is purchased well in advance of the cooling
7 season. A manufacturing ban allows for the
8 absorption of these risks.

9 A sales ban exposes anyone holding
10 inventory, to more risk, because the forecasting is
11 less accurate.

12 ACCA members are aware of the ongoing
13 transition away from HCFC refrigerant and equipment.
14 The industry has made other equipment transitions in
15 the past decade, which have occurred relatively
16 smoothly, due to a manufacturing ban with a sell-
17 through period.

18 The proposed sales ban is already causing
19 uncertainty and confusion in the marketplace, as
20 contractors are making purchasing decisions for the
21 Summer season, right now.

22 Many questions remain that won't be

1 resolved here today. ACCA hopes to engage EPA in
2 the future, to resolve the uncertainty and find a
3 practical remedy to our concerns, and we will
4 provide more detailed comments for the docket.
5 Thanks.

6 MR. BRENNAN: Thank you. I'd like to ask
7 whether Peter Pachikara has comments for this
8 morning?

9 MR. PACHIKARA: Hello, my name is Peter
10 Pachikara, and I'm representing Friedrich Air
11 Conditioning Company, based in San Antonio, Texas.

12 MR. BRENNAN: Sorry, but you have to
13 speak up.

14 MR. PACHIKARA: My name is Peter
15 Pachikara, and I'm representing Friedrich Air
16 Conditioning Company, based on San Antonio, Texas.

17 We manufacture room air conditioners. It
18 is very important that the Proposed Allocation Rule
19 and Pre-charged Rule, have minimal or no negative
20 impact to our Company.

21 I came to Washington, D.C. today, because
22 of the importance of this matter to the Company. It

1 is critical that our products that are manufactured
2 prior to January 1, 2010, be allowed to be sold and
3 distributed after that date, as the Proposed Rule
4 states.

5 We also need an immediate clarification
6 of the definition of "manufactured" and "install."

7 Our Company is making 2009 production
8 decisions now, or will be making them very soon. To
9 us, the use of manufactured date, is the easiest and
10 best way to make a determination, because that date
11 is defined on the product nameplate by the serial
12 number.

13 Other methods, such as date of
14 importation, would be unnecessarily complicated and
15 leave my Company subject to variables outside of our
16 control during the shipping process, custom
17 holdups, port shutdowns, et cetera.

18 Finally, we will be submitting detailed
19 written comments on the Proposed Rule, prior to the
20 February 6 deadline. Thank you.

21 MR. BRENNAN: Thanks, Mr. Pachikara. I'd
22 now like to ask whether Ken Ponder has comments for

1 this morning's hearing?

2 (No response.)

3 MR. BRENNAN: Okay, we'll move on down
4 our list, then, to the Rs and I'm going to ask
5 Thomas Roberts to come to the front of the room.

6 MR. ROBERTS: Good morning. My name is
7 Tom Roberts. I'm President of CFM Distributors.
8 We're an employee-owned distributor of HVAC and
9 refrigeration systems in the Midwest. All my
10 employees could fit in this room. I'm arguably the
11 smallest business here today.

12 But we're an important stakeholder and
13 affected party in this, and as a distributor, we
14 provide the logistics to the industry and we act as
15 capacitants between that season-to-season and year-
16 to-year production capability of the manufacturers,
17 that demand of the consuming public and the
18 contractors.

19 As such, we have to absorb that demand,
20 as it ebbs and flows from season to season and year
21 to year. We've always relied on the definition of
22 "manufactured," meaning the date that product is

1 produced at the factory.

2 In previous regulatory efforts that we've
3 experienced with the Department of Energy and
4 Appliance Efficiency Standards, that regulation has
5 served us well to establish when products are
6 legally marketable in the marketplace and when they
7 are not.

8 I think that that definition passes the
9 "prudent man" test and extrapolation of the
10 manufacturing term into the interpretation that
11 seems to be present here, is highly disruptive and
12 would represent extreme economic loss to both my
13 customers, my contractor customers, and, more
14 importantly, to me, to my own Company.

15 We really need to get the definition
16 changed, where "manufactured" means what we all
17 think it means, which is the date the unit is
18 produced.

19 Also, the other thing that really needs
20 to be changed, is our ability to live up to the
21 moral and ethical commitment to our customers. I'm
22 from the Midwest, and I'm not nearly as articulate

1 as these other speakers, but I'll tell you that we
2 have an ethical commitment to the people who have
3 purchased these products and expect to get a useful
4 life out of them.

5 We have been a willing partner with EPA
6 throughout the transition process, and we've been an
7 essential part of the training component for the
8 transition, and the education of both the consumer
9 and with our contractor customers, of the general
10 public.

11 We often refer people to the EPA website
12 for complete information. If you were to go to the
13 EPA website this morning, as a consumer, you would
14 read that given this schedule, the transition away
15 from R-22 to the use of ozone-friendly refrigerant,
16 should be smooth.

17 For the next 15 years or more, R-22
18 should continue to be available for all systems that
19 require R-22 for servicing. Existing units can
20 continue to be serviced with R-22.

21 There is no EPA requirement to change or
22 convert the units for use with a non-ozone-

1 depleting substance or refrigerant. Now, that would
2 imply to me, as an actively environmentally
3 responsible consumer, that I have every reason to
4 expect that the systems that I purchase, can
5 continue to be used in a responsible way. Thank
6 you.

7 MR. BRENNAN: Thank you. The last
8 speaker on our list, is Chuck Samuels. Would Mr.
9 Samuels like to come to the front of the room?

10 MR. SAMUELS: Thank you very much. Good
11 morning. It's great to see all the usual suspects
12 out there.

13 I'm Chuck Samuels, and I'm here to help
14 EPA.

15 (Laughter.)

16 MR. SAMUELS: My role is counsel to the
17 Association of Home Appliance Manufacturers, and,
18 relevant to this proceeding, we represent pretty
19 much all the manufacturers of room air conditioners,
20 dehumidifiers, and portable air conditioners.

21 EPA mentions in this Rule,
22 "refrigerator/freezers," and I'm not sure I really

1 understand how they may be affected by this. You've
2 heard excellent statements from three of our
3 members, and I just want to supplement that a little
4 bit.

5 We understand the environmental dynamic
6 that underpins this Rule, but we need to consider
7 some major factors: One is, as everyone here knows,
8 there's a deep, worldwide recession, so we need to
9 tread really lightly when we're creating
10 inefficiencies and diseconomies and disruptions and
11 costs in a regulatory manner.

12 Second, the nature of these products,
13 particularly the products that I represent, which,
14 to a large extent, are seasonal, is that there is a
15 long, long lead time between decisions about
16 production and then the eventual sale of these
17 products, and the product is sold globally. There's
18 virtually no -- perhaps none -- domestic production
19 of the products that I represent.

20 That is why we have been literally
21 pleading with EPA for years to get this Proposed
22 Rule out, so there could be clear guidance on what

1 future regulation is. That opportunity has been
2 lost.

3 It's not the of anyone in EPA in this
4 room, but it does not reflect well on the Government
5 that has failed to provide proper guidance. It
6 already, for some industries and for some product
7 sectors, is too late to prevent damage.

8 We also need clear messages. We need a
9 clear message about what this Proposed Rule means,
10 and we need clear messages about what the Final Rule
11 is going to mean.

12 Although we're supportive of what we
13 think the Proposed Rule means, this needs to be
14 stated clearly by EPA immediately.

15 We support what we understand the
16 interpretation of your proposed Section 82.306,
17 which is the products before -- manufactured before
18 January, 2010, can be freely sold or even exported
19 in and from the United States after that date.

20 If that is the correct interpretation and
21 that is our understanding, that's pretty simple.
22 However, you've got extremely confusing language in

1 your Preamble at page 78713, which seems,
2 potentially, if understood in a certain way, to
3 contradict this.

4 We don't think that's what is intended.
5 We don't actually understand what was intended, and
6 the proposal needs to be clarified right away, even
7 before this Rule is finalized.

8 We support the definition of
9 "manufactured," although we recognize that for other
10 industries, it may not be suitable, so we're only
11 talking about our products as it's defined in the
12 Rule that's the subject of the -- of your hearing
13 this afternoon, on page 78699, and I refer to that,
14 only because you didn't refer to it in the first
15 Rule.

16 Our ability to prove to EPA, to
17 regulators, to retailers, and even to consumers,
18 that products are manufactured before 2010, is very
19 simple: We have it on the nameplates, it's readily
20 ascertainable, we have it on the boxes, and we're
21 going to provide you with more information on that
22 in the public record.

1 There is no reason, and, in fact, there
2 is a huge detriment, for example, to move from a
3 manufactured to an import date, which, in fact,
4 could be vaguer, much less clear, and totally
5 unknown to retailers and to consumers, or even to
6 EPA, without lots of additional inquiry.

7 We think that what we understand has been
8 proposed, is a fair result that provides some modest
9 environmental benefits in light of the following:
10 EPA is operating with very thin statutory authority.

11 That's one of the reasons this Rule has
12 been held up from being proposed for several years.
13 They're taking a general section, bootstrapping it
14 to provide authority, in light of the fact there are
15 many other specific authorities.

16 The move that is being done here, was not
17 contemplated by the Congress, and, therefore, it
18 makes a lot of sense and we support EPA treading
19 very lightly here, before it takes action that's
20 going to hurt a lot of folks in our economy.

21 The folks are not just large businesses.
22 There are many small and medium enterprises that

1 will be affected by this Rule -- importers,
2 distributors, retailers, and others -- and I don't
3 think that your Regulatory Flexibility Act takes
4 that into account, just as your cost analysis
5 emphasizes what seems at this point to be fairly
6 small costs between HCFCs and non-HCFCs, but doesn't
7 really fully seem to take into account, much larger
8 issues such as the cost of new compressors, the
9 impact of new compressors, the reality of what the
10 energy efficiency impact might be, the effect on
11 transportation, and then, finally, the effect on
12 obsoleted -- or the creation of obsoleted products.

13 Now, we, ourselves, have not been able to
14 totally quantify this, and we're going to do our
15 best in that regard in the written comments, so we
16 recognize that it's been a difficult task for you.

17 But you also ought to be fairly modest
18 about whether you've really captured the regulatory
19 cost, because I think that you probably have not.

20 Arguing that, in general terms, that non-
21 HCFC products are sold in Europe, is not applicable
22 to our products. You do not see very much,

1 particularly, for example, of room air conditioners
2 of this type in Europe, so that comparison is
3 actually irrelevant.

4 Then, when you give your number of
5 products that are affected, you throw in
6 refrigerator/freezers, for example, in our sector,
7 and it's unclear to me, that this impacts any such
8 products.

9 So what we understand to be the import of
10 this Rule, we support. We would vigorously oppose
11 changing, diluting, and weakening it.

12 We recognize that other sectors have
13 sector-specific problems that probably should be
14 addressed, but with respect to us, we ask for both
15 short-term and immediate clarification of the
16 Proposed Rule, as well as finalization along the
17 same lines as was proposed. Thank you.

18 MR. BRENNAN: Thanks, Mr. Samuels. We
19 have now reached the bottom of at least my list of
20 commenters for this morning. I'm wondering if,
21 number one, we've missed anybody who has previously
22 requested to comment, or, number two, whether there

1 is anybody who now would like to provide public
2 comments?

3 You can simply raise your hand, I'll
4 point to you, and you can walk to the front of the
5 room.

6 MR. WILKINS: Good morning, and thank you
7 for the opportunity. My name is Robert Wilkins; I'm
8 President of Dunfus Companies in the United States.

9 Dunfus is a global leading manufacturer
10 of components, compressors, controls, and valves for
11 air conditioning, refrigeration, and other products.

12 We have 12 facilities in ten U.S. states,
13 as well as facilities in over 100 countries around
14 the world. We have been a leader in developing
15 alternatives for HCFC refrigerants and support the
16 objective to phase out those refrigerants in the U.S.

17 I would like to support the comments of
18 Dr. Amrane of AHRI, particularly regarding the EPA
19 proposed definition of "manufacturer," which would
20 lead to stranded inventory this year. Our concern
21 and the point that I would like to make, is, with

1 thermostatic expansion valves or TXVs, and other
2 components in inventory, in the pipeline today to
3 support seasonal production of high-efficiency R-22
4 end products during 2009.

5 Our own company currently has an
6 inventory of several hundred thousand TXVs for R-22
7 systems. I am certain that other component
8 suppliers here, are similarly positioned.

9 Should EPA go forward with their Rule, as
10 proposed, it could have a devastating effect with
11 OEMs shutting down production prematurely and
12 stranding vast quantities of valves, compressors,
13 heat exchanges, motors, et cetera, that are in
14 production today to support 2009 production of R-22
15 end products at the OEMs.

16 Of course, those products would be
17 stranded, as well. This would be particularly
18 devastating to companies and their employees, in the
19 difficult economic environment of 2009, and, we
20 believe, would have no ultimate reduction in HCFC
21 emissions. Thank you for the opportunity to speak
22 extemporaneously here.

1 MR. BRENNAN: Thanks, Mr. Wilkins.

2 Anybody else who would like to speak? Please come
3 on up. Thank you.

4 Just to get a read of the room, is there
5 anybody else, after this speaker, who would like to
6 provide comments?

7 (No response.)

8 MR. LUCE: Hi, thank you for the
9 opportunity to just share a little bit from my
10 perspective.

11 My name is Jim Luce, and I'm the owner of
12 Luce, Schwab & Kase. We're a small wholesale
13 distributor in New Jersey.

14 We have three locations. We're a family
15 business. We've been in business for 50 years, and
16 we employ about 50 people.

17 As a wholesale distributor, we serve an
18 important function in the chain of distribution. We
19 handle a lot of inventory, probably more than we
20 should, but we get stuck with a lot of inventory and
21 it sometimes takes quite awhile to work everything
22 out of the chain.

1 All along, we've been planning our -- you
2 know, we've been phasing down R-22 and transitioning
3 a lot of our air conditioning equipment to R-410A,
4 and it's been going along well. Some of the
5 manufacturers we've had, have completely changed
6 over, but some have not, and some are in the process.

7
8 My concern -- and it is a real, real
9 concern, when I heard the proposals that came out at
10 the end of December -- was that we would not be
11 allowed to sell the equipment at the end of 2009,
12 and if we've only had this one year, it would be
13 almost impossible, and it really put a shiver down
14 my back. I just couldn't believe it, because, as I
15 said, we're -- our inventory, as a small
16 distributor, we have an inventory to \$8 to \$9
17 million, and, I would say, about \$4 million of that
18 is R-22 equipment.

19 If we were forced to have to sell all of
20 that this year, just to get it out of the pipeline,
21 it would really be impossible. A lot of it that we
22 could sell, we would probably have to discount

1 heavily, and what we couldn't sell, if we were
2 forced to liquidate it, would be devastating.

3 As I said, the consequences to our
4 employees and to our business function, is
5 frightening, so that's why I came down here. That's
6 why I volunteered to come up here and just state my
7 case as a small wholesaler, that it would really have
8 a real impact on the viability of our company in the
9 future.

10 I appreciate the opportunity to share
11 this. Thank you.

12 MR. BRENNAN: Thanks, Mr. Luce. Is there
13 anybody else who would like to speak this morning?

14 (No response.)

15 MR. BRENNAN: If not, I believe that
16 formally concludes this morning's hearing. I want
17 to remind folks that the comments that you've heard
18 this morning, will be available as a transcript in
19 the docket for this rulemaking, so you can look
20 either on regulations.gov, which is the site for the
21 docket, or you can also look on EPA's web page to get
22 a copy of that transcript.

1 If you have brought written comments with
2 you, it's very helpful if you can provide a copy to
3 our Court Reporter. I would also ask, frankly, if
4 you've got three or four copies of your business card
5 -- we're always trying to make sure we have the best
6 possible information on our stakeholder community,
7 and we'd love to update our records with your
8 information.

9 If you are a later speaker today, we'd
10 also -- it would also help our Court Reporter, to
11 get the exact spelling of your name and
12 organization.

13 I welcome folks to come to this
14 afternoon's hearing, which will, as we've heard,
15 discuss the 2010 allocation proposal. We've heard
16 some comments this morning that reflect on that
17 proposal, comments, for example, that deal with the
18 issue of "manufactured by" and some of the overlap
19 between that and what we've heard this morning.

20 We would encourage you to make sure that
21 those comments are provided in this afternoon's
22 hearing, so that we can address those in the context

1 of the 2010 phasedown proposal.

2 With that, we'll see many of you at 1:00
3 in the same room. Thank you very much for coming.

4 (Whereupon, at 10:24 a.m., the hearing
5 was concluded.)

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