

## **Summary**

### *Barrasso-Carper-Kennedy Amendment*

#### **1. Overview**

- Chairman Barrasso and Ranking Member Carper of the Senate Environment and Public Works Committee and Senator Kennedy reached an agreement in early September 2020 on the American Innovation and Manufacturing Act (AIM Act) (S.2457).
- Under the agreement, a revised version of the AIM Act has been filed as the Barrasso-Carper-Kennedy amendment to the Murkowski-Manchin energy bill (American Energy Innovation Act, S. 2657).
- The changes in the amendment primarily reflect concerns by smaller users of HFCs raised during the Environment and Public Works Committee hearing process in March 2020.
- These changes are generally minor and are not expected to change in any fundamental way the core programs and objectives of the bill – e.g., the phase down of HFC production and consumption to 15 percent of the baseline by 2035 and the ability of EPA to restrict the use of HFCs on a sector-by-sector basis.
- The changes are summarized below. In addition to these changes, the bill text has been reorganized to a considerable degree, meaning virtually all cross references and section numbers are different.

#### **2. Findings and Sense of Congress**

- The amendment strikes the findings and Sense of Congress.

#### **3. Essential Use Exceptions**

- Essential use exceptions can now be granted upon date of enactment, instead of beginning in 2034.
- In granting an essential use exception, in addition to the criteria in the original bill, EPA also must consider overall economic costs and environmental impacts as compared to historical trends, whether safe and feasible substitutes are available, and whether the entity seeking the essential use exception is able to secure an adequate supply of HFC in the market.
- The production and consumption used to fulfill an essential use exception are subject to the overall phase down and must be covered by allowances, which will be allocated by EPA solely for purposes of fulfilling essential use exceptions.
- In addition to any other essential use exception EPA may grant, the amendment designates the following as statutory or “mandatory” essential use exceptions: propellant in metered-dose inhalers; defense sprays; structural composite preformed polyurethane foam for marine use and trailer use; the etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the

semiconductor manufacturing sector; mission-critical military end uses, such as armored vehicle engine and shipboard fire suppression systems and systems used in deployable and expeditionary applications; and onboard aerospace fire suppression.

- For these statutory essential uses, the amendment directs EPA to allocate allowances to cover production and consumption for these uses, based on projected, current, and historical trends.

#### **4. Accelerated Schedule**

- EPA can only propose changes to the phase down schedule in response to a petition, and no petition may be granted before 2025.
- In proposing any change to the schedule, EPA must ensure sufficient quantities of HFCs will exist to service any essential use exceptions currently in place.
- Any proposed change to the schedule is limited to current consumption levels, based on the prior year's data. This means the schedule can only change to reflect prevailing market conditions – i.e., if the original phase down schedule is 30 percent of the baseline and current consumption levels are 25 percent of the baseline, the schedule can only be changed up to 25 percent of the baseline and not to a percentage less than 25 percent.
- In addition to the criteria already in the original bill, EPA must consider overall economic costs and environmental impacts as compared to historic trends.

#### **5. Management of Regulated Substances**

- As with the House version of the bill, foams are now exempt from the provisions of this subsection.
- The amendment authorizes the appropriation of \$5 million per year for three years following enactment for grants for small businesses for the purpose of new specialized equipment for recycling, recovery, or reclaim of HFC substitutes, including approved refrigerant recycling equipment (as defined in CAA Sec. 609(b)) for recycling, recovery, or reclaim in the service or repair of motor vehicle air conditioning systems.

#### **6. Technology Transitions**

- In reviewing a petition or carrying out a rulemaking restricting the use of a regulated substance in a sector or subsector, EPA is required to consider the best available data, availability of substitutes, overall economic costs and environmental impacts as compared to historic trends, and other criteria such as consumer costs, building codes, appliance efficiency standards, contractor training costs, and other relevant factors, including quantities of HFCs available from reclaim and prior production and import and the time remaining in the phase down period.
- Rules under this subsection cannot take effect before one year from the date the final rule is issued.

- Rules under this subsection also do not apply to applications currently under essential use exceptions or a “retrofit” application or existing equipment – i.e., the use restrictions can only apply to products manufactured after the effective date.

## **7. Relationship to Other Laws**

- For a five-year period beginning on the date of enactment, state laws involving the management or use of an HFC in the statutory essential uses are preempted, with this period extendable for up to an additional five years.