

State of Rhode Island
Department of Environmental Management
Office of Air Resources

In re: Proposed revisions to Air Pollution Control Regulation
Part 53, "Prohibition of Hydrofluorocarbons in Specific End Uses"

DECISION

Introduction

On April 16, 2021 a notice was posted on the websites of the Rhode Island Department of Environmental Management (RI DEM) and the Rhode Island Office of Secretary of State and was sent to interested parties announcing a public comment period to accept comments on the adoption of proposed regulation Air Pollution Control Regulation Part 53, "Prohibition of Hydrofluorocarbons in Specific End Uses" (250-RICR-120-05-53). R.I. Gen. Laws § 42-35-2 .8, require that an oral hearing be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty- five (25) members, no oral hearing was requested during the public comment period. The public comment period ended at 4:00 PM on May 17, 2021.

The purpose of this regulation is to reduce hydrofluorocarbon emissions by adopting specific prohibitions for certain substances in air conditioning and refrigeration equipment, aerosol propellants, and foam end-uses. The proposed revisions do not impose any new requirements on regulated entities including any small business or any city or town; therefore, there is no new adverse economic impact.

Written comments were received from the Air-Conditioning, Heating, & Refrigeration Institute (AHRI); American Chemistry Council's Center for Polyurethanes Industry (CPI); DuPont Performance Building Solutions; Honeywell; Household & Commercial Product Association (HCPA); Natural Resources Defense Council (NRDC) & Acadia Center; Polyisocyanurate Insulation Manufacturers Association (PIMA); and SOPREMA. The following is the Office of Air Resources' responses to the comments received:

Response to Comments

General Comments and Formatting

Comment: Many commenters support the proposed regulation to prohibit the use of high global warming potential (GWP) HFCs. They also support alignment with similar regulations in other states (California, Colorado, Delaware, Hawaii, Massachusetts, New Jersey, New York, Washington, Vermont, and Virginia) and the U.S. Climate Alliance model rule (on which many states based regulations). The regulation will provide regulatory certainty and practical prohibition schedule, and help drive a transition to the low-GWP solutions and promote US leadership in innovation and manufacturing. Commenters appreciated RI DEM's outreach efforts well in advance of this proposed regulation. (Many commenters).

Response: RI DEM thanks commenters for their support of the proposed regulation.

Comment: If the Environmental Protection Agency (EPA) adopts provisions as stringent or more stringent than the HFC regulations in Rhode Island, then Rhode Island should adopt a provision that all administrative requirements be suspended to avoid being duplicative to national regulations. (AHRI).

Response: We are aware of and are following the developments of EPA's rulemaking. Given the timing of the RI DEM rulemaking, and the uncertainty when EPA will finalize HFC regulations, we have no plans at this time to modify the rule. That said, if EPA adopts provisions as stringent or more stringent than the HFC regulation in Rhode Island, Rhode Island will consider suspending or amending our regulation.

Comment: Recommends that DEM work with the State of Rhode Island: Building Code Commission to adopt rules permitting the use of substitutes not prohibited by this regulation. Some EPA-approved low-GWP alternatives demonstrate moderate flammability and their use is currently restricted under the existing building codes. Updating building codes will allow HFC alternatives to enter the market in air conditioning systems. Suggests that Rhode Island convene a meeting of interested stakeholders including local fire service, state fire marshal, building code officials and others for an educational session regarding the safe transition to low-GWP refrigerants. (AHRI) (NRDC & Acadia Center).

Response: RI DEM recognizes the importance of updating building codes. Nevertheless, adoption of building codes and safety standards in Rhode Island is outside the purview of RI DEM. RI DEM will communicate the importance of updating the standards in connection with the HFC regulation to the State of Rhode Island Building Code Commission and other state officials.

Comment: Suggests that DEM consider including a requirement that technicians have refresher training on some frequency as the transition to lower global warming potential refrigerants will require new uses of different American Society of Heating and Refrigeration Engineers (ASHRAE) safety classification of refrigerants than have been historically used. (AHRI).

Response: While the need for technician training to ensure the safe use and successful implementation of the transition away from HFCs is beyond the scope of this rulemaking, RI DEM agrees and supports the development of standardized training by industry or other entities.

Comment: Requests the inclusion of a process to allow for potentially necessary exemptions and potential supply disruptions as demonstrated by recent ice storms and port delays due to the pandemic that may come to light in the future. A good model for this framework is Canada's "essential purpose" permit option included in the Ozone-Depleting Substances and Halocarbons Alternatives Regulations (ODSHAR). (AHRI).

Response: RI DEM reviewed the request and suggested model but did not revise the rule. We will work individually with manufacturers that have proof of documented hardship, request additional time to meet applicable prohibition dates, and associated requirements due to supply disruptions.

Comment: Recommends that DEM encourage the use of reclaimed refrigerants through its HFC regulations. Creating demand for reclaimed refrigerant encourages the proper collection of refrigerants during maintenance and for end-of-life of equipment. We strongly recommend that DEM take affirmative steps to promote reclamation by requiring the use of reclaimed refrigerant in state procurement processes. A strategy that promotes the recovery, reclamation and re-use of refrigerants directly achieves

DEM's goal of reducing HFC emissions by eliminating, or at least significantly reducing, the need to service existing systems with newly manufactured product. (AHRI).

Response: RI DEM also considers refrigerant reclamation to be potentially valuable as a component of HFC reduction policy, but it was not considered as part of the current regulation. If reclaimed refrigerant was in demand and had a high monetary value, it is possible that users may be incentivized to collect rather than release these refrigerants. However, policies that may be required to properly verify and monitor reclaimed refrigerants is beyond the scope of the current rulemaking, which is focused on adopting prohibitions on the use of specific substances. Additionally, reclaimed refrigerant would have the same impact in terms of GWP as virgin refrigerant. The current rule is specifically intended to address the use of refrigerants in newly manufactured equipment, which unlike existing equipment, can use alternative substances that are not as harmful if released into the atmosphere.

Definitions

Comment: Recommends that DEM modify the definition of "Use" as follows. Section 53.4: "Use" means any utilization of a compound or any substance, including but not limited to utilization in a ~~manufacturing process or~~ product installed in Rhode Island, consumption by the end user in Rhode Island, ~~or in intermediate applications in the Rhode Island, such as formulation or packaging for other subsequent applications.~~ For the purposes of this Regulation, use excludes household use, ~~but does not exclude manufacturing for the purpose of household use.~~ (AHRI).

Response: Manufacturers, suppliers, and other persons regulated under this rulemaking remain responsible for providing compliant products and equipment. The definition of "use" in the proposed regulation aligns with other states implementing similar rules. RI DEM did not revise the definition in order to remain consistent with others states and limit confusion and misinterpretation.

Comment: Recommends that DEM add the following statement. Section 53.7(A)(2): Products or equipment manufactured prior to the applicable effective date of the prohibitions in this Part, including foam systems not yet applied on site or new refrigeration equipment for which a facility has received a building permit prior to the effective date of prohibition, may be sold, leased, rented, installed, imported, exported, distributed, and used on or after the effective date of prohibition. ~~For clarity, products, equipment, or substances may be manufactured, sold, imported, exported, distributed, installed, and used after the specified date of prohibition to service existing equipment. Finally, products may be manufactured, sold, imported, exported, and distributed for use outside the state.~~ (AHRI).

Response: RI DEM agrees that the language is not clear that products or substances that are intended for servicing, maintenance, or repairs may still be manufactured and used after the effective date, so long as they do not fall under the definition of "new equipment." Clarification is needed in the proposed regulation to allow for continued servicing of existing equipment as it is not RI DEM's intention to force the replacement of equipment before the end of its useful life. We added language to the rule to recognize this situation.

Comment: Recommends alignment with the EPA SNAP Rule 20 and requests that one of the acceptable uses of HFC-134a be amended. HFC-134a is "cleaning products for removal of grease, flux, and other soils from electrical equipment ~~or electronics.~~" (HCPA).

Response: RI DEM agrees that the language was inadvertently not included. The proposed regulation is intended to align with EPA SNAP 20, therefore we added language to the rule to recognize this situation.

Enforcement Dates

Comment: Suggests Rhode Island would benefit from an updated effective date of July 1, 2022 for retail food refrigeration to ensure its rules achieve high saliency among the refrigeration industry. (AHRI).

Comment: Recommends an enforcement date of July 1, 2022 and no earlier for extruded polystyrene boardstock foam insulation (XPS). (DuPont).

Response: There is not sufficient reasons to extend the compliance period. RI DEM disagrees that there has been insufficient time to prepare for the prohibitions proposed in this regulation. The prohibitions listed in the rule were adopted by EPA in 2015 (Rule 20) and 2016 (Rule 21), after extensive public review, and such prohibitions were in place nationwide until 2019. Therefore, regulated industry was on notice of these prohibitions on a nationwide basis prior to the proposal and subsequent finalization of this rule in the State of Rhode Island.

Comment: Support the use prohibitions in Section 53.6 of the proposed rule for the foam end-use sector and encourages DEM to finalize the regulation the January 1, 2022 as the uniform prohibition date for this category of products. (PIMA).

Response: RI DEM appreciates the support of the prohibited dates as proposed.

Disclosure Statement & Recordkeeping

Comment: Recommends that DEM include a provision in the regulation that expressly permits the use of internet disclosures or written disclosure in lieu of physical labels to ease the burden on manufacturers and to allow for a more effective means of communicating compliance with consumers and regulators. (AHRI).

Response: The disclosure requirements in the proposed regulation were developed in coordination with the U.S. Climate Alliance and are consistent with other jurisdictions pursuing similar prohibitions. The proposed regulation does not expressly permit internet disclosures, but it allows for the use of written disclosures.

Comment: Recommends striking the recordkeeping requirements in Section 53.8; instead support on-product disclosures. Recordkeeping requirements add additional burden to manufacturers that comply with the HFC regulations without providing a meaningful benefit if the product already contains an explicit written disclosure on the product or product label. The entire foam industry must be compliant with the new restrictions by the date the restrictions become effective. The restrictions on products in Table 5 become effective on January 1, 2022. Therefore, on going recordkeeping requirements will not provide DEM novel information that will not already be communicated by the on-product disclosure. (CPI and PIMA).

Response: RI DEM frequently relies on recordkeeping as a mechanism to ensure compliance with regulatory requirements and to establish a record over a period of time. In this case, the requirements were written to align with those already in place in California and other states, so as to not introduce additional requirements on the same entities. RI DEM believes that the recordkeeping requirements will serve to facilitate compliance and enforcement, while not imposing additional requirements beyond those that exist in other states. Therefore, RI DEM did not make revisions to the recordkeeping

requirements in Section 53.8.

Comment: Support that the disclosure statement is required for aerosol products when using any of the HFCs in Section 53.6, Table 2 of the proposed regulation except for the exemptions listed in Section 53.5, Table 1. (HCPA)

Response: RI DEM appreciates the support of the disclosure statement as proposed.

Comment: Support that the disclosure statement and labeling requirements as applicable to polyiso insulation and similarly situated products. Support the disclosure and labeling requirements for foam end uses because they now align with the requirements adopted by other jurisdictions. (PIMA).

Response: RI DEM appreciates the support of the disclosure statement and labeling requirements as proposed.

Decision

It is the decision of the Department to amend the draft Air Pollution Control Regulation, 250- RICR-120-05-53, "Prohibition of Hydrofluorocarbons in Specific End Uses" as indicated in the response to comments above. The final amended regulations are appended to this Decision.

Administrator, Environmental Protection

Date