Consultation document: Review of the *Ozone-depleting Substances and Halocarbon Alternatives Regulations*

1. Purpose

Environment and Climate Change Canada (ECCC) is undertaking a review of the *Ozone-depleting Substances and Halocarbon Alternatives Regulations* (the Regulations), following ECCC's regulatory stock review plan.

This review is done in accordance with the Cabinet Directive on Regulation which sets out the Government of Canada's expectations and requirements for developing, managing and reviewing federal regulations. It requires departments and agencies to regularly review existing regulations, including technical guidance and other associated policies. The purpose of the review is to ensure that regulations continue to be appropriate, effective and achieve their intended policy objectives, while also considering the impacts and burden of regulations on impacted stakeholders.

As part of the review, departments and agencies should conduct consultations with external stakeholders. The comments received during this consultation will be considered when making the recommendation with respect to the regulations. Possible recommendations include:

- the regulations are working as intended and no changes are necessary;
- certain elements of the regulations could be improved and amendments are recommended;
- the regulations are no longer necessary or could be replaced with another instrument.

Information on the consultation process and how to provide comments is provided in **Section 4.**

2. Background

2.1 Montreal Protocol on Substances that Deplete the Ozone Layer

The Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) is the international environmental agreement that controls the production and consumption of ozone depleting substances (ODS) and hydrofluorocarbons (HFCs). Although HFCs do not deplete the ozone layer, they are often used as replacement for ODS and are powerful greenhouse gases (GHGs) with a global warming potential (GWP) that can be hundreds to thousands of times more potent than carbon dioxide (CO_2). The Kigali Amendment to the Montreal Protocol added HFCs to the list of controlled substances. Canada is a Party to the Montreal Protocol and has ratified the Kigali Amendment. As a Party, Canada is legally obligated implement the agreement to phase out ODS and phase down HFCs according to the terms of the Montreal Protocol.

2.2 Description of the Regulations

The Regulations implement Canada's obligations under the Montreal Protocol to phase out ODS, and the phase-down of HFCs under the Kigali Amendment.

The Regulations implement the phase-down of HFCs by progressively decreasing the supply of HFCs that enter Canada and by reducing the demand for HFCs in manufactured products. The phase-down of HFCs will thereby avert future HFC releases to the environment and contributes towards Canada's efforts to combat climate change.

In addition to progressively reducing the supply of HFCs that can be imported into Canada, the Regulations control the import and manufacture of certain products, including:

- aerosol products where HFCs are used as a propellant;
- foam products where HFCs are used as foaming agents;
- refrigeration or air conditioning equipment where HFCs are used as refrigerants.

The manufacture and import of products containing ODS are generally prohibited.

2.3 Previous amendments

The *Ozone-depleting Substances and Halocarbon Alternatives Regulations* came into force on December 29, 2016. It replaced the *Ozone-depleting Substances Regulations, 1998*. The Regulations were amended in 2017 to introduce the phase-down of HFCs and to add controls on certain products containing them. A minor amendment followed in 2020 to make a correction to the Regulations.

3. Key issues

ECCC identified the following key issues for which ECCC is seeking stakeholder input on.

- HFC phase-down
- Product controls
- New uses for HFCs
- Administrative burden and other issues

The content and questions for each key issue identified aim to solicit feedback on different aspects of the Regulations. Your feedback may describe observations on current or potential impacts of the Regulations. It may also include suggestions on aspects to consider in the administration of the current regulations or for future amendments to the Regulations.

ECCC is seeking feedback on the Regulations' effectiveness to control halocarbons and products containing or designed to contain them. ECCC may also look at opportunities for regulatory improvement, at contributions to the protection of the environment and at identifying unforeseen challenges with complying with the Regulations. Your feedback may address some or all the key issues identified as well as other issues related to the Regulations.

3.1 HFC Phase-down

The phase-down of HFCs applies to new substances, found alone or in a mixture, and began on January 1, 2019 with a 10% reduction of consumption compared to Canada's consumption baseline[1] level, calculated in tonnes of CO_2 equivalent. Since January 1, 2024, the annual HFC consumption reduction stands at 40% of the baseline level. The next reduction step will begin on January 1, 2029, with a reduction of 70% of the baseline level. The final HFC phase-down step is an 85% reduction from baseline which will take place on January 1, 2036.

The phase-down schedule is in place to meet Canada's obligations under the Kigali Amendment to the Montreal Protocol. Eligible companies are informed of their annual consumption allowance from ECCC each year. The Regulations provide for allowance holders to request a transfer of their HFC allowance, in whole or in part, to other companies.

Since the onset of the HFC phase-down in 2019, Canada's reported HFC consumption has consistently been lower than the maximum level authorized through consumption allowances. A key goal of the regulatory review is to ensure the Regulations can maintain environmental gains made to date to ensure compliance with the phase-down schedule. The import of used, recovered, recycled or regenerated (URRR) HFCs fall outside of the allowance system and does not require an HFC allowance. However, an import permit issued under the Regulations is required. Since the beginning of the HFC phasedown, imports of URRR HFCs into Canada have been negligible but may increase in the future, thereby negating environmental gains made under the phase-down of new HFCs. It has been noted that in other jurisdictions, processes associated with the distribution and transfer of HFC allowances support decreases to total HFC consumption and prevent roll back of environmental phase-down gains already made.

During the regulatory review, consideration will be given to potential impact of mechanisms such as:

- preventing allowance transfers between industry sectors;
- accounting for URRR HFCs in the allowance system;
- retirement of a portion of the allowance when transfers occur.

QUESTIONS:

1. **Would you foresee market supply challenges if the import of used, recovered, recycled and reclaimed HFCs were included as part of the phase-down calculations?**

2. **What factors should be assessed when considering measures to restrict transfers of HFC allowances between sectors?**

[1] The Canadian HFC consumption baseline was calculated using average HFC annual consumption between 2011 and 2013 plus a 15% HCFC component equivalent. The baseline is 18 008 795 tonnes of CO_2 equivalent.

3.2 Controls on products containing HFCs and ODS

3.2 a) State of technology

The last significant amendment to the Regulations was in 2017 and since then, notable progress has been made towards the adoption of lower GWP alternatives across the main sectors known to use HFCs such as refrigeration/air conditioning, foams, and aerosols, including metered dose inhalers.

ECCC intends to examine new technologies available for products containing or designed to contain HFCs to ensure that the Regulations can continue to effectively manage HFCs. The regulatory review will consider potential scenarios to further control the import and manufacture of all products containing HFCs to ensure the successful and sustainable HFC phase-down target of 85% reduction from baseline by 2036.

The assessment of technology may consider additional product controls such lower GWP limits for specific products or more broadly across sectors, such as establishing maximum GWP limit for all refrigerants. Further product restrictions in the longer term for product transition may be considered, such as proposing further GWP limits at the later stage of the HFC phase-down.

3.2 b) Regulations in other jurisdictions

Regulations addressing HFCs in the United States, the European Union and in Canada are conceptually similar, and focus on implementing an HFC phase-down supported by prohibitions on certain products containing HFCs. However, other jurisdictions have recently published regulations or proposed regulations that include control measures on products containing HFCs that are not currently controlled in Canada or have stricter measures on products that are controlled in Canada.

Certain stakeholders expressed views that regulatory alignment with the USA may encourage a fair market access for lower-GWP products and could prevent the higher-GWP products from being imported into Canada. It is the Government of Canada's policy "to assess opportunities for cooperation with other jurisdictions, domestically and internationally, on regulations […]. This includes examining alignment of regulatory approaches and outcomes with key trading partners, to reduce the regulatory burden on Canadian business, while maintaining or improving the health, safety, security, social and economic well-being of Canadians, and protecting the environment."[2]

The regulatory review will assess the differences between regulations across various jurisdictions with a view to identify key elements of possible regulatory alignment and longer-term targets for low-GWP alternatives for products containing or designed to contain HFCs.

3.2 c) Uses and definitions

The regulations provide for certain exceptions on product controls across various products containing or designed to contain ODS and HFCs. These exceptions may apply to specific types of products, such as specialty aerosols, or for certain uses such as for personal use.

[2] Cabinet Directive on Regulation - Canada.ca, section 4.2.

In most cases, products relying on ODS have been replaced with alternatives that use non-ozone depleting substances. The Regulations generally restrict the import and manufacture of products containing or designed to contain ODS and in some instances also restricts their export.

ECCC is aware that alternatives are now available for some of the product exceptions listed in the Regulations. The regulatory review will assess the existing product exceptions to ensure they are not unnecessarily delaying the introduction of alternatives with lower climate impact. ECCC will gather information about applications that may still require the import or manufacture of a product containing ODS. Consideration will also be given to additional controls on the export of products containing or designed to contain ODS and HFCs.

Since the introduction of controls on products containing HFCs, there has been significant expansion in uses for HFC refrigerants in heat pump applications across a range of products such as residential and commercial space heating, water heating and others. As these products are often designed to contain HFC refrigerants, ECCC will assess the product definitions used in the Regulations to ensure they clearly categorize all types of equipment.

QUESTIONS:

3. **The current Regulations do not control all types of products that contain HFCs, the addition of controls on products containing HFCs including refrigeration, air conditioning and heating equipment, aerosols, foams and fire extinguishing equipment is being considered. Are you aware of product types that have no known alternatives to HFCs?**

4. **Longer term GWP targets for product controls may be considered to support long term HFC phase-down objectives. What technical barriers would prevent adoption of very low GWP alternatives to HFCs in the refrigeration and air conditioning sectors and how much time would be needed to transition to very low GWP alternatives?**

5. **The regulations control products across sectors and include definitions for many product types. Given the common use of HFCs in a number of applications in the refrigeration and air conditioning, foams, aerosol and other sectors, how could product definitions be improved and/or standardized to ensure clarity regarding to which products specific controls apply?**

6. **Are exceptions for specialized aerosol products that are currently listed under subsections 64.6(2) and (3) still necessary? If so, which ones in particular?**

3.3 New and specialized uses of HFCs

To ensure that HFCs continue to be adequately controlled in Canada, ECCC would like to collect information on new and specialized uses of HFCs that are not replacing an ODS. Known uses of HFCs include, as a refrigerant, as a foaming agent, as a propellant, as feedstock and for laboratory/analytical use.

ECCC has been made aware in recent years that HFCs may be used for other specialized purposes. ECCC is gathering information about other possible uses and the processes involved.

QUESTION:

7. Do you have information on new or specialized uses of HFCs, in Canada or elsewhere, that fall outside the known uses identified above?

3.4 Administrative burden and other issues

Administrative aspects of the Regulations include the different processes where information is exchanged between ECCC and the public. They include:

- Permit or allowance transfer applications;
- Annual consumption allowances;
- Annual reporting.

Current administrative mechanisms continue to allow for the adequate administration of the Regulations. However, ECCC will examine the administrative aspects of the Regulations to ensure they are effective and do not create unintended or unnecessary barriers or burden for the regulated community.

QUESTIONS:

8. What could facilitate the permit, allowance transfer or annual reporting processes?

9. Have you experienced unexpected or unintended administrative barriers or burden as a regulated entity under the Regulations?

Stakeholders are invited to provide comments on other aspects of the regulations, with a view to improve the effectiveness of the regulations in achieving their stated objectives.

For example:

- Are you responding as a member of the public or on behalf of a business or other organization?
- How could the Regulations better support innovation and the development and use of new technologies or best practices?
- Are you satisfied with the information you receive from ECCC about the requirements under these Regulations?
- How could ECCC improve its outreach to regulated or interested parties?

- What improvements could be made with respect to the compliance or administrative aspects of the Regulations to reduce the burden on businesses (especially to small businesses) while still ensuring environmental protection?
- Are there any unintended impacts (positive or negative) of the regulations that ECCC should be made aware of?
- What aspects of the Regulations not discussed in the present document could improve their clarity?

ECCC welcomes any other comments related to ways to further improve and modernize the Regulations.

4. Providing feedback and contact information

You are invited to provide feedback and perspectives on the key issues described in section 3, or any other issue related to the Regulations, by August 9, 2024.

You may wish to use the list of consultation questions that are summarized in Annex I to provide your feedback.

Please use the email or mailing address below to send your comments or questions, or if you wish to be added/deleted from our mailing list to receive information related to the Regulations. Please indicate "ODSHAR Review" in the subject line of your message.

Email: halocarbures-halocarbons@ec.gc.ca
Mailing address:
Ozone Layer Protection Programs
Environment and Climate Change Canada
351 St. Joseph Blvd., 19th floor
Gatineau QC K1A 0H3

ECCC welcomes the distribution of this document to other potential interested parties.

5. Next Steps

The key targets for the review of the *Ozone-depleting Substances and Halocarbon Alternatives Regulations* are outlined below:

- Interested parties are welcome to provide feedback on this document by August 9, 2024.
- ECCC will review and take into consideration all comments received in response to this consultation.
- The recommendation resulting from the review and a brief summary of stakeholder feedback is planned to be published on ECCC's regulatory stock review plan once the review is completed.

Annex 1: Summary of questions for feedback on key issues for the Regulations

The questions in this Annex are the same as those in the consultation document and are intended to help guide the readers to provide their feedback related to the Regulations. However, participants do not need to limit their comments to these questions only.

List of questions:

1. Would you foresee market supply challenges if the import of used, recovered, recycled and reclaimed HFCs were included as part of the phase-down calculations?

2. What factors should be assessed when considering measures to restrict transfers of HFC allowances between sectors?

3. The current Regulations do not control all types of products that contain HFCs, the addition of controls on products containing HFCs including refrigeration, air conditioning and heating equipment, aerosols, foams and fire extinguishing equipment is being considered. Are you aware of product types that have no known alternatives to HFCs?

4. Longer term GWP targets for product controls may be considered to support long term HFC phase-down objectives. What technical barriers would prevent adoption of very low GWP alternatives to HFCs in the refrigeration and air conditioning sectors and how much time would be needed to transition to very low GWP alternatives?

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6. Are exceptions for specialized aerosol products that are currently listed under subsections 64.6(2) and (3) still necessary? If so, which ones in particular?

7. Do you have information on new or specialized uses of HFCs, in Canada or elsewhere, that fall outside the known uses identified above?

8. What could facilitate the permit, allowance transfer or annual reporting processes?

9. Have you experienced unexpected or unintended administrative barriers or burden as a regulated entity under the Regulations?

10. Are you responding as a member of the public or behalf of a business or other organization?

11. How could the Regulations better support innovation and the development and use of new technologies or best practices?

12. Are you satisfied with the information you receive from ECCC about the requirements under these Regulations?

13. How could ECCC improve its outreach to regulated or interested parties?

14. What improvements could be made with respect to the compliance or administrative aspects of the Regulations to reduce the burden on businesses (especially to small businesses) while still ensuring environmental protection?

15. Are there any unintended impacts (positive or negative) of the regulations that ECCC should be made aware of?

16. What aspects of the Regulations not discussed in the present document could improve their clarity?