



national association of clean air agencies

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U.S. Environmental Protection Agency
EPA Docket Center
Air Docket
Docket ID No. EPA-HQ-OAR-2021-0044
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

To Whom It May Concern:

The National Association of Clean Air Agencies (NACAA) offers the following comments on the U.S. Environmental Protection Agency's (EPA's) action titled, "Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act," which was published in the *Federal Register* on May 19, 2021 (86 Fed. Reg. 27150). NACAA is the national, nonpartisan, non-profit association of air pollution control agencies in 41 states, including 115 local air agencies, the District of Columbia and four territories. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. These comments are based upon that experience. The views expressed in these comments do not represent the positions of every state and local air pollution control agency in the country.

In this action, EPA proposes to establish regulations governing Hydrofluorocarbon (HFC) production and consumption using baselines derived from historical 2017-2019 market data; to set up an allowance allocation program to phase down HFC production and consumption; to determine the approach for allocating and transferring allowances in 2022 and 2023; to establish international provisions, recordkeeping and reporting requirements; and to take other actions related to the effective implementation of the American Innovation and Manufacturing Act (AIM Act). EPA seeks comment in this proposal on design and implementation issues, and in the Advanced Notice of Proposed Rulemaking (ANPRM) contained within the proposal, on environmental justice and allowance distribution issues.

NACAA supports the proposal, and offers comment on technical and policy aspects that may facilitate the successful implementation of EPA's proposed regulations to limit and draw down emissions of this class of pollutant.

HFCs are a class of chemicals that can be used as coolants in air conditioners and refrigerators, as well as for other uses. Widely introduced after the passage of the Montreal Protocol governing ozone depleting substances such as halons and chlorofluorocarbons, HFCs include climate pollutants that have global warming potentials

on average that are several thousand times stronger than CO₂, but may persist in the atmosphere for shorter periods of time. In 2020, research indicated that HFC emissions were 50 percent higher than they were in 2005, and were projected to grow to double 2005 levels by 2030, absent new policy.¹ Legislative language originally introduced in Congress as the AIM Act that was passed as part of the Consolidated Appropriations Act of 2021 (116 H.R. 133), directed EPA to phase down production and consumption of HFCs in the United States by 85 percent over the next 15 years, in line with the Kigali Amendment to the Montreal Protocol, and articulated details that EPA should use to put such reductions into effect. EPA's proposal is responsive to that bipartisan legislation.

In general, NACAA supports federal pollution reduction programs acting as a floor beyond which state and local programs can act in accordance with their programs, laws, regulations, and statutes, as well as to meet the needs and priorities of those jurisdictions to protect public health and the environment. In 2016 EPA finalized the Significant New Use Alternatives Proposal (SNAP) Rules 20 and 21, limiting various HFCs in end-uses in refrigeration, air-conditioning, and other sectors. Those rules were partially vacated by the U.S. Court of Appeals for the D.C. Circuit in its *Mexichem Fluor, Inc., v. EPA* decision in 2017², and then fully abandoned by EPA in guidance issued in 2018³. As of June 2021, California, Vermont, Washington, New Jersey, Colorado and Virginia have all passed legislation to adopt HFC use limits based on SNAP Rules 20 and 21; Hawaii, Oregon, Rhode Island, Massachusetts, Maine, Connecticut, Delaware, Maryland, Pennsylvania and New York are taking analogous action using regulations. Other state and local agencies have programs relating to the management of equipment and chemicals that produce HFC reductions as well. Therefore, as it moves toward finalizing its proposal, EPA should coordinate with states and with NACAA to determine which existing and developing laws, programs, or regulations on HFCs would need to be taken into consideration to enable rules and procedures under EPA's activities that do not diminish the effectiveness of these programs.

For example, EPA should coordinate with those agencies that have programs to facilitate multijurisdictional consistency surrounding labelling, recordkeeping, tracking, reporting, verification, and enforcement. Tracking programs should allow for terminological flexibility around issues such as labeling and disclosure to enable consistency with, and take advantage of lessons learned from, the variety of existing local and state programs. In addition, authorized by statutes and regulations in their jurisdictions some local and state programs emphasize GHG reductions over a period that prioritizes some HFCs with longer or shorter persistence longevity. EPA's regulation should not inhibit those priorities inasmuch as they do not affect the protectiveness or effectiveness of EPA's programs. EPA should also coordinate with existing programs on key issues surrounding recovery, reclamation, and reuse of HFCs to displace new production.

The proposal articulates exemptions from regulation for a specific slate of uses, among them inhalers for asthma, aerosol propellants for defense sprays, pre-formed foams for marine and trailer use,

¹ <https://rhg.com/research/climate-progress-in-the-year-end-stimulus/>

² U.S. Court of Appeals for the District of Columbia Circuit, Case no. 15-1328, August 8, 2017. [https://www.cadc.uscourts.gov/internet/opinions.nsf/3EDC3D4817D618CF8525817600508EF4/\\$file/15-1328-1687707.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/3EDC3D4817D618CF8525817600508EF4/$file/15-1328-1687707.pdf)

³ "Protection of Stratospheric Ozone: Notification of Guidance and a Stakeholder Meeting Concerning the Significant New Alternatives Policy (SNAP) Program", 83 Fed Reg. 18431, April 27, 2018, https://www.epa.gov/sites/production/files/2018-04/documents/snap-guidance-notice_as-signed-4-13-18-with-disclaimer.pdf

and military and aerospace fire suppression. These exemptions exist to reflect the absence of currently existing alternatives, but the administration must continue to support research, development and deployment of new alternatives for these uses to address their contribution to climate change. In the proposal, these exemptions pre-empt state and local regulations. EPA states that it could in the future designate other “essential uses” for which there are no alternatives. While the current essential use exemptions represent a small portion of the emissions inventory of HFCs, any future modification to these exemptions, as well as any other steps taken to pre-empt the authority of state and local agencies with regard to their programs regulating HFC emissions, should not be undertaken without coordination with, and agreement from, the agencies regulating these pollutants to assure beneficial interaction with their programs.

Aside from the administration of their own programs, the proposal is largely silent about the state and local role in the proposed federal program, and EPA should engage with NACAA members to enumerate what, if any, role these agencies will play. State and local clean air agencies will also need resources (including funding, technical assistance, training, etc.) to successfully play a part in implementing the rule; EPA should provide that support as needed.

Enforcement provisions within the proposal articulate non-compliance consequences, requirements for packaging, labeling tracking, recordkeeping, reporting, and auditing, and details for the transparent disclosure of program data. EPA should, as it finalizes its proposal, include provisions for compliance assurance strategies to augment the enforcement provisions. EPA should also work to assure strong compliance assistance and enforcement on programs to address end of life and leakage concerns. EPA programs should promote the recovery, reclamation and reuse of existing HFCs, reducing and preventing their eventual release. In particular, EPA should develop and promulgate guidance that assists potential reclaimers in making the transition to alternatives. EPA guidance should also support efforts on leak management issues concerning containment, handling, maintenance, as well as HFC reclamation and possibly HFC disposal and destruction. As it finalizes its proposal, EPA should also detail how it will coordinate with state and local recovery, reclamation and reuse programs. Another key enforcement and compliance assurance lesson learned from the European experience is the possibility of import fraud, smuggling, and leakage that undermine the effectiveness of the program. Given the jurisdictional limits of state and local agencies, the federal role in preventing these kinds of undermining actions will be extremely important. EPA should be particularly mindful and consider the potential for non-compliance leakage through the international land borders of the contiguous 48 states. Tracking international imports and cross-boundary movement is a clear federal role, although EPA may wish to make clear whether and how it will depend on other agencies (federal or otherwise) to support this function.

In the ANPRM contained in its proposal, EPA seeks comment on two issues relating to environmental justice and to allowance disposition post-2023. With regard to the first, environmental justice is a central concern to the clean air agencies that make up our association and EPA is well-advised to understand these impacts thoroughly to avoid finalizing a proposal that perpetuates or worsens inequitable pollution effects. In October 2020, NACAA revised its Mission and Values statement to center equity, and issued a Statement and Direction on Racial Justice⁴. Many of our agencies are leaders in addressing the disproportionate harms that air pollution causes to vulnerable communities. These communities are the

⁴ NACAA’s “Mission & Values,” “Strategic Priorities” and “Statement & Direction for Racial Justice” are available at http://www.4cleanair.org/sites/default/files/Documents/NACAAMissionValuesGoalsandRacialJusticeStatement-10_19_2020-noQ.pdf.

most exposed to the potential harms created by instability in the climate, and as such EPA's proposal inherently and directly addresses one structural issue that perpetuates unequal outcomes by reducing greenhouse gas emissions that destabilize the climate. As EPA considers strategies to prevent or mitigate air toxics emissions from facilities located near communities that may face exposure risks, the agency should support improved monitoring for these pollutants, greater data transparency and accessibility, improved access of granularity and timeliness of air toxics data, and increases in resources to state and local environmental justice, community outreach, monitoring and air toxics programs.

Regarding the allowance distribution strategy post 2024, EPA suggests several programmatic concepts that use allocation of allowances, allocation with fees, or establishing an auction system for the total set or subset of allowances, and seeks comment on preferred approaches. While there are administrative efficiencies from auction systems that leverage market signals to efficiently assign allowances to market participants, allowance auctions have also faced questions related to the potential for greater impact to economically disadvantaged and environmentally overburdened communities. NACAA offers no specific preference for a post-2024 allowance distribution concept, except to encourage EPA to both consider efficient program design and also to explicitly anticipate and commit to the avoidance of disproportionate community impacts as it proceeds.

NACAA and EPA have worked together for decades using a framework of cooperative federalism that facilitates synergies across state, local and federal authorities. In passing the AIM Act, Congress recognized that the virtue of a national program is to assure a consistent and fair floor of protection of public health and the environment across the country. However, Congress also recognized state and local expertise, needs, and willingness to take more protective action than a national HFC drawdown program would provide in many cities, counties, and states. NACAA supports the direction of this proposal to draw down emissions of these harmful pollutants consistent with the AIM Act. We look forward to continued consultation and coordination as EPA moves to improve and finalize its proposal.

Thank you for the opportunity to comment on this important and welcome action. If you have questions, please contact either of us or Miles Keogh, Executive Director of NACAA.

Sincerely,



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