

# EPA Labeling Requirements for Products Containing or Manufactured with a Hydrochlorofluorocarbon (HCFC) Begin January 1, 2015

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Effective January 1, 2015, **products imported or manufactured** after that date that contain or were manufactured with a **hydrochlorofluorocarbon (HCFC)** must be **labeled before they may be placed into interstate commerce**. These newly effective labeling requirements will largely affect imported products.

Importers may be able to limit the scope of their duty to determine whether a product contains or was manufactured with an HCFC through provisions in their supply contracts.

## Background

In a 1993 rule ([58 Fed. Reg. 8136](#)), EPA promulgated regulations under Section 611 of the Clean Air Act that required labeling by May 15, 1993 of all containers made with class I or class II ozone-depleting substances (ODSs) as well as products containing or manufactured with class I substances (including CFCs, halons, carbon tetrachloride, methyl chloroform, HBFCs, and methyl bromide).

That 1993 rule also mandated labeling on all products containing or manufactured with class I or class II substances (including HCFCs) effective January 1, 2015.

The full labeling requirements are located in the Code of Federal Regulations at Title 40 Part 82, Subpart E. [40 C.F.R. 82.100-82.124](#).

EPA has recently published [a fact sheet](#) on the pending labeling requirements, which notes that the following products “may still be manufactured with HCFCs...: electronics, aerospace equipment, medical equipment, and critical infrastructure where the product was cleaned or lubricated with an HCFC solvent.” The fact sheet also notes that certain imported products could “contain” HCFCs, including spray foam and certain foam other products, such as refrigerators; water heaters; vending machines; building/roof insulation; pipe wrap and other insulating foam products; boats or other equipment containing foam for buoyancy purposes.

## Implementation – “Pass-through Requirements” and Due Diligence

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The regulations distinguish between products or containers *containing* ODSs and products *manufactured with* ODSs, defined as when the manufacturer of the product itself uses an ODS in manufacturing the product. A product that incorporates components that were manufactured using ODSs, but did not itself otherwise use ODSs, is not “manufactured with an ODS” under the regulations. In this instance, the labeling requirements would apply to the component parts if they are imported separately, but would not apply to the final product; a manufacturer or importer could therefore omit the label from the final product.

If a product *containing*—as opposed to *manufactured with*—an ODS is incorporated into another product, however, the labelling requirements “pass through” and the final product must bear a warning statement incorporating the information on the warning statements of the component products. These requirements apply, for example, to closed cell rigid foam insulation products that are blown with HCFCs.

Importers have a duty to ensure proper labeling unless the importer has a *reasonable belief* that the “product manufactured with” or “product containing” does not require a label under the regulations. To comply with this obligation, an importer may rely on provisions in its supply contracts requiring suppliers to certify whether the product being exported was manufactured using an ODS. If the importer has contractually required the supplier either not to use ODSs or to label any components made with ODSs, then that contract may be evidence of reasonable belief. Similarly, a manufacturer of a product incorporating components may generally rely on the labeling information provided by the component supplier. Thus, a manufacturer or importer may not be required to independently investigate so long as it reasonably believes that the component supplier or foreign manufacturer has reliably and accurately complied with the labeling requirements.

## Relationship to ODS Excise Tax

The new EPA labeling requirements are distinct from an IRS excise tax that the use of certain ODSs in the manufacture of certain imported products can also trigger. The scope of ODSs that trigger the labeling requirements is broader than the substances that can trigger the excise tax requirement. This means that companies that have organized their supply chain communication tools around the ODSs that trigger the excise tax rule may not have included all of the HCFC compounds that will now trigger the new EPA labeling requirements. However, EPA has not adopted the extremely burdensome requirements that the IRS has applied to companies seeking to demonstrate that they have “sufficient and reliable” information that ODSs were not used in the manufacture of overseas components.

## Key Documents

- [EPA Final Rule, Protection of Stratospheric Ozone: Labeling](#), 58 Fed. Reg. 8136 (Feb. 11, 1993).
- [EPA Guidance on ODS Labeling Requirements](#)

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