

EU F-Gas Regulation Guidance

Information Sheet 17: F-Gas Producers, Importers and Exporters

Target audience for this Information Sheet

This information sheet is aimed at organisations that are producers, importers and exporters of bulk F-Gases.

1. Background

This guidance is for organisations affected by the 2014 EU F-Gas Regulation (517/2014). The F-Gas Regulation creates controls on the use and emissions of fluorinated greenhouse gases (F-Gases) including HFCs, PFCs and SF₆. The 2014 EU F-Gas Regulation replaces the 2006 Regulation, strengthening all of the 2006 requirements and introducing a number of important new measures.

A crucial aspect of the 2014 Regulation is the introduction of the phase down in the supply of HFCs within the EU market. The phase down process has a significant impact on those companies that produce, import or export bulk HFCs. This Information Sheet provides guidance on new requirements that affect the bulk F-Gas supply industry in the EU.

A wide range of further guidance is available for other aspects of the EU F-Gas Regulation – see Information Sheet 30 for a full list and a glossary of terms.

2. The HFC Phase Down Process

A key feature of the 2014 F-Gas Regulation is the introduction of a phase down in the quantity of HFCs than can be placed on the EU market. The proposed phase down will lead to a 79% cut in current levels of HFC sales by 2030. This is a very significant cut and requires strong controls on the companies that place bulk supplies of HFCs on the EU market.

The phase down process is described in detail in Information Sheet 28. Key features are:

- a) It is a phase down not a phase out. 21% of current sales can be placed on the market after 2030.
- b) It is based on a “GWP¹-weighted” process, which will encourage the rapid phase down of the highest GWP HFCs.
- c) The phase down is based on a series of cuts in supply from a “baseline”, which is the average consumption of HFCs on the EU market during the years 2009 to 2012. The baseline amount is 183 million tonnes CO₂ equivalent.
- d) A quota system will be introduced to control sales in the EU market. The quota system will affect all HFC producers, importers and exporters.
- e) There are comprehensive annual reporting requirements so that the European Commission can monitor and control the phase down.
- f) There are a number of exemptions from the phase down.
- g) The quota system is based on control of bulk HFC production, import and export. There are additional controls for import of pre-charged products.

¹ GWP, Global Warming Potential: see Information Sheet 25 for details about GWP

3. The HFC Phase Down Regulations

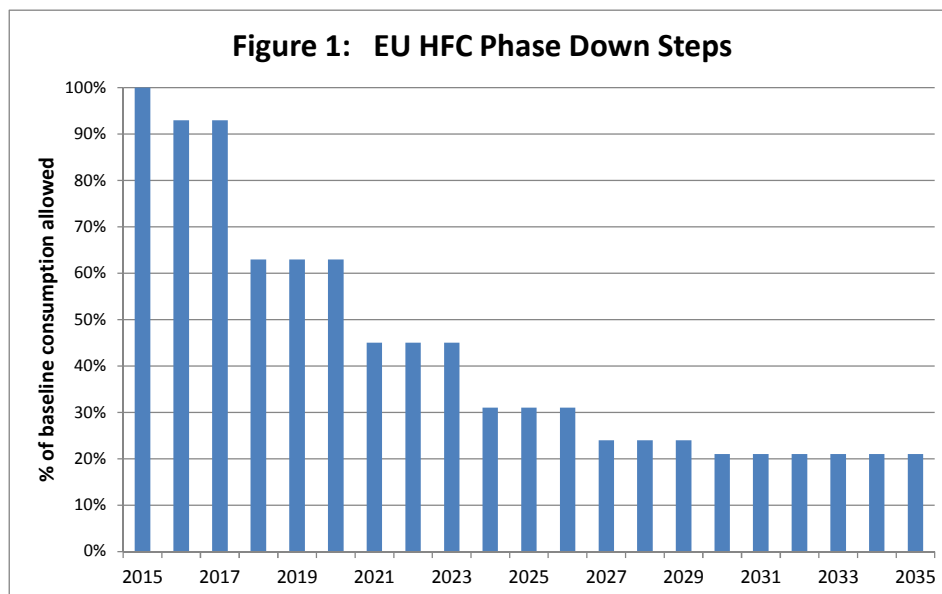
In the 2014 EU F-Gas Regulation the following Articles are of key importance to F-Gas producers, importers and exporters:

- Article 15 introduces the phase down. It places controls on producers and importers to ensure that the total quantity of HFCs that each of them places on the EU market does not exceed the quota allocated to them. The phase down steps are given in Annex V.
- Article 15 also lists 6 exemptions from the phase down and describes a process for agreeing further short-term exemptions should they be required.
- Article 16 describes the quota system. In particular it states that quotas will be allocated to those companies that reported production and imports during the baseline period (“incumbents”) and that some of the quota would be allocated to “new entrants”. The detailed methodology for allocation of quotas is given in Annex VI.
- Article 17 describes the Registry that will be used to monitor and control the production and import of HFCs in the EU.
- Article 18 describes rules for transfer of quota between companies.
- Article 19 specifies the annual reporting requirements, with further details given in Annex VII and Commission Implementing Regulation 1191/2014.

4. The Annual Maximum Allocation

The amount of HFCs that can be placed on the EU market each year is defined as a percentage of the baseline amount, as listed in Annex V of the Regulation. The average baseline amount (for the period 2009 to 2012) is 183 million tonnes CO₂ equivalent. In 2015 the market will be capped at 100% of this amount. In 2016 only 93% of the baseline can be placed on the EU market. Following a series of cuts, the amount available from 2030 will be 21% of the baseline amount. The phase down steps are illustrated in Figure 1.

Figure 1: HFC Phase Down Steps



5. Allocation of HFC Sales Quotas

The phase down process is being implemented via a sales quota system. Only companies with an official HFC quota, received from the European Commission, will be allowed to produce HFCs or import them into the EU.

- It will be illegal for quota holders to produce or import more than their allocated quota
- It will be illegal to produce or import HFCs without a quota.

Under the 2006 Regulation there was a legal requirement to report production, imports and exports of HFCs and other F-Gases on an annual basis. For 2015, 89% of the quotas (i.e. 89% of 183 MT CO₂ baseline amount) are being allocated to the companies that reported production or imports of HFCs during the baseline period (2009 to 2012). These quota holders are referred to in this guidance as “incumbents”. The allocation is being made to incumbents is in proportion to their average share of the market in the 4 year baseline period. For example a company that sold 10% of the total EU HFC sales in 2009 to 2012 will get 10% of the amounts available for incumbents. In 2015 there will be 79 incumbents, although it is important to note that the majority of the quotas will go to 5 companies that were the dominant producers and importers in the baseline period.

A small proportion (11%) is allocated to “new entrants”. New entrants can apply for an amount that they would like to receive and will be given an allocation based on the amount they asked for and the number of other companies that applied for a new entrant allocation. A large number of companies applied for the 2015 new entrant allocation. As the allocation was significantly oversubscribed, most of the 334 valid new entrants will receive the same fairly small quota allocation for 2015 (in the region of 65,000 CO₂e, which is equivalent to around 16 tonnes of HFC 404A).

The new entrant allocations will be made annually. Every 3 years there will be a recalculation of quotas, with current new entrants being merged with the incumbents, to allow further new entrants to join the market. Each recalculation will be made on the basis of the annual averages of the quantities placed on the market from the 1st January 2015.

Quotas shall only be allocated to producers or importers which are established within the EU, or which have mandated an “only representative” established within the EU for the purpose of compliance with the requirements the F-Gas Regulation. The only representative may be the same as the one mandated pursuant to Article 8 of Regulation (EC) No 1907/2006².

6. Exemptions from the HFC Phase Down

The following exemptions allow some trade in HFCs outside of the quota system:

- a) HFCs imported into the Union for destruction
- b) HFCs used by a producer in feedstock applications or supplied directly by a producer or an importer to undertakings for use in feedstock applications
- c) HFCs supplied directly by a producer or an importer to undertakings, for export out of the EU where those HFCs are not subsequently made available to any other party within the EU, prior to export

² Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

- d) HFCs supplied directly by a producer or an importer for use in military equipment
- e) HFCs supplied directly by a producer or an importer to an undertaking using it for the etching of semiconductor material or the cleaning of chemicals vapour deposition chambers within the semiconductor manufacturing sector
- f) from 1st January 2018 onwards, HFCs supplied directly by a producer or an importer to an undertaking producing metered dose inhalers for the delivery of pharmaceutical ingredients
- g) Imports of less than 100 tonnes CO₂e per year are allowed outside of the quota mechanism. This is a very low threshold, equivalent to approximately 25 kg of HFC 404A.

It is important to note that these exemptions apply to direct sales by a quota holder to an exempted end user. The sales cannot be via 3rd parties in the HFC supply chain.

7. The EU HFC Registry

The European Commission has set up a Registry to monitor and control the quota system. Registration in the registry shall be compulsory for the following:

- a) producers and importers with an HFC quota (i.e. incumbents and new entrants)
- b) undertakings to which a quota is transferred (see Section 8 on transfers)
- c) producers and importers supplying, or undertakings in receipt of HFCs for the exempted purposes listed in points (a) to (f) of Section 6 above
- d) importers of equipment placing pre-charged equipment on the market where the HFCs contained in the equipment have not been placed on the market prior to the charging of that equipment.

The Commission shall ensure that registered producers and importers are informed via the registry about the quota allocated and about any changes to it during the allocation period. The competent authorities, including customs authorities, of the Member States shall have access, for information purposes, to the registry.

8. Transferring quotas to another company

Any incumbent quota holder may transfer in the registry that quota for all or any quantities to another producer or importer in the EU or to another producer or importer which is represented in the EU by an only representative.

Any incumbent quota holder or undertaking to whom a quota has been transferred (as described in the paragraph above) may authorise another undertaking to use its quota for the purpose of producing pre-charged equipment outside the EU for subsequent import into the EU (see Section 10 below).

New entrant quota holders are not allowed to transfer their quotas. New entrant quota holders may only authorise another undertaking to use its quota for the purpose importing pre-charged equipment provided that the corresponding quantities of HFCs are physically supplied by the authorising producer or importer.

9. Annual reporting requirements

All producers, importers and exporters of HFCs (as listed in Annex I of the Regulation) and of other gases listed in Annex II of the Regulation, must annually report data to the Commission.

Reporting thresholds defined in terms of tonnes CO₂e and are summarised in Table 1.

Table 1: HFC Reporting Thresholds

Requirement	2006 Regulation	2014 Regulation		
	kg threshold	tonnes CO ₂ threshold	kg equivalent for HFC 404A	kg equivalent for HFC 134a
Production, import, export	1,000 kg	100 tonnes CO ₂ *	25 kg	70 kg
Destruction, feedstock	n/a	1,000 tonnes CO ₂	250 kg	700 kg
Products	n/a	500 tonnes CO ₂	125 kg	350 kg
Independent audit	n/a	10,000 tonnes CO ₂	2,500 kg	7,000 kg

* The reporting requirement is for 1 metric tonne or 100 tonnes CO₂ – for all HFCs the 100 tonnes CO₂ threshold always applies. For some very low GWP products listed in Annex II of the Regulation the 1 metric tonne threshold may be applicable.

n/a Not applicable: these requirements were not in the 2006 Regulation

Information Sheet 20 gives further details of annual reporting requirements.

Further details of the reporting requirements are specified in Annex VII of the Regulation and in Commission Implementing Regulation 1191/2014.

10. Imports of Pre-charged Equipment

From 2017 onwards, any refrigeration, air-conditioning or heat pump equipment imported into the EU that is pre-charged with HFCs, must use HFCs obtained from the EU quota. Importers will need to prove to the authorities that the equipment they import complies with this requirement.

Non-EU manufacturers will have the option of:

- a) Purchasing their required HFCs from an EU quota holder (the quota holder would deliver actual HFC fluids to the non-EU manufacturer)
- b) Obtain an authorisation from an EU quota holder to use a specified amount of their quota (the non-EU manufacturer will then be able to source the actual HFC fluid from a local supplier)

EU-based manufacturers of pre-charged equipment can only use HFCs from the EU quota to pre-charge their products.

11. Exports of Bulk HFCs and Pre-charged Equipment

Exports of bulk HFCs are outside the EU quota mechanism. If a quota holder exports some of their product, it does not count as “placing on the EU market”. If a quota holder sells HFCs to a 3rd party who then exports the bulk gas, that quantity does not count towards the quota holder’s allocation providing that the 3rd party exporter informs the quota holder that the gas is for export. Both parties must report the export transaction to the Commission (see Information Sheet 20).

Exports of pre-charged equipment manufactured in the EU are included within the quota system. This means that HFCs used by an EU manufacturer of pre-charged equipment must be purchased on the EU market from the quota system.

There is a customs procedure available (inward processing relief) that might allow an EU equipment manufacturer to import HFCs outside of the quota mechanism, providing it is identified as gas that is to be used to charge equipment that will be exported.

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This Information Sheet has been prepared by Gluckman Consulting

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This document can be used and distributed for no charge. It contains the best information available to date and will be updated as more or different information is made available. It does not seek to provide a definitive view on the legal requirements; only the courts can provide such a view. If there are uncertainties you should always refer to the text of the Regulation and seek qualified legal advice.

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