

California Environmental Protection Agency
Air Resources Board



Compliance Division

Advisory

To: Air Pollution Control
Districts
in California

Number 123

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Smuggling of CFCs

The purpose of this advisory is to enlist the support of air pollution control districts in California in the national effort to prevent and detect any attempts to bring dichlorodifluoromethane (CFC-12, or Freon™), or other CFCs illegally into the United States. The Air Resources Board is cooperating with the U.S. Customs Service in its efforts to prevent the smuggling of CFCs. A brief history follows of U.S. efforts to control the use of CFCs and prevent their illegal entry into this country.

The initial hypothesis linking chlorofluorocarbons (CFCs) with depletion of stratospheric ozone appeared in a research paper by Mario Molina and Sherwood Rowland published in 1974. The scientific community made subsequent advances in understanding the atmospheric processes that affect stratospheric ozone.

In 1985, it was reported that significant loss of ozone already had taken place over Antarctica. An international team of scientists collected and analyzed evidence linking the Antarctic ozone depletion to ozone-depleting chemicals in 1987. The team issued a report in 1988 (*Ozone Trends Report: Executive Summary*) which suggested that some depletion of global ozone levels already had taken place.

In the late 1980s, the international community negotiated the Montreal Protocol (signed 1987), which limited the production and consumption of a small set of ozone-depleting chemicals. Adjustments adopted by the Parties to the Protocol in June 1990 and Amendments to the Federal Clean Air Act which became law in November of that year require that the most significant of the ozone-depleting chemicals be fully phased out by the turn of the century on January 1, 2000. (Note: for the Montreal Protocol, "consumption" for a nation is production plus imports minus exports.)

The 1987 Protocol required that the Parties restrict the production and consumption of CFC-11, CFC-12 (Freon), CFC-113, CFC-114, CFC-115, and halons 1211, 1301 and 2402; these had been identified as the worst of the ozone-depleting chemicals. As originally drafted, the Protocol called for annual production and consumption to be frozen at 1986 levels beginning July 1, 1989 for CFCs and January 1, 1992 for halons, respectively. It also called for CFCs to be reduced to 50% of 1986 levels by 1998.

U.S. EPA used a system of tradable allowances for promulgation of regulations implementing the requirements of the 1987 Protocol. The Agency apportioned allowances to producers and importers of controlled substances based upon their 1986 levels of production and imports. It then allocated percentages of the allowances according to the reduction schedule specified in the Protocol

To reflect the interrelationship between the production and consumption limits, the Agency provided that a producer needed both production and consumption allowances to produce the limited chemicals (since production counted against both production and consumption limits) while importers needed only consumption allowances to import (since imports counted only against consumption). (See 40 CFR §82.4(b)).

To monitor industry's compliance with the production and consumption limits, EPA also required that producers and importers maintain records of their activities and report their production and import levels each quarter. Minor revisions to EPA's original rule were issued during 1989, 1990 (the London Amendments to the Montreal Protocol, which speeded up the timetable on phaseout of CFCs) and 1992 (the Copenhagen Amendments to the Montreal Protocol). Also, in 1989 Congress imposed a steep excise tax on CFC imports.

In the face of reduced supplies, a strong demand for illegally-imported CFCs may arise in the U.S. This may be driven by the desire to avoid paying the high price tag for conversion of refrigerant systems, especially industrial-size units and building-size air conditioners. No doubt a market also will arise among customers unwilling to spend the money to convert automobile air conditioning systems.

It is unlikely that large quantities of CFCs will be produced illegally in the U.S., as these products require an industrial plant to manufacture. Instead, CFCs are being produced overseas, especially in India, China and the former Soviet Republics.

Schemes to misrepresent CFCs and avoid the excise tax probably will involve the pretense that they are:

- Something else entirely (i.e., propane);
CFCs to be destroyed or transformed; or
CFCs to be transshipped through the U.S.

If the perpetrators are willing to pay the excise tax in order to arouse less suspicion, the scheme probably will involve misrepresenting virgin CFCs as being used, recycled or reclaimed. The Internal Revenue Service is responsible for collecting the excise tax on CFCs; the U.S. Customs Service is the agency responsible for preventing the illegal entry of CFCs into the U.S. (See 18 USC §545, 113(c)(1) & 26 USC §§7201, 7203).

The U.S. Customs Service, Office of Criminal Investigations, has asked the ARB Compliance Division to cooperate in helping to prevent and detect the smuggling of Freon and other CFCs into the United States, and we have agreed to do so. In turn, we request that any local air pollution control district in California having information regarding the smuggling, or attempted smuggling, of CFCs into the U.S., please notify the ARB Hotline at (800) 952-5588.

Should you have any questions regarding this advisory, please contact Rick Wagner of the Field Enforcement Section at (916) 445-7602.

Written inquiries may be addressed to:

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