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ADJUSTMENTS TO THE ALLOWANCE SYSTEM
FOR CONTROLLING HCFC PRODUCTION, IMPORT, AND EXPORT

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

Wednesday, January 7, 2009

1:03 p.m.

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

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P R O C E E D I N G S

(1:03 p.m.)

MR. BRENNAN: Okay, everybody, why don't we grab a seat and why don't we get started? Welcome back to those of you who were here this morning.

I would note, just as a quick matter, that we have probably half a dozen empty chairs up at the front, and those of you who are challenged by the sight lines way back in the room, you would be welcome to wander up and see if you can grab a chair from among the first few rows, because there are about half a dozen empty seats. Feel free to do that.

Good afternoon. Those of you who heard my speech this morning, there is going to be some repetition, because this is a separate hearing.

I would like to welcome you all to this afternoon's hearing on EPA's Proposed 2010 Allocation Rule. My name is Ross Brennan. I'm the Branch Chief for the Stratospheric Program Implementation Branch in EPA's Stratospheric Ozone Program.

I'm joined at the front of the room by

1 Cindy Newberg, Chief of the Alternatives and
2 Emissions Reduction Branch, and the author of not
3 only the Pre-Charged Appliances Rule that we
4 discussed this morning, but also the 2010 Allocation
5 proposal that is under discussion this afternoon.

6 I'm also introducing Jeremy Arling, who
7 is our Red Lead for the Stratospheric Ozone
8 Protection Program, and Stacy Gatica, also on the
9 Phase Out Team and a reg writer in our group.

10 To the extent you've got questions about
11 the hearing, you need to talk to any of us offline,
12 and you should start with one of the four of us,
13 and, hopefully, we can take care of any concerns
14 that you have.

15 This Proposed Rule, again, this is the
16 Rule officially entitled "Adjustments to the
17 Allowance System for Controlling HCFC Production,
18 Import, and Export." We refer to it, again, as the
19 2010 Allocation Rule.

20 It was published on December 23rd, just
21 like the Pre-Charged Appliances Rule that we
22 discussed this morning. The Docket Number for this

1 rulemaking is 2008-0496.

2 The comment period on this Rule is
3 extending slightly longer. We will be accepting
4 comments on this Rule until March 9th.

5 The purpose of the 2010 Allocation Rule,
6 as you no doubt know, would be to continue the
7 phaseout under the Montreal Protocol, of HCFCs. The
8 proposal would allocate allowances on a chemical-by-
9 chemical, company-by-company basis, for HCFCs that
10 not only now already have allowances, but other HCFCs
11 that don't currently have baseline allowances.

12 A notable aspect of the proposed 2010
13 Allocation Rule, is that it would also interpret -
14 - or, rather, it would implement EPA's
15 interpretation of the use restrictions that are
16 characterized at Section 605 of the Clean Air Act.

17 So, as we heard this morning, this
18 Proposed Rule very much complements the Proposed
19 Rule for pre-charged appliances, nevertheless, they
20 are completely separate rulemakings, and we,
21 frankly, need to assume that either of them could be
22 promulgated in the absence of the other.

1 For that reason, if, this morning, you
2 provided comments on the pre-charged appliances
3 rulemaking, that ended up also addressing concerns
4 in the 2010 Allocation Rule, now is the time to
5 provide those comments on the 2010 Allocation Rule,
6 and I'm sure you'll plan to do so.

7 We, again, are grateful that the two
8 Rules are being published together, and that we will
9 be basically finalizing them as together as we
10 possibly can, because of the commonality of the
11 issues being addressed.

12 Just as a reprise and just because there
13 are some new folks in the room, the purpose of this
14 hearing, again, is for EPA to hear verbal comments
15 on the package. Providing verbal comments this
16 afternoon, does not keep you from providing written
17 comments, separately, to the docket.

18 The verbal comments that you provide in
19 today's hearing, will be transcribed by a Court
20 Reporter, they will be made available as a
21 transcript on the public docket for this rulemaking,
22 along with all the other comments and all the other

1 background documents being provided.

2 If you have handouts, you can put those
3 handouts in the back of the room, and it would be
4 best that you provide those handouts also to the
5 Court Reporter. We will put them in the docket, and
6 if you have a written version of your comments, if
7 you would also provide those to the Court Reporter.

8 At some point today, too, if you've got a
9 few copies of your business card, we'd appreciate
10 that information, just so we can make sure our files
11 are updated with current names, addresses, and
12 contact information.

13 Again, you're welcome to provide
14 testimony; you're also welcome to wait and provide
15 written testimony to the record before March. The
16 purpose of today's hearing is not to answer
17 individual questions on the Rule, although we do
18 welcome stakeholder interactions, either to get
19 clarification on what's being discussed in the Rule,
20 on a more technical basis, or to discuss more
21 broadly with EPA, the issues that you've identified.

22 You would be welcome to contact one of

1 the four of us, ask us to set up a meeting, and we
2 would be happy to sit down with you. We would
3 document that meeting for the docket for this
4 rulemaking. It would become a part of that record,
5 although we need not provide all the details of the
6 stakeholder meeting, necessarily, if some of those
7 were confidential information.

8 Again, just a review of the process: I
9 think we'll do basically what we did last time,
10 which is to go through the sign-up sheet that people
11 filled out, either before they arrived today, or as
12 they were walking in the door. You had a chance to
13 check a box as to whether or not you wanted to
14 testify today.

15 I think what we'll do, is, we'll go
16 through that list and we'll do it again in
17 alphabetical order, if that works for everybody. If
18 this morning is any indication, there will probably
19 be some time at the end of the hearing, for those
20 folks who didn't have a chance to check that box, and
21 they can also come up and provide some verbal
22 comments.

1 We would ask, when you come to the front
2 of the room, again, that you start by stating your
3 name, spelling it, if it's a complicated spelling,
4 and mentioning your affiliation, your organization,
5 so that we make sure we identify who is speaking.

6 We then ask that you basically speak
7 slowly and clearly so our Court Reporter can
8 transcribe your comments, and that you limit your
9 comments to a few minutes. This morning, I think,
10 was a very good model for the length of time that's
11 appropriate for comments.

12 If you have more detailed comments,
13 certainly you are welcome to submit them in writing
14 after today's hearing.

15 With that, let me pull out my list and
16 let's start again with the As. Let's start with
17 Karim Amrane.

18 MR. AMRANE: Good afternoon. My name,
19 again, is Karim Amrane. I'm Vice President of
20 Regulatory and Research at the Air Conditioning,
21 Heating, and Refrigeration Institute. AHRI is a
22 national trade association of manufacturers of

1 residential and commercial HVAC equipment.

2 AHRI members employ approximately 130,000
3 men and women in the United States, and the total
4 value of AHRI member shipments is over \$20 billion
5 annually.

6 We appreciate the opportunity to appear
7 before you and to provide input on the Notice of
8 Proposed Rulemaking on the Adjustment to the
9 Allowance System for Controlling HCFC Production,
10 Import, and Export.

11 We have reviewed the Proposed Rule and
12 would like to limit our comments to the proposed
13 definition of the term, "manufacture." By proposing
14 an unconventional definition of the term,
15 "manufacture," EPA is significantly penalizing the
16 U.S. domestic air conditioning and refrigeration
17 industry.

18 In fact, based on the interpretation of
19 the term, "manufacture," EPA is proposing, effective
20 January 1st, 2010, to ban the installation of certain
21 air conditioning and refrigeration equipment, such as
22 condensing units, even if the equipment entered

1 interstate commerce prior to January 1st, 2010.

2 If we understand the proposed rule
3 correctly, EPA is proposing to ban the installation
4 of certain products that would have been placed into
5 initial inventory before January 1st, 2010.

6 Not allowing product placed in inventory
7 prior to January 1st, 2010, to be installed after
8 January 1st, 2010, will have a devastating impact on
9 the industry and is contrary to the provision of the
10 Clean Air Act, as it will effectively accelerate the
11 phaseout date of R-22 by six months to a year.

12 Given that over two million R-22
13 condensing units are expected to be manufactured in
14 2009 alone, the stranded inventory costs could well
15 be in excess of \$500 million, enough to bankrupt
16 several manufacturers and distributors.

17 As drafted, we believe that the Proposed
18 Rule is subject to the requirements of Section 202
19 or 205 of the Unfunded Mandates Reform Act, and that
20 EPA is also required to prepare regulatory
21 flexibility analysis to assess the impact on small
22 businesses.

1 EPA also fails to recognize under the
2 Regulatory Flexibility Act requirements, that small
3 distributors and contractors are affected by this
4 Rule.

5 A simple and elegant way to resolve this
6 issue, would be for EPA to use a more conventional
7 definition for the term, "manufacture." More
8 specifically, we urge EPA to define the term,
9 "manufacture," to mean when the product leaves the
10 manufacturer's final assembly process, is packaged
11 for shipment and placed into initial inventory.

12 Using this new definition, will allow for
13 the sale and installation of products which have been
14 placed in inventory prior to January 1st, 2010. For
15 imported products, AHRI recommends that the term
16 "manufacture" be defined to mean when the product
17 enters the customs territory of the United States.
18 This meaning of the term, is also consistent with the
19 Department of Energy regulations.

20 By EPA's own admission, this Rule will
21 not be finalized until the summer of 2009, by which
22 time the inventory of R-22 product will be full and

1 potentially put into obsolescence by this Rule.

2 Given the consequences, industry must
3 move and plan now. Components for the manufacture
4 of R-22 systems have already been built and are, in
5 AHRI members' factories, ready to be made into
6 systems.

7 The Summer of 2009 will be far too late,
8 and, for this reason, we urge EPA to immediately
9 clarify its definition of "manufacture," as we
10 propose. Thank you for the opportunity to present
11 your views, and we will provide more detailed
12 comments in writing.

13 MR. BRENNAN: Next on the list, we have
14 Jesse Combs.

15 MR. COMBS: Good afternoon. First off, I
16 want to thank you all for the opportunity for me to
17 be able to speak today on behalf of CoolGas, Condor
18 Products, and Discount Refrigerants.

19 My name is Jesse Combs, and I've been in
20 this industry for 16 years, and all three of our
21 companies are small businesses. We employ a total
22 of 15 employees.

1 In reviewing the Proposed Rule for the
2 2010 to 2014 control period of HCFC production and
3 consumption, we've seen that there's basically three
4 different ways that EPA could have chosen to
5 establish the baseline from 2010 to 2014.

6 I'll just briefly go through each of
7 those: Number one, the Agency could have simply
8 issued a percentage of the original published
9 baseline that was published on January 21st, 2003,
10 taking into consideration, what the Agency has
11 predicted as the amount of R-22 needed for servicing
12 needs for the 2010 through 2014 control period, which
13 has been established at approximately 62,500 metric
14 tons, of which 20 percent is to be met by recycle and
15 reclaim, leaving 50,000 metric tons as the cap for R-
16 22.

17 I'm primarily going to talk about the R-
18 22 cap, because, as everybody has realized, the 142B
19 cap is being reduced to 100 metric tons or almost
20 done away with, which only represents 4700ths of one
21 percent of what the cap was in 2003.

22 The second option would have been to

1 simply reestablish the baseline, consistent with the
2 way the Agency is planning on establishing a
3 baseline for the lower ODP HCFCs which weren't
4 established in 2003, such as R-123, whereas, using
5 each company's highest consumption of HCFC-22 and
6 142B and then simply from the years 2005, 2006 and
7 2007, and then simply issuing a pro rata share,
8 based on what the determined cap for each of these
9 products is to be.

10 The third option, which, from reading the
11 Proposed Rule, seems to be the lead option the
12 Agency has chosen to take, is to issue a pro rata
13 share based on the new cap, with the baseline being
14 what each company's baselines were as of June of
15 2008, taking -- which takes into consideration,
16 interpollutant transfers that were done, as we see
17 it, for the 2003 to 2009 control period.

18 Since, as in meeting we've had with the
19 Agency and the Agency's talked about in public,
20 there are no allowances for the 2010 period and
21 beyond, unless the Agency passes this new Rule.

22 So we see those permanent transfers from

1 142B into 22, as really only being permanent
2 transfers for the 2003 to 2009 control period.

3 The pros and cons that I see in these
4 three options: Option Number One, I see as the
5 fairest option for all the parties involved. There
6 are basically 20 companies that have baseline
7 consumption allowances for HCFCs.

8 Under Scenario One, you would be
9 utilizing the original baseline, which was
10 established in 2003, which is based on a company's
11 highest ODP year from 1994, 1995, 1996, and 1997,
12 which was at a period when no one knew there would
13 be an allocation rule down the road, so it truly
14 reflects what each company's market share at that
15 time was.

16 Also, over this 2003 to 2009 control
17 period, those are the rights, like, that our
18 company, because we only had R-22 rights, and those
19 are the -- you know, it reflects -- I mean, that
20 reflects what our business model is; our business
21 model is still on R-22, which is the product that we
22 really need for the 2010 through 2014 control

1 period, since 142B is no longer going to be able to
2 be used for blowing from stock or extruded
3 polystyrene board.

4 Option Number Two, reestablished on the
5 baseline consistent with the way the Agency is doing
6 it for the lower ODP HCFCs, I also see that as a more
7 fair option, because it would truly reflect what each
8 participant's real market share is or their
9 participation in the business in the current period,
10 in the current time.

11 And then, thirdly, the problem that I see
12 with Option Number Three, whereas, by allowing
13 companies who did interpollutant transfers of 142B
14 to 22 during the 2003 to 2009 control period, the
15 problem with that, is that, basically, as I said,
16 there are about 20 companies involved.

17 And of the 20 companies, there are two
18 companies that, by doing this, are, in effect,
19 taking 17 percent of the entire allowances that will
20 be available for the 2010 through 2014 control
21 period, and they're getting redistributed from these
22 other 18 companies.

1 I mean, if you look at the 2003 baseline
2 that was in the Federal Register, for R-22, it was
3 119,284,000 kilos. The Agency shows that the 2003
4 baseline in the Proposed Rule, with allowing
5 interpollutant trades to become part of the new
6 baseline for 2010 period and beyond, is 141,865,000
7 kilos, so that's a difference of approximately 20
8 million kilos, but that entire 20 million kilos is
9 going to two of those companies.

10 So, the entire 20 million kilos is going
11 to ten percent of the affected companies, and it's
12 coming from the other 90 percent of the affected
13 companies.

14 And just to give you an idea, like, a
15 small business like CoolGas -- and I'll finish on
16 this --that difference, if you simply go and use
17 Option One, the Agency, to get to the 50,000 metric
18 -- I'm sorry, the 50,000, yeah, metric tons or 50
19 million pounds, that would be 42 percent of the
20 original 2003 cap.

21 Whereas, by allowing the permanent trades
22 to be part of the new cap, the Agency would be

1 issuing 35.5 percent of the new baseline, so that's a
2 difference of 6.5 percent and, you know, to CoolGas,
3 that's approximately 70,000 kilos per year. The
4 market price of R-22 is about \$10 a kilo, so that
5 would affect a small company like ours to the tune of
6 \$700,000 a year, annually, for the next five years.

7 The way we see it, it's merely just a
8 redistribution of our business, because we have been
9 utilizing 100 percent of that product. We do
10 recognize the need to reduce -- you know, we
11 recognize that the U.S. signed the Montreal Protocol
12 and this has to happen, but we don't feel like that
13 we should have to give up more than our fair share.

14 That's all I have to say. Thank you for
15 your time.

16 MR. BRENNAN: Thanks, Mr. Combs. The
17 ground rule that I articulated this morning, also
18 applies to this afternoon, which is, we have one
19 check mark on the list that covers whether or not
20 you wanted to testify on either this morning's or
21 this afternoon's proposal, so there is a possibility
22 that I might call your name and you might not wish to

1 testify this afternoon, and I'm guessing that there
2 will be a few cases where that occurs.

3 I wondered whether Tony Digmanese was
4 going to testify? He's the next one on our list.

5 MR. DIGMANESE: I already spoke this
6 morning.

7 MR. BRENNAN: Very good, thank you.
8 That's the case in point.

9 The next on the list is Talbot Gee.

10 MR. GEE: Thank you very much. Good
11 afternoon. I am Talbot Gee, Vice President of
12 HARDI. Thank you again for the opportunity to
13 present again, HARDI's comments regarding the
14 proposed Allocation Rule for the U.S. phaseout of
15 HCFC substances.

16 The Heating, Air Conditioning, and
17 Refrigeration Distributors, International, or HARDI,
18 is the result of the 2003 consolidation of the North
19 American Heating, Refrigeration, and Air
20 Conditioning Wholesalers and the Air Conditioning
21 and Refrigeration Wholesalers International.

22 HARDI is an international trade

1 association of over 1,000 member companies, over 450
2 of which are U.S. based wholesale distributors of
3 heating, ventilation, air conditioning, and
4 refrigeration, HVACR, equipment, supplies, and
5 controls, the majority of which are for residential
6 applications.

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

12 Page 78699 of this Proposed Allocation
13 Rule, states the EPA's intention to, quote, "apply
14 the Section 605(a)(3) exception, only to the use of
15 these HCFCs in appliances manufactured before
16 January 1, 2010. Such use would consist of
17 servicing and maintenance of these appliances. EPA
18 notes that servicing could entail a wide range of
19 activities, including replacing parts or components,
20 end quote."

21 However, on that same page,
22 "manufactured" is defined as when the refrigerant

1 loop is completed, the appliance can function, the
2 appliance holds the complete and proper charge, and
3 is ready for its intended purpose.

4 HARDI has interpreted these two
5 statements as being in direct conflict with one
6 another, because this new and severely broadened
7 definition, in our opinion, of "manufactured," would
8 essentially prohibit the stated definition of the
9 servicing of existing equipment, after January 1,
10 2010.

11 Banning the servicing of existing HCFC
12 air condition and refrigeration equipment, would be
13 disastrous to HARDI's 450 small business members.
14 Further, such a ban would essentially void the
15 warranties of millions of existing systems in
16 service today, and, while we support the phaseout of
17 HCFCs, such a ban would, in effect, accelerate this
18 phaseout by one year, because of the incredible
19 disruptions it causes, and, frankly, has already
20 started to cause, to the 2009 supply chain.

21 When combined with the proposed pre-
22 charge Rule's ban on the sale and distribution of

1 appliances pre-charged or suitable only for use with
2 newly produced R-22 or R-142B, which would include R-
3 22 condensing units used in the repair of existing
4 residential and commercial air conditioning and
5 refrigeration systems, as well as essential
6 components such as TXV valves, for example, puts at
7 risk, millions of dollars in distributors'
8 inventories, and thousands of jobs.

9 HARDI strongly recommends that the EPA
10 expedite a revision of this Proposed Rule that
11 adopts a more traditional definition of
12 "manufactured." HARDI strongly supports the Air
13 Conditioning, Heating, and Refrigeration
14 Institute's, (AHRI) proposed definition of
15 "manufactured," as when a product leaves the
16 manufacturer's final assembly process, is packaged
17 for shipment, and placed in the initial inventory,
18 or, when an imported product, it enters U.S.
19 Customs.

20 This definition aligns with other
21 regulatory processes our members have previously
22 experienced and complied with.

1 More importantly, this definition
2 provides for the continued servicing of existing R-
3 22 air conditioning and refrigeration systems. That
4 being said, our members desire to be able to service
5 existing R-22 systems, including condensing unit
6 changeouts, compressor replacements, and other
7 essential component repairs, is driven entirely by a
8 sense of obligation to contractor and end customers
9 who legally purchased and installed R-22 systems with
10 the reasonable expectation that the system could
11 remain in service throughout its useful life, even if
12 minor repairs are required.

13 Further, many of these existing systems
14 are contractually bound by service warranties which
15 mandate the installing contractor, supplying
16 distributor, and manufacturer, to make specific
17 repairs such as compressor replacements. Lifetime
18 compressor warranties are common for many of these
19 systems, as well.

20 It is very important that the EPA
21 understand that economic incentives to stockpile R-
22 22 condensing units, do not exist, as it did during

1 the recent phaseout of 10 SEER condensing units.
2 Ten SEER condensing units were in great demand
3 during the transition to the higher 13 SEER
4 efficiency standard, because the 10 SEER units were
5 less expensive, smaller, physically, and a simpler
6 installation than the 13 SEER units.

7 Conversely, there is little market
8 advantage to R-22 systems to alternative refrigerant
9 systems today, and the installation of each system is
10 essentially the same.

11 Further, as the supply of R-22 shrinks
12 throughout this phaseout, its market price will
13 increase significantly, which provides a strong
14 incentive to, today, purchase an alternative
15 refrigerant system.

16 The need and desire by HARDI distributor
17 members to be able to sell R-22 condensing units and
18 essential components such as compressors, is
19 entirely based on the need to service existing
20 systems, not expanding the demand for R-22 in the
21 future.

22 EPA's adoption of the AHRI and HARDI-

1 supported definition of "manufactured," will provide
2 much needed certainty for distributors and our
3 customers, regarding both the Allocation Rule and the
4 Pre-Charged Rule.

5 The Allocation Rule devotes much time and
6 attention to the careful allocation of R-22
7 allowances, but without accepting our amended
8 definition of "manufactured," those allowances are
9 essentially useless, since, despite EPA's repeatedly
10 stated intentions in both Proposed Rules, the
11 servicing of existing refrigerant loops would be
12 prohibited.

13 Finally, HARDI has serious concerns over
14 distributors being omitted as stakeholders in this
15 rulemaking, as it pertains to a regulatory
16 flexibility analysis. Potential losses for our
17 member companies, because of this proposal, are
18 estimated to be millions of dollars in lost
19 inventory in 2010, alone.

20 Thank you for the opportunity to express
21 these concerns and for your attention to them. As
22 always, HARDI and its membership stand eager and

1 anxious to work with the EPA to assist in the
2 expedient phaseout of HCFC refrigerants, but we hope
3 we've made clear today, that doing so without regard
4 to the realities of the marketplace, will not only
5 debilitate our membership, but also our industry, our
6 economy, and our customers, while costing many
7 American jobs. Thank you.

8 MR. BRENNAN: Thanks, Mr. Gee. Next on
9 the list is Jim Crawford.

10 MR. CRAWFORD: I'm Jim Crawford; I'm the
11 Director of Regulatory Affairs for the Trane
12 Company, Ingersoll Rand.

13 Very briefly, I want to, from a
14 manufacturer's standpoint, reinforce the very
15 important issue of the date of manufacture, the way
16 it's defined, and perhaps where it's defined.

17 I think some consideration, perhaps,
18 should be given to taking it out of the Allocation
19 Rule and putting the definition of "date of
20 manufacture," in the Rule, where it is being
21 applied.

22 Several people spoke this morning, and, I

1 think, probably will this afternoon, very eloquently
2 about the various financial impacts, and, certainly,
3 if there are any questions in the minds of EPA about
4 what the market is in terms of split systems versus
5 packaged systems, or unitary air conditioner, versus
6 room air conditioner, I'm sure that AHRI will make
7 available to them, the data that we have available,
8 as well as that which comes from other federal
9 services. Thank you.

10 MR. BRENNAN: Does Christopher Johnson
11 have any comments to provide in this afternoon's
12 hearing?

13 (No response.)

14 MR. BRENNAN: If not, we can move on and
15 I'll ask whether Sean McKay has comments?

16 (No response.)

17 MR. BRENNAN: That does it for the check
18 marks that I have on my list. I suspect that there
19 are numerous other people who are here to provide
20 comments.

21 There may be another list that I'm not
22 aware of. I think the most streamlined approach is

1 to ask, number one, just for a brief show of hands,
2 so we can gauge the number of additional commenters.

3 (Show of hands.)

4 MR. BRENNAN: What I see is maybe half a
5 dozen additional folks. I would recommend that we
6 just start at the front of the room and move back,
7 if you don't mind.

8 Sir, if you could come on up and speak,
9 thanks.

10 MR. KEARNEY: Thank you. Good afternoon.
11 My name is Tim Kearney, and I'm with RemTec
12 International in Bolling Green, Ohio.

13 We have a small business that reclaims -
14 - we're a certified reclaimer of refrigerants. We
15 also have destruction facilities and capabilities.

16 But, from our point of view and that of
17 many of the other certified reclaimers that do not
18 have allocations, we think that the EPA should be
19 encouraging reclaiming. This Proposed Rule, in our
20 estimation, does not accomplish this.

21 It also misses the opportunity to control
22 and encourage the phaseout of R-22, earlier than

1 planned.

2 We agree with DuPont and their submission
3 to the docket, that the allocations should be reduced
4 in relation to the demand line from 2011 to 2014, and
5 we recommend that the allocations be set about 90
6 percent of the demand line, so that the reclaimers do
7 have some incentive to produce their reclaimed
8 product and bring it into the marketplace.

9 This would allow us to have a level
10 playing field for reclaimers. If you look at the
11 service tail graph that everybody is very familiar
12 with, the demand is actually decreasing on a linear
13 proportion, however, the new Allocation Proposed
14 Rule shows the allocations will stay at a steady,
15 flat rate.

16 So, that little gray area that used to be
17 referred to as the reclaimers' portion of what's
18 going to fulfill the market, will go away after a
19 year and a half, as allocations will be greater than
20 the demand.

21 That basically puts reclaimers out of
22 business. Reclaimers have not been able to compete

1 with newly manufactured products over the last eight
2 years, mainly because of price.

3 So, with that in mind, we are basically
4 asking the EPA to consider that they reduce the
5 allocations for 2011, 12, 13, and 14, on a
6 percentage basis, to allow that the reclaimers do
7 have some room.

8 Without reclaimers, it's very evident
9 that the used material has no place to go. It
10 doesn't go back into the recirculation for use
11 product, and the alternative of that, is venting,
12 which is certainly not in the goal of EPA's
13 regulations here.

14 New entrants and reclaimers that have not
15 historically imported before 2003, in fact, before
16 1997, are not effectively allowed to participate in
17 allocations, according to the Proposed Rule.

18 The Proposed Rule perpetuates an earlier-
19 created, and what I call "refrigerant cartel," of a
20 small group of companies that controls the price and
21 supply of all R-22. In fact, just four companies
22 with allocations, control 90.5 percent of the price

1 and supply of all R-22.

2 In 2003, EPA stated that it wanted to
3 avoid creating an uneven playing field that skews
4 allocations to those companies with ample resources
5 and good access to information.

6 But we see that this is what is happening
7 right now, by not allowing new entrants and
8 reclaimers into the allocation schedule, or by not
9 decreasing the supply, proportionate to the demand.

10 Reclaimers need a supply of low-cost,
11 virgin material to blend with slightly low purity R-
12 22, in order to compete with newly-manufactured
13 material. Much of the material recovered, needs
14 more work than just simply filtering and drying and
15 returning it to the marketplace.

16 It may be cross-contaminated, and that
17 requires several passes, perhaps, in expensive
18 distillation towers, in order to bring the purity to
19 an accepted ARI standard.

20 This is at a high cost, and use of much
21 energy along the way. Even that may not be enough
22 to meet 99.5 percent purity of used material that

1 comes back through the supply chain.

2 Without having virgin material that's
3 99.999 percent pure, to blend, then that material
4 which is slightly less than pure, cannot be
5 effectively returned to the marketplace, or legally
6 returned to the marketplace.

7 Reclaimers without allocations do not
8 have access to that material at non-prohibitive
9 prices.

10 We will submit written comments about
11 this, within the time period for comments, but
12 without going further, we really do encourage the
13 EPA to study and consider that a small portion of
14 the allocations be used for certified reclaimers who
15 can petition to the EPA and prove that they could
16 return more reclaimed material to the market, with
17 the issuance of allowance on a case-by-case basis.
18 Thank you very much.

19 MR. BRENNAN: Thanks very much. Moving
20 back through the room, sir, I see you raised your
21 hand.

22 MR. ROBERTS: Good afternoon, my name is

1 Tom Roberts, and I'm President of CFM Distributors.
2 We're an employee-owned small business, an HVAC and
3 refrigeration distributor in the Midwest.

4 Again, I'd like to focus on the term
5 "manufactured," in the Allocation Rule. It's
6 probably appropriate to add a few details here.

7 It's the text of the Proposed Rule,
8 versus the texture of the real world of a variety of
9 complex systems, some of which are more difficult to
10 replace, the indoor/outdoor portion, or more easy to
11 replace.

12 As a distributor of these critical
13 environmental control and refrigeration systems, we
14 must maintain inventories that fulfill the market
15 demands, which demands immediate replacement of
16 failed systems and major components like condensing
17 units.

18 This necessarily means that we have
19 enough inventory and do not reach zero quantities.
20 Because of that and because we can't forecast the
21 precise demand of each model, type, and variety,
22 with thousands of skews, we often carry over 20

1 percent or more of our inventory from year to year.

2 In fact, my oldest ten pieces of HCFC
3 condensing unit inventory, are currently four years
4 old. At three years old, it's a much higher number,
5 and two years, much higher.

6 There are still very good applications
7 for this equipment to find a home, rather than face
8 the devastating cost to our business of
9 obsolescence.

10 A real example is the replacement of
11 split systems when metals prices were high and we
12 had outdoor condensing units stolen from a variety
13 of installations, many times low-income, inner city
14 churches, and those installations, while maybe
15 costing \$8,000 to replace several condensing units,
16 might cost \$30,000 to \$40,000 to replace the entire
17 systems.

18 So there are installations where it's a
19 very appropriate use of this residual inventory to
20 deploy it in the field and reduce the environmental
21 impact of the cost or replacement system or make
22 possible, the replacement of heating and cooling to

1 that structure, where it wouldn't be possible, if
2 the only alternative were HFC.

3 So, the impact to the small business
4 community, is more than just the direct impact to
5 distributors and contractors; it's the impact to
6 small business end users and consumers alike.

7 Also, I'd like to support what has
8 already been said here, that there's a clear
9 difference between the appliance energy standard
10 change and the temptation to stockpile and the
11 temptation and the economic benefits and market
12 benefits of stockpiling in this particular
13 application.

14 In my own company's analysis, there is
15 absolutely no incentive to stockpile HCFC equipment,
16 versus HFC. It's going to be persona no grata; it
17 will only be used in those applications like I
18 mentioned, where we will be selling off that
19 remaining tail of inventory.

20 But I don't think that we should fall
21 victim to our own Government's mandate that we
22 accept a loss for equipment that is still perfectly

1 usable and was produced prior to January 1st, 2010.

2 Thank you very much.

3 MR. BRENNAN: Thanks. Let's get that
4 show of hands in the front of the room. Anybody
5 else in the first half? Go right ahead, thanks.

6 MR. DEVOE: Hi, my name is Adam Devoe,
7 and I represent CoolGas and Dynatemp.

8 I just want to reiterate for the record,
9 since this is a new public hearing this afternoon, a
10 comment that was made this morning, and that's
11 basically a process comment.

12 I'm sure you're all a little surprised,
13 as I am, that there aren't more comments this
14 afternoon on this proposed rulemaking, and I suspect
15 it's because the Agency put out a Proposed Rule two
16 days before Christmas and held a public hearing four
17 business days after the new year.

18 I think this is a missed opportunity to
19 have meaningful stakeholder input and public
20 comment, and from a process standpoint, I just think
21 that the hearing was scheduled too quickly, and it
22 seems apparent that the industry has not had time to

1 analyze the potential effect of the Proposed Rule and
2 to put together meaningful public comment for this
3 hearing. That was the only comment I had.

4 MR. BRENNAN: Why don't I move to the
5 back half of the room and see a show of hands of
6 anybody who would like to comment. Yes?

7 MR. BRENNAN: Thank you, Mr. Devoe.
8 Yes?

9 MR. MCCRUDDEN: For those of you who were
10 here this morning, once again, my name is Charlie
11 McCrudden, and I am here representing the Air
12 Conditioning Contractors of America and will try to
13 change my jokes this time around.

14 (Laughter.)

15 MR. MCCRUDDEN: For more than 40 years,
16 the Air Conditioning Contractors of America has
17 served the nationwide educational, policy, and
18 technical interests of the small businesses who
19 design, install, and maintain indoor environmental
20 systems.

21 ACCA has a longstanding history of
22 developing a superior class of air conditioning and

1 refrigeration technicians and professionals. As
2 creators of the original and most popular EPA
3 certification program and tests, ACCA has certified
4 over 300,000 people to work on this equipment under
5 the Section 608 program.

6 Every day, thousands of ACCA members help
7 homeowners, building managers, and business
8 customers, realize the comfort, cost benefits, and
9 convenience of energy-efficient heating,
10 ventilation, air conditioning, and refrigeration
11 equipment.

12 ACCA members characterize the extent of
13 America's economic diversity. The typical ACCA
14 contractor employs less than ten people, but many of
15 our members have hundreds of workers.

16 We appreciate the opportunity to appear
17 at this hearing on the Adjustment to the Allowance
18 System for Controlling HCFC Production, Import, and
19 Export Allocation Rule.

20 Like with the Pre-Charged Rule, ACCA and
21 its members have many concerns about this proposed
22 Rule and the consequences it will have on the large

1 and small businesses in the air conditioning and
2 refrigeration industry and the customers they serve.

3 ACCA is most concerned about the
4 rulemaking process and the timeframe, the omission
5 of stakeholders in the economic and regulatory
6 analysis, the estimated availability of R-22 for
7 servicing needs in the 2010 through 2014 period, and
8 the interpretation of Section 605(a) under which air
9 conditioning and refrigeration appliances are, quote,
10 "manufactured," unquote.

11 Reiterating the concerns made this
12 morning with the Pre-Charged Rule, the Notice of the
13 Proposed Allocation Rule, appeared only 15 days ago.
14 While ACCA made a good-faith effort to solicit
15 comments from its members, we would have preferred a
16 hearing a few weeks later.

17 ACCA notes that this Proposed Rule must
18 be enacted in less than one year, in order to meet
19 the HCFC phaseout obligations under the Montreal
20 Protocol.

21 ACCA members are currently in the process
22 of making inventory decisions regarding equipment and

1 refrigerants dealt with in this Proposed Rule.

2 As with the Pre-Charged Rule, air
3 conditioning and refrigeration contractors are not
4 listed as regulated entities in Section 1 of the
5 Proposed Rule Notice, and while the Notice mentions
6 that, quote, "other types of entities not listed,
7 could also be affected," unquote, the omission of
8 air conditioning and refrigeration contractors from
9 this list, greatly concerns the ACCA membership.

10 In relying on the five categories of
11 impacted entities, EPA overlooked the impact this
12 proposed rulemaking will have on a significant
13 number of contractors in the industry.

14 ACCA feels that EPA should have completed
15 a review of the impacts this rulemaking will have, as
16 required under the Regulatory Flexibility Act.

17 ACCA members are concerned that EPA's
18 assumption is that 20 percent of the R-22 servicing
19 needs will come from recycled or reclaimed
20 refrigerant. This figure may be ambitious, as
21 current reclamation rates are much, much lower than
22 20 percent.

1 The Allocation Rule proposes to set a
2 definition of when air conditioning and
3 refrigeration equipment is manufactured. Under the
4 Proposed Rule, equipment is, quote, "manufactured
5 when the device is installed in the field, connected
6 with the indoor unit and charged to the proper
7 level," unquote.

8 Except for window units, the practical
9 result of this definition, will mean air
10 conditioning and refrigeration equipment is
11 manufactured at the point of installation.

12 ACCA members are concerned about the
13 impact this interpretation will have on the supply
14 chain, and the ability to repair otherwise legal
15 equipment, should it trigger a replacement in a
16 repair situation.

17 Among other concerns, we are afraid this
18 will drive consumers to use uncertified contractors
19 that make illegal shortcuts.

20 ACCA members are intrigued by the
21 allocation auction proposal, but wonder how it will
22 work. Should EPA select the auction option, ACCA

1 recommends that the proceeds from this auction, are
2 not directed to the general fund, but, instead, go
3 toward paying for tax incentives for the purchase of
4 high-efficiency appliances and the enforcement of
5 Section 608 laws.

6 Properly installed and maintained
7 equipment is not the problem. Improper handling and
8 release of HCFCs into the atmosphere, poses the real
9 threat to public health and welfare.

10 Again, we are aware that much uncertainty
11 remains on the Allocation and Pre-Charged Rules.
12 ACCA hopes EPA can resolve some of these issues
13 raised here, in the short term.

14 Meanwhile, we do plan to provide more
15 detailed and fully developed comments for the
16 docket. Thanks.

17 Do you need me to spell my last name?
18 It's M-C-capital C-R-U-D-D-E-N.

19 MR. BRENNAN: Thanks. Let's stick with
20 the back of the room. Show of hands of people who
21 would like to comment, in the back half of the room?

22 (Show of hands.)

1 MR. BRENNAN: Yes?

2 MR. BURKE: My name is James Burke, the
3 company's name is USA Refrigerants, and I have a
4 couple of things that I'd like to suggest.

5 First of all, I don't have a dog in this
6 fight, other than, yes, I want allocation, like half
7 the room does. The other half already has it.

8 So, just so you know, a lot of people
9 don't want to speak up, because they're afraid of
10 their supplier not supplying it, but there's a lot
11 of people who want allocations.

12 (Laughter.)

13 MR. BURKE: A couple of things, though, I
14 think, should be said. If you want to make sure you
15 get 20 percent recovery, I believe that all gas that
16 is allocated, there's got to be a qualifier that 20-
17 percent recovered gas, be purchased from a certified
18 reclaimer.

19 That would guarantee a certain amount of
20 recovery and that makes the price of everything go
21 up in the marketplace, and the reclaimers now have
22 an incentive to do their jobs.

1 A couple of other things: What I'm
2 trying to work on here, is an even playing field.
3 You want reclamation to go up, there's no way that
4 the certified reclaimer can do his job, buy the gas,
5 pay two bucks to transport it, clean it, and compete
6 with gas that is half that price or less.

7 So we've got to do something to even the
8 playing field out -- just something. I mean, don't
9 just let it go where it's a dollar versus three
10 dollars and think you can compete. You cannot; you
11 can't sell lemonade for three dollars when somebody
12 else is selling it for a dollar; you're going out of
13 business, all right?

14 The auction thing was mentioned. I don't
15 care where the money goes, all right? That was a
16 good idea that Charlie just had, to let it go in to
17 enforce laws, all right? You know there's been only
18 one HVAC venting violation in the history of the
19 United States.

20 He was sitting there outside of a meeting
21 during an EPA luncheon.

22 So, what I'm trying to say here, is,

1 we've got to do something to get the price of the
2 product up, and, last but not least, I believe --
3 and this sounds a little crazy -- all of the virgin
4 gas should get shipped to the really qualified
5 reclaimers and separation guys, first, so that they
6 can use that gas to clean up the impurities, because
7 to go from 97 to 98.5 or 99.5, is the most difficult
8 part and the most power-consuming part of their jobs.

9 If you can sit there and just be a little
10 bit practical in saying, okay, DuPont makes it, they
11 ship it over to this big reclaimer, whoever it is, if
12 it's Hudson or it's AirGas, and let them take the
13 gas, get it back to them or ship it to their customer
14 at 99.5. It's still ARI gas.

15 There's no reason why we're not taking
16 that great gas.

17 Also, there's one last thing I want to
18 tell you: We've got to stop the illegal imports.
19 It's real simple: No more imports.

20 DuPont, Honeywell, and ARCO, have enough
21 facilities to supply the country. You just need to
22 have a nice, even playing field, where a large

1 customer is there who supplies the rest of the
2 allocation holders, all right?

3 You shut down the borders, so that
4 Customs can make an arrest at the time it comes into
5 the country, not after I tell somebody who tells
6 somebody who tells somebody who tells somebody and
7 it's already sold and on the street, all right? It's
8 real simple; you just shut the borders down, no more
9 gas comes into this country.

10 If anybody needs the gas, you make out a
11 rule where it's \$100 a cylinder or \$90 a cylinder;
12 they're glad to supply it to you. It's going to be
13 quality gas at 99.5, because we just cleaned it up,
14 you know.

15 That's all I've got to say about that.

16 Thank you.

17 MR. BRENNAN: Thanks, Mr. Burke. Show of
18 hands from remaining folks who would like to provide
19 a comment this afternoon.

20 (No response.)

21 MR. BRENNAN: Going once, going twice.

22 (No response.)

1 MR. BRENNAN: I guess that's it. Well,
2 thank you. That then wraps up this afternoon's
3 hearing on the 2010 Allocation Rule.

4 As we said this morning, it will be about
5 two weeks until the verbal comments provided today,
6 are transcribed and available on the docket on the
7 EPA website, as well.

8 I also -- just with respect to some
9 observations that were raised this afternoon, I also
10 do want to thank folks for accommodating the timing
11 of this process. We were very eager, obviously, to
12 get the Rule signed before the holiday season.

13 Those of you who are familiar with the
14 process for writing regulations and going through
15 the different administrative procedures, recognize
16 that there's actually very little control over the
17 sequence of events, once signature happens.

18 Often, we have to sit back and await
19 publication, and there's a certain number of days
20 until a hearing can be requested, a certain number
21 of days to hold the hearing.

22 We recognize the difficulty that the

1 holiday season created for what is already a very,
2 very streamlined set of milestones, so we very much
3 thank you for providing thoughtful comments today.

4 We welcome you, as always, to provide
5 more detailed written comments on the docket, all
6 the way up to and including March 9th. So thanks
7 very much for coming today, and have a good trip
8 home.

9 Also, just as a side note, check our
10 website from time to time. We understand there are
11 opportunities for some clarification that we can
12 provide now, and it may be worth just checking back
13 to the phaseout site and seeing if we've got a fact
14 sheet or any other clarification available on the
15 web.

16 (Whereupon, at 1:52 p.m., the hearing was
17 concluded.)

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