

EPA proposed rules on the adjustments to the allowance system for controlling HCFC production and on the ban of pre-charged appliances with HCFCs – Summary and Comments

Introduction

On December 23, 2008, the Environmental Protection Agency (EPA) published two proposed rules. The first proposed rule would implement the Montreal Protocol caps for production and consumption of HCFCs during the years 2010-2014. The second rule proposes to ban the sale and distribution of air conditioning and refrigeration equipment pre-charged with HCFC-22. AHRI has requested a public hearing, which based on a recent communication from EPA, has been scheduled on January 7, 2009 (the pre-charged rule will be addressed in the morning and the allocation rule in the afternoon). EPA will accept comments until February 6, 2009 for the pre-charged rule and March 9, 2009 for the allocation rule.

Allocation Rule

In the allocation rule, EPA is proposing to adjust existing regulations to address the new cap for production and consumption of HCFCs (i.e., 75% reduction from the aggregate U.S. HCFC baseline for production and consumption effective January 1, 2010). EPA is proposing to continue its past practice of apportioning company-specific production and consumption baseline. For HCFC-22, EPA is proposing to allocate consumption allowances to meet 80% of the servicing need. EPA is assuming that the remaining 20% will be met by recycled and reclaimed HCFC-22. This represents about 50,000 metric tons (2,750 ODP-weighted metric tons) or approximately 72% of the total HCFC consumption cap from the period 2010 to 2014.

Of importance to OEMs is the way EPA interprets the term “manufactured”. According to EPA, an appliance is “manufactured” when the “refrigerant loop is completed, the appliance can function, the appliance holds the complete and proper charge, and is ready for use for its intended purposes.” (page 78699) For example, the “manufacture” of a condensing unit “would not be complete until the device is installed in the field, connected with the indoor unit and charged to the proper level.”(page 78700) In other words, for EPA the term “manufacture” means “installation”. This interpretation has severe consequences for OEMs in the pre-charged rule, where EPA is proposing to ban the sale or distribution in interstate commerce of air conditioning and refrigeration equipment manufactured on or after January 1, 2010. In fact, EPA is proposing to effectively ban the installation of condensing units and other air conditioning and refrigeration equipment requiring refrigerant charging (with virgin HCFC-22 or HCFC-142b) in the field at the time of installation even if the product was manufactured (in the real sense of the term) before January 1, 2010. It is

interesting to note that the term “manufacture” is discussed in the preamble of the rule but is not defined in the CFR.

Pre-Charged Rule

This rule proposes to ban the sale or distribution or offer for sale or distribution in interstate commerce of all air conditioning and refrigeration equipment containing HCFC-22, HCFC-142b, or blends containing these refrigerants, effective January 1, 2010. The ban covers imported products, products intended for exports, as well as products manufactured in the U.S. for domestic use. EPA is also proposing to extend the ban to products that are suitable only for use with virgin HCFC-22, HCFC-142b, or blends containing these refrigerants. In addition, the proposed rule would ban the sale or distribution in interstate commerce of pre-charged components such as line sets and pre-charged compressor. However, the ban does not apply to newly manufactured equipment charged with recycled or reclaimed refrigerant.

According to the definition of “Interstate commerce” found in the allocation rule “The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States customs clearance.” (page 78698) EPA is proposing to apply the term “interstate commerce” to “the product’s entire distribution chain up to and including the point of sale to the ultimate consumer” (page 78713). However, EPA’s interpretation of interstate commerce does not cover the sale or distribution of a product if the product is completely manufactured, distributed, and sold without ever crossing state lines. A product manufactured, distributed and sold exclusively within a particular state is not covered by the rule, if “the raw materials, components, equipment and labor that went into the manufacturing, distributing and selling, or offering for sale or distribution of such a product originated within the state as well.” (page 78713)

Based on the meaning of “manufacture” and the definition of “interstate commerce” in the allocation rule, the pre-charged rule will, effective January 1, 2010, do the following:

- Ban the sale or distribution or offer for sale or distribution in interstate commerce of air conditioning equipment charged with virgin HCFC-22, HCFC-142b and their blends.
- Ban the installation of air conditioning and refrigeration equipment charged with virgin HCFC-22, HCFC-142b and their blends, if the installation requires connecting the equipment to a refrigerant loop or adding virgin refrigerant. This ban applies even if the product entered interstate commerce prior to January 1, 2010.

- Ban the import and export of pre-charged air conditioning and refrigerant equipment with virgin HCFC-22, HCFC-142b and their blends.
- Ban the sale or distribution or offer for sale or distribution in interstate commerce of air conditioning and refrigeration equipment suitable for use with virgin HCFC-22, HCFC-142b and their blends.
- Ban the sale or distribution or offer for sale or distribution in interstate commerce of pre-charged components such as line sets and pre-charged compressors.

AHRI Comments to EPA

- Effective 1/1/2010, the proposed rules ban the installation of certain air conditioning and refrigeration equipment such as condensing units, even if the equipment entered interstate commerce prior to 1/1/2010. EPA is apparently not allowing the sale or distribution of certain products that have been placed into initial inventory before January 1, 2010. Not allowing products in inventory to be installed after 1/1/2010 will have a significant impact on the industry (need to quantify in \$) and is contrary to the provisions of the clean air act as it will effectively accelerate the phase-out date of HCFC-22 by 6 months to a year. EPA must use the conventional definition of the term “manufacture” to mean when the product leaves the manufacturer’s plant. Using this new definition will allow for the sale and installation of products which have been placed in inventory prior to 1/1/2010.
- Based on the definition of interstate commerce, EPA is proposing to ban, effective 1/1/2010, the export of air conditioning and refrigeration equipment pre-charged or suitable for use with virgin HCFC-22. This provision will disadvantage U.S. manufacturers who are globally competing against non-U.S manufacturers selling in article 5 countries, as HCFC products are significantly less expensive than products operating with alternative refrigerants. EPA should exempt products intended solely for exports.
- The rule does not apply to air conditioning and refrigeration equipment pre-charged or suitable for use with recycled or reclaimed refrigerant. This provision is unenforceable. The ban should apply to products using virgin as well as recycled and reclaimed HCFC-22, HCFC-142b and their blends.

In addition, clarifications from EPA are needed on the following points:

- The proposed rules will ban the installation of air conditioning and refrigeration equipment after January 1, 2010, if the installation requires

connecting the equipment to a refrigerant loop or adding virgin refrigerant to the system. In the case of condensing units or refrigeration display cases, will the ban apply to products manufactured prior to 1/1/2010 and sold after 1/1/2010, if the products are sold for replacement applications where the refrigerant loop is already in place?

- Are packaged units (such as unitary or packaged terminal equipment) considered “manufactured” (per EPA definition) because the refrigerant loop is complete and sealed at the factory, although they require installation in the field (i.e.; mechanical fittings to ductwork or mounting to the wall sleeve)?
- The proposed ban does not apply to air conditioning and refrigeration products intended for use with recycled or reclaimed refrigerant. Does it mean that the regulation will allow the sale or distribution in interstate commerce of any uncharged equipment as long as the equipment is not suitable for use with virgin HCFC-22, HCFC-142b or their blends?