

House HFC Phasedown Legislation

Overview & Summary

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- The House bill phasing down HFCs is substantively equivalent to the Senate’s *American Innovation and Manufacturing Act of 2019*.
- As with the Senate bill, the House bill authorizes the Environmental Protection Agency (EPA) to regulate a group of about 20 substances known as hydrofluorocarbons (HFCs).
- HFCs are widely used as refrigerants, solvents, fire suppressants, foam blowing agents, aerosols, propellants, and various other applications.
- HFCs were developed and commercialized as substitutes to substances that deplete the stratospheric ozone layer. Those ozone-depleting substances have been regulated under Title VI of the Clean Air Act since 1990.
- As with the Senate bill, the House bill is broadly based on Title VI programs, which are familiar to industry and widely supported, but still represents a separate and highly discrete grant of authority that can be used only to regulate HFCs and not any other substance.
- The House bill regulates HFCs in three ways:
 - It gradually phases down the production and consumption of HFCs over a 15-year period via an allowance allocation and trading program. This is substantially similar to the way ozone-depleting substances were regulated under Title VI.
 - It authorizes EPA to establish standards for the management of HFCs used as refrigerants, such as in equipment servicing and repair, and for the recovery of “used” HFCs for purification and resale, known as reclaim. This allows for a safe and efficient transition out of HFCs.
 - It authorizes EPA to establish sector-based use restrictions, as a way to facilitate transitions to next generation refrigerant technologies. These use restrictions would complement the broader production and consumption phase down, aiding sectors able to transition more quickly out of HFCs and providing more flexibility for those sectors in need of more time to complete a transition.
- The bill would not interfere with the use of HFCs in existing refrigeration and air conditioning equipment – meaning consumers would not be forced to replace equipment before the end of its useful life. The bill also would not constrict aftermarket supplies of HFCs for servicing existing equipment.
- The bill was prepared with substantial input and guidance from experts and others in industry and in the environmental community with significant experience with Title VI and associated EPA regulatory programs, with the common goal of creating an effective EPA regulatory program for HFCs.

Section-by-Section Summary

- **Section 1 – Short Title**
 - This bill is called the American Innovation and Manufacturing Leadership Act of 2020.
- **Section 2 – Definitions**
 - Most of these terms are based on defined terms in Title VI of the Clean Air Act and associated EPA regulations.
 - **Senate Bill Comparison:** The House bill added definitions destroy, export, person, and United States. The definitions are consistent with the terms' usage in both bills.
- **Section 3 – Listing of regulated substances**
 - The HFCs subject to regulation under this bill are listed in a table.
 - The “exchange value” refers to the effective weight of each HFC, for purposes of trades, transfers, and related calculations, since not all HFCs are the same in terms of their manufacture and/or use.
 - EPA is granted authority to adjust the values of the exchange values based on newly available scientific information. This allows for harmonization with other HFC-related regulatory programs among the states and internationally.
 - EPA is granted authority to add substances that are considered “saturated hydrofluorocarbons” with an exchange value greater than 53. This prevents the development and use of a new HFC not listed in the table solely for purposes of avoiding regulation.
 - **Senate Bill Comparison:** Section 3(c) uses slightly different criteria for adjusting/establishing an exchange value for a regulated substance. These different criteria are not expected to produce a different result from the criteria included in the Senate bill.
- **Section 4 – Monitoring and reporting requirements**
 - EPA is granted authority to require reporting of any production, consumption, import, export, reclaim, destruction, and feedstock usage of HFCs, which is necessary to carry out a regulatory program for HFCs.
 - Because some of this information may already be reported to EPA, EPA is granted authority to coordinate and harmonize with existing reporting requirements, to minimize administrative burdens and avoid confusion.
 - **Senate Bill Comparison:** The House bill includes some additional reporting requirements for information during the baseline period of 2011-2013.

- ***Section 5 – Phase down of regulated substances***
 - The baseline provisions in subsection (a) are meant to reflect an internationally recognized standard for HFC production and consumption.
 - The percentage reductions in the phasedown schedule contained in this section similarly reflect an internationally recognized standard for reducing HFC production and consumption.
 - The provisions in subsections (b) and (c) are based on similar provisions in Title IV, directing EPA to utilize an allowance allocation and trading program to administer a production and consumption phase down of HFCs.
 - Trading is intended to facilitate compliance and reduce costs. The language and structure of this subsection are based substantially on a similar provision in Title IV of the Clean Air Act. The primary purpose of this language is to ensure (i) exchange values are utilized in the transferring of allowances, (ii) a net total reduction in production and consumption occurs as a result of each transfer, and (iii) transfers occur only between parties with compliance obligations for HFC production and consumption.
 - The provisions in subsection (d) grant EPA authority to adjust the percentage reductions in the phase down schedule if petitioned to do so and if certain practical criteria are met.
 - The first tranche of percentage reductions, from 2019 to 2024, is exempt from this authority, as it would be difficult and potentially impracticable to change the percentage reductions so soon after enactment and initial implementation.
 - The exceptions in subsections (e) for essential uses are based on similar exceptions under Title VI and reflect internationally recognized practices.
 - The provisions in subsection (f) regarding domestic manufacturing are based on similar provisions in Title VI that allow domestic production of HFCs for export to foreign countries, so such countries do not seek to develop their own production facilities as the phase down is implemented globally.
 - ***Senate Bill Comparison:*** Section 5 includes subsections on the baselines, phase down program, trading, schedule, essential use exceptions, and exports. Some of these were in separate sections in the Senate bill, which is why the House bill has fewer overall sections. But substantively it's the same phase down program. Additionally, for trading, these provisions incorporate and include the international trading provisions and other requirements in Section 11 of the Senate bill.
- ***Section 6 – Management of regulated substances***
 - EPA is granted authority to establish standards for HFC management, such as equipment servicing and repair, as well as the recovery of “used” HFCs from equipment for purification and resale, known as reclaim.
 - It is possible some EPA regulatory programs established under this section could overlap with existing EPA programs, so EPA is granted authority to coordinate and

harmonize with such programs to ease administrative burden and avoid duplicative and potentially conflicting standards.

- **Senate Bill Comparison:** Section 6 on the management of regulated substances is more explicit than the Senate bill in indicating it applies just to refrigerants and not other uses of regulated substances, such as foams.
- **Section 7 – Technology transitions**
 - EPA is granted authority to negotiate with a sector that uses HFCs to establish standards restricting the use of certain HFCs in certain applications.
 - These use restrictions would complement the production and consumption phase down, aiding sectors able to transition more quickly out of HFCs and providing more flexibility for those sectors in need of more time to complete a transition.
 - Given the complexity and other challenges in crafting such standards, EPA is given the option of utilizing the Negotiated Rulemaking Act of 1990.
 - **Senate Bill Comparison:** This section contains a few stylistic differences from the Senate bill but is not substantively changed from the Senate bill's section 10. There is a minor addition to the final subsection, directing EPA to evaluate substitutes, where EPA is directed to consider "lead times for equipment conversion" in addition to other, more general enumerated factors. This is not precluded in the Senate bill; it is just not explicitly mentioned.
- **Section 8 – Rulemaking Authority**
 - This section contains standard language authorizing EPA to issue rules to implement the provisions of the bill and allowing the EPA Administrator to delegate within the agency such implementation authority.
 - **Senate Bill Comparison:** The Senate bill contains the same type of provisions.
- **Section 9 – Relationship to other laws**
 - This bill has been developed as stand-alone legislation outside the Clean Air Act. But to allow EPA to implement it effectively, this bill (i) cross-references various administrative provisions of Title I of the Clean Air Act and (ii) seeks to remove potentially duplicative EPA authority under Title VI of the Clean Air Act.
 - The cross-referenced provisions in Title I involve recordkeeping, monitoring, enforcement, and judicial review, among others. Their application will help EPA and regulated entities avoid uncertainty in implementation and minimize administrative burdens and compliance costs.
 - There also is a standard provision authorizing EPA to issue rules to implement the provisions of this Act.
 - **Senate Bill Comparison:** This section does not include the reference to Section 614(b) of the Clean Air Act, preventing its use as an alternate source of (potential, though questionable) authority for HFCs in Title VI. This difference does not bear on the HFC phase down.