



November 15, 2018

Sent Electronically

Mr. Jeremy Arling
Environmental Protection Agency, Stratospheric Protection Division
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Comments of the American Chemistry Council on EPA Proposed “Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program’s Extension to Substitutes [EPA-HQ-OAR-2017-0629; 83 Fed. Reg. 49332, Oct. 1, 2018]

Dear Mr. Arling:

The American Chemistry Council (ACC) appreciates the opportunity to submit comments on U.S. Environmental Protection Agency's (EPA) proposed “Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program’s Extension to Substitutes” (the Proposal).¹ ACC represents a diverse set of companies engaged in the manufacture, sale, and use of refrigerants, industrial gases, and products that will be affected by EPA’s proposed withdrawal of the leak repair requirements in 40 CFR 82.157 for appliances using only non-exempt substitute refrigerants.

The Proposal puts forth EPA’s proposed changes to its legal interpretation of its authority under Section 608 of the Clean Air Act (CAA). ACC submitted comments on that issue in response to EPA’s November 9, 2015 proposed rulemaking on, “Protection of Stratospheric Ozone: Update to the Refrigerant Management Requirements Under the Clean Air Act.”² As such we will not address that issue again in these comments. Instead we will focus on the following two issues raised in the Proposal.

¹ The American Chemistry Council represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people’s lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$526 billion enterprise and a key element of the nation’s economy. It is one of the nation’s largest exporters, accounting for ten cents out of every dollar in U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation’s critical infrastructure.

² Comments of the American Chemistry Council on EPA’s “Protection of Stratospheric Ozone: Update to the Refrigerant Management Requirements Under the Clean Air Act.” EPA-HQ-OAR-2015-0453. January 25, 2016.



I. EPA should retain certain provisions of subpart F applicable to non-exempt substitute refrigerants instead of withdrawing the full set of subpart F requirements for these substances.

As EPA notes, some of the provisions of subpart F implement, explain, and enforce the venting prohibition for non-exempt substitute refrigerants and EPA is proposing to retain those provisions in a final rule.

ACC believes that EPA reasonably interprets section 608(c) as providing the Agency with the discretion to promulgate regulations implementing those provisions and to extend those regulatory requirements to non-exempt substitutes. As EPA acknowledges, Section 608(c)(1) establishes a self-effectuating venting prohibition, with an accompanying exemption for “[d]e minimis releases associated with good faith attempts to recapture and recycle or safely dispose” of substances.”³ The language of section 608(c)(2) applies the requirements of the previous section to “any substitute substance for a class I or class II substance” during maintenance, service, repair, or disposal.⁴ ACC therefore supports EPA’s proposal to retain the regulatory requirements implementing Section 608(c)’s provisions as they apply to non-exempt substitute refrigerants. This approach makes sense given the impending compliance deadline and the resources facilities have already dedicated to be in compliance with those specific provisions by the January 1, 2019 deadline.

II. EPA should extend the January 1, 2019 compliance date in §82.157(a) for appliances containing only non-exempt substitute refrigerants to provide necessary clarity and certainty for the regulated community.

EPA solicits comments on the viability of the 2016 final rule’s January 1, 2019 compliance date for the extension of the appliance maintenance and leak repair provisions at §82.157 to non-exempt substitutes. The Agency correctly acknowledges that despite its efforts to expeditiously develop the final rule, “regulated entities may face a choice about whether to incur compliance costs prior to issuance of a final rule that could rescind those requirements for non-exempt substitutes.”⁵ As EPA recognizes, final action on the substantive portions of this Proposal may not occur within a reasonable time before the existing compliance date. In that likely scenario, regulated entities would face a great deal of uncertainty—and potential compliance penalties—depending on which date of compliance is effective.

To reduce this uncertainty and provide needed clarity, ACC supports EPA’s proposed extension of six to twelve months beyond the January 1, 2019 deadline. While ACC members have made systems preparations and conducted training to achieve compliance with the extension of other parts of subpart F requirements (as noted above), an extension of the maintenance and leak repair provisions for appliances containing non-exempt substitutes would represent a significant step towards avoiding unnecessary confusion and undue costs to owners and operators. These

³ CAA Section 608(c)(1).

⁴ CAA Section 608(c)(2).

⁵ 83 Fed. Reg. at 49341.

unnecessary burdens include, but are not limited to, conducting leak rate calculations when refrigerant is added, implementing repairs or retrofit/retirement projects if the applicable leak rate threshold is exceeded (30% for industrial process refrigeration equipment or 10% for comfort cooling systems), implementing the leak inspection requirements for any system when the leak rate threshold is exceeded, and keeping detailed records to determine whether or not there is a chronically leaking appliance.

Since EPA has proposed to rescind these requirements for the substitute refrigerants, it does not make sense to require an owner/operator to implement them between January 1, 2019 and the date when EPA promulgates a final rule. In addition, an extension to the compliance deadline would allow EPA the necessary additional time to take final action on this Proposal, which would reduce the uncertainty surrounding which set of requirements apply and when. As such, ACC encourages EPA to take final action to extend the January 1, 2019 compliance date for these requirements as soon as possible.

We appreciate EPA's consideration of these comments. If you have any questions or need further clarification, please feel free to contact me at (202) 249-6423 or brendan_mascarenhas@americanchemistry.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Brendan Mascarenhas", enclosed in a thin black rectangular border.

Brendan Mascarenhas
Director
American Chemistry Council