

Express Terms Summary

Part 494 Hydrofluorocarbon Standards and Reporting

The Department of Environmental Conservation (Department) proposes to revise Part 494 to reinforce administrative and record-keeping requirements for manufacturers, expand enforcement provisions, and implement recommendations from the Climate Action Council Climate Change Scoping Plan needed to achieve the requirements of the Climate Leadership and Community Protection Act (Environmental Conservation Law Section 75-0109). In conjunction with the substantive changes, the Department proposes to restructure the regulation into Subparts reflecting general provisions and requirements regarding new sources (Subpart 494-1) and requirements regarding existing, commercial sources (Subpart 494-2).

Subpart 494-1 General Provisions

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- Section 494-2.6 Annual Reporting Requirements
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- Section 494-2.8 Food Chain Refrigerant Replacement Program

Section 494-1.1 Purpose

This section expands the scope of the regulation has been expanded to include additional types of policies and additional greenhouse gases.

Section 494-1.2 Applicability

This regulation now applies to any persons who sells, imports, leases, rents, manufactures, distributes for sale, offers for sale, makes available for sale or distribution, purchases or receives for sale or distribution, or attempts to purchase or receive for sale or distribution, installs or that owns, operates, or uses for commercial purposes or otherwise enters into commerce in the State of New York, any product, equipment, material, or regulated substances.

Section 494-1.3 Definitions

This section lists the definitions to be used for this Part, which are primarily derived from EPA regulatory language and regulations in other states. This section is revised to include terminology used in new and revised sections and terms derived from the Climate Leadership and Community Protection Act, including the Global Warming Potential.

Section 494-1.4 Prohibitions

This section lists prohibitions on new and retrofitted equipment, products, and substances. The amendments backstop EPA's recent nationwide prohibitions, adopt other prohibitions including a full phasedown of regulated substances to the lowest Global Warming Potential level, as recommended in the Climate Action Council Climate Change Scoping Plan to achieve the required statewide greenhouse gas emission limits. This section is also amended to clarify applicable "sell-through" provisions, or the period over which newly manufactured products may be sold after the prohibition date.

Section 494-1.5 Exemptions

This section lists exemptions to the prohibitions listed in Section 494-1.4.

Section 494-1.6 Labeling and Disclosure Requirements

This section now mandates that manufacturers provide written disclosures to buyers and the public as well as a label or other documentation regarding the regulated substances, manufacture year, and quantity, where applicable. These requirements can be met through other State or federal requirements that meet the same standard.

Section 494-1.7 Requirements for Suppliers of Regulated Substances, Suppliers of Regulated Substances Contained in Pre-Charged Equipment or Products, and Reclaimers

This section combines existing requirements and new requirements for manufacturers and other suppliers of substances and equipment to register, report, or maintain certain records. register with the department as well as maintain specific records. These requirements are modelled after provisions in place in other states or in existing EPA programs.

Section 494-1.8 Variances

This new section provides a process for compliance entities to apply for a variance based on impossibility, a force majeure event, or economic hardship. These requirements are modelled after provisions in place in other states.

Section 494-1.10 Enforcement

This section has been added to provide a reference to the relevant section of Environmental Conservation Law.

Section 494-1.11 Reference Material

This new section provides information on how to locate materials that have been incorporated by reference in this regulation.

Subpart 494-2 Refrigerant Management and Replacement Program

This new Subpart establishes terms related to the management of existing hydrofluorocarbon emission sources, specifically large, commercial equipment. These requirements are modelled after refrigerant management provisions in place in other states related EPA programs.

Section 494-2.2 Registration and Labeling

This new section mandates that owners and operators of certain equipment that contain regulated substances register with the department and create a label or other documentation consistent with the requirements for new equipment in section 494-1.6. of this Part.

Section 494-2.3 Leak Detection and Monitoring

This new section establishes requirements to monitor for leaks of regulated substances from equipment, with increasing frequency based on the amount of regulated substances contained in the equipment. It also requires the use of automated detection for commercial refrigeration systems as recommended in the Climate Action Council Climate Change Scoping Plan.

Section 494-2.4 Leak Repair Requirements

This new section establishes requirements to repair leaks within a certain time period.

Section 494-2.5 Retrofit or Replacement Plans for Leaking Equipment

This new section outlines a process for replacing substances or equipment if leaks cannot be repaired.

Section 494-2.6 Annual Reporting Requirements

This new section requires owners and operators of the largest equipment to report annually on their equipment, leak management, and purchases of regulated substances.

Section 494-2.7 Record-Keeping Requirements

This new section requires owners and operators subject to this program to maintain certain records.

Section 494-2.8 Food Chain Refrigerant Replacement Program

This new section mandates that retail food chains participate in a program to phasedown the emissions of greenhouse gas emissions from existing stores by replacing equipment or meeting an equivalent emission rate.

Regulatory Impact Statement Summary

6 NYCRR Part 494, Hydrofluorocarbon Standards and Reporting

1. Statutory Authority

The statutory authority to promulgate this rulemaking is derived from the Department's obligation to prevent and control air pollution, including greenhouse gases (GHGs), as set out in the Environmental Conservation Law (ECL) at Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103, 71-2105, 75-0101, 75-0105, 75-0107, and 75-0109. Furthermore, the proposed amendment to this regulation also addresses the Department's statutory responsibility to promulgate regulations under ECL 75-0109 and other provisions of the Climate Leadership and Community Protection Act of 2019 (Climate Act).

2. Legislative Objectives

The Climate Act directs the Department to promulgate regulations that, “reflect, in substantial part, the findings” of the Climate Action Council Scoping Plan (Scoping Plan) in order to achieve the Climate Act's statewide GHG emission limits (promulgated as 6 NYCRR Part 496) and net zero goal. The Scoping Plan included the following recommendations for the Department to address hydrofluorocarbon (HFC) emissions. The proposed amendments to the Part 494 regulation address all recommendations that are within the scope of this regulation and that do not require additional legislation. As a summary, the Scoping Plan Strategies B12 and W5 include the following recommendations specifically related to the promulgation of regulations by the Department. In other words, the Climate Act directs the Department to promulgated regulations that “substantially reflect” these recommendations.

- “DEC should expand the scope of 6 NYCRR Part 494... including through the establishment of a GWP [Global Warming Potential] threshold that decreases over time as low and ultra-low GWP options become

available and addressing leakage in existing equipment during the transition. DEC should align New York policy with anticipated federal (EPA[Environmental Protection Agency]) policy measures to meet HFC reduction requirements as well as with other U.S. Climate Alliance states, to send a strong market signal to manufacturers and industry while mitigating costs of the transition.” (Scoping Plan Strategy B12)

- “[Ensure] proper disposal of HFCs already in use in existing equipment” (Scoping Plan Strategy B12).

- “Require reclamation or destruction of refrigerants from appliances at end-of-life, with verification and reporting, and require leak detection for certain commercial refrigeration equipment” (Scoping Plan Strategy B12).

- “Address leaks at end-of-life by requiring reclamation or destruction of refrigerants from appliances and institute requirements for verification and reporting” (Scoping Plan Strategy W5).

- “Ban the sale of virgin high GWP refrigerants for servicing with an exception for reclaimed refrigerants” (Scoping Plan Strategy W5).

- “Create a registry and reporting requirements (to track sales, stockpiles, and leaks) for large refrigeration and heating, ventilation, and air conditioning (HVAC) systems and refrigerant wholesalers and distributors” (Scoping Plan Strategy W5).

3. Needs and Benefits

The Department estimates that the proposed amendments to Part 494 will address the relevant recommendations from the Climate Action Council Scoping Plan and reduce emissions in line with the requirements of the Climate Act. The proposed regulation is also aligned with the international Kigali Amendment to the Montreal Protocol as envisioned in the federal American Innovation and Manufacturing (AIM) Act of 2021. These policies intend to reduce the production and trade of HFCs in the U.S. 85% by 2036. The U.S. Environmental Protection Agency (EPA) has begun implementing regulations as directed under the AIM Act. EPA’s recent

Technology Transitions rule will step-down the Global Warming Potential (GWP) of substances in certain products to 150-700 GWP. The Department estimates that the Technology Transitions regulation could significantly reduce emissions in the State but will fall short of what was modeled in the Scoping Plan by approximately 7 million metric tons of carbon dioxide equivalent emissions (mmt CO₂e) in 2030 and 2050. The Department expects EPA to issue additional GWP step-downs in future years in line with the Kigali timeline. However, although EPA's regulations may control the national supply of new equipment, products and HFC substances; they will not control existing supplies or directly reduce emissions in New York State.

The proposed regulation is particularly important for ensuring that the Climate Act emission reduction requirements and Scoping Plan recommendations are met. The regulation will establish a full phasedown timeline for HFCs (i.e., a 10 GWP Limit), controls on emissions from existing equipment (i.e., a Refrigerant Management Program and prohibitions on bulk HFC substances), and enable a transition away from HFCs in the largest equipment types (i.e., a Food Chain Refrigerant Replacement Program, and prohibition on all new commercial refrigeration facilities). The Department estimates that this will reduce emissions 3.5 to 24mmt CO₂e per year through 2050, compared to the current regulation.

4. Costs

To estimate potential costs, the Department considered EPA's analyses of the AIM Act Allocation Rule. The EPA Allocation Rule, finalized in 2021, encompasses the full phasedown of HFCs in the US under the Kigali Amendment. EPA estimated significant cost savings associated with the full phasedown of HFCs, and a negative abatement cost equivalent to \$9 billion in savings nationwide (up to \$540 million for New York if allocated based on population size). There are no additional costs anticipated to the Department for implementing this regulation.

The Department used the EPA Social Cost metrics and NYS Value of Carbon Guidance to estimate the societal benefits of the proposed regulation from 2025 through 2050. Based on the Department's analysis, the current rule has a present value of \$12.3-62.5 billion, with a value of \$24.8 billion at the central 2% discount rate. This significant societal value reflects the high Global Warming Potential of HFCs and the potential damages associated with their impact on global climate change.

5. Paperwork

The proposed rule will impose minimal additional paperwork on manufacturers, owners and operators of equipment, distributors and wholesalers, and reclaimers but it is not expected to be unduly burdensome as the majority of records are already subject to federal requirements.

6. Local Government Mandates

Part 494 will not create any mandates for local governments as compared to other entities.

7. Duplication

This proposal does not conflict with any other existing federal or State regulations or statutes.

8. Alternatives

The Department considers other alternatives infeasible because of the requirements of the Climate Act.

9. Federal Standards

This proposal does not result in the imposition of requirements that exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule

Notwithstanding the following compliance schedule, pursuant to ECL Article 19, Part 494 will be effective 30 days after filing with the Department of State. This regulation will adopt a compliance schedule that prohibits specific substances in certain new products and systems and given certain exemptions.

January 2025 or 2026: First step-down in GWP per EPA or US Climate Alliance state rules; New refrigeration facilities limited to GWP of 10

January 2027: Prohibition on virgin refrigerant in small containers of automotive refrigerant

January 2028: Use of 100% reclaim in new residential and light commercial air conditioning and heat pumps, stand-alone refrigeration equipment

January 2034: Final stepdown for air conditioning and refrigeration end-uses to a GWP of 10

The regulation also prohibits the sale of bulk regulated substances on a graduated timeline between 2025 and 2040.

This regulation will also adopt a compliance schedule for registrations, reporting, record-keeping, leak management, and planning.

January 2025: Initial registration of suppliers; Start of labeling requirements; and leak detection and repair requirements.

June 2025: Initial registration of large commercial equipment, food chains; Installation of automatic leak detection devices

March 2026: Start of annual reporting by suppliers and large commercial equipment

June 2026: Initial registration of medium-sized commercial equipment

March 31, 2027: Start of annual reporting by medium-sized commercial equipment

June 2028: Initial registration of small-sized commercial equipment

January 2035: Final phasedown of food chain facilities without an approved Replacement Plan

Job Impact Statement

6 NYCRR Part 494, Hydrofluorocarbon Standards and Reporting

1. Nature of Impact:

The New York State Department of Environmental Conservation is proposing amendments to the Part 494 regulation that reflect recommendations in the Climate Action Council Scoping Plan to reduce hydrofluorocarbon (HFC) emissions. The Department is directed under the Climate Leadership and Community Protection Act to promulgate regulations that substantially reflect the recommendations in the Scoping Plan to meet the required statewide GHG emissions limits. The recommendations that are being addressed in this rule include that the Department should expand the current Part 494 prohibitions on new equipment and products, prohibit high Global Warming Potential substances, and develop a registration and reporting program to reduce refrigerant leakage (i.e., a Refrigerant Management Program). The recommendations also indicate that the Department should seek to align with the international Kigali Amendment to the Montreal Protocol (Kigali Agreement) to phase down HFCs as implemented under the United States 2020 American Innovation and Manufacturing Act (AIM Act). Under these policies, the US supply of HFC refrigerant will be reduced 85% by 2036. The United States Environmental Protection Agency (EPA) is implementing the AIM Act through a series of regulatory actions that were also considered in the design of this regulation. Specifically, the proposed rule adopts EPA's Technology Transitions prohibitions on new equipment and products and then additional prohibitions in later years that reflect the full timeline of the AIM Act and Kigali Agreement. Importantly, although the Kigali Agreement and EPA regulations affect the supply of newly manufactured equipment, products, and HFC substances, they do not control the HFC emissions such as from existing equipment. The proposed rule also includes a Refrigerant Management Program and Food Chain Refrigerant Replacement Program in Subpart 2 as an additional control on HFC emissions. The proposed regulation applies statewide.

The Department is unaware of any significant adverse impact to jobs and employment opportunities as a result of this proposed rule.

2. Categories and Number Affected:

The proposed amendments to Part 494 are not expected to impact jobs or employment in New York State as this regulation is designed to align with a transition that is already under way nationally and internationally. The global transition away from HFC refrigerants is expected to have significant effects on the workforce as it will require widespread training in new technologies. Similarly, other recommendations of the Scoping Plan are expected to affect jobs in the HVAC and Refrigeration sector, such as to increase the adoption of heat pump technologies to replace fuel combustion in the building sector. However, this increasing demand for training and workforce development is not directly related to the proposed regulation.

The proposed rule also provides flexibility for compliance entities in the event of a specific adverse impacts, including the ability to request a variance in the event of force majeure or impossibility. There are also mechanisms for small businesses in Disadvantaged Communities to seek variances based on economic hardship or for retail food operations to extend the replacement of equipment in such communities. This latter mechanism is specifically intended to avoid negative impacts on jobs and food security in these communities.

3. Regions of Adverse Impact

The proposed rulemaking applies statewide. There are no regions of the State where jobs or employment opportunities are expected to be adversely affected by this rule.

4. Minimizing Adverse Impact:

As detailed above, this rule is not expected to have a significant impact on jobs or employment. The Scoping Plan recommends workforce training to address and transitioning to low-GWP alternatives. The recommendation includes resource toolkits, programs, and incentives that make low-GWP refrigerant technologies and low-GWP alternatives available and affordable, including a focus on natural refrigerants. Specifically, the Scoping Plan states that the New York State Energy Research and Development Authority (NYSERDA) should support design professional and workforce training and education around low-GWP refrigerants and alternatives, including natural refrigerants, in building equipment and in building/construction spray foam.

Rural Area Flexibility Analysis

6 NYCRR Part 494, Hydrofluorocarbon Standards and Reporting

1. Types and Estimated Numbers of Rural Areas:

The New York State Department of Environmental Conservation (DEC or the Department) proposes to amend Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 494, “Hydrofluorocarbon Standards and Reporting” (Part 494). These amendments will further reduce hydrofluorocarbon (HFC) emissions and support the requirements of New York’s Climate Leadership and Community Protection Act, Chapter 106 of the Laws of 2019 (Climate Act) to reduce statewide greenhouse (GHG) emissions. The proposed amendments to Part 494 will apply statewide and there are no requirements in the proposed rule that would apply only to rural areas.

2. Reporting, Record Keeping and Other Compliance Requirements; and Professional Services:

There are no specific requirements in the proposed amendments that apply exclusively to rural areas, and the compliance obligations exist regardless of whether the regulated entity is located in a rural area. The Department does not anticipate adverse impacts to entities in rural areas from participating in reporting as the data are already subject to federal record keeping requirements and may aid businesses in saving money by avoiding refrigerant leakage.

3. Costs:

The majority of costs associated with the phase-down of HFCs are related to a global agreement, as implemented by the United States Environmental Protection Agency (EPA). The EPA has determined that there is an overall net savings to US businesses from this phasedown. The unique, direct costs from this regulation are likely limited to the costs of the Refrigerant Management Program and the Food Chain Refrigerant

Replacement Program in Subpart 2 of the proposed rule. These costs apply to all applicable businesses in the state are not specific to rural areas. These programs seek to reduce refrigerant leakage and enable retail food stores to transition to refrigerants that are not subject to the international phasedown, and the expected increased cost of such refrigerants. This rulemaking also seeks to reduce GHG emissions in line with the Climate Act, and to avoid the significant ongoing economic damages from climate change. Overall, the Department does not anticipate any significant costs to rural areas.

4. Minimizing Adverse Impacts:

The Department has considered the issues and determined that Part 494 will not have an adverse impact on rural areas. The Department will assess public comments regarding rural impacts received in the public comment period of the proposed amendments.

5. Rural Area Participation:

The Department conducted pre-proposal stakeholder outreach in three periods: May-July 2022, February-April 2023, and September-October 2023 with additional consultations throughout 2022 and 2023. The Department also sought to specifically notify small businesses through regional trade organizations and local governments through the Climate Smart Communities coordinators and held a webinar for them in March 2023. The Department also held focused discussion sessions and office hours for supermarket chains, some of which operate in rural areas. The specific amendments to the Part 494 rule also reflect recommendations in the Climate Action Council Scoping Plan, for which there was extensive outreach through 2020-2022 including a formal public comment period from December 2021 through July 2022. The Department will hold public comment period and hearings on the Part 494 amendments that will be accessible to all entities, including rural

stakeholders, and will notify interested parties of the proposed rulemaking. All parties will be able to comment on the proposed rule during the notice and comment period.

Regulatory Flexibility Analysis for Small Businesses and Local Governments

6 NYCRR Part 494, Hydrofluorocarbon Standards and Reporting

1. Effect of Rule:

The New York State Department of Environmental Conservation is proposing amendments to the Part 494 regulation that reflect recommendations in the Climate Action Council Scoping Plan to reduce hydrofluorocarbon (HFC) emissions. The Department is directed under the Climate Leadership and Community Protection Act to promulgate regulations that substantially reflect the recommendations in the Scoping Plan to meet the required statewide GHG emission limits. The recommendations that are being addressed in this rule include that the Department should expand the current Part 494 prohibitions on new equipment and products (primarily those using refrigerants), prohibit high Global Warming Potential substances, and develop a registration and reporting program to reduce refrigerant leakage (i.e., a Refrigerant Management Program). The recommendations also indicate that the Department should seek to align with the international Kigali Amendment to the Montreal Protocol (Kigali Agreement) to phase down HFCs as implemented under the United States 2020 American Innovation and Manufacturing Act (AIM Act). Under these policies, the US supply of HFC refrigerant will be reduced 85% by 2036. The United States Environmental Protection Agency (EPA) is implementing the AIM Act through a series of regulatory actions that were also considered in the design of this regulation. Specifically, the proposed rule adopts EPA's Technology Transitions prohibitions on new equipment and products and then additional prohibitions in later years that reflect the full timeline of the AIM Act and Kigali Agreement. Importantly, although the Kigali Agreement and EPA regulations affect the supply of newly manufactured equipment, products, and HFC substances, they do not control the HFC emissions such as from existing equipment. The proposed rule also includes a Refrigerant Management

Program and Food Chain Refrigerant Replacement Program in Subpart 2 as an additional control on HFC emissions.

2. Compliance Requirements:

This is not a mandate on local governments. Local governments have no additional compliance obligations as compared to other regulated entities. The proposed regulation will affect the availability of new products and equipment for sale to all persons and entities, including air-conditioning and refrigeration equipment procured by local governments and small businesses. Local governments and small businesses may be compliance entities under the Refrigerant Management Program in Subpart 2 of the proposed rule to the extent that they own or operate equipment that contains more than 50 pounds of refrigerant. This may include equipment such as large air-conditioning equipment or ice rink chillers. Compliance entities in this program will be required to register their equipment, maintain documentation and records, report refrigerant usage, repair leaks, and replace equipment if leakage cannot be repaired. These requirements are not expected to be burdensome as there are already similar federal requirements to collect and maintain the relevant information.

3. Professional Services:

There is no specific requirement or need for entities to contract for professional services in order to comply with the proposed rule and the Department does not believe that the regulated entities would need to acquire professional services to comply with the rule.

4. Costs:

The Department considers most of the potential costs from this rule to be the result of the national and global phase down. The EPA has determined that the national phase down of HFCs will have net economic benefits, in

part due to reduced refrigerant and energy costs and due to the significant societal benefit of GHG reductions. Based on the EPA analysis of the nationwide phase down of HFCs, the Department expects most of the potential costs to entities in New York State to be insignificant. The additional potential costs in New York State from this rule would be from participating in the Refrigerant Management Program and Food Chain Refrigerant Replacement Program in Subpart 2 of the proposed rule. These programs seek to reduce refrigerant leakage and to enable retail food stores to transition to refrigerants that are not subject to the international phasedown. The Refrigerant Management Program is not expected to incur costs as there are already similar federal requirements. The Food Chain Refrigerant Replacement Program may require certain businesses to replace equipment earlier than they would otherwise; but these businesses are specifically defined to exclude small businesses. Both of these programs have the potential to result in overall cost savings, particularly given the increasing costs of HFC refrigerants due to the global phase down.

EPA concluded that the full, national HFC phasedown will have a net benefit of \$265.8 or 269.9 billion, when applying a 3 or 7% discount rate. This includes a net present value of costs at -\$9 billion (3%) or -\$4.8 billion (7%), with the negative values representing overall savings, and a climate benefit of \$260.9 billion. If the costs are allocated to New York State based on population size, this would result in \$288-540 million in savings. The majority of potential cost savings are incurred from the adoption of low GWP options in commercial and industrial sectors that also provide substantial energy cost reductions, particularly in cooler climates like that in New York State. For the proposed Part 494, the majority of costs are duplicative to those assessed by EPA as the proposal a) is designed to align with the international Kigali Amendment phase-down and b) represent refrigerant management practices that save money.

5. Economic and Technological Feasibility:

Compliance with the proposed rule is technologically feasible for all entities, including small businesses and local governments. The timeline proposed for the prohibitions on new equipment and products reflects federal law in the near term or the international phase down in HFC refrigerants for later years. Where compliant alternatives are not yet available, the Department expects that the market will transition ahead of the prohibition dates proposed in this rule. However, the proposed rule also provides flexibility for compliance entities, including the ability to request a variance in the event of force majeure or impossibility. There are also mechanisms for small businesses in Disadvantaged Communities to seek variances based on economic hardship or for retail food operations to extend the replacement of equipment in such communities. In terms of economic feasibility, the Department believes the costs are reasonable and that there is an added value in transitioning to low GWP alternatives and away from HFCs.

6. Minimizing Adverse Impacts

The Department has determined that Part 494 will not have an adverse impact on small businesses or local governments as the ability to comply is not influenced by whether an entity is a small business or local government. Almost all of the proposed amendments align with the international phase down of HFCs under the Kigali Agreement and federal AIM Act. The additional costs associated with this rule either do not apply to small businesses or local governments or reflect administrative requirements that are also federally mandated.

7. Small Business and Local Government Participation

The Department conducted pre-proposal stakeholder outreach in three periods: May-July 2022, February-April 2023, and September-October 2023 with additional consultations throughout 2022 and 2023. The Department also sought to specifically notify small businesses through regional trade organizations and local governments through the Climate Smart Communities coordinators and held a webinar for them in March 2023. The specific

amendments to the Part 494 rule also reflect recommendations in the Climate Action Council Scoping Plan, for which there was extensive outreach through 2020-2022 including a formal public comment period from December 2021 through July 2022. The Department will hold public comment hearings on the Part 494 amendments that will be accessible to all entities, including small businesses and local governments, and will notify interested parties of the proposed rulemaking. All parties will be able to comment on the proposed rule during the notice and comment period.