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via electronic transmission

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1200 Pennsylvania Avenue, N.W.
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Subject: Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act; Docket ID No. EPA-HQ-OAR-2021-0044

Dear Mr. Chang,

On May 19, 2021, the Environmental Protection Agency (EPA) published in the Federal Register a proposed rule¹ *Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program under the American Innovation and Manufacturing Act* which implements certain provisions of the AIM Act, as enacted on December 27, 2020. This proposed rule proposes to establish the Hydrofluorocarbon (HFC) production and consumption baselines; establish the allowance allocation program to phasedown HFC production and consumption; determine an initial methodology for allocating allowances and allowing for the transfer of those allowances; establish provisions for the international transfer of allowances, establish requirements to support compliance with phasing down HFC production and consumption; establish recordkeeping and reporting requirements; release certain data to provide transparency and support implementation of the program; and, address certain other elements related to the effective implementation of the AIM Act. The Household & Commercial Products Association² (HCPA) appreciates the opportunity to provide these comments and supports the phasedown of the use of HFCs.

HCPA represents a wide range of products, from household cleaners and air fresheners to commercial disinfectant and pest control whose use of aerosol technology makes the aerosol

¹ Available at <https://www.govinfo.gov/content/pkg/FR-2021-05-19/pdf/2021-09545.pdf>

² The Household & Commercial Products Association (HCPA) is the premier trade association representing companies that manufacture and sell \$180 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.

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industry an integral part of the household and commercial products industry. HCPA has represented the U.S. aerosol products industry since 1950 through its Aerosol Products Division, representing the interest of those that manufacture, formulate, supply and market a wide variety of products packaged in an aerosol form. HCPA participated in the virtual public hearing on June 3, 2021, and submitted comments on February 25, 2021, on the Notice of Data Availability Relevant to the United States Hydrofluorocarbon Baselines and Mandatory Allocations³. Further, HCPA, at the time known as the Consumer Specialty Products Association (CSPA), participated in the development of multiple EPA's Significant New Alternatives Policy (SNAP) Rules, most recently SNAP Rule 20.⁴ Recently, HCPA has engaged in multiple states⁵ as they have passed legislation and/or regulations to utilize SNAP Rules 20 and 21⁶ as the basis to prohibit the use of high global warming potential hydrofluorocarbons (GWP > 150) within the individual state.

Aerosol manufacturers utilize a variety of propellants which pressurize the aerosol system and influence how the product is expelled from the container. Traditionally, the use of high-GWP hydrofluorocarbons (GWP > 150) by the aerosol industry was limited to a small number of products categories where their usage, primarily for their non-flammable properties, was necessary. With the implementation of the original timeline with EPA's SNAP Rules, the U.S. aerosol industry moved away from the small number of high-GWP hydrofluorocarbons uses in aerosol products except for the critical uses that were exempted by the rule. Furthermore, the use of hydrofluorocarbons with a global warming potential of less than 150 is generally limited to a small number of product categories that need to utilize a liquefied propellant that are excluded from federal⁷ and state⁸ volatile organic compound (VOC) regulations for consumer and commercial products. HCPA and its members have worked with EPA and numerous state government agencies over the past thirty years that have developed regulations to limit the VOC content of consumer and commercial products. The aerosol industry not only continuously analyzes and research ways to improve aerosol products, which includes the use of other propellants which can impact how a product sprays and performs, to meet the needs of end-users, but limits the use of HFCs as propellants by utilizing alternative propellants when possible while complying with these stringent regulations.

³ Available at <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0044-0028>

⁴ 40 CFR Appendix U to Subpart G of Part 82

⁵ California, Colorado, Delaware, Maine, Maryland, Massachusetts, New Jersey, New York, Vermont, Virginia, and Washington

⁶ 40 CFR Appendix V to Subpart G of Part 82

⁷ 40 CFR Part 59 Subpart C

⁸ The following states have VOC regulations that are more stringent than the National Volatile Organic Compound Emission Standards for Consumer Products: California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Utah, and Virginia

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As EPA phases down the production and consumption of HFCs within the United States, domestic aerosol manufacturers who utilize HFCs in their products will need to transition to other propellants so that their products remain on the market; however, HCPA is deeply concerned that imported products that contain HFCs, such as finished aerosol products, are not included in the allocation process as it can put domestic manufacturers at a disadvantage and poses a significant challenge to the regulation meeting its goals. While HCPA agrees that it is reasonable to build upon the Agency's experience of phasing out ozone-depleting substances (ODS) under Title VI of the Clean Air Act (CAA)⁹ as a starting point for the implementation of the AIM Act, updates are necessary due to the differences and increased competition in the global market as there are many more aerosol product manufacturers overseas now than there was when EPA started the phaseout of ODS. HCPA would expect other markets utilizing HFCs in products would have similar changes in their global markets. Without including imported products containing HFCs within phasedown of HFCs, HCPA believes that domestic manufacturers would be at a disadvantage in the market compared to products made outside the United States and imported for sale. To address this apparent market inequity and remain consistent with the intent of AIM, HCPA believes that EPA needs to address this inconsistency to both level the playing field for domestic manufactured products but also to achieve the stated environmental goals.

With this in mind, HCPA recommends that EPA allocates to manufacturers and importers of bulk HFCs who then sell their inventory to domestic manufacturers of products containing HFCs and utilize the data it already has in its GHG inventory to add imported products containing HFCs into the baseline and start including it in 2022 with a reporting requirement. This reporting requirement develops a pathway for determining and monitoring imported products containing HFCs so that these products are properly tracked and count towards the phasedown of HFCs within the United States for the next rulemaking process. HCPA believes this is necessary for a level playing field to protect domestic manufacturers and enhance the American work force. HCPA would appreciate the opportunity to discuss tracking imported aerosol products with EPA so that the aerosol industry can provide whatever would be of use to the Agency for this to occur.

EPA is soliciting input on the proposed definition of a defense spray, which is:

“an aerosol-based spray used for self-defense, including pepper spray and animal sprays, and containing irritant capsaicin and related capsaicinoids (derived from oleoresin capsicum), an emulsifier, and an aerosol propellant.”

HCPA is not aware of any existing definition of for defense spray and in general support this proposed definition as it would include products such as pepper sprays and animal sprays which are intended for self-defense.

⁹ 40 CFR Part 82, Subpart A

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EPA is also soliciting comment on whether the Agency should distinguish between misuse and proper use when evaluating the full quantity of allowances necessary for defense sprays, specifically in this case due to reports of people using bear sprays against people and not their intended purpose of against bears. As bear sprays are regulated by EPA as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), HCPA believes that these products should only be used on bears when appropriate for self-defense and the misuse of bear sprays should be enforced and prosecuted to the fullest extent of FIFRA or other applicable federal laws.

EPA is proposing to allow transfers of allowances for HFCs provided the transferor's remaining allowances are reduced by the amount it transferred plus some percentage of the amount transferred. EPA is proposing that offset be five percent to meet the AIM Act statutory directive; however, HCPA believes that the five percent is excessive and could discourage trading to meet market demands. With the aggressive timeline for the phasedown, HCPA believes that a one percent offset makes more sense as to not discourage trading while still achieving an environmental benefit.

HCPA appreciates the opportunity to provide these comments on the proposed rule *Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act*. HCPA supports the implementation of the AIM Act and believes that the proper tracking of bulk HFCs and products containing HFCs is crucial for the phasedown to be effective and not undermine the demand for and sale of alternatives, of which the U.S. industry is a significant global supplier.

If you have any questions about the comments provided in this letter, please contact me at ngeroges@thehcpa.org.

Sincerely,



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Household & Commercial Products Association