

110TH CONGRESS  
1ST SESSION

# H. R. 3448

To reduce emissions of ozone depleting substances in order to protect the climate and stratospheric ozone layer, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 2007

Mr. WAXMAN introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To reduce emissions of ozone depleting substances in order to protect the climate and stratospheric ozone layer, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-  
2       tives of the United States of America in Congress assembled,*

**3 SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Global Climate and  
5       Ozone Layer Protection Act of 2007”.

**6 SEC. 2. FINDINGS.**

7       The Congress finds the following:

8           (1) Ozone depleting chemicals such as  
9           chlorofluorocarbons (CFCs) and hydrochloro-  
10          fluorocarbons (HCFCs) threaten human health and

1 the environment by both depleting the stratospheric  
2 ozone layer and contributing to global warming.

3 (2) The harms associated with global warming  
4 are serious and well recognized. These include the  
5 global retreat of mountain glaciers, reduction in  
6 snow cover extent, the earlier spring melting of riv-  
7 ers and lakes, the accelerated rise of sea levels, the  
8 extinction of up to 30 percent of the world's species,  
9 the increased frequency of cardio-respiratory and  
10 diarrhoeal diseases, and the increased intensity of  
11 hurricanes and typhoons.

12 (3) The harms associated with the depletion of  
13 the stratospheric ozone layer are also serious and  
14 well recognized. The thinning of the stratospheric  
15 ozone layer allows more harmful ultraviolet radiation  
16 to reach the surface of the Earth. This radiation can  
17 contribute to skin cancer, cataracts, and weakened  
18 immune systems in humans. It can also adversely af-  
19 fect agricultural crops and aquatic organisms, such  
20 as zooplankton and phytoplankton, with adverse con-  
21 sequences for aquatic ecosystems.

22 (4) September 2007 will be the 20th anniver-  
23 sary of the signing of the Montreal Protocol on Sub-  
24 stances that Deplete the Ozone Layer, which set  
25 controls on the production and consumption of ozone

1 depleting substances. The Protocol, which has been  
2 ratified by 191 countries, is widely regarded as the  
3 most successful international environmental treaty  
4 ever adopted. By 2005, the treaty had driven global  
5 production of ozone depleting substances down by  
6 approximately 95 percent from their 1990 levels.

7 (5) The Montreal Protocol currently requires  
8 developed countries to phase out the consumption of  
9 HCFCs by 2030 and developing countries to phase  
10 out the consumption of these chemicals by 2040.

11 (6) The Montreal Protocol has provided dra-  
12 matic climate benefits. Between 1990 and 2010, the  
13 Montreal Protocol will have eliminated the equiva-  
14 lence of 11 billion tons of carbon dioxide per year.  
15 This is equivalent each year to over five times the  
16 reductions that are to be achieved under the Kyoto  
17 Protocol. This reduction will have the effect of delay-  
18 ing global warming impacts by seven to twelve years.  
19 Without the Montreal Protocol, the world would be  
20 approximately a decade further along the path to  
21 catastrophic climate change.

22 (7) The Montreal Protocol has the potential to  
23 provide additional significant climate benefits. Accel-  
24 erating the phase-out of HCFCs in a way that sup-  
25 ports climate change objectives could reduce emis-

1 sions by the equivalent of approximately 25 billion  
2 tons of carbon dioxide between 2010 and 2050. Fur-  
3 ther substantial environmental benefits will accrue if  
4 CFCs and HCFCs contained in banks of existing  
5 equipment and products are recovered at equipment  
6 and product end-of-life and then recycled or de-  
7 stroyed. By accelerating the phase-out of ozone de-  
8 pleting HCFCs and recovering and destroying CFC  
9 and HCFC banks, the Parties to the Montreal Pro-  
10 tocol could achieve an immediate reduction in emis-  
11 sions from both developed and developing countries,  
12 and further delay global warming impacts.

13 **SEC. 3. SENSE OF CONGRESS REGARDING MONTREAL PRO-  
14 TOCOL NEGOTIATIONS.**

15 It is the sense of Congress that the United States  
16 should negotiate with the other Parties to the Montreal  
17 Protocol at the earliest opportunity to—

18 (1) maximize the ability of the Montreal Pro-  
19 tocol to mitigate global warming impacts, while en-  
20 suring continued protection of the ozone layer, by fo-  
21 cusing on the climate impacts of ozone depleting  
22 substances and their substitutes, and on the energy  
23 efficiency of equipment in which such substances  
24 and their substitutes are used;

9 (4) change the baseline date for developing  
10 countries from 2015 to 2010; and

11 (5) fully finance the Multilateral Fund con-  
12 sistent with past practice so that an accelerated  
13 phase out of HCFCs can be accomplished with max-  
14 imum benefit for both ozone layer and climate pro-  
15 tection.

## 16 SEC. 4. PRODUCTS CONTAINING HCFCS.

17 (a) FIRE SUPPRESSION AGENTS.—Section 605(a) of  
18 the Clean Air Act (42 U.S.C. 7671d(a)) is amended by  
19 striking “or” at the end of paragraph (2), striking the  
20 period at the end of paragraph (3) and inserting “; or”  
21 and adding the following new paragraph after paragraph  
22 (3):

23                   “(4) the Administrator determines that the sub-  
24                   stance is used as a fire suppression agent for mili-  
25                   tary, commercial aviation, industrial, space, or na-

1 national security applications, and reduces overall risk  
2 to human health and the environment compared to  
3 alternatives.”.

4 (b) IMPORT BAN.—Section 605 of the Clean Air Act  
5 (42 U.S.C. 7671d) is amended by inserting the following  
6 new subsection after subsection (b) and redesignating the  
7 succeeding subsections accordingly:

8        "(c) IMPORT BAN.—It shall be unlawful for any per-  
9 son to import any product manufactured after January  
10 1, 2010, containing any class II substance that has been  
11 phased out of production and consumption under regula-  
12 tions promulgated by the Administrator under this section  
13 for any purpose other than for use in a process resulting  
14 in its transformation, for use in a process resulting in its  
15 destruction, or under exceptions stated in subsection (d).".

16 SEC. 5. DESTRUCTION OF BANKS OF OZONE DEPLETING  
17 SUBSTANCES.

18       Section 604 of the Clean Air Act (42 U.S.C. 7671c)  
19   is amended by adding the following new subsection at the  
20   end thereof:

21       “(i) DESTRUCTION OF BANKS.—(1) Effective Janu-  
22 ary 1, 2010, it shall be unlawful for any person to produce  
23 or import an amount of any class I substance otherwise  
24 permitted under subsections (e), (g), or (h)(6) unless the  
25 Administrator certifies that the person has destroyed or

1 secured, and verified the destruction of three times this  
2 amount of class I or class II substances on an ozone deple-  
3 tion potential equivalent basis.

4 "(2) Effective January 1, 2012, and until December  
5 31, 2014, it shall be unlawful for any person to produce  
6 or import an amount of any class II substance unless the  
7 Administrator certifies that the person has destroyed or  
8 secured, and verified the destruction of 1.2 times this  
9 amount of class I or class II substances on an ozone deple-  
10 tion potential equivalent basis.

11 "(3) Effective January 1, 2015, and until December  
12 31, 2029, it shall be unlawful for any person to produce  
13 or import an amount of any class II substance unless the  
14 Administrator certifies that the person has destroyed or  
15 secured, and verified the destruction of two times this  
16 amount of class I or class II substances on an ozone deple-  
17 tion potential equivalent basis.

18 "(4) The Administrator shall, within 2 years after the  
19 enactment of this Act, but in no event later than Decem-  
20 ber 31, 2009, promulgate regulations establishing stand-  
21 ards and requirements for the certifications under para-  
22 graphs (1), (2) and (3). Such regulations must provide  
23 that—

24 "(A) in order for a person to receive certifi-  
25 cation from the Administrator for the destruction of

1 a given quantity of any class I or class II substance  
2 pursuant to paragraphs (1), (2) and (3):

3 “(i) the production and consumption of  
4 such substances is controlled to a level of zero  
5 under the Clean Air Act without regard to  
6 amounts permitted under subsections (d), (e),  
7 (f), (g), or (h);

8 “(ii) such substance was not in possession  
9 of the federal government prior to destruction;  
10 and

11 “(iii) such substance was destroyed using a  
12 controlled process approved by the Parties to  
13 the Montreal Protocol;

14 “(B) certification can be received for the de-  
15 struction of a given quantity of any class I or class  
16 II substance within or outside the United States;

17 “(C) once issued, certifications may be applied  
18 to any future production or import of a given quan-  
19 tity of any class I or class II substance.

20 “(5) If, after January 1, 2015, upon petition of any  
21 entity, the Administrator determines by clear and con-  
22 vincing evidence that it is technically and economically in-  
23 feasible to obtain material for destruction, the Adminis-  
24 trator may adjust the offset ratio downward or, if nec-  
25 essary, waive the requirements of paragraphs (1), (2), or

1 (3). The Administrator shall issue a final decision on such  
2 petition within 90 days.”.

3 **SEC. 6. SUBSTITUTES FOR CFC AND HCFC REFRIGERANTS.**

4 (a) **DEFINITION.**—Section 608 of the Clean Air Act  
5 (42 U.S.C. 7671g) is amended by adding the following  
6 new subsection at the end thereof:

7 “(d) **DEFINITION.**—For the purposes of this section,  
8 the term ‘substitute’ means any substance or chemical  
9 used in or for types of equipment, appliances, or processes  
10 previously relying on class I or class II substances.”.

11 (b) **REGULATIONS.**—Section 608(a) of the Clean Air  
12 Act (42 U.S.C. 7671g(a)) is amended by inserting the fol-  
13 lowing new paragraph after paragraph (2) and redesi-  
14 nating paragraph (3) as (4):

15 “(3) The Administrator shall, within 1 year after the  
16 enactment of this Act, promulgate regulations establishing  
17 standards and requirements regarding the sale, distribu-  
18 tion or offer for sale and distribution in interstate com-  
19 merce, use, and disposal of substitutes for class I and class  
20 II substances not covered by paragraph (1), including the  
21 use, recycling, and disposal of such substitutes during the  
22 maintenance, service, repair, or disposal of appliances and  
23 industrial process refrigeration equipment. Such stand-  
24 ards and requirements shall become effective not later  
25 than 12 months after promulgation of the regulations.”.

1       (c) SAFE DISPOSAL.—Section 608(b) of the Clean  
2 Air Act (42 U.S.C. 7671g(b)) is amended as follows:

3               (1) Inserting “and their substitutes” after  
4               “class I and II substances” in the matter preceding  
5               paragraph (1).

6               (2) Inserting “, or substitutes for such sub-  
7               stances,” after “class I or class II substances” in  
8               paragraph (1).

9               (3) Inserting “, or a substitute for such sub-  
10               stance,” after “class I or class II substance” in  
11               paragraphs (2), and (3).

12       (d) SMALL CONTAINERS.—Section 609(e) of such  
13 Act (42 U.S.C. 7671g(e)) is amended as follows:

14               (1) Inserting “and Their Substitutes” at the  
15               end of the paragraph heading.

16               (2) Inserting “(1)” before “Effective 2 years”.

17               (3) Adding the following at the end thereof:

18               “(2) Effective January 1, 2010, it shall be unlawful  
19               for any person to sell or distribute, or offer for sale or  
20               distribution, in interstate commerce to any person (other  
21               than a person performing service for consideration on  
22               motor vehicle air-conditioning systems in compliance with  
23               this section) any substitute that is suitable for use in a  
24               motor vehicle air-conditioning system and that is in a con-

1 tainer which contains less than 20 pounds of such sub-  
2 stitute.”.

3 **SEC. 7. REFRIGERANT ENVIRONMENTAL MANAGEMENT**

4 **COUNCIL.**

5 (a) **DEFINITIONS.**—For the purposes of this section:

6 (1) The terms “recover,” “recycle,” and “re-  
7 claim” have the meanings provided in 40 CFR  
8 82.152.

9 (2) The term “destruction” has the meaning  
10 provided in 40 CFR 82.3.

11 (3) The term “virgin refrigerants” means newly  
12 produced refrigerants in an originally sealed original  
13 container.

14 (4) The term “chlorofluorocarbons” means the  
15 many various halocarbon compounds consisting of  
16 carbon, chlorine, and fluorine used widely as refriger-  
17 ents and controlled by the Montreal Protocol.

18 (5) The term “hydrochlorofluorocarbons”  
19 means halogenated compounds containing carbon,  
20 hydrogen, chlorine and fluorine used widely as a re-  
21 frigerants and controlled by the Montreal Protocol.

22 (6) The term “hydrofluorocarbons” means halo-  
23 genated hydrocarbons in which the molecule contains  
24 hydrogen, fluorine, and carbon but is absent of chlo-  
25 rine used widely as refrigerants.

11 (10) The term “original refrigerant equipment”  
12 means air conditioning and refrigeration products  
13 that rely on refrigerants to operate, including motor  
14 vehicle air conditioning systems.

15 (11) The term “Administrator” means the Ad-  
16 ministrator of the U.S. Environmental Protection  
17 Agency.

18 (12) The term “Secretary” means the U.S. Sec-  
19 retary of Commerce.

20 (13) The term “Council” means the Refrigerant  
21 Environmental Management Council.

22 (14) The term “Board” means the Board of  
23 Directors of the Refrigerant Environmental Manage-  
24 ment Council.

25 (b) ESTABLISHMENT.—

(1) ESTABLISHMENT OF NONPROFIT ORGANIZATION.—The Refrigerant Environmental Management Council is hereby established as a non-profit entity organized under the District of Columbia Nonprofit Corporation Act to address the emissions of fluorocarbon refrigerants in an economical, efficient, and effective manner. The Council shall not be an agency or establishment of the United States Government. The purpose of the Council shall be to lead industry in recovery, reclamation, and destruction of fluorocarbon refrigerants, thereby reducing emissions of these compounds.

18 (c) REFRIGERANT ENVIRONMENTAL MANAGEMENT  
19 COUNCIL.—

20 (1) BOARD COMPOSITION.—The Council's  
21 Board of Directors shall consist of 21 members, with  
22 3 members representing refrigerant producers and  
23 importers, 4 members representing original refrigerant  
24 equipment manufacturers, 3 members representing  
25 reclaimer, destruction process operators,

1       distributors, wholesalers, contractors or technicians,  
2       3 employees of the U.S. Environmental Protection  
3       Agency, 3 employees of the U.S. Department of  
4       Commerce, and 5 public members representing non-  
5       industry, non-government stakeholders. The industry  
6       members shall be full-time employees or owners of  
7       businesses in the industry. Only one person at a  
8       time from any company or its affiliate may serve on  
9       the Board. Vacancies in unfinished terms of Board  
10      members shall be filled in the same manner as were  
11      the original appointments.

12                   (2) ESTABLISHMENT.—Within 90 days of the  
13      enactment of this Act—

14                   (A) the following representative industry  
15      organizations may appoint the industry mem-  
16      bers of the Board of Directors: Air-Condi-  
17      tioning and Refrigeration Institute; Heating,  
18      Air conditioning & Refrigeration Distributors  
19      International; and Alliance for Responsible At-  
20      mospheric Policy;

21                   (B) the Administrator shall appoint 3 EPA  
22      employees and 5 public members to sit on the  
23      Board; and

1 (C) the Secretary shall appoint 3 Depart-  
2 ment of Commerce employees to sit on the  
3 Board.

10 (A) refrigerant producers and importers;  
11 (B) original refrigerant equipment manu-  
12 facturers; and

13 (C) large and small companies among re-  
14 claimers, destruction process operators, dis-  
15 tributors, wholesalers, contractors, or techni-  
16 cians.

1       dustry and public Board Members filling unexpired  
2       terms may serve not more than a total of 7 consecu-  
3       tive years. Former Board members may be returned  
4       to the Board if they have not been members for a  
5       period of 2 years. Initial appointments to the Board  
6       shall be for terms of 1, 2, and 3 years, staggered to  
7       provide for the selection of 7 members each year.

8               (6) ADMINISTRATION.—The Board shall select  
9       from among the members appointed pursuant to  
10       subparagraph (2)(a) a Chairman and other officers  
11       as necessary, may establish committees and sub-  
12       committees, and shall adopt rules and bylaws for the  
13       conduct of business and the implementation of this  
14       Act and shall hire appropriate administrative staff  
15       to operate and conduct Council business. The Coun-  
16       cil shall establish procedures for the solicitation of  
17       industry, nongovernmental, and government com-  
18       ment and recommendations on any significant plans,  
19       programs, and projects.

20               (7) ADMINISTRATION EXPENSES.—The admin-  
21       istrative expenses of operating the Council shall not  
22       exceed 10 percent of the funds collected in any fiscal  
23       year.

24               (8) REIMBURSEMENT.—The Council shall an-  
25       nually reimburse the Administrator for costs in-

1       curred by the Federal Government relating to the  
2       Council, except that such reimbursement for any fis-  
3       cal year shall not exceed the amount that the Ad-  
4       ministrator determines is the average annual budget  
5       for this program to the Administrator and to the  
6       Congress.

7               (9) BUDGET.—Before August 1 each year, the  
8       Council shall publish for public review and comment  
9       a budget plan for the next calendar year, including  
10       the probable costs of all programs, projects, and  
11       contracts and a recommended rate of assessment  
12       sufficient to cover such costs. Following this review  
13       and comment, the Council shall submit the budget  
14       to the Administrator. The Administrator may rec-  
15       ommend programs and activities the Administrator  
16       considers appropriate.

17               (10) RECORDS; AUDITS.—The Council shall  
18       keep minutes, books, and records that clearly reflect  
19       all of the acts and transactions of the Council and  
20       make public such information. The books of the  
21       Council shall be audited by a certified public ac-  
22       countant at least once each fiscal year and at such  
23       other times as the Council may designate. Copies of  
24       such audit shall be provided to all Board members,  
25       the Administrator, the Secretary, the House of Rep-

1       resentatives Committee on Energy and Commerce,  
2       and the Senate Committee on Environment and  
3       Public Works. The Administrator shall receive notes  
4       of meetings and may require reports on the activities  
5       of the Council, as well as reports on compliance, vio-  
6       lations, and complaints regarding the implemen-  
7       tation of this Act.

8                   (11) MINUTES.—The minutes of all meetings of  
9       the Board shall be made available to and readily ac-  
10       cessible by the public.

11                  (12) ANNUAL REPORT.—Each year, the Council  
12       shall prepare and make publicly available a report  
13       that includes an identification and description of all  
14       programs and projects undertaken by the Council  
15       during the previous year as well as those planned for  
16       the coming year. Such report shall detail the alloca-  
17       tion or planned allocation of Council resources for  
18       each program and project. Such report shall also in-  
19       clude estimates of the quantities and types of sub-  
20       stances recycled and destroyed as a result of the in-  
21       centives provided under subsection (e)(1).

22                  (d) LEVIES.—

23                  (1) LEVY.—The Council shall have authority to  
24       institute and collect a per pound levy, equally ap-  
25       plied, on the domestic production of all virgin HCFC

1 and HFC refrigerants, the import of all HCFC and  
2 HFC refrigerants, and on the import of all HCFC  
3 and HFC refrigerants contained in equipment. The  
4 levy shall be collected at the first point of sale in the  
5 United States.

6 (2) AMOUNT.—The Board shall set the initial  
7 levy at thirty cents per pound of refrigerant. There-  
8 after, annual levies shall be sufficient to cover the  
9 costs of the plans and programs developed by the  
10 Council. Any change in the levy amount must be ap-  
11 proved by a two-thirds vote of the Board. In no case  
12 may the levy be raised by more than ten cents per  
13 pound of refrigerant in any one year.

14 (3) OWNERSHIP.—The domestic producers of  
15 virgin HCFC and HFC refrigerants, and the import-  
16 ers of all HCFC and HFC refrigerants, and the im-  
17 porters of all HCFC and HFC refrigerants con-  
18 tained in equipment at the time of the first point of  
19 sale in the United States, shall pay the levy based  
20 on the pounds of refrigerants produced or imported.  
21 Levies collected are payable to the Council on a  
22 monthly basis by the 25th of the month following  
23 the month of such collection. Virgin refrigerants ex-  
24 ported from the United States to another country

1 and refrigerants reclaimed in the United States are  
2 not subject to the levy.

3 (4) ALTERNATIVE COLLECTION RULES.—The  
4 Board may establish an alternative means of col-  
5 lecting the levy if another means is found to be more  
6 efficient and effective. The Board may establish a  
7 late payment charge and a rate of interest to be im-  
8 posed on any person who fails to remit or pay to the  
9 Council any amount due under this Act.

10 (5) INVESTMENT OF FUNDS.—Pending dis-  
11 bursement pursuant to a program, plan, or project,  
12 the Council may invest funds collected through lev-  
13 ies, and any other funds received by the Council,  
14 only in obligations of the United States or any agen-  
15 cy thereof, in general obligations of any State or any  
16 political subdivision thereof, in any interest-bearing  
17 account or certificate of deposit of a bank that is a  
18 member of the Federal Reserve System, or in obliga-  
19 tions fully guaranteed as to principal and interest by  
20 the United States. Funds shall only be disbursed for  
21 operating expenses, reimbursements to the U.S. En-  
22 vironmental Protection Agency, programs approved  
23 by the Board, and the provision of incentive pay-  
24 ments under subsection (e).

25 (e) DISBURSEMENTS.—

18 (f) COMPLIANCE.—

1       Council under this Act. A successful action for com-  
2       pliance under this section may also require payment  
3       by the defendant of the costs incurred by the Coun-  
4       cil in bringing such action.

5               (3) All refrigerant producers, importers, equip-  
6       ment importers, and certified reclaimers and de-  
7       struction process operators shall file annual reports  
8       with the Administrator. The reports shall contain, at  
9       a minimum, the amount of refrigerants manufac-  
10      tured, imported, exported, reclaimed, and destroyed,  
11      and the amount of refrigerants contained in im-  
12      ported equipment.

13               (g) PENALTIES.—In the case of any person who sells  
14      refrigerants on which a levy has not been paid, the Admin-  
15      istrator is authorized to take any of the actions provided  
16      for in section 113 of the Clean Air Act (42 U.S.C. 7413).

17               (h) LOBBYING RESTRICTIONS.—No funds collected  
18      by the Council shall be used in any manner for influencing  
19      legislation or elections, except that the Council may rec-  
20      ommend to the Administrator in writing changes in this  
21      Act or other statutes that would further the purposes of  
22      this Act.

23               (i) PRICING.—In all cases, the price of refrigerants  
24      shall be determined by market forces. Consistent with the  
25      antitrust laws, the Council may take no action, nor may

1 any provision of this Act be interpreted as establishing an  
2 agreement to pass along to consumers the cost of the levy  
3 provided for in subsection (d).

4 (j) REPORTS.—Within 2 years after the date of en-  
5 actment of this Act, and at least once every 2 years there-  
6 after, the Secretary and the Administrator shall jointly  
7 prepare and submit to the House of Representatives Com-  
8 mittee on Energy and Commerce and the Senate Com-  
9 mittee on Environment and Public Works a report exam-  
10 ining whether operation of the Council, in conjunction  
11 with the cumulative effects of market changes and Federal  
12 programs, (1) has had an effect on refrigerant consumers  
13 and (2) has had an effect on ozone layer depletion and  
14 climate change. The Secretary and Administrator shall  
15 consider and, to the extent practicable, shall include in the  
16 report submissions by refrigerant users, distributors and  
17 consumers, and shall consider whether there have been  
18 long-term and short-term effects on refrigerant prices as  
19 a result of Council activities and Federal programs. To  
20 the extent that the report demonstrates that there has  
21 been an adverse effect, the Secretary and Administrator  
22 shall include recommendations for correcting the situation.

23 **SEC. 8. SUNWISE PROGRAM.**

24 The Administrator of the Environmental Protection  
25 Agency is authorized to carry out the mission and activi-

1 ties of the SunWise Program to raise awareness of ozone  
2 layer depletion and the potential health risks of overexpo-  
3 sure to ultraviolet radiation as well as measures that can  
4 be taken to avoid such overexposure. There is authorized  
5 to be appropriated \$5 million for fiscal year 2009 and \$5  
6 million for each of the next 5 years to carry out this sec-  
7 tion.

○