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Subject: Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons under Subsection (i) of the American Innovation and Manufacturing Act of 2020 (Proposed Rule)

The Household & Commercial Products Association¹ (HCPA) appreciates the opportunity to submit comments regarding the Environmental Protection Agency's (EPA) Proposed Rule² *Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under Subsection (i) of the American Innovation and Manufacturing Act of 2020*. HCPA supports the goals of the American Innovation and Manufacturing Act (AIM Act) and offers comments on the proposed restrictions of certain Hydrofluorocarbons (HFCs), labeling provisions, recordkeeping and reporting requirements.

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 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 previously filed a joint petition with the National Aerosol Association (NAA) under Subsection (i) of the AIM Act, requesting that the agency restrict the use of HFC-125, HFC-134a, and HFC-227ea. HCPA and NAA also requested that the Agency grant exclusions for certain applications from these restrictions, mainly the applications found acceptable under the

¹ 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.

² 87 *Federal Register* 76738 (December 15, 2022)

Significant New Alternatives Policy (SNAP) Program Rules 20³ and 21⁴. Our joint petition was granted⁵ on October 7, 2021. While in general HCPA supports the proposal, we have several suggestions on modifications and offer the following specific comments.

I. Proposed HFC Restrictions and Compliance Dates

HCPA supports EPA's proposal to establish global warming potential (GWP) limits rather than restrict individual HFCs. Further HCPA supports EPA's proposal to set a GWP limit of 150 for the aerosol sector and a compliance date of January 1, 2025. HCPA has supported state action⁶ to restrict the use of high GWP HFCs (GWP > 150) and using a GWP limit of 150 ensures consistency across the U.S. Traditionally, the use of high-GWP HFCs by the aerosol industry was limited to a small number of products categories where their usage was necessary. Because of the original timeline with EPA's SNAP Rules, the U.S. aerosol industry has already moved away from using high-GWP HFCs in aerosol products except for the critical uses that were exempted under those rules.

HCPA supports EPA's decision to exempt certain applications that are receiving application-specific allowances, such as metered dose inhalers and defense sprays, and expects that once these certain applications no longer receive application-specific allowances that the Agency will work with stakeholders to provide adequate transition timelines.

With that said, HCPA would like to request a delay in the compliance date for certain niche applications that need a longer transition time. Those applications are the same that are found in the SNAP Rule 20, and HCPA is requesting a compliance date of January 1, 2030 for these applications:

- Cleaning products for removal of grease, flux and other soils from electrical equipment or electronics;
- Refrigerant flushes;
- Products for sensitivity testing of smoke detectors;
- Lubricants and freeze sprays for electrical equipment or electronics;
- Sprays for aircraft maintenance;
- Sprays containing corrosion preventive compounds used in the maintenance of aircraft, electrical equipment or electronics, or military equipment;

³ Appendix U, Subpart G of 40 C.F.R. Part 82

⁴ Appendix V, Subpart G of 40 C.F.R. Part 82

⁵ <https://www.federalregister.gov/documents/2021/10/14/2021-22318/notice-of-determination-to-grant-or-partially-grant-certain-petitions-submitted-under-subsection-i>

⁶ California, Colorado, Delaware, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington

- Pesticides for use near electrical wires, in aircraft, in total release insecticide foggers, or in certified organic use pesticides for which EPA has specifically disallowed all other lower-GWP propellants;
- Mold release agents and mold cleaners;
- Lubricants and cleaners for spinnerettes for synthetic fabrics;
- Duster sprays specifically for removal of dust from photographic negatives, semiconductor chips, specimens under electron microscopes, and energized electrical equipment;
- Adhesives and sealants in large canisters;
- Document preservation sprays;
- Wound care sprays;
- Topical coolant sprays for pain relief; and
- Products for removing bandage adhesives from skin.

All of these products use HFC-134a, and can potentially use other HFCs as solvents, e.g., HFC-4310mee is used as solvent in cleaning products for electrical equipment or electronics and refrigerant flushes. Most of these applications use HFC-134a due to its nonflammability properties and it is critical that any reformulation maintains that characteristic. For the other products, specifically wound care sprays, topical coolant sprays for pain relief, and products for removing bandage adhesives from skin, these products are regulated by FDA and require their approval before alternative formulations can be brought to market.

While some of these products have alternative formulations already on the market, those are based on the HFO-1234ze propellant. HCPA is requesting a longer compliance date even with these alternatives on the market because of state activity around PFAS. Several states⁷ have passed PFAS laws that will restrict the use of compounds that contain a fully fluorinated carbon atom, which includes both HFC-134a and HFO-1234ze, and others are working on similar legislation. Maine's law specifically will restrict the use of these compounds in all aerosol products by January 1, 2030, so the aerosol industry will be utilizing this time to develop and commercialize alternative solutions, such as new valve technology, if the state does not grant us an exemption to use the HFO-1234ze propellant. If it was as simple as replacing the HFC propellant with a compressed gas, such as Nitrogen, the aerosol industry would have already made that transition due to the economic differences.

HCPA members that still use HFC-134a and other high-GWP HFCs are working on solutions to replace these substances. As the aerosol industry is highly competitive, HCPA is encouraging its members to schedule one-on-one meetings with the Agency to discuss in detail their specific R&D efforts and potential timelines for transition about the niche product categories in which we are requesting a later compliance date.

⁷ California, Colorado, and Maine

Beyond aerosol products, HCPA would also like to make a general comment about the GWP of other sectors, specifically those in which the Agency has proposed a GWP limit of zero. While HCPA believes the intent of EPA is to not allow HFCs within these subsectors, HCPA cautions the agency with how this is written as it appears to us as though the Agency is not allowing any compound that has any sort of GWP in these products. To avoid any misunderstanding, HCPA would request that these subsectors have a GWP limit of 20, such that compounds which eventually break down in the atmosphere into carbon dioxide and potentially other substances, and thus would have a GWP, not be restricted under this rulemaking.

II. Proposed Labeling Requirements

HCPA supports the goal of providing meaningful and understandable information to consumers and workers that use aerosol products, as well as providing transparency on the ingredients used in those products.

The labeling of aerosol products is highly complicated as there are a number of federal government agencies that regulate aerosol products depending on the product application. Aerosolized pesticide products are regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Food, drugs (both prescription and over-the-counter (OTC)), and personal care products are regulated by the Food and Drug Administration (FDA). Aerosol consumer products that are not regulated by EPA or FDA are regulated by the Consumer Product Safety Commission (CPSC) and are labeled in accordance with the Federal Hazardous Substances Act (FHSA). Aerosol products used in the workplace are regulated by the Occupational Safety and Health Administration (OSHA) and are labeled in accordance with their hazard communication standard (HCS).

Some of the labeling requirements which aerosol products have to comply with mandate the disclosure of intentionally added ingredients, including the propellant, with specific nomenclature requirements, such as is the case with personal care products and OTC drugs as regulated by FDA. Further, many HCPA member companies go beyond legal requirements when it comes to providing transparency to the ingredients used in their products, voluntarily disclosing more than they have to on product websites. However, there are certain labeling requirements that make it incredibly difficult to disclose all ingredients on product labels, such as is the case with FDA and prescription drugs or EPA with pesticide products where only the active ingredient(s) are disclosed on the label. As such, creating a one-size fit all approach when it comes to aerosol products is not possible.

Several states⁸ that have restricted the use of high-GWP HFCs have disclosure requirements for aerosol products containing HFCs. Most of these states have opted to provide the aerosol products industry options as it relates to disclosure, including the use of the Safety Data Sheet

⁸ Colorado, Delaware, Maryland, Massachusetts, New Jersey, Rhode Island, Virginia and Washington

(SDS) to satisfy their disclosure requirement. As the propellant(s) creates a pressure within the aerosol system that is greater than 29 psi, the manufacturer of the product has to disclose the propellant(s) within Section 3 of the SDS. If EPA wishes to have one pathway for compliance regarding disclosure for all aerosol products, HCPA recommends that the Agency go this route in allowing the use of the SDS to satisfy this requirement. While the SDS is not required by any agency other than OSHA, nearly every aerosol product has an SDS because retailers will not sell these products without one.

The state of Washington is the only state not to follow this path. Instead, their regulation⁹ separates the disclosure options based on the application and federal authority, then provides manufacturers and marketers with options on how to comply as follows:

(a) For aerosol products regulated by the U.S. Food and Drug Administration excluding prescription drug products, the U.S. Consumer Product Safety Commission, or products that are not covered by (b) of this subsection:

- (i) New dedicated label;
- (ii) Existing product label;
- (iii) On-packaging label;
- (iv) On-product symbol or code; and online disclosure; or
- (v) On-packaging symbol or code; and online disclosure.

(b) For aerosol products regulated by EPA under the Federal Insecticide Fungicide and Rodenticide Act, aerosol products regulated by the Occupational Safety and Health Administration, or aerosol prescription drug products regulated by the U.S. Food and Drug Administration:

- (i) Any option in (a)(i) through (v) of this subsection; or
- (ii) A product document, such as a Safety Data Sheet (SDS), that complies with the 29 C.F.R. 1910.1200; and online disclosure if the SDS is not posted online.

If the Agency would prefer to go this route, HCPA is amenable; however, we oppose the listing of the GWP on the product label for any of these products. This would complicate compliance with existing labeling requirements under other authorities without being meaningful to consumers and workers.

HCPA also objects to the product label having to contain the date of manufacture. From a practical standpoint, aerosol product labels can be very small and are printed ahead of production. That means a manufacturer would have to have labels printed for each day a product plans to be produced, and even just printing the year will result in thousands of labels having to be disposed of at the end of each calendar year. Further, there are many different aerosol products which have an expiration date printed on the container, and it could cause confusion for consumers to see two different dates on the product. Instead, HCPA recommends allowing the industry to continue its current practice of printing a date code on

⁹ WAC 173-443-070

the bottom of the container. Due to the various volatile organic compound (VOC) regulations for aerosol products, including EPA's National Volatile Organic Compound Emission Standards for Consumer Products,¹⁰ aerosol companies use the date code and provide an explanation of how the date of manufacture is marked on each unit so that various government agencies know how to read it for enforcement purposes. In some cases, these agencies only need this explanation upon request while others require its submission before conducting business or a change in the date coding system occurs. From EPA's VOC regulation,¹¹ companies have to submit within 30 days either a new or revised date code explanation. HCPA requests that EPA continue in this manner of allowing the aerosol industry to utilize a date code and provide an explanation so that the Agency understands how to interpret it.

III. Proposed Recordkeeping Requirements

HCPA supports EPA's proposed recordkeeping requirements for three years as it aligns with other regulations, such as EPA's National Volatile Organic Compound Emission Standards for Consumer Products¹² and the requirements under FIFRA.¹³ While some products, such as drugs in aerosol delivery technology, are required to keep such records one year past the expiration date of the product, HCPA believes that a three year requirement is sufficient for this rulemaking.

IV. Proposed Reporting Requirements

HCPA does not believe that domestic end-product manufacturers, such as aerosol product manufacturers, who do not currently report should be subject to the reporting requirement. EPA is already receiving reports on bulk HFCs, whether produced domestically or imported, thus the material used by domestic end-product manufacturers is already being accounted for and HCPA does not see the value in additional reporting for these entities.

For domestic end-product manufacturers that are subjected to reporting requirements under other rules, HCPA believes that the quarterly reporting requirements would be overburdensome and costly without providing appropriate value to the Agency. HCPA considers the existing e-GRRT Data Reporting System, which requires annual reporting, to be adequate and adjusting the frequency to a quarterly basis would require the Agency and industry to commit additional resources to collect and manage the reporting. From the recent¹⁴ OMB report for the Greenhouse Gas Reporting Program, the annual average respondent burden and cost assumptions are 2,624 hours at a cost of \$187,540. If we assume that quarterly reporting would quadruple the burden and cost, this will equal 10,496 hours and

¹⁰ 40 CFR Part 59 Subpart C

¹¹ 40 CFR § 59.209(d) and (e)

¹² 40 CFR Part 59 Subpart C

¹³ 40 CFR § 165.27 and § 165.65

¹⁴ Available at <https://omb.report/icr/201909-2060-005/doc/94990000>

\$750,160. Quarterly reporting of all sectors would vastly increase the existing annual EPA estimates that it requires up to *“12 full time equivalents, or an estimated 24,960 hours annually to these activities”* with a total annual cost to the Agency of \$9,847,181, requiring an increase to their proposed rule estimate of \$27,107,658 in the first year. Additional increased adjustments would also be required to account for updated economic factors, including the lack of skilled labor inflating hourly rates and inflationary status. OMB also notes in the report that *“an annual collection frequency supports the critical linkage...between the GHGRP and its data sharing with the Inventory, an annual reporting requirement of the U.S. Government and led by EPA to the United Nations Framework Convention on Climate Change”,* and *“These collection frequencies are necessary to ensure adequate data quality and were designed to match the variability of activities conducted by the source category.”*

HCPA believes that importers of end-products which contain HFCs should be subject to annual reporting requirements. Unlike domestic end-product manufacturers, imported materials and products containing HFCs are not captured by reports received on bulk HFCs, and would thus inform the Agency on the amount of HFCs being imported in forms other than bulk.

HCPA also asks that the submission timeline follow the Greenhouse Gas Reporting Program timeline, which is 90 days rather than the proposed 45-day proposed submission timeline. The current e-GRRT annual reporting system has been proven to be adequate and there is no reason to believe that a 90-day submission would impact the Agency’s ability to track HFC usage any differently than 45 days.

HCPA supports the EPA’s proposal that reports be electronic and recommends utilization of the existing confidential e-GGRT system.

V. Conclusion

HCPA supports the phasedown of HFCs and appreciates the opportunity to provide these comments. If you have any questions about the feedback provided in this letter, please contact me at ngeorges@thehcpa.org.

Respectfully submitted,



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