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Environmental Alert

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EPA's next step in HFC phasedown

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The final rule establishes a methodology for allocating HFC production and consumption allowances beginning in 2024 to further reduce HFC consumption by 40%.



What's the Impact?

- / Review your compliance plans now—EPA has promised strict enforcement of the new rule.
- / Be on the lookout for EPA to introduce further regulatory actions pertaining to HFCs.

Continuing the trend of phasing out hydrofluorocarbons (HFCs), the U.S. Environmental Protection Agency (EPA) recently signed a final rule, [Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years](#) (the Rule) that implements certain provisions of the [American Innovation and Manufacturing \(AIM\) Act of 2020](#) intended to ensure that the U.S. leads the way in the global phasedown of HFCs under the [Kigali Amendment](#) to the Montreal Protocol. Under the AIM Act, EPA established a national HFC phasedown program, initiated in January of 2022, intended to reduce the production and consumption of HFCs by 85%

by 2036.¹ The reduction will be measured against the “consumption baseline” which is calculated using the average annual consumption of HFCs from January 1, 2011, through December 31, 2013. The Rule represents EPA’s next step in the HFC phasedown program; it reduces the production and consumption of HFCs by 40% from 2024 through 2028, which follows the 10% reduction implemented for 2022 to 2023.

HFCs are a class of potent greenhouse gases often used in refrigeration, air conditioning, aerosols, and foam products. EPA alleges that their pollution impacts can be hundreds of thousands of times stronger than the same amount of carbon dioxide (CO₂).

The Rule

The Rule regulates companies that produce, import, export, destroy, use as a feedstock or process agent, reclaim, or recycle HFCs. There will also be indirect impacts on companies that depend on those companies to deliver or dispose of HFCs.

The Rule establishes the methodology for allocating HFC production and consumption allowances for the calendar years 2024 through 2028. It also amends the HFC consumption baseline to reflect updated data, codifies the existing way allowances must be expended for the import of regulated substances, revises recordkeeping and reporting requirements, and implements other modifications to existing HFC regulations.

Allowance allocation methodology

Beginning in 2024, the EPA will allocate production and consumption allowances based on an entity’s market share as averaged over its three highest years of production and consumption of regulated substances between 2011 and 2019. These allocations will be made only for entities that produced or imported bulk-regulated substances in 2021 or 2022. For new market entrants, a stand-in high three-year average will be set by the EPA based using a methodology laid out in the Rule.² After an allocation is made, entities can confer or transfer allowances at any time until the end of the calendar year during which the allocation was made.

Consumption baseline

The Rule amends the consumption baseline from 303,887,017 metric tons of exchange value equivalent (MTEVe) to 302,538,316 MTEVe to account for verified revisions from entities for 2011 through 2013 and a review of baseline calculation methodologies.

¹ Under the Kigali Amendment, 170 countries have agreed to phase down the production and consumption of HFCs by 80–85% by 2047. See also, U.S. EPA, [Biden-Harris Administration Takes Latest Step in National Phasedown of Climate-damaging Hydrofluorocarbons](#), July 11, 2023.

² For participants in the new market entrant pool, EPA will determine for each former new market entrant a stand-in high three-year average based on the number of allowances allocated in 2023 and the percent reduction all general pool allowance holders experience in 2023 relative to the average of their three highest years of consumption.

Imports and allowance expenditures

Under the Rule, HFC allowances must be expended upon ship berthing, border crossing, or first point of terminus within U.S. jurisdictions, depending on the mode of regulated substance arrival. Additionally, only the importer of record can expend allowances and must have sufficient allowances at the time of required expenditure or will be held liable for those imports.

Recordkeeping and reporting

The Rule requires that the importer of record (or their authorized agent) file advance notifications and quarterly reports, with advance notice reporting requirements shortened and content requirements specified in the Rule. Additionally, entities planning to become an importer of record must submit certain information by November 15 of the *prior* calendar year, and entities owning multiple facilities and transferring regulated substances between them must now report certain transfer information.

Enforcement

To ensure that companies complying with HFC regulations are not at an economic disadvantage and that the environmental benefits touted by the regulations are realized, EPA also promises strict enforcement. In that vein, the Interagency Task Force on Illegal HFC Trade (the Task Force) was formed in March 2022 to detect, deter, and disrupt attempts to illegally import HFCs. The Task Force is co-led by the EPA and Department of Homeland Security but also includes participation by Customs and Border Protection, the Department of Defense, the Department of Justice, and the Department of State.

To date, the Task Force has prevented illegal HFC shipments, equivalent to more than 1 million metric tons of CO₂ at the border, which is equal to the CO₂ emissions from the electricity use of over 206,000 homes for one year. Recently, the EPA used a helicopter equipped with a special infrared camera that detects hydrocarbon leaks to identify one [company in violation of requirements](#) for flares, tanks, and combustors, as well as general requirements under the Clean Air Act.

If a company is alleged to have violated the Rule, retaining knowledgeable defense counsel early will be important to reduce administrative consequences, such as revocation and retirement of allowances, in addition to civil or criminal enforcement actions. Illegally imported HFCs may be seized by authorities, or the importer required to re-export or destroy the goods at their own cost. Knowing violations of the AIM Act and related smuggling crimes may result in criminal fines, imprisonment, and other penalties as deemed appropriate.

Outlook

The Rule contains other additions and revisions to EPA HFC regulations beyond this alert, and entities can expect more to come during EPA's ongoing process of HFC phasedown. The EPA is already planning to introduce two more regulatory actions: a rule to place restrictions on certain sectors' HFC use to facilitate sector-based transitions to alternative chemicals and a rule to manage HFCs and HFC substitutes in equipment like air conditioners.

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