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Via electronic submission

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

Re: Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under Subsection (h) of the American Innovation and Manufacturing Act of 2020
EPA-HQ-OAR-2022-0606

Dear Administrator Regan:

On October 19, 2023, the U.S. Environmental Protection Agency (EPA) published a proposed rule entitled “Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under Subsection (h) of the American Innovation and Manufacturing Act of 2020.”¹ The States of Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, New Jersey, New York, Oregon, Washington, and Wisconsin; the Commonwealths of Massachusetts and Pennsylvania; the District of Columbia; and the City of New York (together, the States) welcome this opportunity to express their strong support for EPA’s proposal.

The proposed rule meaningfully addresses climate harms associated with hydrofluorocarbon (HFC) emissions by imposing a set of common-sense leak detection and repair requirements for equipment in the refrigeration, air conditioning, and heat pump sector; by requiring that certain equipment be charged or serviced with reclaimed refrigerant; and by creating sensible and lawful recovery, identification, and tracking requirements for HFC-containing cylinders. If finalized, the rule would avoid an estimated 142 million metric tons of carbon dioxide-equivalent emissions between 2025 and

¹ See 88 Fed. Reg. 72,216 (proposed Oct. 19, 2023).

2050 while yielding a present-value net benefit of between 6.1 and 7.4 billion dollars.² As with EPA’s recently finalized rule under AIM Act subsection (i), this rule would set predictable nationwide standards for industry while complementing the States’ efforts to reduce greenhouse gas emissions in their respective jurisdictions.

I. Background

A. *The Climate Emergency and HFCs*

As EPA notes in the preamble to the proposed rule, the “well-documented” buildup of HFCs and other greenhouse gases in the atmosphere due to human activity “is changing the climate at a pace and scale that threatens human health, society, and the natural environment.”³ Warming associated with increasing concentrations of greenhouse gases in the atmosphere is “leading to . . . changes in the frequency and intensity of heat waves, precipitation, and extreme weather events; rising seas; and retreating snow and ice.”⁴ These and other climate-related impacts are harming the States’ economies, ravaging our natural resources, and disproportionately affecting our most vulnerable residents.⁵

HFCs are anthropogenic chemicals used in a variety of applications, including as refrigerants in refrigeration, air conditioning, and heat pump systems and in fire suppression equipment. HFCs are potent greenhouse gases that accelerate climate change and endanger public health and welfare.⁶ As EPA notes in the preamble to the proposed rule, some HFCs are thousands of times more climate-forcing than carbon dioxide.⁷ In recent

² *See id.* at 72,219–20.

³ *Id.* at 72,225.

⁴ *Id.*

⁵ *See* Comments of the Attorneys General of California, Delaware, District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, Vermont, Washington, and Wisconsin on the Proposed Rule entitled “Phasedown of Hydrofluorocarbons Under Subsection (i) of the American Innovation and Manufacturing Act of 2020” (States’ Comments on Proposed Technology Transitions Rule) 2–5 (Jan. 30, 2023); *see also Massachusetts v. EPA*, 549 U.S. 497, 523 (2007).

⁶ *See* 74 Fed. Reg. 66,496, 66,497 (Dec. 15, 2009).

⁷ *See* 88 Fed. Reg. at 72,224.

years, HFC use and emissions have grown due both to the phaseout of ozone-depleting substances (for which HFCs are substitutes) and to the increased use of refrigeration and air conditioning globally.⁸ In New York for example, HFC emissions now account for six percent of the state's total greenhouse gas emissions.⁹

Because many commonly used HFCs have a very high global warming potential (GWP) but are relatively short-lived in the atmosphere, near-term reductions in HFC emissions could have a significant impact on global warming. Accordingly, many of the undersigned States have taken steps to reduce HFC emissions as part of their climate change mitigation strategies.¹⁰ But because HFC emissions do not respect state boundaries, a federal approach is critical to avoid piecemeal regulation, facilitate implementation, and promote industry-wide emissions reductions. The States welcome EPA's proposed rule as part of a cohesive framework of regulations designed to reduce supply and demand of climate-polluting refrigerants in an orderly way while minimizing disruptions to industry.

B. The AIM Act and Related Rulemaking

In December 2020, Congress passed the bipartisan American Innovation and Manufacturing Act of 2020 (AIM Act or Act).¹¹ The AIM Act addresses HFC pollution in three main ways: First, the Act requires EPA to phase down HFC production and consumption by 85 percent by 2036 through an allowance allocation and trading program.¹² Second, the Act authorizes EPA to facilitate sector-based transitions to next-generation refrigerant

⁸ *See id.*

⁹ *See* N.Y. Department of Environmental Conservation, 2022 Statewide GHG Emissions Report *v.*, https://extapps.dec.ny.gov/docs/administration_pdf/ghgsumrpt22.pdf.

¹⁰ *See, e.g.*, 310 Mass. Code Regs. § 7.76 (prohibiting the use of HFCs by certain end-users as part of Massachusetts' aggressive strategy to reduce greenhouse gas emissions); N.Y. Comp. Codes R. & Regs. tit. 6, pt. 494 (prohibiting the use of HFCs by certain end-users as part of New York's aggressive strategy to reduce greenhouse gas emissions); Me. Stat. tit. 38, § 1613 (prohibiting certain HFCs); 06-096 Me. Code R. ch. 147 (implementing Maine's statutory prohibition); Md. Code Regs. 26.11.33.03 (prohibiting use of specific HFCs in certain applications).

¹¹ *See* 42 U.S.C. § 7675.

¹² *See id.* § 7675(e)(2).

technologies by “restrict[ing], fully, partially, or on a graduated schedule, the use of a regulated [HFC] in the sector or subsector in which [that chemical] is used.”¹³ Third and of particular relevance here, the Act directs EPA to maximize reclamation and minimize the release of HFCs by regulating, “where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment . . . that involves” HFCs, substitutes for HFCs, or the reclaiming of HFCs or their substitutes.¹⁴ In exercising its authority under subsection (h) of the Act, EPA must consider ways to “increase opportunities for the reclaiming of [HFCs] used as refrigerants” and may “coordinate” its regulatory activities “with any other [EPA] regulations . . . that involve the same or a similar practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment; or reclaiming.”¹⁵

In October 2021, EPA finalized a rule under subsection (e) of the AIM Act establishing baselines for HFC production and consumption, codifying the Act’s HFC phasedown schedule, and establishing methodologies for issuing and trading allowances.¹⁶ In October 2023, EPA finalized a rule under subsection (i) of the Act restricting the use of high-GWP HFCs and blends in the aerosols, foam blowing, and refrigeration, air conditioning, and heat pump sectors.¹⁷ Among other things, the rule prohibits the sale, distribution, or export of equipment using HFCs or HFC blends with a GWP of 700 or more in the residential and light commercial air conditioning and heat pump subsector beginning on January 1, 2028.¹⁸ EPA anticipates that manufacturers in this subsector will transition to lower-GWP refrigerants like R-32 or R-454B.¹⁹

EPA’s proposed subsection (h) rule complements both the Allocation Framework Rule and the Technology Transition Rule by (1) limiting HFC emissions—and boosting reclamation—through a common-sense collection of refrigerant management practices; (2) requiring the use of reclaimed HFCs in new and existing equipment in certain subsectors, thus limiting demand for virgin HFCs and stimulating the reclamation market; and (3) imposing

¹³ *Id.* § 7675(i)(1).

¹⁴ *Id.* § 7675(h)(1).

¹⁵ *Id.* § 7675(h)(2) (cleaned up).

¹⁶ *See* 86 Fed. Reg. 55,116 (Oct. 5, 2021) (Allocation Framework Rule).

¹⁷ *See* 88 Fed. Reg. 73,098 (Oct. 24, 2023) (Technology Transition Rule).

¹⁸ *See id.* at 73,178.

¹⁹ *See id.*

appropriate identification, tracking, and recovery requirements for cylinders. These provisions will reduce harmful HFC emissions while helping to ensure the smooth national phasedown of HFCs under the AIM Act.

II. Comments in Support of the Proposed Rule

As noted above, the AIM Act empowers EPA to address harmful HFC emissions in several ways. In the Allocation Framework Rule, EPA limited HFC pollution by restricting HFC production and consumption—i.e., supply. In the Technology Transition Rule, EPA took the complementary step of limiting demand by, among other things, setting GWP caps for certain sectors or subsectors. Consonant with these efforts, EPA’s proposed subsection (h) rule would further reduce demand for virgin HFCs by, among other things, (1) creating sensible leak detection and repair requirements for equipment in the refrigeration, air conditioning, and heat pump sector; (2) requiring the use of reclaimed refrigerant for new and existing equipment in certain subsectors in the refrigeration, air conditioning, and heat pump sector; and (3) requiring that disposable cylinders be transferred to a reclamation facility for recovery and reclamation of any residual refrigerant. Taken together, these requirements will maximize reclamation and minimize HFC emissions as Congress intended.²⁰

A. Leak Detection and Repair

The States commend EPA for proposing baseline leak detection and repair requirements for equipment using HFCs and their substitutes.²¹ In 2030 alone, the proposed leak detection and repair provisions will, according to EPA’s estimates, prevent greenhouse gas emissions equivalent to removing over 800,000 passenger vehicles from U.S. roads for one year.²² And because

²⁰ See 42 U.S.C. § 7675(h)(1), (2)(A).

²¹ The States note that California and Washington have established refrigerant management programs under state law that include leak detection and repair requirements that are more stringent than those EPA is proposing in this rulemaking. See Cal. Code Regs. tit. 17, § 95380–98; Wash. Rev. Code ch. 70A.60; Wash. Admin. Code ch. 173-443.

²² See 88 Fed. Reg. at 72,219 (citing estimate that leak detection and repair provisions of the proposed rule would prevent 3.8 million metric tons of carbon dioxide equivalent in HFC emissions in 2030 alone); EPA, Greenhouse Gas Equivalencies Calculator, <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>.

these significant emissions reductions come simply from detecting and repairing refrigerant leaks, they are obtainable without any negative impact on system functionality or performance.

Reducing leaks of HFCs and their substitutes will also limit the potential for disruption associated with the phasedown of HFCs under the AIM Act. Many industries—including some, like the heat pump industry, that are critical to efforts to decarbonize the economy—currently rely on HFCs and their substitutes. As domestic supply of HFCs is reduced under the Allocation Framework Rule, preserving the refrigerant already in use will help ease constraints on the market while the reclamation industry evolves and industries adapt to new technologies.

Finally, the States support EPA’s proposed leak detection and repair requirements because they will allow a transition away from the use of high-GWP refrigerants without concomitant increases in the production of HFC substitutes which, while less detrimental to the climate, pose important health and environmental impacts. As the States wrote in comments to EPA on the Technology Transition Rule under subsection (i) of the AIM Act, many of the chemicals used as feedstocks for the production for various HFC substitutes are toxic, and increased production of these substitutes has the potential to increase pollution in already-overburdened communities.²³ To reduce harmful emissions associated with the use of HFCs while also minimizing negative externalities disproportionately affecting overburdened communities, it is imperative that refrigerant already in use remain in use.

The States share comments on various specific provisions of the proposed rule below.

Coverage of Leak Detection and Repair Requirements

EPA proposes to require owners and operators of refrigerant-containing appliances with a full charge of at least 15 pounds of refrigerant to address leaks that exceed the applicable leak rate either by repairing the leak or by retrofitting or retiring the appliance.²⁴ Currently, there is no federal requirement that owners or operators of HFC-containing appliances identify or reduce leaks of these climate super-pollutants. As a result, typical large

²³ See States’ Comments on Proposed Technology Transitions Rule at 22–23.

²⁴ See 88 Fed. Reg. at 72,301.

supermarket refrigeration systems leak an average of 25% of their full charge each year.²⁵ The States support EPA's efforts to reduce these substantial emissions. In fact, the States urge EPA to consider lower leak rate thresholds for commercial refrigeration and industrial process refrigeration equipment.

The States also support EPA's proposal to use a lower charge-size threshold for leak repair requirements than under the section 608 rules.²⁶ This lower threshold will result in more HFC and HFC-substitute leaks being repaired, and will thus minimize releases of harmful emissions and increase the availability of refrigerant for recovery and reclamation.²⁷ The lower threshold is also prudent because, as EPA explains, technological advances since EPA first established refrigerant leak repair requirements in 1993 have led to systems that achieve a comparable cooling capacity with lower charge sizes.²⁸ Many small leaks are no better than one big leak, and lowering the charge-size threshold decreases the incentive for owners and operators to replace one large system with smaller systems to skirt regulatory obligations.

Automatic Leak Detection Requirements

Leak detection is critical because, without it, many leaks of odorless and colorless HFC and HFC-substitute gases go undetected. Therefore, the States support EPA's proposed requirement for automatic leak detection for commercial and industrial refrigeration systems with over 1,500 pounds of refrigerant.

Recordkeeping and Reporting

To implement these important requirements, the States support EPA's proposal to include detailed recordkeeping and reporting requirements. Such requirements are necessary for EPA to effectively assess and enforce compliance with the proposed rule.²⁹

²⁵ See EPA, *Prioritizing Leak Tightness During Commercial Refrigeration Retrofits*, https://www.epa.gov/sites/default/files/documents/GChill_Retrofit.pdf.

²⁶ See 88 Fed. Reg. at 72,237.

²⁷ See *id.*

²⁸ See *id.* at 72,236–37.

²⁹ See *id.* at 72,246.

Exemption for the Residential and Light Commercial Air Conditioning and Heat Pump Sector

EPA proposes to exempt equipment in the residential and light commercial air conditioning and heat pump subsector from its leak detection and repair requirements.³⁰ The States support the exemption for small systems but question its appropriateness for larger systems. With respect to small systems, the States note that a significant expansion of the use of heat pumps for (at least) space conditioning is part of many of the States' climate action plans.³¹ Exempting individuals from liability for failing to detect and repair leaks in residential heat pump systems should aid (or at least not inhibit) uptake of this important technology. While the States therefore support the proposed exemption as applied to heat pumps used for residential space conditioning, we suggest that EPA revisit this issue as improved leak detection solutions become available and cost-effective.

The States question whether the proposed exemption should apply to larger systems. While we understand that many residential air conditioning and heat pump systems have a charge size below 15 pounds, the proposed exemption would also encompass larger, more leak-prone variable refrigerant flow (VRF) systems. EPA should consider limiting the proposed exemption and applying the proposed leak detection and repair requirements to larger VRF or similar systems.

Chronically Leaking Appliances

EPA proposes additional reporting requirements for appliances found to be chronically leaking.³² The States support EPA's proposal and agree that chronically leaking appliances warrant special attention to timely minimize continued emissions. Further, the additional data collected from chronically leaking appliances will allow EPA to assess reoccurring leak-causing issues and to take steps to mitigate those deficiencies, reducing overall emissions.³³

³⁰ *See id.* at 72,238.

³¹ *See, e.g.,* Mass. Gen. Laws ch. 8, § 100 (2021). *An Act Creating a Next Generation Roadmap for Massachusetts Climate Policy* mandates the administration of a heat pump market development program to expand use of efficient heat pump technology.

³² *See* 88 Fed. Reg. at 72,244.

³³ *See id.* at 72,245.

EPA requests comment on the appropriate reporting threshold for chronically leaking appliances.³⁴ While the States appreciate that EPA seeks to avoid applying these requirements to appliances that unavoidably lose their full refrigerant charge, we support lowering the reporting threshold for leaking appliances from 125% to 110%.

GWP Threshold for Leak Repair Requirements

EPA requests comment on whether it has set an appropriate GWP threshold for leak repair requirements to take effect. The States urge EPA to consider omitting any GWP threshold for non-natural substitute refrigerants. Minimizing releases of *all* refrigerants decreases emissions and increases the availability of refrigerant necessary to charge and service heat pumps and other equipment.

B. Use Requirements for Reclaimed HFCs

The States applaud EPA for proposing national requirements for the use of reclaimed HFCs in new and existing equipment in certain key subsectors in the refrigeration, air conditioning, and heat pump sector. Taken together, these requirements will significantly increase HFC recovery and reclamation rates, in turn lessening HFC emissions, reducing environmental harm, and smoothing the AIM Act's HFC phasedown.

As EPA notes, the AIM Act authorizes the agency to regulate “any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment . . . that involves” HFCs or their substitutes or the reclaiming of HFCs or their substitutes used as refrigerants.³⁵ Using that authority, and in view of Congress’s directive to maximize the reclamation of HFCs,³⁶ EPA proposes to require that certain new equipment be initially charged with reclaimed HFCs³⁷ and that certain existing equipment be serviced or repaired using reclaimed HFCs.³⁸ The initial-charge rule would apply to equipment in the residential and light commercial air conditioning and heat pump subsector (among others), which is the subsector with the

³⁴ *See id.* at 72,244–45.

³⁵ 42 U.S.C. § 7675(h)(1); *see* 88 Fed. Reg. at 72,252.

³⁶ *See* 42 U.S.C. § 7675(h)(1).

³⁷ *See* 88 Fed. Reg. at 72,255–58.

³⁸ *See id.* at 72,258–59.

greatest projected demand for HFCs in 2028.³⁹ The service-or-repair rule would apply to equipment in the supermarket systems and refrigerated transport subsectors (among others), which together make up nearly the entirety of the projected service- and repair-related demand for HFCs in 2028.⁴⁰ While the proposed rule rationally targets subsectors with the greatest projected demand in 2028, the States encourage EPA to extend the initial-charge and service-or-repair requirements to additional subsectors and/or equipment in the refrigeration, air conditioning, and heat pump sector as adequate supplies of reclaimed HFCs become available.

The States generally support EPA’s proposed requirement that reclaimed HFC refrigerants contain no more than 15 percent virgin HFCs by weight.⁴¹ The AIM Act and EPA’s implementing regulations define the terms “reclaim” and “reclamation” to mean “the reprocessing of a recovered regulated substance” to a specific purity standard, as verified using a specific analytical methodology.⁴² As EPA recognizes, this definition leaves open the possibility that large amounts of virgin HFCs could be sold into the U.S. market as “reclaimed” simply by adding small amounts of reclaimed HFCs.⁴³ Such a practice, if allowed, could lessen incentives for recovery and reclamation, increase emissions of virgin HFCs, and discourage reclaimers from investing in the advanced technologies necessary to ensure an adequate supply of reclaimed HFCs in the future.⁴⁴ By capping the virgin component of reclaimed HFCs at 15 percent by weight, EPA avoids this potential loophole while still allowing for the necessary rebalancing of certain HFC blends as a part of the reclamation process.⁴⁵ The States question, however, whether the 15-percent rule is appropriate as applied to single-component refrigerants, for which blending is unnecessary.

³⁹ See Updated Draft Report—Analysis of the U.S. Hydrofluorocarbon Reclamation Market: Stakeholders, Drivers, and Practices 28 (Sept. 2023) (Reclamation Report).

⁴⁰ See *id.* at 29.

⁴¹ See 88 Fed. Reg. at 72,253–54, 72,306.

⁴² See 42 U.S.C. § 7675(b)(9); 40 C.F.R. § 84.3.

⁴³ See 88 Fed. Reg. at 72,254.

⁴⁴ See Christina Theodoridi et al., *The 90 Billion Ton Opportunity: Lifecycle Refrigerant Management* 14 (2022), <https://us.eia.org/wp-content/uploads/2022/10/Refrigerant-Lifecycle-FullReport-6Spreads-PRINT.pdf> (LRM Report).

⁴⁵ See Reclamation Report at 33, 40.

The States note that EPA is proposing to define “virgin” HFCs as those (other than the recoverable heel in disposable cylinders) having had no bona fide use in equipment.⁴⁶ EPA proposes this definition to avoid a situation where new HFCs are briefly introduced into equipment and then recovered as “used.”⁴⁷ EPA’s proposal addresses another potential loophole in the regulatory structure and the States support it. The States also support EPA’s proposed certification and recordkeeping requirements, which should support the use requirements in the proposed rule, aid enforceability, and help to ensure that HFC refrigerants marketed as reclaimed are what they purport to be.

More broadly, the States strongly support EPA’s proposal to require the use of reclaimed HFCs in certain new and existing equipment beginning in 2028. By requiring the use of reclaimed HFCs in several key subsectors in the refrigeration, air conditioning, and heat pump sector, the proposed rule will send a strong market signal in favor of increased reclamation. Increasing reclamation (a goal of subsection (h)) will reduce HFC emissions (also a goal of subsection (h)), including by lessening the likelihood that HFC refrigerants will be illegally vented.⁴⁸ As the supply of virgin HFCs dwindles under the AIM Act’s phasedown, increasing availability of reclaimed HFCs will reduce disruption by enabling the continued use of legacy equipment.⁴⁹ And because the proposed use requirements apply only to HFCs (and not their substitutes), the States note EPA’s approach could encourage certain users to transition away from HFCs altogether.

In their comments on the Technology Transition Rule, the state commenters noted that many states have passed laws, promulgated rules, or adopted policies designed to dramatically reduce HFC and other greenhouse gas emissions.⁵⁰ To obtain these needed reductions, many states will encourage rapid, widespread adoption of climate-friendly heating and cooling technologies, including air- and ground-source heat pumps.⁵¹ The now-final

⁴⁶ See 88 Fed. Reg. at 72,233, 72,253, 72,300, 72,306.

⁴⁷ See *id.* at 72,233.

⁴⁸ See LRM Report at 9.

⁴⁹ See 88 Fed. Reg. at 72,235; Reclamation Report at 27.

⁵⁰ See States’ Comments on Proposed Technology Transitions Rule at 6–9, 13.

⁵¹ For example, New York estimates New Yorkers will need to install heat pumps in up to two million homes by 2030. See N.Y. Climate Action

Technology Transition Rule facilitates the transition to lower-GWP refrigerants in the residential and light commercial air conditioning and heat pump subsector by prohibiting the use of HFCs or HFC blends with a GWP of 700 or higher.⁵² The States understand that equipment in this important subsector will likely transition to R-32 or the R-32-containing blend R-454B,⁵³ and that R-32 can be reclaimed from recovered R-410A, itself equal parts R-32 and R-125. Because widespread adoption of heat pump technology for building heating and cooling is crucial to many states' climate objectives, the States support EPA's efforts to stimulate the reclamation market, thereby increasing the likelihood that lower-GWP reclaimed refrigerants will become available for use in space-conditioning heat pumps. As EPA notes, using reclaimed HFCs in (among other things) heat pumps will avoid the negative environmental consequences of using newly produced HFCs,⁵⁴ which in any event would be contrary to the AIM Act's phasedown and emissions-reduction objectives. The States additionally support requiring the use of reclaimed refrigerant in non-space-conditioning heat pumps, including those used in hot water heaters, clothes dryers, and pool and spa heaters.

C. Cylinder and Container Requirements

The States support proposed requirements relating to the recovery of residual HFCs in disposable cylinders and the identification and tracking of containers. Taken together, these requirements will maximize reclamation and reduce HFC emissions while helping to ensure both compliance with the proposed rule's other requirements and the safety of equipment users and technicians.

EPA is proposing to require that disposable HFC-containing cylinders used for the servicing, repair, or installation of refrigerant-containing equipment or fire-suppression equipment be transported to an EPA-certified

Council, Scoping Plan Final Report 123 (2022), <https://climate.ny.gov/-/media/project/climate/files/NYS-Climate-Action-Council-Final-Scoping-Plan-2022.pdf>. In support of its decarbonization efforts, New York has prohibited the installation of new fossil fuel infrastructure in many new buildings beginning in 2026 and in all new buildings beginning in 2029. See N.Y. Energy Law § 11-104(6)(b). This would result in a significant increase in the use of heat pumps to provide space conditioning in New Yorkers' homes and businesses.

⁵² See 88 Fed. Reg. at 73,178.

⁵³ See Reclamation Report at 28.

⁵⁴ See 88 Fed. Reg. at 72,256.

reclamation facility or recycler for recovery and reclamation or recycling of residual refrigerant.⁵⁵ EPA notes that disposable cylinders are commonly used in the servicing or repair of equipment in the refrigeration, air conditioning, and heat pump sector and that such cylinders commonly retain up to 10 percent of their charge even when considered empty for purposes of servicing, repair, or installation of equipment.⁵⁶ This residue or “heel” is typically released upon disposal.⁵⁷ Accordingly, EPA’s proposed reclamation requirement will both maximize reclamation of HFCs and minimize HFC emissions associated with the disposal of partially filled disposable cylinders.

The States agree with EPA that it has authority under subsection (h) to impose this requirement: reclamation of residual HFCs from disposable cylinders used in the servicing, repair, or installation of equipment comes within EPA’s clear authority to “control . . . any practice, process, or activity *regarding* the servicing, repair, disposal, or installation of equipment” involving HFCs or the reclamation of HFCs, especially where the effect of the regulation would be to “increase opportunities for the reclaiming of [HFCs] used as refrigerants.”⁵⁸

The States also support EPA’s proposed container identification and tracking requirements. These provisions would aid compliance and enforceability by helping to ensure that technicians know what substances they are using and that the substances meet all technical and regulatory requirements.⁵⁹ As applied to disposable cylinders, the requirements would help to ensure that residual HFCs are properly transferred to reclaimers or recyclers for recovery and reclamation or recycling rather than lost at the time of disposal. And while technicians are subject to existing training and

⁵⁵ *See id.* at 72,265–66.

⁵⁶ *See id.* at 72,266–67.

⁵⁷ *See id.*

⁵⁸ 42 U.S.C. § 7675(h)(1), (2)(A) (emphasis added). As EPA notes in the preamble, *Heating, Air Conditioning & Refrigeration Distributors Int’l v. EPA* is not relevant here. *See* 88 Fed. Reg. at 72,266. While the District of Columbia Circuit invalidated certain provisions in the Allocation Framework Rule relating to QR codes and disposable cylinders, the court’s decision turned on the scope of EPA’s authority under a wholly different part of the AIM Act. *See Heating, Air Conditioning & Refrigeration Distributors Int’l v. EPA*, 71 F.4th 59, 66 (D.C. Cir. 2023) (analyzing the scope of EPA’s authority under 42 U.S.C. § (e)(2)(B)).

⁵⁹ *See* 88 Fed. Reg. at 72,269.

certification requirements (which EPA should consider strengthening), the anticipated increase in the use of A2L refrigerants like R-32 and R-454B underscores the need, for safety reasons, to ensure that technicians, owners and operators, and others using or transporting refrigerants understand what substances they are using or transporting.⁶⁰

The States appreciate the opportunity to comment on this important rulemaking.

Respectfully submitted,

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⁶⁰ See Reclamation Report at 38–39.

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