



December 18, 2023

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U.S. Environmental Protection Agency  
EPA Docket Center  
Air and Radiation Docket, Mail Code 28221T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**RE: Offshore Operators Committee Comments  
Proposed Hydrofluorocarbon Phasedown Rules: Management of HFCs  
Docket ID Number: EPA-HQ-OAR-2022-0606**

To Whom This May Concern:

The Offshore Operators Committee (OOC) appreciates the opportunity to provide detailed comments on the above-referenced Proposed Rule entitled “Phasedown of Hydrofluorocarbons: Management of Certain HFCs and Substitutes under Subsection (h) of the AIMA (American Innovation and Manufacturing Act) of 2020.” (88 Fed. Reg. 72216, Oct. 19, 2023). Comments are submitted without prejudice to any member’s right to have or express different or opposing views. It is from this perspective that these comments have been developed.

OOC member companies represent more than 90% of the oil and gas production in the Gulf of Mexico (GOM) Outer Continental Shelf (OCS) with oil and natural gas operators, drilling contractors, and service providers. Our members recognize that offshore operations must be conducted safely and in a manner that protects the environment. The offshore industry has a long history of safe operations that has advanced the energy security of our nation and provided energy resources which are crucial to our nation’s economy.

The OOC fully supports the Environmental Protection Agency’s (EPA’s) endeavors to optimize the reclamation and minimize the release of hydrofluorocarbons (HFCs) into the environment. In response to the proposed regulations, the OOC provides the following comments to underscore certain challenges in compliance and proposes revisions aimed at enhancing clarity for compliance purposes.

## **1. Applicability of 40 CFR Part 84**

In Chapter I of Title 40 of the Code of Federal Regulations (CFR), under Subchapter C dedicated to Air Programs, the EPA oversees various air programs. Notably, within this subchapter, Part 84 addresses the phasedown of HFCs.

Contrastingly, Part 55 delineates the EPA's air programs applicable to the Outer Continental Shelf (OCS). According to 40 CFR 55.3(a), the scope of this part extends to all OCS sources except those situated in the GOM west of 87.5 degrees longitude. Under the Outer Continental Shelf Lands Act ("OCSLA"), the Department of Interior ("DOI") has the authority to administer programs and prescribe rules relating to the OCS, including those relating to air quality. Section 328 of the CAA clearly outlines the jurisdictional authority of the EPA in the OCS, limiting the applicability of EPA's regulatory authority to OCS sources eastward of longitude 87 degrees and 30 minutes ("Eastern GOM"). Accordingly, OOC seeks confirmation that OCS sources situated in the Western and Central Gulf of Mexico are excluded from the applicability of the proposed regulations in 40 CFR Part 84.

The DOI has sole authority to promulgate air quality regulations for OCS sources, which is not shared with the EPA. *California v. Kleppe*, 604 F.2d 1187, 1193 (9th Cir. 1979). While the EPA's authority for the proposed regulations is not the CAA but rather the AIM Act, it is evident that the intent of the AIM Act and these proposed regulations in Part 84 are to regulate air quality and emissions related to HFCs and overlap with authority granted to the DOI. EPA's preamble cites repeated studies on HFC emissions, analyzes benefits from emission reductions, and proposes control technology such as automatic leak detection systems that are used in the air emissions context. The proposed regulations require operators to track, record, and provide information regarding sale and distribution of HFCs, which are similar to requirements in 43 U.S.C. § 1348(b)(3) for lease and permit holders to provide "documents and records which are pertinent to . . . environmental protection, as may be requested" under OCSLA.

Section (h) of the AIM Act provides EPA broadly with authority to promulgate regulations. However, the AIM Act is silent on the question of OCS sources and in (k)(1)(C) expressly applies sections of title VI of the CAA to EPA's authority in these proposed regulations. Thus, the AIM Act does not alter the existing division of jurisdiction between the EPA and DOI with regard to air quality regulations applicable

to OCS sources. Accordingly, the OOC asserts that 40 CFR Part 84 is not applicable to the Western and Central GOM, and the regulation of sale and distribution of HFCs does not extend to Western and Central GOM without a grant of similar authority under the AIM Act to the DOI and BOEM. The OOC respectfully requests confirmation from the EPA.

Importantly, the OOC recognizes that 40 CFR Part 84 would apply to the Eastern GOM, given that BOEM has not been delegated authority over air quality in this specific area.

## **2. Appliance Applicability to 40 CFR 84.106**

Section 40 CFR 84.106 (a) stipulates the applicability of the proposed leak repair provisions to appliances containing refrigerants with a full charge of 15 pounds or more where the refrigerant is composed in whole or in part of a regulated substance listed in subsection (c) of the AIM Act or in appendix A to part 84, or a substitute for a regulated substance with a global warming potential (GWP) greater than 53.

Appliances holding 50 pounds or more of refrigerant, excluding those utilizing 100% substitute refrigerant, are already regulated by 40 CFR Part 82. The inclusion of appliances with 15 pounds or more of refrigerant into 40 CFR Part 84 would essentially double the regulatory responsibilities for the industry without commensurate environmental benefits.

In the preamble, the EPA acknowledges advancements in technology for some refrigerant-containing appliances, noting that comparable cooling capacity can now be achieved with smaller relative charge sizes. 88 Fed Reg. 72238. This reduction in refrigerant volume reduces the potential harm to the environment in the event of a leak. The regulatory emphasis should be directed towards appliances with larger charge sizes. Regulating appliances with less than 50 pounds of refrigerant could discourage manufacturers from improving the efficiency of refrigeration appliances to reduce the overall refrigerant usage.

OOC respectfully urges the EPA to eliminate the 15-pound criterion and exclusively apply 40 CFR 84.106 to appliances charged with 50 pounds or more of refrigerant.

## **3. Definition of Substitute for a Regulated Substance**

While the definition of a regulated substance in the proposed 40 CFR 84.106(a)(1) is clear and concise, as outlined in Appendix A, the definition of a substitute for a

regulated substance in 40 CFR 84.106(a)(2) poses challenges in comprehension.

To elaborate, the rule initially enumerates two specific compounds, which is not a point of contention. However, the complexity arises from the requirement for regulated entities to consult three distinct lists to ascertain the regulatory status of their substitute substances. Of particular concern are two extensive publications that prove cumbersome to locate and navigate: “Fourth Assessment Report of the Intergovernmental Panel on Climate Change” and the “Scientific Assessment of Ozone Depletion: 2022”. In contrast, the third list refers to 40 CFR Part 98, offering a more accessible point of reference.

In essence, the process of researching a substance to determine its classification as a regulated substitute proves highly intricate. In light of this, OOC strongly advocates for the EPA to compile a singular comprehensive list encompassing all substitute substances with GWPs exceeding 53. It is unnecessary to include or reference substances with GWPs less than 53, as they are not proposed for regulation, and their inclusion only contributes to confusion.

#### **4. Exclusion Clarification**

In accordance with 40 CFR 84.106(a)(3), it is stipulated that, despite the criteria outlined in paragraphs (1) and (2) of this section, the requirements therein do not extend to appliances (as defined in 40 CFR 82.152) exclusively containing an ozone-depleting substance as a refrigerant.

However, this exclusion necessitates clarification as there is potential ambiguity in its interpretation. One possible understanding implies that all appliances utilizing only ozone-depleting substances as refrigerants are exempt from 40 CFR 84.106, which could be seen as conflicting with the regulation's intended purpose. Alternatively, another interpretation suggests that appliances regulated by 40 CFR 82 are excluded from 40 CFR 84, though this remains somewhat unclear.

OOO emphasizes the need for a clarified definition of this exclusion to enable regulated entities to easily discern what falls within its scope and what does not.

#### **5. Compliance Dates for 40 CFR 84.106**

OOO acknowledges that, as per 40 CFR 84.106(a)(4), appliances with a full charge of 50 pounds or more of a regulated refrigerant are granted a 60-day window to achieve compliance with the final regulation. While appliances utilizing 50 or more pounds of

Class I or II refrigerants are already under the purview of 40 CFR 82, those employing 50 or more pounds of 100% substitute refrigerant were previously exempted from similar regulation.

OOO asserts that appliances utilizing 50 or more pounds of 100% substitute refrigerants will necessitate a more extended timeframe for compliance. This includes tasks such as conducting a comprehensive inventory of appliances meeting the new regulatory criterion, identifying the composition and positively identifying all specific substitute compounds, researching each compound to determine its regulatory status, and establishing the full charge of each appliance.

In light of these considerations and if EPA pursues the regulation of appliances with 15 pounds or more of a regulated refrigerant contrary to our urging, OOO requests the EPA to synchronize the compliance dates for both categories of regulated appliances (those with 15 to 50 pounds of refrigerant and those with 50 or more pounds of refrigerant) to be "1 year after the date of final publication of the rule in the Federal Register." This adjustment not only allows ample time for regulated entities to achieve compliance but also eradicates confusion arising from differing compliance dates for each appliance type.

## **6. Automatic Leak Detection**

The proposed rule includes a new automatic leak detection requirement for owners/operators of refrigerant-containing appliances used for industrial process refrigeration or commercial refrigeration with a full charge of 1,500 pounds or greater of a refrigerant containing a regulated substance or a substitute for a regulated substance with a GWP greater than 53. The designated compliance date for the installation and utilization of automatic leak detection systems on appliances installed 60 days or more after the final publication of the rule poses challenges in specific scenarios. Given that these installation projects are meticulously planned months, and sometimes years, in advance due to intricate engineering requirements and extended lead times for procurement and supply chain management, adhering to the proposed timeframe becomes problematic.

In light of these considerations, OOO advocates for the provision of a one-year grace period following the final publication of the rule. This extension would afford regulated entities sufficient time to design, procure, and receive all necessary equipment. Additionally, it allows for the preparation of operating procedures and the training of personnel to effectively operate, monitor, and maintain the equipment in compliance with the new regulations.

## **7. Compliance Date Issues**

Commencing with 40 CFR 84.110 and extending through 84.112, 84.116, 84.118, and 84.120, specific dates are stipulated for achieving compliance with various requirements. However, in 40 CFR 84.106 and 108, the EPA employs a timeframe linked to the issuance of the final rule in the Federal Register.

As the exact publication date of the final rule by the EPA remains undetermined, the clarity regarding the timeframe available for regulated entities to achieve compliance with these new regulations is currently lacking, particularly concerning compliance dates set for 2025.

In the event of a substantial delay in publishing the final rule in the Federal Register while these dates are still in use, significant challenges may arise for the regulated community in meeting compliance requirements.

OOC strongly recommends adjusting all specified dates in the proposed regulations, especially those in 2025, to reflect a more explicit timeframe, such as one year from the publication date of the final rule in the Federal Register. This modification would provide clarity and ensure that regulated entities have sufficient time to adhere to the new regulations.

## **8. Requirement for Use of Reclaimed Substances**

The stipulation to utilize recycled or reclaimed substances, as outlined in 40 CFR 84.110(c) and 40 CFR 84.112(e), poses a notable challenge. The future accessibility of these recycled or reclaimed materials remains entirely uncertain. If these materials are not obtainable when necessary for ongoing operations, could a regulated entity be compelled to halt its processes or shut down its facility while awaiting their availability? Complying with this rigid requirement might prove impractical and could result in significant operational delays.

In lieu of these explicit requirements, OOC strongly urges the EPA to incorporate an alternative compliance approach, contingent upon the regulated entity maintaining documented evidence that the requisite recycled or reclaimed substances are unavailable, necessitating the use of virgin products. This approach aims to offer flexibility in situations where compliance with the primary requirement is unfeasible due to material unavailability.

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In conclusion, the OOC remains committed to supporting the EPA's efforts in optimizing the reclamation and minimizing the release of hydrofluorocarbons (HFCs) into the environment. We appreciate the opportunity to provide valuable feedback on the proposed regulations and to highlight certain challenges in compliance. The recommendations presented are aimed at enhancing clarity, ensuring practical feasibility, and minimizing operational disruptions for regulated entities.

We trust that the EPA will consider these suggestions seriously and work towards refining the proposed regulations to achieve a balanced and effective framework. The OOC remains open to further collaboration and discussion to ensure the successful implementation of regulations that benefit both environmental conservation and the operational integrity of regulated entities.

Thank you for your attention to these crucial matters. Please feel free to contact me if you have any questions or comments regarding this submittal.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Hamm".

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