

January 8, 2025

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Re: Part 494 Hydrofluorocarbon Standards and Reporting

Heating, Air-conditioning & Refrigeration Distributors International (“HARDI”)¹ hereby requests that the Department exercise its enforcement discretion, or other mechanism, allowing businesses in New York to continue to manufacture, sell, distribute and use certain substances that would otherwise be prohibited by 6 NYCRR 494-1.4(f)(1) after January 9, 2025, for a period of one year for the limited purpose of servicing and repairing existing refrigeration systems.

On Christmas Eve, the New York State Department of Environmental Conservation (“NYSDEC” or the “Department”) noticed its adoption of a new amended rule, Part 494 Hydrofluorocarbon Standards and Reporting (the “Rule”). Although the Rule became effective 30 days after filing, unbeknownst to the regulated community, the Rule had been previously filed with the Department of State on December 10, 2024, making it effective only 10 business days after publication. Among other things, 6 NYCRR 494-1.4(f)(1) prohibits the manufacture, sale, use and distribution of certain refrigerants after January 9, 2025 unless they are “reclaimed.” This prohibition extends to the use of these refrigerants as needed to service and make repairs to existing refrigeration systems.

For the reasons detailed further below, and because of the detrimental impact the prohibition of these substances, especially R-404A and R-507A, will have, particularly on small businesses, HARDI requests NYSDEC to exercise its enforcement discretion authority effective January 9,

¹ HARDI is a trade association comprised of over 800 member companies, more than 400 of which are U.S.–based wholesale distribution companies. In New York State, HARDI has 33 wholesaler distributor members and 13 supplier manufacturer members. Over 80 percent of HARDI’s distributor members are classified as small businesses that collectively employ in excess of 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.

2025 until January 9, 2026. This would provide additional time to make the transition to a lower GWP refrigerant system more manageable, particularly for small businesses.

- Although New York’s regulatory program is modeled after California, California provided several years notice to regulated entities before the sale and distribution of higher GWP refrigerants were banned in that state. New York provided only a couple of weeks (over the holidays) notice of the final Rule prior to the January 9, 2025 prohibition date.
- New York distributors that sell substances that Part 494 would prohibit after January 9, 2025, have an estimated total of [REDACTED] pounds of R404A remaining in their inventory. The December 24th ENB did not give these distributors ample notice that they would be unable to sell their inventory as of January 9, 2025.
- The December 24th ENB notice also did not give businesses that have refrigeration systems containing substances that 6 NYCRR 494-1.4(f) will prohibit after January 9, 2025 sufficient notice that the prohibited substances could not be sold or be used for repair and maintenance of existing equipment. Notably, even accounting for the existing inventory of New York distributors today, the statewide demand for R404A for repair and maintenance only is approximately [REDACTED] pounds.
- Contractors/repairers of refrigerant systems did not have sufficient notice that they would not be able to repair their customers’ existing equipment due to the ban.
- After January 9, 2025, the new Rule will make it near impossible to repair existing refrigeration systems in businesses like grocery stores, restaurants and convenience stores; as well as in some pharmacies, nursing homes, and hospitals.
 - The Rule will prohibit the manufacture, sale, distribution or purchase of certain (common) refrigerants like R404A and R507A to repair and maintain existing systems unless the substance is “reclaimed.”
 - There is a shortage of reclaimed refrigerants available. In 2023, there were only 880,000 pounds of recycled R404A, which is used by supermarkets, convenience stores, restaurants and other small businesses, but New York alone needs as much as 783,000 pounds a year. The shortfall is made worse because New York is competing with California for reclaimed R404A, where similar prohibitions on R404A began January 1, 2025. California has twice the demand as New York. This shortage has also increased the cost of reclaimed R404A from approximately \$14/pound to \$50/pound.
- The Rule will require a significant amount of the refrigeration systems that use substances prohibited by 494-1.4(f)(1), a substantial portion of which are small businesses, to be replaced instead of repaired.
 - Because of the likely unavailability of reclaimed refrigerants, the unavailability of replacement refrigerants for these systems that are not prohibited, and the

prohibition on virgin substances, the Rule would require refrigeration systems that use these substances to be replaced instead of repaired.

- Replacement costs can be significant and prohibitive, particularly for small businesses. Retrofit of smaller systems (like those used in convenient type stores, restaurants, etc.), a significant portion of which use R404A, is cost prohibitive and not feasible. Therefore, smaller systems that could be repaired for \$1,000+, will have to be replaced at an approximate cost of \$20,000-50,000 plus the food loss/emergency storage and business interruption costs associated with installation.
- Because these businesses are generally small and have limited funds, such an expenditure could lead to a significant reduction in the services offered by the businesses, or complete closure.
- Refrigeration system replacement costs due to unavailability of reclaimed refrigerants, and/or replacement refrigerants not prohibited, come January 9, 2025 were not taken into account in NYSDEC's Regulatory Impact assessment. NYSDEC relied solely on EPA's analysis of the AIM Allocation Rule, which allows for the use of virgin substances for the maintenance and repair of existing systems. As such, the system replacement costs that will be borne by retailers, stores, restaurants, pharmacies, nursing homes, etc. were not taken into account by NYSDEC or included in the Regulatory Impact Statement as required by SAPA Section 202-A(3)(c).
- The United States Environmental Protection Agency ("EPA") rule does not require the use of reclaimed substances for repair/maintenance of existing systems at least until 2028.
- The variances in 6 NYCRR 494-1.8 for impossibility and/or economic hardship have limited potential applicability, would be difficult for small businesses to apply for and obtain, and appear to be available only to end users (i.e. restaurants, grocery and convenience stores, and other smaller businesses that have systems that use the substances). Further, the variance process in the Rule would take several months, during which time the affected business would likely not be able to operate or repair its refrigeration system.

In addition to this issue and the request for the enforcement discretion requested herein, which needs immediate attention due to the January 9th prohibition date, there are several other issues with the Rule that HARDI looks forward to discussing with the Department.

Sincerely,



Alex Ayers

Vice President of Government Affairs

Heating, Air-conditioning, & Refrigeration Distributors International