~Alliance Letterhead~

January 31, 2014

**VIA E-MAIL**

Administrator Gina McCarthy
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Petition to Extend the Requirements of 40 C.F.R. Part 82, Subpart F to HFCs

Dear Administrator McCarthy:

The Alliance for Responsible Atmospheric Policy ("Alliance"), pursuant to 5 U.S.C. Section 553(e), respectfully petitions the Environmental Protection Agency ("EPA") to extend the regulations promulgated under Section 608 of the Clean Air Act, and codified at 40 C.F.R. Part 82, Subpart F, to hydrofluorocarbons ("HFCs") and other substitutes for class I and class II ozone depleting chemicals. The Alliance is an industry coalition that was organized in 1980 to, among other things, promote policies relating to ozone depleting substances and their substitutes that are reasonable, scientifically sound, and economically, socially and environmentally effective and responsible. The Alliance's members consist of manufacturers and businesses in a number of industry sectors, including air conditioning, refrigeration, appliance manufacturing, foam insulation manufacturing, and aerosol manufacturing, which use and rely upon HFCs. A list of Alliance members is attached (Attachment 1). The Alliance works towards its goals by coordinating industry participation in the development of international and U.S. government policies regarding ozone protection and climate change. The Alliance supports a planned, orderly global phase down of substances with high global warming potential ("GWP"), improved application energy efficiency, leakage reduction, and recovery, reuse, or destruction at application end-of-life.

Under the Montreal Protocol, production of class I Ozone Depleting Chemicals, also known as chlorofluorocarbons ("CFCs"), was phased out by 1996, and production of all class II Ozone Depleting Chemicals, also known as hydrochlorofluorocarbons ("HCFCs"), will be phased out by 2030. As a result of these phase-outs, class I and class II substances are being increasingly replaced by the use of HFCs and other substitutes that have zero ozone-depletion potentials ("ODPs"). The transition away from ozone depleting substances ("ODSs") under the Montreal Protocol, and the transition to HFCs, has dramatically reduced current and future ozone depletion. However, notwithstanding the success of the global phase-out of ODSs, potential emissions from the increased use of HFCs and other substitutes may have climate impacts, since a number of HFCs are considered to be potent greenhouse gases ("GHGs") with varying atmospheric lifetimes and high GWPs.

In response to this concern, the United States, Canada, and Mexico have jointly proposed an amendment to the Montreal Protocol that would establish a gradual phase down of HFC production and consumption. The EPA estimates cumulative benefits of the HFC phase down at about 1,900 million metric tons of carbon dioxide equivalent ($MMTCO_2eq$) through 2020, and about 84,100 $MMTCO_2eq$ through 2050. Cumulative benefits simply from HFC-23 byproduct emissions controls are estimated at an additional 11,300 $MMTCO_2eq$ through 2050 (See Attachment 2).

The Section 608 regulations were expressly adopted for the purpose of reducing class I and class II ODS emissions. Since many of those compounds are also high GWP compounds, their phase-out has had the added benefit of reducing greenhouse gas emissions. In fact, analysis has shown that the controls under the Montreal Protocol and Title VI of the Clean Air Act have achieved more than 6 times the reduction of GHG emissions than achieved under the first implementation period of the Kyoto Protocol (See Attachment 3).

Currently, it is projected that approximately two-thirds of HFC emissions occur as a result of commercial refrigeration and mobile air conditioning system leaks and service practice. Attachment 4 shows a current analysis between projected HFC emissions and atmospheric observations by the National Oceanic and Atmospheric Administration. Extending the Section 608 regulations to HFCs would increase the environmental benefits already realized from the Section 608 regulations, through reduced HFC emissions, and would complement the United States' goal of a global phase down in HFC production and consumption.

Section 608(c)(2) of the Clean Air Act provides that, effective November 15, 1995, the prohibition against knowingly venting or otherwise knowingly releasing or disposing of any class I or class II substance in Section 608(c)(1) also applies to any substitute substance for a class I or class II substance, which include HFCs, unless EPA were to determine that the venting, releasing, or disposing of the substitute does not threaten the environment. 42 U.S.C. § 7671g(c)(2). On June 11, 1998, EPA published in the Federal Register a notice of proposed rulemaking that would have extended the Section 608 regulations to HFCs and other substitutes. 63 Fed. Reg. 32,044-32,099 (June 11, 1998) (See Attachment 5.) In that notice of proposed rulemaking, EPA determined that it has the statutory authority to extend the Section 608 regulations to HFCs. EPA never finalized that rule. However, in 2004, the EPA formally issued regulations extending the "no venting" prohibition to HFCs and other substitute substances.

By this petition, the Alliance requests that EPA revisit this rulemaking and finalize the regulations proposed back in 1998 extending the Section 608 regulations relating to refrigerant sales and distribution restrictions, and the evacuation, certification, reclamation and recovery, leak repair, reporting and recordkeeping requirements to HFCs.

In the 1998 notice of proposed rulemaking, EPA derived its authority for the rulemaking from its Section 608(c)(2) authority to prohibit the venting of substitutes. The Alliance agrees with EPA's reasoning that extending the certification, evacuation, and other requirements to substitute refrigerants would allow it to implement Section 608(c)(2) more

effectively. EPA previously proposed to define the exception for *de minimis* releases such that it would only apply if a person complied with the proposed recapture, recycling, and disposal requirements. As a result, compliance with the venting prohibition would require compliance with the proposed requirements. EPA believed that it had "sufficient authority under sections 608(c)(2) and 301(a) [which allows the Administrator to prescribe regulations as necessary to carry out his or her functions under the Act] to implement section 608(c)(2) by requiring compliance with the proposed provisions, as a matter of law, without in each instance first requiring a demonstration that the person's activities have actually released refrigerant." 63 Fed. Reg. 32,060.

The Alliance also agrees with EPA's reasoning that its authority to promulgate regulations regarding class I and II substances, including the requirement to use alternatives, is "sufficiently broad to include requirements on how to use alternatives, where this is needed to reduce emissions and maximize recycling of class I and II substances." 63 Fed. Reg. 32,046.

The Section 608 regulations were promulgated for the purpose of reducing "the emissions of class I and class II refrigerants and their substitutes to the lowest achievable level by maximizing the recapture and recycling of such refrigerants during the service, maintenance, repair, and disposal of appliances and restricting the sale of refrigerants consisting in whole or in part of a class I and class II ODS in accordance with Title VI of the Clean Air Act." Despite this broad regulatory agenda and the clear path the Agency has set forth for accomplishing these goals, the regulations remain insufficiently robust to reduce emissions of class I and class II substitutes, including HFCs, to their lowest achievable level. There are several reasons why imposing the evacuation, certification, and other requirements to HFCs will lower emissions:

- Extending recovery and evacuation requirements to HFCs will help ensure they are not vented to the atmosphere during servicing and repair and that they will be recovered for further use, and minimizing the need to replace HFCs lost to the atmosphere.

- Extending the technician certification requirements, along with the sales restriction, to HFCs, would ensure that persons lacking the appropriate expertise do not release or contaminate class I and class II substances while using substitutes to recharge or perform other work on systems containing class I and class II substances.

- Extending the reclamation and recovery requirements to HFCs would prevent refrigerant releases and refrigerant contamination, and ensure a viable market for used refrigerants.

- Extending the leak repair requirements to HFCs would lower HFC emissions resulting from equipment and appliance leaks.

- Extending the recovery and recycling equipment certification requirements to equipment used with HFCs would provide reliable information on recovery and recycling equipment and would also maximize recycling and minimize emissions of HFCs.

- Extending the reporting and recordkeeping requirements to HFCs would help ensure that the required service practices are consistently followed.

In conclusion, EPA should exercise its regulatory authority to enforce Section 608(c)(2) of the Clean Air Act by extending to HFCs the regulations set forth in 40 C.F.R. Part 82, Subpart F. The Alliance strongly believes that a more robust regulatory framework that includes HFCs as well as class I and class II substances is necessary to ensure better enforcement of the statutory prohibition against the knowing release or disposal of HFCs. In addition, a stronger regulatory framework would also support a global phase down of HFCs under the Montreal Protocol.

Sincerely,

Kevin Fay
Executive Director

Attachments:

1. Members of the Alliance for Responsible Atmospheric Policy
2. Benefits of Addressing HFCs under the Montreal Protocol
3. The Importance of the Montreal Protocol in Protecting Climate
4. HFC Global Emissions and Measurements
5. EPA Notice of Proposed Rulemaking, Protection of Stratospheric Ozone; Refrigerant Recycling; Substitute Refrigerants (June 11, 1998)

cc: Janet McCabe, Acting Assistant Administrator, EPA
Sarah Dunham, Director, Office of Atmospheric Programs, EPA
Drusilla Hufford, Director, Stratospheric Protection Division, EPA