

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of the Environment**
(DLS Control No. 20-060)

Overview and Legal and Fiscal Impact

The regulations establish prohibitions, record-keeping requirements, and disclosure requirements related to the use of certain hydrofluorocarbons (HFCs) in aerosol propellants, chillers, foam, and stationary refrigeration end-uses. The regulations are based on federal Significant New Alternatives Policy (SNAP) Rules 20 and 21 and are consistent with regulations developed by several other U.S. Climate Alliance (USCA) states.

The regulations present no legal issues of concern.

There is no material fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of the Environment:

Air Quality: Prohibitions on Use of Certain Hydrofluorocarbons in Aerosol Propellants, Chillers, Foam, and Stationary Refrigeration End-Uses: COMAR 26.11.33.01 – .06

Legal Analysis

Background

Federal SNAP Program and Rules 20 and 21

The Environmental Protection Agency (EPA) SNAP program implements section 612 of the Clean Air Act, which requires EPA to evaluate substitutes for ozone-depleting substances to reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. EPA has modified the SNAP lists many times, most often by expanding the list of acceptable substitutes, but in some cases by prohibiting the use of substitutes previously listed as acceptable.

In 2015 and 2016, EPA adopted SNAP Rules 20 and 21, prohibiting or restricting the use of certain HFCs and HFC blends with a higher global warming potential relative to alternatives in specific end-uses. The rules were subsequently challenged in court and parts of the rules were vacated. In *Mexichem Fluor, Inc. v. Environmental Protection Agency*, 866 F.3d 451

(D.C. Cir. 2017) (*Mexichem I*) and *Mexichem Fluor, Inc. v. Environmental Protection Agency*, 760 Fed. App'x. 6 (D.C. Cir. Apr. 5, 2019) (*Mexichem II*), the U.S. Court of Appeals for the District of Columbia Circuit ruled that EPA could not require manufacturers to phase out existing HFC uses, but could block new adoptions of HFCs as replacements for ozone-depleting substances. However, rather than suspend only the parts of the rules that had been vacated, EPA subsequently issued a guidance document suspending Rules 20 and 21 in their entirety; this action was also subject to legal challenge. In April of 2020 the court ruled against EPA in a case brought by the Natural Resources Defense Council and a coalition of states led by New York. The court's 2020 decision restored the prohibition on switching from ozone-depleting substances to HFCs listed in the original SNAP rules.

USCA and Short-Lived Climate Pollutants

USCA is a bipartisan coalition of governors from 24 states, including Maryland, committed to reducing greenhouse gas emissions consistent with the goals of the Paris Agreement. Among other initiatives, USCA has committed to reducing short-lived climate pollutants like HFCs. In the wake of the *Mexichem* decisions, several USCA states (California, Vermont, and Washington) have passed legislation to adopt HFC use limits based on SNAP Rules 20 and 21, while several others (Connecticut, Delaware, Maryland, and New York) have committed to taking regulatory action to do the same. The Maryland Department of the Environment indicates that the proposed regulations will help the State meet its commitments under the Greenhouse Gas Emissions Reduction Act.

Summary of Regulation

The regulations establish prohibition dates for specified HFCs and HFC blends in certain end-uses based on EPA's SNAP Rules 20 and 21 and consultation with other USCA states. The effective prohibition dates range from January 1, 2021 to January 1, 2024, and focus on end-use categories in Table 1 (COMAR 26.11.33.03B): aerosol propellants; air conditioning; refrigeration; and foams. The regulations include a sell-through provision for products and equipment manufactured prior to the prohibition date. The regulations also allow continued use of existing products and equipment that contain banned substances acquired prior to the prohibition dates. Additionally, Table 2 (COMAR 26.11.33.03C) provides a list of exemptions by end-use category, which align with the SNAP rules. Finally, the regulations establish record-keeping, reporting, and disclosure requirements for manufacturers of products and equipment covered by the regulations.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 1-404, 2-103, 2-301 through 2-303, 2-1202, and 2-1205 of the Environment Article as authority for the regulations. Of the statutes cited, §§ 2-301 through 2-303, and 2-1205 are the most relevant. Section 2-301 authorizes the department to adopt rules and regulations for the control of air pollution, including testing, monitoring, record-keeping, and

reporting requirements. Section 2-302 authorizes the department to set emissions standards and requirements for various classes of sources for air emissions for which no national ambient air quality standards have been set. Section 2-303 establishes procedural requirements for the adoption of air quality rules and regulations, including a requirement that the department hold a public hearing before adopting any new rule or regulation. In accordance with this requirement, the department indicates that a virtual hearing on the proposed action will be held on August 17, 2020, at 10 a.m. Finally, § 2-1205 requires the State to develop plans, adopt regulations, and implement programs that reduce statewide greenhouse gas emissions in accordance with the State's Greenhouse Gas Emissions Reduction Act. Subsection (f) of this section prohibits State agencies from adopting regulations requiring greenhouse gas emissions reductions from the State's manufacturing sector "unless required by federal law." It is likely that the regulations comport with this requirement because they are consistent with federal SNAP rules.

The other statutes cited by the department provide more general authority for the regulations. Section 1-404 gives the Secretary of the Environment broad authority to adopt regulations to carry out the provisions of law that are within the jurisdiction of the Secretary, while § 2-103 gives the department "jurisdiction over emissions into the air and ambient air quality in this State." Lastly, § 2-1202 defines terms related to the State's Greenhouse Gas Emissions Reduction Act.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no material fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have minimal impact on State or local governments. The department further notes that existing air compliance inspector staff will enforce the changes under the regulations. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The department further estimates that implementation costs for Maryland manufacturing businesses (cumulatively) are approximately \$20,000 annually over a 20-year span. This estimate is based on nationwide cost estimates developed by EPA to implement the federal regulatory changes the regulations are implementing at the State level. However, the department also notes that these estimated costs are likely somewhat inflated because certain refrigerant equipment manufacturers and foam and aerosol propellant end-use manufacturers are already in

compliance with the regulations due to prior federal regulatory changes (which are discussed above). Finally, the department advises that research conducted while developing the regulations did not identify any small businesses in the State that manufacture stand-alone refrigeration or vending machine equipment, foams, or aerosol propellants.

Based on this information, and the fact that the regulations (1) include a sell-through provision for affected products and equipment manufactured prior to the prohibition date and (2) allow continued use of existing products and equipment that contain banned substances acquired prior to the prohibition dates, the Department of Legislative Services concurs that there is likely only a minimal economic impact on small businesses in the State.

Contact Information

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