


Hydrofluorocarbon Restrictions under the AIM Act

Real Estate Round Table
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The logo for Troutman Pepper, featuring the word "troutman" stacked above "pepper" in a white, lowercase, sans-serif font. To the right of the text is a stylized white icon of a building with a flag on top.

Agenda

- **Introductions**
- **Background about the AIM Act**
- **EPA's HFC Transition Rules**
- **Impacts for Real Estate Stakeholders**
- **Current State of Play / Ongoing Efforts**
- **Questions?**

Introductions



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HFCs and the American Innovation in Manufacturing Act

Hydrofluorocarbons (HFCs)

- Came into widespread use as replacements for ozone-depleting substances (ODS)
- Used in many **residential**, **industrial**, and **commercial** applications, including HVAC and refrigeration
- Climate impacts: hundreds or thousands of times more potent than carbon dioxide

American Innovation and Manufacturing Act of 2020 (AIM Act) (42 U.S.C. § 7675) (bipartisan)

- Passed in response to Montreal Protocol – Kigali Amendment (treaty requiring HFC phasedown)
- Directs EPA to phase down American HFC production and consumption to 15% of baseline levels by 2036
- Three main components:
 - Allowance allocation and trading program
 - HFC release and reclamation program ****pre-publication final rule issued last week****
 - Technology transitions program

Technology Transitions Program Under the AIM Act

- Requires industries to transition to HFC alternatives faster than Congress's 2036 mandate
- EPA targets industry subsectors, conducts notice and comment, and promulgates regulations establishing deadlines for manufacture, import and use of HFCs

Technology Transition for Residential & Commercial HVAC

EPA granted 13 Technology Transition Petitions in Oct. 2021 & Sept. 2022

- These proposed restrictions on HFCs for residential and commercial HVAC and refrigeration, among other things
- EPA carried out notice and comment; commercial building & housing industries largely (if not entirely) left out:
 - North American Industry Classification System (NAICS) Codes used by EPA to identify “potentially affected entities”
 - EPA failed to list:
 - Construction (commercial, institutional, or residential)
 - Architectural services
 - Building inspection services
- Rather, EPA mainly focused on manufacturers, wholesalers, and distributors

The result: No input from real estate development stakeholders and unrealistic installation deadlines



Technology Transition for Residential & Commercial HVAC

Final HFC Phasedown Rule Promulgated October 2023

- For high GWP HFC equipment in the residential and light-commercial A/C and heat pump sector:
 - **Self-contained products and chillers for comfort cooling** with HFCs of GWPs ≥ 700
 - Manufacturing & import deadline = January 1, 2025
 - Sale and distribution deadline = January 1, 2028
 - **Systems** with HFCs of GWPs ≥ 700
 - Component manufacturing & import deadline = January 1, 2025
 - Installation deadline = January 1, 2025
 - **Variable refrigerant flow systems**
 - Installation deadline = January 1, 2026
- Caught developers by surprise; would have resulted in stranded inventory

Interim Final Rule for Residential & Light Commercial A/C and Heat Pump Systems

- EPA extended the installation deadline for A/C and heat pump systems to **January 1, 2026**
- EPA stated it viewed this “as a final rule” during an outreach call in January 2024

Proposed Rule for VRF HVAC systems

- Delays *installation* deadline for new residential and light commercial A/C and Heat Pump VRF Systems that are 65,000 British thermal units per hour or greater (and manufactured in the U.S. or imported prior to January 1, 2026)
 - New Installation deadline = **January 1, 2027**

Variable Refrigerant Flow (VRF) and Variable Refrigerant Volume (VRV) systems

How EPA views this subsector:

“Variable refrigerant flow (VRF) and variable refrigerant volume (VRV) systems are **direct expansion multi-split systems** that incorporate the following:

- a split system air conditioner or heat pump
- incorporating a single refrigerant circuit that is a common piping network to two or more indoor evaporators,
- each capable of independent control, or compressor units.

VRF split systems contain a single module outdoor unit or combined module outdoor units with at least one variable capacity compressor that has three or more steps of capacity, with air or water as the heat source.”

Allegedly more efficient than unitary split systems without VRF.

EPA’s extension for the installation deadline is only for VRF systems that are larger than 65,000 BTU/h and are used for air conditioning.

On-the-Ground Impacts

New residential and light commercial A/C and heat pump systems using an HFC with a GWP ≥ 700 must be installed prior to January 1, 2026

VRF systems using an HFC with a GWP ≥ 700 must be installed prior to January 1, 2027

Impacted players:

- Apartment and multifamily housing industry
- Commercial developers and builders
- Construction, contractors, and investors

Even with another year to install:

- Project designing, planning, and permitting takes years:
 - Complex projects easily can take 3+ years to complete
- Projects already underway based on previously-compliance refrigerants
- Impacts to clients' time, money, and financing

Currently installed equipment can continue to be serviced and repaired until the end of its “useful life”

On-the-Ground Impacts: Time, Money, Project Approvals

- Equipment already purchased may be prohibited by the time it is ready to be installed
- Need to redesign projects and building plans
 - More flammable than legacy HFCs; safety concerns
 - Fire-rated shafts and more ventilation
- Local building codes may not accommodate or allow for lower GPW HFC alternatives
 - Unclear if building materials contemplated by model building codes is deployed in field (i.e., double walled pipes for refrigerant shafts)
- Potentially triggers need for new project or building permits
- Potential contract issues due to cost increases and inability to meet construction deadlines
- May cause significant project delays
- Strains industry's ability to meet need for increased housing stock



Current State of Play: HFC's in EPA's Crosshairs

EPA added HFC enforcement to its National Enforcement Initiatives (Aug. 2023)

On Sept. 6, EPA issued enforcement alert to address illegal import of HFCs into the U.S.

- Next phase is domestic sale and use

EPA has already brought several civil and criminal enforcement actions under AIM Act:

“So far in fiscal year 2024, EPA has completed nine civil settlements to resolve claims of unlawful imports of HFCs. The most recent settlements were against five companies – Clean Venture, Inc., HVAC Services, Liferrafts Incorporated of Puerto Rico, Little Leaf Farms, LLC, and Parker Engineering and Mechanical, Inc.”

The screenshot shows the EPA website's news release page. At the top, the EPA logo and navigation menu are visible. The main heading is "EPA Issues Enforcement Alert to Address Illegal Import of Hydrofluorocarbons into the United States". Below the heading, the text states that EPA is increasing civil and criminal enforcement efforts due to the global phasedown of HFCs. The date is September 6, 2024. Contact information for the EPA Press Office is provided. The main body of the text explains that the U.S. EPA issued an Enforcement Alert regarding its work under the American Innovation and Manufacturing Act (AIM Act) to phase down production and consumption of hydrofluorocarbons (HFCs). It highlights recent civil and criminal enforcement actions and the urgency of the climate crisis. A quote from Assistant Administrator David M. Uhlmann is included. The text also mentions the AIM Act of 2020 and the Kigali Amendment to the Montreal Protocol. Finally, it notes that EPA has completed nine civil settlements to resolve claims of unlawful imports of HFCs in fiscal year 2024.

Current State of Play: Legal Challenges & Advocacy

Challenges related to different aspects of the October 2023 Technology Transitions Rule (D.C. Circuit Court of Appeals)

One Active Case

- *Food Marketplace, Inc., et al v. EPA, et al.*
 - Oral Arguments held Sept. 12

Two Cases on Hold Pending Administrative Rehearing

- *Semiconductor Equipment and Materials International v. EPA*
- *Chemours Company FC, LLC v. EPA*

Industry Comments on Technology Transition Rules:

- December 2023 Interim Final Rule (extended installation deadline for A/C and heat pump systems to January 1, 2026)
 - NMHC commented to raise concerns of multifamily housing industry
 - EPA has not responded to comments on the “Interim Final Rule”
- June Proposed Rule on VRF Systems
 - Multifamily stakeholder comments: Extell; Real Estate Board of NY, Landmark Properties
 - Highlight anticipated impact on developers

Current State of Play: Ongoing Advocacy

Deadline to comment on the VRF Installation Deadline Rule is *Today*

- *Option to submit a simple comment supporting comments of other developers directly through the Federal Register: [EPA Proposed HFC Transition Rule for VRF Systems](#)*

Direct Engagement with EPA

- Potential meeting with EPA to further explain impacts on RER members
- Address open questions, lack of developer industry input, and need for longer runway
- Request more engagement and education
 - Both for already proposed and final rules for new installation and for impacts on existing assets

Current State of Play: Ongoing Advocacy

EPA's Newest Final Rule: Management of Certain HFCs and Substitutes Under the AIM Act

Pre-publication version released Friday, September 20

Requirements address:

- Leak repair for certain refrigerant-containing appliances
- Automatic leak detection systems for certain new and existing commercial and industrial refrigeration appliances;
- A standard for reclaimed HFC refrigerants;
- Servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs (supermarkets, refrigerated transport, automatic commercial ice makers);
- Initial installation, servicing and/or repair of fire suppression equip. with recycled HFCs;
- Recovery of HFCs from disposable cylinders; and
- Recordkeeping, reporting and labeling.

Deadline to challenge Final Rule: **60 days after publication In Federal Register**



Any Questions?