

OMB MEETING TALKING POINTS

The Office of Management and Budget should refer this rule back to the Environmental Protection Agency to ensure that the rule achieves the requirements of the Executive Order 14008. If not now, then when? The President and his Senior Staff gave guidance to address the systemic issues the Nation Faces, we cannot miss this opportunity to act consistent with the Order.

Executive Order 14008 signed on January 7, 2021 directs Government Agencies to act on environmental justice. The recommendation that I presented on a “New Entrant Reserve” is aligned with E.O. 14008. As written, this rule ignores the intended purpose and intent I suggested and does not conform to the requirements of the Executive Order. This vitally important Order provides recited but there is no action as required. The purpose of my recommendations was to promote those who have been systemically overlooked and boxed out of this program from its inception. The recommendation was to provide a space for Minority Small Business, Woman Owned Business, Entities that Develop Low GWP Alternatives and the Reclaimers. The rule only addresses these groups in words. What this rule clearly does do is expand and grow a “cash grab” for privileged corporations and well financed individuals. Starting at § 85.13 through § 85.19 of the rule there is nothing to tether a petitioner to the specific goal of environmental justice as out lined in Executive Order 14008. To the contrary, this only maintains the status quo. There is no requirement, no action on the part of a petitioner to address existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples through the action under development. What is even more remarkable is that § 84.15 (2) & (7) asks specific questions about issues of the disenfranchised, marginalized people but does not set these questions as criteria for any acceptance or rejection of the proposed participation in this reserve.

There is no guidance in the rule to suggest that Companies such as Comstar International are rewarded for their development of a Low-GWP replacement for R-410a. Both Comstar and Bluon have spent resources to meet the challenges of the legacy air-condition equipment. Independent Grocers in under-served communities will be held captive by the large well financed concerns.

Environmental Justice

Proposed Rule: Phase-down of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program under the American Innovation and Manufacturing Act

A regulatory action may involve potential environmental justice concerns if it could: (1) Create new disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples; (2) exacerbate existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples; or (3) present opportunities to address existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples through the action under development (page 13)

EPA proposes that considerations for determining who should receive allowances in this initial rule-making would include providing as seamless a transition as possible to a regime where allowances are needed to produce and import HFCs, promoting equity, timeliness of implementation, and availability of robust data. EPA is proposing to issue allowances to active HFC producers and importers operating in 2020 while providing a set aside for new entrants as a way to meet these objectives. (page 24)

If the set aside program is established as outlined in this proposal, EPA specifically encourages businesses to apply for set aside allowances that may have had particular challenges entering the HFC import market due to systemic racism, market-access barriers, or other challenges particularly faced by small disadvantaged businesses such as minority- and woman-owned small businesses. EPA is mindful of the Executive Order on Tackling the Climate Crisis at Home and Abroad (E.O. 14008), which calls for "undertaking robust actions to mitigate climate change" and "developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts." (Page 33)

The Agency is concerned that certain businesses historically have and could continue to experience difficulty entering the HFC market due to societal problems, such as systemic racism or sexism, and the Agency is interested in collecting the information requested in this paragraph to better understand whether such issues are affecting entry into this market and to explore future opportunities to ensure a more equitable marketplace. (Page 34)

Draft Regulatory Impact Analysis for Phasing Down Production and Consumption of Hydrofluorocarbons (HFCs) EPA-HQ-OAR-2021-0044-0046

Executive Order 14008 calls on agencies to make achieving environmental justice part of their missions "by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts." Executive Order 14008 further declares a policy "to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care." In addition, the Presidential Memorandum on Modernizing Regulatory Review calls for procedures to "take into account the distributional consequences of regulations, including as part of a quantitative or qualitative analysis of the costs and benefits of regulations, to ensure that regulatory initiatives appropriately benefit, and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities." EPA also released its June 2016 "Technical Guidance for Assessing Environmental Justice in Regulatory Analysis" (2016 Technical Guidance) to provide recommendations that encourage analysts to conduct the highest quality analysis feasible, recognizing that data limitations, time and resource constraints, and analytic challenges will vary by media and circumstance. (page 98)



According to well financed trade association and lobbyist there is more than enough space to accommodate the concept of the reserve. It is time to break down the barriers and open the doors to an industry that is, on a conservative basis, 85 to 90% white.

Economic Benefits

- The AIM Leadership Act allows U.S. manufacturers to maintain technology leadership in the global fluorocarbon and equipment marketplaces, while at the same time creating new domestic jobs and driving economic growth. According to an industry study, it will:
 - Create 33,000 manufacturing jobs and sustains 138,400 existing jobs between now and 2027.
 - Increase direct manufacturing output by \$12.5 billion, and total (direct and indirect) manufacturing output by \$38.8 billion between now and 2027.
 - Improve the U.S. trade balance in equipment and chemicals by \$12.5 billion.
- Studies also forecast the overall contribution to the economy from the HVACR industry will be 2.5 million jobs, and \$621 billion in economic output by 2027.

This Rule opines the requirements of the Executive Order. The rule fails to achieve any element of these Orders. I would stress that EPA cannot fain lack of knowledge of these concerns, the Letter from Hillary Shelton, NAACP in 2013 expresses these concerns. The mandate in the E.O. requires there to be a change in the ethos and create

opportunities to address social ills of the past and not simply create another cash grab for non-minorities. Here is the opportunity to the engagement of HBCUs for various levels of engagement, consider how food insecurities can grow from this rule. What is the purpose to ask about minority hiring participation with no clear application other than a feel-good rhetoric? SBA asks who will be affected. The question is why are there so few minorities and woman owned concerns left out.

Table 1: Summary of MWBE Identified

MWBE Type	HFC Importers Identified	HCFC Allowance Holders Identified	Application-specific users identified
Women Owned Small Businesses	0	0	0
Economically Disadvantaged Women Owned Small Businesses	0	0	0
Women Owned (Self-certified)	0	0	1
Minority Owned (Self-certified)	4	2	0

In addition to this oversight, the “set-aside” of 5 million metric tons of exchange value has no clear meaningful or beneficial application and would be easily depleted by whoever gets to the courthouse steps first. Here again the recommendation to utilize the HFCs not accounted for in the large quantities of bulk air-conditioning equipment imported, would feed this reserve. Utilization of these HFCs as recommended would easily support this request as well as give a more accurate and transparent idea of the baseline. On balance this reserve would benefit the environment. If there is not sufficient interest to utilize the associated exchange value, the representative HFCs would go to seed. From the business side this would provide sufficient metric tons of exchange value to support the reserve without disrupting the larger unrestricted allowance system. This would satisfy the attitude of no crumb should fall from the table cries.

The Regulatory Impact Analysis is misleading. This analysis fails to account for emissions that are the result of the reclaiming, blending and packaging of HFCs. I can assure you that these facilities are not located in Bethesda, Arlington, or the Hollywood Hills. It is unreasonable to assume that these facilities represent insignificant emission and do not impact fence line minority communities.

The following is taken directly from the proposed rule and requires remedial action.

§ 84.15

Set aside of application-specific allowances, production allowances, and consumption allowances. (a) Total allowances available under this section to be allocated for calendar years 2022 and 2023 are:

(1) **Five million metric tons** of exchange value equivalent consumption allowances annually for calendar year 2022 and 2023.

(2) **One million metric tons** of exchange value equivalent production allowances for calendar year 2022 and 2023.

(b)(1) Consumption and production allowances in paragraph (a) of this section are available to entities that qualify for application-specific allocations under § 84.13 that EPA has not identified by October 1, 2021.

(2) Entities must provide the relevant Agency official with the information contained in § 84.13 by November 30, 2021, to be eligible for consideration.

(c) Consumption allowances in paragraph (a) of this section are available to either:

(1) Persons who imported regulated substances in 2020 that were not required to report under 40 CFR part 98 that EPA has not identified by October 1, 2021; or

(2) **Persons who are newly entering the HFC import market, do not share corporate ownership or familial relations with entities in the HFC import market, and meet the Small Business Administration conditions for a small business in 13 CFR part 121.**

(d) **Persons who meet the criteria listed in paragraph (c)(1) or (2) of this section must provide the relevant Agency official with the following information by November 30, 2021, to be eligible for consideration:**

(1) **Name and address of the company and the complete ownership of the company (with percentages of ownership); (2) Whether the company is a woman or minority owned business;**

(3) Contact information for the owner of the company;

(4) The date of incorporation and State in which the company is incorporated;

(5) State license identifier;

(6) A plan for importing HFCs;

(7) **Company employment figures including number of employees and a breakdown by race and gender;**

(8) A prospective foreign exporter that the applicant anticipates working with; and

(9) For persons who meet the criteria listed in paragraph (c)(2) of this section only, documentation demonstrating that they meet conditions for a small business concern, as defined in 13 CFR part 121.

(e) The calendar-year 2022 and 2023 allowances in paragraph (a) of this section are to be allocated no later than March 31, 2022, in the following manner:

(1) First, persons who meet the criteria listed in (b) are allocated application-specific allowances (subtracted from both the production and consumption portions of the set aside pool) for 2022 equal to the estimated need, based on projected, current, and historical trends, and subject to the same conditions for such allowances in § 84.13;

(2) Second, persons who meet the criteria listed in paragraphs (c)(1) and (2) of this section are allocated up to 0.2 million metric tons exchange value equivalent in allowances for 2022 and 2023.

(3) If the requests received total an amount of allowances that exceeds the remaining quantity of allowances in the set aside pool, after subtracting allowances issued under paragraph (c)(1) of this section, the amount provided to each person who meet the criteria listed in paragraphs (c)(1) and (2) of this section that has applied to the set aside pool will be allocated an amount of allowances that is reduced on a pro rata basis. If any allowances remain after the steps outlined in paragraphs (c)(1) through (3) of this section, those allowances will be distributed to the persons who meet the criteria listed in §§ 84.9 and 84.11 on a pro rata basis.

(f) Restrictions:

(1) Allowances issued under this section may not be transferred to another entity.

(2) Allowances issued under this section are not available to companies that are a subsidiary of, or have any common ownership stake with, another allowance holder.

(g) EPA will publish the list of entities allocated allowances under this section by March 31, 2022.

Unfortunately, many of the well-intentioned groups that work in this area have been unwilling to take this opportunity to make the same commitment to this vitally important issue as they have on issue such as cylinders.

Respectfully

A handwritten signature in black ink, appearing to be a stylized name, possibly "D.L.", written in a cursive style.