

March 19, 2024

Suzanne Hagell
New York Department of Environmental Conservation
Office of Climate Change
625 Broadway
Albany, NY 12233-1030

Re: Comment on New York State Department of Environmental Conservation’s Proposed Amendments to Part 494, Hydrofluorocarbon Standards and Reporting

Dear Ms. Hagell,

On behalf of Heating, Air-conditioning & Refrigeration Distributors International (HARDI), I write to thank you for the opportunity to provide feedback and offer comment on the proposed “Amendments to 6 NYCRR Part 494.”

HARDI is a trade association comprised of over 800 member companies, more than 450 of which are U.S.–based wholesale distribution companies, including 28 companies operating in New York State. Over 80 percent of HARDI’s distributor members are classified as small businesses that collectively employ more than 60,000 U.S. workers, representing more than \$40 billion in annual sales and an estimated 70 percent of the U.S. wholesale distribution market of heating, ventilation, air-conditioning, and refrigeration (HVACR) equipment, supplies, and controls.

HARDI respectfully asks that the New York State Department of Environmental Conservation’s (NYSDEC or Department) proposed “Amendments to 6 NYCRR Part 494” be amended to comply with state law and match the deadlines and sell-through provisions found in EPA’s final Technologies Transitions Program (40 CFR Subpart 84), including the Interim Final Rule effective on December 26, 2023, and any subsequent amendments made to the final rule by the Agency. If enacted as written, NYSDEC’s proposal would harm consumers and businesses within the state, creating a backlash that will hurt the federal phase-down of hydrofluorocarbons (HFCs).

HARDI has multiple issues with the proposed amendments; these comments will outline why NYSDEC should not finalize the amendments as written.

Amendments to Part 494 are not in line with the Climate Leadership and Community Protection Act

The Climate Leadership and Community Protection Act (Climate Act)¹ directed NYSDEC to develop “Greenhouse gas emission offset projects” to reduce HFC refrigerant releases and created the Climate Action Council to develop a scoping plan² outlining recommendations to reduce greenhouse gas emissions. HFC emissions are potent global warming pollutants; this is why, as an industry, we have worked with international and federal authorities to phase down

¹ S. 6599, 2019-2020 Sen., Reg. Sess. § 1 (N.Y. 2019)

² New York State Climate Action Council. 2022. “New York State Climate Action Council Scoping Plan.” climate.ny.gov/ScopingPlan

the use of HFCs across the HVACR sectors. These goals align with the Climate Action Council scoping plan recommendation, “New York State agencies should continue to adopt regulations and coordinate with other states on HFC reduction policies to ensure an effective phase-down of HFCs,” [Emphasis added].³ The proposed amendments from NYSDEC are a phaseout of HFC refrigerants by requiring all sectors to move to refrigerants with a GWP20 of less than 10. The American Innovation and Manufacturing Act⁴ defines 18 chemicals as HFCs, but none of these substances, including those used as part of a refrigerant blend, meet the aggressive GWP20 limit in the proposed amendment.

In addition, the scoping plan directed the NYSDEC to align with the “federal (EPA) policy measures to meet HFC reduction requirements.”⁵ The proposed amendment goes far beyond the technology transition program finalized by the EPA. There is no evidence that the EPA will pursue additional technology transitions in the HVACR sectors similar to those proposed by the Department.

Prohibition dates should match EPA prohibition dates

Nearly all prohibition dates in the refrigeration subsector are earlier than those listed in the Technology Transitions Program final rule published by the EPA in October 2023. Distributors of refrigeration systems are required to carry parts necessary to repair or replace systems that can fail at any time. This means significant investments in inventory for products with inconsistent sales timelines. A product in stock before this proposal was released could still sit in the warehouse when the amendments are finalized. For equipment that meets the system definition, which is common in commercial refrigeration, the parts and equipment will effectively expire on the shelf for no reason other than a regulatory change. This is a significant cost to distributors that was not included in the Regulatory Impact Statement released by the Department.⁶

HARDI believes that no product that has entered commerce should be restricted from continued sale or use because of a regulatory change after the product has left the factory. We believe the proposed amendment utilizing an install date prohibition is a regulatory taking and will cause severe economic harm to New York businesses.

EPA has changed prohibition dates for the air conditioning subsector after the proposed Amendments to Part 494 were released

Since the proposed Amendments to Part 494 were released, the EPA has published an Interim Final Rule moving the installation prohibition for residential and light commercial split systems from January 1, 2025, to January 1, 2026, for equipment manufactured before January 1, 2025. This change was made because of the inventory issues faced by wholesaler distributors and the construction methods used by developers. Finalizing the Amendments to Part 494 with dates

³ *ibid* at 12

⁴ American Innovation and Manufacturing Act, Public Law No: 116-260 Division S, Sec. 103 (Date: December 27, 2020, enacted H.R. 133) Available from: <https://www.congress.gov/bill/116th-congress/house-bill/133/text?r=6&s=1>.

⁵ New York State Climate Action Council at 217

⁶ New York State Department of Environmental Conservation. Regulatory Impact Statement. December 2023.

earlier than those contained in the Technology Transitions Program will hurt distributors who have already purchased products for the 2024 cooling season and could have remaining inventory that would become illegal to install if the proposed amendment is finalized as written.

In addition to the timeline for residential and light commercial split systems, the EPA has also announced it plans to change the compliance deadline for VRF systems. The Amendments to Part 494 should provide the same flexibility as the EPA.

Amendments to Part 494 should adopt a three-year sell-through for products to match EPA sell-through

Section 494-1.4(c) contains a one-year sell-through for products sold after the prohibition date. Moving to a shorter sell-through less than a year before the prohibition date will harm distributors who have made economic decisions based on the planned availability of products after the manufacturing prohibition. NYSDEC should align with the EPA policy of a three-year sell-through.

Ban on bulk regulated substances hurts consumers by requiring early replacement of equipment

Section 1.4(f) prohibits the “sale or distribution” of “bulk regulated substances” based on various GWP20 levels over five prohibition dates. Unlike California’s enacted SB 1206, the proposed prohibitions, based on the definitions of “bulk regulated substances” and “regulated substances,” include virgin and *reclaimed* refrigerants. The Regulatory Impact Statement appears to imply that the section is meant only to ban virgin substances, as in California’s law. However, the definitions in the Amendments to Part 494 do not exempt reclaimed refrigerants from the prohibition. The proposed amendment prohibits the following common refrigerants from being used for servicing any existing equipment after the date listed:

GWP20 Limitation	Prohibition Date	Banned Common Refrigerants
Bulk regulated substances with GWP20 ≥4600	January 1, 2025	R-404A, R-22, R-407A, R-410A
Bulk regulated substances with GWP20 ≥4200	January 1, 2030	R-407C
Bulk regulated substances with GWP20 ≥3000	January 1, 2033	R-134a, R-448A, R-449A
Bulk regulated substances with GWP20 ≥1600	January 1, 2040	R-32, R-452B, R-454B

These proposed prohibitions will force any New York resident needing additional refrigerant for their system to work to replace the entire system or retrofit a new refrigerant. Retrofits of existing equipment are not allowed by EPA regulations and will force entire system changeouts for air conditioners and heat pumps. With no ability to repair a system, even one covered by an existing warranty, consumers will face high replacement costs.

This prohibition could also drive reclamation out of the state. The proposed section 1.4(f) would prohibit a reclaimer from “mak[ing] available for sale or distribution ... bulk regulated substances,” which would include selling material reclaimed in the state to a willing buyer out-of-state. This provision, if enacted, would hurt the nationwide HFC phase-down under the AIM Act.

More than any other provision contained in the proposed amendments, this provision has the worst impact on consumers and yet has been consistently denied by the Department in public statements, including Ms. Hagell. At the beginning of the public workshop, Ms. Hagell said, “The rulemaking does not require any person or entity to replace any existing equipment or product,”⁷ however, this provision does require early replacement of equipment if there is no additional refrigerant available to keep it functioning correctly because that refrigerant has been prohibited from being sold in the state.

The leak detection and repair requirements will also drive early replacements in commercial refrigeration, such as grocery stores, regardless of the public statements from Ms. Hagell, “It would not require grocery stores, including small and independent businesses, to replace their refrigeration equipment before the end of its useful life.”⁸ If a grocery store finds a leak in a system designed for a prohibited substance, regardless of how easily the leak can be fixed, it will be forced to “replace their refrigeration equipment before the end of its useful life.” This provision should not be finalized by the Department as written.

Amendments to Part 494 will hurt the current HVACR workforce

The proposed amendments would require all HVACR products installed in the state to move to ultra-low GWP20 below 10. This would make all the current fluorinated refrigerants that technicians are trained on unusable in the state. While next-generation, low-GWP refrigerants, like R-32 and R-454B, require some training, they have very similar characteristics to current refrigerants in terms of pressures and equipment components. Even for low-GWP refrigerants classified as lower flammability, the training necessary to safely use them is a low barrier to participation in the industry.

The proposed ultra-low-GWP refrigerants like propane, carbon dioxide, and ammonia require significantly more training because of the necessary equipment changes to mitigate these refrigerants' physical and health dangers. For example, carbon dioxide, a lower toxicity refrigerant, becomes dangerous at a significantly lower threshold (5,000ppm)⁹ than HFC refrigerants (350,000ppm);¹⁰ additionally, ammonia is classified as higher toxicity and is deadly at 5,000ppm.¹¹ While refrigeration systems designed for propane exist and are common for specific end-uses, expanding propane's use as a refrigerant to comfort cooling or lower-temperature refrigeration would require larger charge sizes than currently allowed by building

⁷ R744. New York State Official Addresses ‘Misconceptions’ about Proposed HFC Regulations. March 15, 2024. <https://r744.com/new-york-state-official-addresses-misconceptions-about-proposed-hfc-regulations/>

⁸ *ibid*

⁹ Occupational Safety and Health Administration. OSHA Hazard Information Bulletins Potential Carbon Dioxide (CO₂) Asphyxiation Hazard When Filling Stationary Low Pressure CO₂ Supply Systems. <https://www.osha.gov/publications/hib19960605>

¹⁰ Safety Data Sheet – R-32, Chemours,

https://hdsupplysolutions.com/wcsstore/ExtendedSitesCatalogAssetStore/product/fm/additional/15/150110_MS_DS-PDF.pdf

¹¹ National Institute for Health. National Library of Medicine: Ammonia Toxicity. <https://www.ncbi.nlm.nih.gov/books/NBK546677>

codes and proposed in EPA’s Significant New Alternatives Policy (SNAP) program.¹² Additionally, alternative refrigerants that require ultra-high pressures or high-flammability refrigerants are hard to retrofit into existing buildings and require significant changes to safety standards and building codes that are unlikely to be achieved in time for the proposed prohibition timeframes that would begin in less than nine months.

Department outreach did not include local regulated entities

In the Regulatory Impact Statement accompanying the proposed amendment, the Department claimed it sought feedback at multiple stages in the development process. However, neither HARDI nor its member companies operating in New York state were added to “an email distribution list with representatives of regulated entities,”¹³ despite providing comments for the scoping plan. Additionally, the report produced by effecterra used to support the amendment’s requirements to move to natural refrigerants did not list any major manufacturers of air conditioning or refrigeration equipment, no wholesaler-distributors of HVACR equipment in the state, nor any contracting companies with knowledge of the New York market.¹⁴

Section 75-0109.1 requires the department to seek consultation with representatives of regulated entities before promulgating any rules or regulations. However, nothing in the record shows any attempt at consultation with genuine representatives of regulated entities.

Amendments to Part 494 cite Article 19 of the Environmental Conservation Law but do not show direct evidence of Article 19 having authority over HFCs

Article 19 of the Environmental Conservation Law (ECL) defines “air pollution” as having characteristics “which are injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout the state.”¹⁵ On their own, HFCs do not meet this definition, which clearly the Department understood as the Regulatory Impact Statement makes the case that because HFCs cause climate change and climate change is dangerous to human health, HFCs meet the “air pollution” definition. Using a second-order effect of something to make it meet the definition of air pollution is a dangerous precedent to set. The Department should not cite Article 19 in the final regulation.

Additionally, the New York Legislature had an opportunity to include HFCs under Article 19. When the legislature created Article 75, they could have defined HFCs and other “Greenhouse gas[es]”¹⁶ as air pollutants. They did not choose to do so, instead giving the Department ample authority to regulate greenhouse gases directly instead of as air pollutants.

¹² Section 612 of the Clean Air Act (42 U.S.C. § 7671k, et seq.)

¹³ New York State Department of Environmental Conservation. Amendment to Part 494 Regulatory Impact Statement. P. 10.

¹⁴ effecterra. Synthesis Report: New York State Assessment of Natural Refrigerants. September 2023.

¹⁵ 2022 New York Laws, Article 19 - Air Pollution Control, Title 1 - Declarations of Policy and Purpose; Definitions

¹⁶ 2022 New York Laws, Article 75 – Climate Change, Title 1 – Definitions.

Significant portions of Amendments to Part 494 would violate state statutes explicitly allowing the use of SNAP-approved refrigerants

Section 3-0301.1 of the ECL requires the Department to develop rules “in accordance with such existing provisions and limitations as may be elsewhere set forth in law.”¹⁷ In 2022, the New York Legislature passed S. 9405, which included Section 24:¹⁸

A building code or other requirement applicable to commercial or residential buildings or construction may not prohibit the use of a substance allowed pursuant to the United States Environmental Protection Agency's significant new alternatives policy to implement 42 U.S.C. 7671k, provided that such substance and the refrigeration or air conditioning system or other equipment or products utilizing such substance are designed, installed, and used in accordance with nationally recognized published standards that protect building occupant safety and reduce fire risks.

Amendments to Part 494 contain prohibitions, including installing “products or systems for use.”¹⁹ By prohibiting the installation of equipment using a “substance allowed pursuant to the United States Environmental Protection Agency's significant new alternatives policy,” the Amendments violate section 24’s limitation on “requirement[s] applicable to commercial or residential buildings” and section 3-0301.1's requirement to develop rules in accordance with existing provisions.

The Department cannot finalize any part of the Amendments to Part 494 that would violate section 24 of S. 9405 as enacted in 2022.

The Regulatory Impact Statement analysis of consumer costs ignores transitions not included by EPA

The Regulatory Impact Statement claims that the proposed amendments would “impose[] limited additional costs to those that would be incurred from complying with federal requirements.”²⁰ However, there is no evidence that the EPA is planning additional transitions to ultra-low GWP refrigerants in the refrigeration, air conditioning, and heat pump subsectors. The transition costs to ultra-low-GWP refrigerants should have been included in the Regulatory Impact Statement.

¹⁷ 2022 New York Laws, Article 3 – General Functions, Powers, Duties and Jurisdiction, Title 3 - General Functions, Powers, Duties and Jurisdiction.

¹⁸ New York Senate Bill 9405, Signed on 7/05/2022.

¹⁹ Definition of ‘install’ from Amendments to Part 494.

²⁰ New York State Department of Environmental Conservation. Regulatory Impact Statement. December 2023.

Conclusion

HARDI and New York State share the goal of moving to more environmentally friendly refrigerants. As an industry, we operate on a national scale, and having a patchwork of state-level regulations will make it impossible to serve consumers. For this reason, we encourage NYSDEC to accept federal phase-down transition or modify strategies to meet GHG reduction goals to fit within the federal framework.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Titus", written in a cursive style.

Todd Titus

Director, State and Public Affairs

Heating, Air-conditioning, & Refrigeration Distributors International