

# RESTRICTIONS ON CERTAIN USES OF HYDROFLUOROCARBONS UNDER SUBSECTION (I) OF THE AMERICAN INNOVATION AND MANUFACTURING ACT

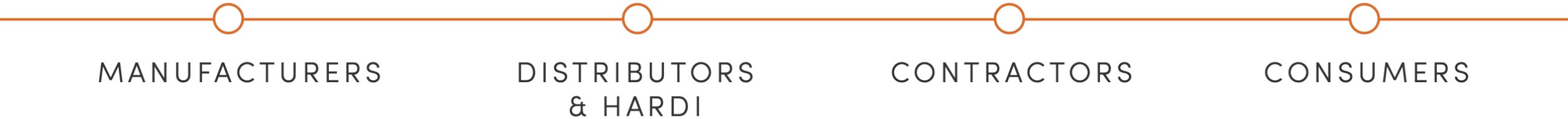
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# HVACR WHOLESALE-DISTRIBUTION

## HVACR Value Chain



# HARDI CONCERNS

1. EPA's analysis of substitute refrigerants for commercial refrigeration includes products that the EPA has not yet approved for use in that sector.
2. Expanding the definition of “manufacture” to include necessary processes to install equipment in end-consumers’ facilities effectively creates an installation prohibition which will force transitions on an unachievable timeline.
3. Establishing a nationwide limited sell-through date for already manufactured HVACR harms distributors and contractors and is unnecessary to reach the environmental benefits of the HFC phasedown.

# SUBSTITUTE REFRIGERANTS NOT YET APPROVED

- EPA provided a list of substitute refrigerants in its justification of the proposed rule and the timeline for the transition
- EPA has not yet approved the full list of substitute refrigerants for use in the end-use sectors and subsectors
  - Proposed SNAP Rule 26 was published May 24, 2023

# EPA'S PROPOSED DEFINITION OF MANUFACTURE

- *Manufacture* means to complete a product's manufacturing and assembly processes such that it is ready for initial sale, distribution, or operation. For equipment that is assembled and charged in the field, manufacture means to complete the circuit holding the regulated substance, charge with a full charge, and otherwise make functional for use for its intended purpose.
- Finalizing this definition would harm distributors with equipment already in inventory that might not be installed by the deadline

# EPA'S DEFINITION OF USE IS TOO BROAD

- Use means for any person to take any action with or to a regulated substance, regardless of whether the regulated substance is in bulk, contained within a product, or otherwise, except for the destruction of a regulated substance. Actions include, but are not limited to, the utilization, deployment, sale, distribution, discharge, incorporation, transformation, or other manipulation.
- Allowing EPA to define the word use as “any action” goes far beyond the AIM Act

# AIM ACT SUBSECTION (I)

## (i) TECHNOLOGY TRANSITIONS.—

(1) AUTHORITY.— Subject to the provisions of this sub-section, the Administrator may by rule restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used.

## (3) PETITIONS.—

(A) IN GENERAL.—A person may petition the Administrator to promulgate a rule under paragraph (1) for the restriction on use of a regulated substance in a sector or subsector, which shall include a request that the Administrator negotiate with stakeholders in accordance with paragraph (2)(A).

# NOUN VS VERB

- EPA provided two dictionary definitions in the proposed rule
  1. Meriam Webster: transitive verb, “to put into action or service,” and
  2. Lexico.com: verb, “to take, hold, or deploy (something) as a means of accomplishing a purpose or achieving a result; employ.”
    1. At the time the proposed rule was published lexico.com had been shut down and redirected to dictionary.com which provided different definitions of use
- Both definitions are verbs, the AIM Act contained verbs and nouns
- “the use [noun] of a regulated substance in the sector or subsector in which the regulated substance is used [verb]”



# NOUN DEFINITIONS

- Meriam-Webster: [noun] the act or practice of employing something
- Dictionary.com (successor to lexico.com): [noun] the act of employing, using, or putting into service
- Blacks Law Dictionary: [Noun.] The application or employment of something; esp., a long-continued possession and employment of a thing for the purpose for which it is adapted, as distinguished from a possession and employment that is merely temporary or occasional.
- None of these definitions would include the sale of a product as the use of a regulated substance

# HARDI V. EPA

- The United States Court of Appeals vacated parts of the first allocation rule for going beyond the statutory authority of the AIM Act
- Opinion for the court, page 15:
  - “The touchstone of statutory interpretation is always to ‘interpret the words consistent with their ordinary meaning at the time Congress enacted the statute.’ *Wisconsin Central Ltd. v. United States*, 138 S. Ct. 2067, 2070 (2018) (cleaned up). Ordinary readers of English do not expect provisions setting out math equations to empower an agency to prescribe other ‘fundamental details of a regulatory scheme.’ *Whitman*, 531 U.S. at 468.  
“Because the EPA’s interpretation of (e)(2)(B) seeks to do just that, it strains against the ordinary use of language. That is an important clue that the EPA advances an implausible reading of the statute.”

# USE CANNOT INCLUDE BULK HFCS

- “Use means for any person to take any action with or to a regulated substance, regardless of whether the regulated substance is in bulk, contained within a product, or otherwise, except for the destruction of a regulated substance.”
- For a refrigerant to be put into service, it must travel through a refrigerating circuit (going from compression to expansion to remove heat)
- A regulated substance (refrigerant) in bulk is not in a circuit, there is no process to employ the refrigerant; therefore the regulated substance is not in use and cannot be regulated under subsection (i)

# LIMITING THE SALE OF PRODUCT WILL HARM DISTRIBUTORS

- Loss of revenue from trying to “fire sale” any remaining inventory before the regulatory deadline,
- Increased carrying costs on unsold inventory that will have no economically beneficial value,
- Reduced cash flow for future operations,
- Increased difficulty predicting market demand as the entire industry faces the same deadline to deplete their inventories, and
- Decreased inventory can lead to delayed projects while certain parts or components are located and shipped, which increases project costs.

# FINAL RULE SHOULD BE LIMITED TO A MANUFACTURING TRANSITION

- Decrease uncertainty about what products can be used to install new systems versus what must be used to repair or retrofit existing systems,
- Institute the most cost-effective compliance system for transitioning to new technology, and
- Reduce waste, unused equipment under the proposed rule cannot be sold, installed, or exported; even attempting to scrap the equipment will incur costs to the distributor to remove regulated substances.

# HARDI'S ASK

- Remove § 84.54(b) and § 84.54(h) or similarly written restrictions on the sale and installation of equipment manufactured before the manufacturing prohibition.
- Change § 84.54(a) § 84.56(a) to allow refrigeration equipment to continue to be manufactured for an additional year to make up for the late approval of low-GWP refrigerants for the refrigeration subsector
- Change the definition of manufacture contained in § 84.52 to allow the field charging of equipment manufactured prior to the manufacturing prohibition

\*Reference to section numbers based on the proposed rule text