



AIR-CONDITIONING, HEATING,  
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March 16, 2020

Suzanne Hagell  
NYSDEC Office of Climate Change  
625 Broadway, Albany, NY 12233-3251  
(Submitted via email to [climatechange@dec.ny.gov](mailto:climatechange@dec.ny.gov))

Re: AHRI Comments to NYSDEC Regarding Proposed Rulemaking: 6 NYCRR Part 494  
Hydrofluorocarbon Standards and Reporting

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Dear Ms. Hagell,

The Air Conditioning Heating and Refrigeration Institute (AHRI) submits this letter in response to the New York State Department of Environmental Conservation (NYSDEC) proposed addition of Part 494 to Title 6 NYCRR *Hydrofluorocarbon Standards and Reporting*.

AHRI represents over 300 air-conditioning, heating, and refrigeration equipment manufacturers. In North America, the annual output of the HVACR and water heating industry is worth more than \$44 billion. In the United States, the industry supports 1.3 million jobs and \$256 billion in economic activity annually.

AHRI has been working for more than a decade to support regulations to reduce the consumption and production of HFCs. Our members strongly supported the agreement to amend the Montreal Protocol on Substances that Deplete the Ozone Layer to phase down HFC production and consumption as a proven, predictable, and practical approach. We demonstrated that support in our work with state regulators and environmental non-governmental organizations (E-NGOs). Our industry has worked closely with governments, both foreign and domestic, to prepare and successfully execute the safe, orderly, and economical transition to low-GWP refrigerants. We look forward to collaborating with the NYSDEC as the regulation progresses and hope that our comments will be helpful.

We are working closely with the Climate Alliance states that have announced an intent to regulate HFCs in the United States to help states provinces adopt and implement laws and regulations consistently across jurisdictions. We recognize that regulations must meet greenhouse gas reduction objectives while still providing critical benefits like preserving food and medicine and, in some cases, life-saving facility cooling. As a matter of general policy, AHRI would prefer a federal initiative to address low-GWP refrigerants to avoid a patchwork of regulations, and AHRI is actively pursuing federal legislation to achieve a national HFC phase down. We recognize New York State's commitment to solving this important issue and appreciate the opportunity to provide feedback.

Our comments focus on recommendations designed to harmonize aspects of the regulation with existing regulations, to align with the intent of the original Environmental Protection Agency

(EPA) Significant New Alternatives Policy (SNAP) rules, and to achieve a workable, enforceable framework to provide certainty and consistency for industry by addressing the following topics:

1. Proposed Revisions to Definition of “New;”
2. Proposed Revisions to Definition of “Use;”
3. Proposal to clarify the allowance of the manufacture of products intended for service or maintenance;
4. Administration Requirements (e.g. disclosure, labeling, and recordkeeping);
5. New York State building codes should adopt ASHRAE 15 (2019) and UL 60335-2-40 to allow for the installation of equipment using low-GWP alternatives; and
6. Request to delay supermarket equipment compliance date until July 1, 2021.
7. Technician Training.

## 1. PROPOSED REVISIONS TO THE DEFINITION OF “NEW”

AHRI’s experience with the EPA’s SNAP 20 & 21 regulations suggests that the term “system capacity” can have multiple interpretations relating to the commercial refrigeration sector.

**AHRI proposes the following changes to the definition of “New” and a proposed definition of “Nominal Compressor Capacity”:**

*‘New’ Products or equipment that are manufactured after the effective date of this Part or installed with new or used components, expanded by the addition of components to increase **system** the total nominal compressor capacity after the effective date of this Part, or replaced or cumulatively replaced after the effective date of this Part such that the cumulative capital cost of replacement exceeds 50% of the capital cost of replacing the whole system.*

*“Nominal Compressor Capacity” means the capacity of the system’s compressor(s) based on published ratings in accordance with a recognized standard such as AHRI Standard 540.*

## 2. PROPOSED REVISIONS TO THE DEFINITION OF “USE”

The intention of United States Environmental Protection Agency (EPA) Significant New Alternatives Program (SNAP) Rules 20 and 21 is to regulate the use of certain HFCs in specific end uses. It is AHRI’s understanding that NYSDEC’s proposed regulation is intended to adopt these requirements for equipment being *installed* in New York. As written, the draft language may ban warehousing and the transport of non-New York products through the state. Moreover, the regulatory language could prevent research on HFCs at universities or at companies located in the state that manufacture small amounts of refrigerant.

Banning the formulation or packaging of controlled substances inequitably impacts small and medium distributors, packagers, and companies who may not have enough capital to move their regional distribution centers to another state. It harms business owners who prefer operating in New York and are willingly compliant with HFC regulations in every state banning their use.

**AHRI strongly recommends that NYSDEC modify the definition of “Use” as follows:**

“Use.” Any utilization of a compound or any substance, including but not limited to utilization in a ~~manufacturing process or~~ product *installed* in New York State, consumption by the end-user in the State of New York, ~~or in intermediate applications in the State of New York, such as formulation or packaging for other subsequent applications, manufacturing for the purpose of residential use,~~ but does not mean or include residential use.

### 3. PROPOSAL TO CLARIFY THE ALLOWANCE OF THE MANUFACTURE OF PRODUCTS INTENDED FOR SERVICE OR MAINTENANCE

AHRI is concerned that it is not clear that products or substances intended for servicing, maintenance, or repairs may still be manufactured and used after the effective date, so long as they do not fall under the definition of “new equipment.” Clarification is needed in the regulation to allow for continued servicing of existing equipment as it is not NYSDEC’s intention to force the replacement of equipment before the end of its useful life. Similar statements have been included during discussions with other states adopting EPA SNAP Rules 20 & 21.

**AHRI requests the addition of the following statement in section 494.5, Exemptions:**

*(b) Except where an existing system is retrofit, nothing in this regulation requires a person that acquired a product or equipment containing a prohibited substance prior to an effective date of the prohibition in Section 494.4 to cease use of that product or equipment.*

*(c) Products, equipment, or substances may be manufactured, sold, imported, exported, distributed, installed, and used if it is manufactured prior to the applicable effective date of the restrictions specified in Section 949.4 of this regulation, or if it is manufactured after the applicable effective date of the restrictions specified in Section 949.4 of this regulation to service existing equipment or for use outside the state.*

### 4. ADMINISTRATIVE REQUIREMENTS SHOULD NOT BE OVERLY BURDENSOME

#### A. ALLOWANCE OF ELECTRONIC DISCLOSURES IN LIEU OF PHYSICAL LABELS

States are considering a range of administrative requirements related to disclosure to end-users and to regulatory agencies. Due to differences in products that use HFCs, administrative requirements should be flexible to allow for the implementation of practical solutions, especially to account for different supply chains of consumer products and residential, commercial, and industrial products that are required to be installed and maintained by professional technicians.

AHRI requests the flexibility in disclosure requirements and the express allowance of internet or electronic disclosures in lieu of physical labels. Industry experience demonstrates that physical labels are not an effective means of communicating compliance with consumers or regulators because HVACR equipment is rarely on display rather, it is stored in a warehouse until after it is

contracted for, sold, and installed. Internet disclosures are acceptable and a more cost effective and practical means of communicating important compliance, especially for equipment that is installed in place such as commercial refrigeration.

The [AHRI Directory](#) offers an existing accessible database of readily available information on a vast array of regulated equipment. Currently, this centralized database provides contractors, regulators, and consumers with product information, including model-specific certificates and EnergyGuide labels, though it is important to note that not all AHRI member products are represented in the AHRI Directory. Under Federal Trade Commission rules governing the familiar yellow Energy Guide labels, online information by manufacturers satisfies the disclosure obligation. Equipment requiring refrigerant disclosures could be made the same way.

The AHRI Directory may be of use to regulators as states promulgate HFC rulemakings, particularly as a means of easily accessing information on the many millions of models on the market. We extend the offer to host a meeting with New York State staff to introduce the AHRI Directory and showcase the capabilities that could be adapted to help manufacturers comply with internet disclosures as we have done for other Climate Alliance states. AHRI encourages explicit allowance of the use of an online or written disclosure to ease the burden on manufacturers and to allow for a more effective means of communicating compliance with consumers and regulators.

## **B. PROPOSED LANGUAGE FOR A GENERIC DISCLOSURE STATEMENT**

An additional consideration regarding disclosure requirements is the need for concise, generic language. As the NYSDEC is aware, an important policy consideration in implementing state regulation is the additional burden that a state-by-state patchwork of regulations can impose on a line of products that are marketed and sold nationally. A practical regulation would align as much as possible with other states' requirements to reduce added costs to New York State consumers for New York-specific products. As such, we would encourage the NYSDEC to adopt generic language for any disclosure provisions. Attached as Exhibit 1 is AHRI's recommendation to the Climate Alliance regarding administrative controls for HFCs, including a proposed language for a disclosure statement.

Regarding disclosure to the NYSDEC, several other states have established regulations including Washington State and California. Washington State requires reporting of refrigerant used by product type while California requires manufacturers to keep records including documenting the refrigerant used and retaining that information for five years for disclosure upon request. AHRI would like to point out that neither control measure is particularly practical for residential, commercial, and industrial HVACR equipment. AHRI urges the NYSDEC to consider the following complexities to such disclosure requirements:

- Many products are sold through a lengthy supply chain to distributors that operate in multi-state geographic regions, who then sell a product to a contractor, who sells it to an end-user or installs the equipment. This complex supply chain makes recordkeeping challenging or even impossible. Consequently, manufacturers may not have records that include information about the end-user, such as the name and address of the purchaser or the date of sale.

- Equipment is frequently sold in parts or components. These components may not individually contain any refrigerant. Manufacturers of these components may not know what refrigerant will ultimately be used rendering compliance untenable.
- Sales disclosures, including customer lists, market shares, and product selections are important proprietary business data. For example, the U.S. Department of Justice (DOJ) discourages the disclosure of any market data or sales information that is not an aggregation of more than five market players. This also comes with a risk of public disclosure that could result in anticompetitive liabilities, contrary to the policies of the DOJ.

### C. REQUEST TO REMOVE RECORDKEEPING REQUIREMENTS

AHRI request that the NYSDEC reconsider the proposed recordkeeping requirements. Due to the complexities of state-by-state regulation and the distribution chain for commercial refrigeration equipment, the proposed requirements for recordkeeping are overly burdensome on manufacturers.

AHRI members operate within a global supply chain. The equipment is often not shipped to the direct end-user. Distribution centers and contractors play the central role in delivering the good to the end user. Most AHRI members do not keep the statements and records that this regulation will now require, such as the name and address of the purchaser or the date of sale because the manufacturer never executes a sale to the end-user. In most cases, the manufacturer sells to a local distributor, who sells the equipment to a contractor, who sells the equipment to the end user and then installs the equipment. Many of the products that are manufactured by our members do not reach New York through the initial sale because distributors operate in multi-state geographic regions, as to many contractors. Reporting is further complicated by the system-structure of the equipment. Frequently, a sale of part or some of a system includes components, and those components may not individually contain all refrigerant and charge information. AHRI encourages the department to reconsider recordkeeping requirements to reduce unnecessary burden that drives little benefit.

Also relevant is the competitive impact of sales disclosures. Sales records including customer lists, market shares, and product selections that manufacturers are important proprietary business data. For example, the U.S. Department of Justice discourages the disclosure of any market data or sales information that is not an aggregation of more than five market players. With sales-specific recordkeeping comes a risk of public disclosure that could result in anticompetitive impacts, contrary to the policies of the Department of Justice.

**AHRI strongly requests flexibility in administrative requirements including: an express allowance of the use of internet or electronic disclosures in lieu of physical labels via a public database; a generic disclosure statement; and removal of recordkeeping requirements.**

## 5. BUILDING CODES MUST BE UPDATED TO ENABLE LOW-GWP ALTERNATIVES.

AHRI requests that DEC set up a forum for a conversation about low-GWP refrigerants and the code changes and safety requirements to ensure a safe transition. AHRI also strongly recommends that the NYSDEC work with the county Divisions of Codes and Standards to adopt rules permitting the use of substitutes not prohibited by this regulation. Some low-GWP refrigerants have different flammability and toxicity properties than currently used products. For manufacturers to design, test, and certify products with low-GWP alternative refrigerants, updated safety standards must be adopted into state building codes. This is a concern with the current proposal, and it is important to note that some products' installation may be inhibited by existing code limitations. For example, there are no refrigerants listed pursuant to the EPA's Significant New Alternatives Program as acceptable alternatives for chillers designed to use high pressure "410A"-like refrigerants because the model building code to enable the use of mildly flammable refrigerants is not yet available. ASHRAE Standard 15 and UL 60335-2-40 are industry safety standards that provide the requisite specifications to design and install safe, compliant products. These standards must be adopted into the New York building codes for chiller manufacturers to fully comply with a regulation based on EPA SNAP Rule 21.

AHRI has developed an expertise in the codes and standards amendments required to successfully install low-GWP refrigerant. **AHRI requests the opportunity to have a discussion with the NYSDEC staff and government code officials on the code changes needed for compliance with the SNAP Rules 20 and 21.**

## 6. DELAY COMPLIANCE DEADLINE UNTIL JULY 1, 2021 FOR SUPERMARKETS.

While AHRI generally supports adoption of EPA's SNAP Program Rules 20 and 21, we respectfully request that the compliance deadline for Supermarket Systems (new and retrofit) be delayed until at least July 1, 2021. AHRI manufacturers, contractors, and the supermarket industry plan for equipment conversion or new equipment installment well in advance of the work being performed. The NYDEC's proposed timeline allows less than one year for manufacturers, contractors, and the supermarket industry to process through inventory, design, test, and certify new designs, train technicians on updated safety and servicing requirements, and execute the retrofit and installation as planned. A delayed compliance deadline will help to ensure that manufacturers, contractor's and the supermarket industry have sufficient time to prepare for, and ensure compliance with, New York's regulations.

**AHRI strongly requests that the compliance deadline for Supermarket Systems (new and retrofit) be delayed until at least July 1, 2021.**

## 7. CONSIDER TECHNICIAN TRAINING FOR FUTURE REGULATIONS

Training and servicing requirements for technicians will be important considerations for future regulations. AHRI suggests that the Division consider including a requirement that technicians have refresher training on some frequency as the transition to lower-GWP refrigerants will require new uses of different American Society of Heating and Refrigeration Engineers (ASHRAE) refrigerant safety classifications than have been historically used.

Thank you for providing stakeholders the opportunity to give feedback during and following the stakeholder meetings along with sharing these comments with the Climate Alliance to ensure state-to-state harmonization of rules. If you have any questions regarding this submission, please do not hesitate to contact me.

Sincerely,

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Exhibits:

1. AHRI Recommendations to Climate Alliance for HFC Administrative Requirements