

# Does Your Product Use HFCs? Are You Ready for a Phase-Out?

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In December, the U.S Environmental Protection Agency (EPA) announced a proposed rule under the American Innovation and Manufacturing (AIM) Act to address the impact of hydrofluorocarbons (HFCs), which are potent greenhouse gases (GHGs) and ozone-depleting substances (ODS) commonly used in a variety of materials such as aerosols, foams, and refrigerants. The AIM Act, passed in December 2020, authorizes EPA to address HFCs by phasing down their production and consumption, maximizing reclamation and minimizing releases from equipment, and facilitating the transition to next-generation technologies through sector-based restrictions. EPA's actions under the AIM Act also affect consumer products, since HFCs are present in many consumer products in the refrigeration and air-conditioning sectors.

The proposed rule, called the “Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons under the American Innovation and Manufacturing Act” (the “December 2022 HFC Phasedown”),<sup>1</sup> focuses on the transition to next-generation technology. The December 2022 HFC Phasedown Rule restricts the use of certain HFCs that have higher global warming potentials (GWPs).<sup>2</sup> These HFCs are present in various products, including aerosols, foams, refrigeration, air conditioning, and heat pump products and equipment. Generally, the December 2022 HFC Phasedown Rule prohibits the manufacture and import of products containing restricted HFCs by January 1, 2025, and prohibits the sale, distribution, and export of products containing restricted HFCs by January 1, 2026.

For example, industrial process refrigeration systems with refrigerant charge capacities of less than 200 pounds are subject to a 300 GWP limit<sup>3</sup> by January 1, 2025. Retail food refrigeration—supermarket systems with refrigerant charge capacities of 200 pounds or greater, are subject to a 150 GWP limit by January 1, 2025. The December 2022 HFC Phasedown Rule also bans the use of listed substances for certain sectors and subsectors. For example, under the rule, transport refrigeration—road systems are prohibited from using various HFCs<sup>4</sup> by January 1, 2025.

The AIM Act directs the EPA to determine, by October 1 of each calendar year, the quantity of allowances for the production and consumption of regulated substances that may be used for the following calendar year. These are referred to as HFC allowances. EPA published the HFC Allowances for 2023 on October 11, 2022.<sup>5</sup> Subsequently, EPA published a proposed rule on November 3, 2022, to establish the methodology for allocating HFC production and consumption allowances for the calendar years of 2024 through 2028.<sup>6</sup> The proposed December 2022 HFC Phasedown Rule does not affect HFC use in products and equipment that receive an application-specific HFC allowance under the AIM Act; for example, the use of HFCs as a propellant in metered dose inhalers, or in the manufacture of defense sprays are unaffected.

It is important to note that products cannot simply switch to a different ODS. EPA's Significant New Alternatives Policy (SNAP) program reviews ODS substitutes within a comparative risk framework in various industrial sectors.<sup>7</sup> EPA maintains lists of acceptable substitutes for ODSs in particular industries and for particular uses by end-use product and will review these lists in the context of responding to a SNAP substitute application. For instance, EPA has determined that HCFC-22 is an acceptable substitute for R-502 in industrial process refrigeration, while HCFC-141b is an unacceptable substitute for CFC-11 in building chillers. HFC manufacturers, suppliers, and end users should also review the EPA SNAP program requirements for overlapping, and in some instances, different requirements for conditional use and phase-out timeframes for HFCs in various industries and end-products. While the proposed December 2022 HFC Phasedown Rule addresses various phase-out requirements for various HFCs, in many instances, EPA has already set phase-out timeframes and use conditions for particular HFCs. For example, the SNAP rules set a January 1, 2024 phase-out for certain HFCs in chiller air conditioning units.

Industry groups have submitted comments expressing concerns with complying with the proposed December 2022 HFC Phasedown Rule. For example, the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), which represents 330 manufacturers of air conditioning, heating, and commercial refrigeration equipment, noted concerns with several recording and reporting requirements that could negatively impact supply chains and create time-consuming obligations. Similarly, the Retail Industrial Leaders Association, National Retail Federation, National Association of Chain Drug Stores, and the Food Industry Association requested an extended comment period so that retailers could confer with relevant suppliers to better assess how the proposed rule would impact equipment and product end uses. The retailers also expressed concern that the comment deadline overlapped with the retail industry's most critical season.

Comments on the proposed December 2022 HFC Phasedown Rule were due on January 30, 2023, and EPA will likely issue a final rule in the coming months after considering comments received on the proposal.

Contact Foley & Lardner LLP for additional information on implications for your products or for assistance in coordinating with the agency on the proposed rule. Foley & Lardner LLP can also assist with submitting SNAP substitute applications to EPA.

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<sup>1</sup> <https://www.federalregister.gov/documents/2022/12/15/2022-26981/phasedown-of-hydrofluorocarbons-restrictions-on-the-use-of-certain-hydrofluorocarbons-under>

<sup>2</sup> GWPs are a measure of the relative climate impact of a GHG.

<sup>3</sup> 100-year GWPs of listed HFCs are given in the Errata to Table 2.14 of the Intergovernmental Panel on Climate Change (IPCC)'s 2007 Fourth Assessment Report (AR4). Available at

<https://www.ipcc.ch/report/ar4/wg1>.

<sup>4</sup> These include: R-404A, R-507, R-507A, R-428A, R-422C, R-434A, R-421B, R-408A, R-422A, R-407B, R-402A, R-422D, R-421A, R-125/R-290/R-134a/R-600a (55/1/42.5/1.5), R-422B, R-424A, R-402B, GHG-X5, R-417A, R-438A, and R-410B.

<sup>5</sup> <https://www.federalregister.gov/documents/2022/10/11/2022-22059/phasedown-of-hydrofluorocarbons-notice-of-2023-allowance-allocations-for-production-and-consumption>

<sup>6</sup> <https://www.federalregister.gov/documents/2022/11/03/2022-23269/phasedown-of-hydrofluorocarbons-allowance-allocation-methodology-for-2024-and-later-years>

<sup>7</sup> <https://www.epa.gov/snap/snap-substitutes-sector>

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