

May 7, 2020

via electronic transmission

Lisa Vest
Hearing Officer
Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901

Subject: HCPA Comments on Proposed Regulation 7 DE. Admin. Code 1151
(Docket #2020-R-A-0004)

Dear Ms. Vest,

The Household & Commercial Products Association¹ (HCPA) appreciates the opportunity to offer comments on Delaware Department of Natural Resources and Environmental Control (DNREC) Division of Air Quality's (DAQ's) proposed regulation "Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses."² The objective of this new proposed regulation is to phase down the use of certain hydrofluorocarbons (HFCs) in air conditioning and refrigeration equipment, aerosol propellants, and foam end-uses by adopting specific United States Significant New Alternatives Policy (SNAP) Program prohibitions. HCPA supports the proposal to adopt the 2015³ and 2016⁴ United States Environmental Protection Agency (EPA) prohibitions on the use of HFCs as substitutes for ozone-depleting substances to ensure consistency with other state activity to limit the use of certain HFCs; however, HCPA recommends an alignment on the definition of aerosol propellant with current regulation in Delaware and modification to the disclosure requirement for aerosol products.

HCPA represents a wide range of products, from household cleaners and air fresheners to commercial disinfectant and pest control whose use of aerosol technology makes the aerosol industry an integral part of the household and commercial products industry. HCPA has represented the U.S. aerosol products industry since 1950 through its Aerosol Products

¹The Household & Commercial Products Association (HCPA) is the premier trade association representing companies that manufacture and sell \$180 billion annually of products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.

² The proposed regulation 7 DE. Admin. Code 1151 can be found at:

<https://regulations.delaware.gov/register/april2020/proposed/23%20DE%20Reg%20841%2004-01-20.htm>

³ Appendix U of Subpart G of 40 CFR Part 82

⁴ Appendix V of Subpart G of 40 CFR Part 82

Division, representing the interest of companies that manufacture, formulate, supply and market a wide variety of products packaged in an aerosol form.

I. HCPA Supports Delaware's Actions to Restrict the Use of High Global Warming Potential HFCs in a Manner that Is Consistent with Other States

HCPA is in support of DNREC's goal to restrict the use of high global warming potential (GWP) HFCs through limiting their use in a manner that is consistent with similar action taken by other states to restrict the use of HFCs. California, New Jersey, Vermont and Washington have all passed legislation or regulations to achieve the same goal of limiting the use of certain high GWP HFCs by utilizing Appendix U and Appendix V of Subpart G of 40 CFR Part 82 (Jan. 3, 2017). Further, other states⁵ are also in process of drafting and approving their own regulatory actions to restrict the use of HFCs in a similar manner.

DNREC's approach is consistent with other state actions, which is critical so that industry has regulatory certainty for compliance and future planning, investment, sales and research and development decisions. Aerosol manufacturers utilize a variety of propellants which pressurize the aerosol system and influence how the product is expelled from the container.

Traditionally, the use of high-GWP HFCs by the aerosol industry was limited to a small number of products categories where their usage was necessary. Because of the original timeline with EPA's SNAP Rules, the U.S. aerosol industry has already moved away from using high-GWP HFCs in aerosol products except for the critical uses that were exempted. Thus, Delaware and other states are ensuring through this consistent action that aerosol products in which the usage of high-GWP is not critical do not reenter the market.

II. HCPA Recommends Modifying the Definition of an Aerosol Propellant

HCPA supports DNREC's proposed regulation because it is consistent with other state activity to limit the use of high GWP HFCs; however, it is also important to align with existing Delaware regulations.

HCPA recommends DNREC refer to the definition of a Propellant in the state's regulation "Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products."⁶ Here, the definition of an Aerosol Propellant is as follows:

Propellant means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or other material from the same self-pressurized container or from a separate container.⁷

⁵ Colorado, Connecticut, Maryland, Massachusetts, New York, Pennsylvania, and Rhode Island

⁶ 7 DE Admin. Code 1141

⁷ 7 DE Admin. Code 1141 § 2.2

This definition is for propellant is consistent with not just current regulation in Delaware, but all volatile organic compound (VOC) regulations for consumer and commercial products across the United States. By referring to an existing Delaware regulation, DNREC would maintain consistency in the definition of an aerosol propellant.

III. HCPA Recommends Modification to the Disclosure Requirement for Aerosol Products

HCPA greatly appreciates DNREC proposing multiple compliance options for aerosol products in the proposed regulation. The labeling of aerosol products can fall under the jurisdiction of several different federal government agencies, such as the Consumer Protection Safety Commission (CPSC), the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA) or the Occupational Safety and Health Administration (OSHA). Because each of these agencies have different labeling requirements for the products that fall under their jurisdiction, it makes labeling requirements for a delivery form incredibly difficult, if not impossible, to comply for all products. By providing two compliance options, including one that allows aerosol manufacturers to comply through the use of the Safety Data Sheet, DNREC ensures that all aerosol products can comply.

Many aerosol manufacturers have already submitted explanations of their date code to DNREC, as required by the administrative requirements⁸ in Delaware's VOC regulation for consumer and commercial products. To reduce the amount of paperwork DNREC would receive from this regulation, HCPA recommends the following:

- Include section 2.5.1.1 from Delaware's VOC regulation⁹ so that manufacturers that use the date code YYDDD (where YY is the two digits representing the year in which the product was manufactured and DDD represents the day of the year the product was manufactured) are not required to submit an explanation of this easily recognizable code.
- Manufacturers that previously submitted their date code not be required to resubmit their documentation as DNREC has this information already. HCPA also recommends that DNREC include in the proposed regulation, similar to Delaware's VOC Regulation, that if a manufacturer changes their date code, then they would be required to submit a new explanation.¹⁰

HCPA would also recommend modifying the applicability on the disclosure requirement for aerosol propellants. According to section 2.2 of the proposed regulation, any person who manufacturers product or equipment covered in the specific end-uses listed in Section 6.0 is subject to disclosure statement requirements, as detailed in subsection 4.2. HCPA believes that

⁸ 7 DE Admin. Code 1141 § 2.5

⁹ 7 DE Admin. Code 1141 § 2.5.1.1

¹⁰ 7 DE Admin. Code 1141 § 2.5.1.2

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this applicability for the disclosure requirement is overreaching as the scope of the regulation is to the prohibited substances listed in Section 6.0. HCPA recommends modifying section 2.2 so that the disclosure statement for aerosol products is for the exempted uses in Section 7.0 that are allowed to use the prohibited substances.

IV. Conclusion

HCPA appreciates the opportunity to offer these comments on DNREC's proposed regulation and would like to thank DAQ staff for the transparent and collaborative process under which this proposed regulation was developed. By developing consistent regulations, states can achieve a reduction in HFC emissions without imposing impediments to interstate commerce.

If you have any questions about our support or suggestions presented in these comments, please do not hesitate to contact me directly at (202) 833-7304 or ngeorges@thehcpa.org.

Sincerely,



Nicholas Georges
Vice President, Scientific and International Affairs
Household & Commercial Products Association