

STATE OF NEW YORK

6105

2023-2024 Regular Sessions

IN SENATE

March 29, 2023

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to establishing a collection program for refrigerants and refrigerant-containing appliances

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 27 of the environmental conservation law is amended by adding a new title 34 to read as follows:

TITLE 34

COLLECTION PROGRAM FOR REFRIGERANTS AND REFRIGERANT-CONTAINING APPLIANCES

Section 27-3401. Definitions.

27-3403. Producer plan.

27-3405. Producer responsibilities.

27-3407. Retailer requirements.

27-3409. Department responsibilities.

27-3411. Labeling requirements.

27-3413. Penalties.

27-3415. No preemption of local law.

27-3417. Rules and regulations.

§ 27-3401. Definitions.

As used in this title:

1. "Brand" means a name, symbol, word, or mark that attributes the product to the owner or licensee of the brand as the producer.

2. "Collection program" means a system for the collection, transportation, recycling, and disposal of out-of-service refrigerants and refrigerant-containing appliances that is financed and managed or provided by a refrigerant or refrigerant-containing appliance manufacturer individually or collectively with other such manufacturers in accordance with this title.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 3. "Collection site" means a permanent location in the state at which
2 discarded refrigerants and refrigerant-containing appliances may be
3 returned by a consumer. Collection sites shall accept all types of
4 refrigerants and refrigerant-containing appliances as defined by this
5 title regardless of brand.

6 4. "Consumer" means a person located in the state who purchases, owns,
7 leases, or uses refrigerants or refrigerant-containing appliances,
8 including but not limited to an individual, a business, corporation,
9 limited partnership, not-for-profit corporation, the state, a public
10 corporation, public school, school district, private or parochial
11 school, or board of cooperative educational services or governmental
12 entity.

13 5. "Producer" means any person who manufactures refrigerants or refri-
14 gerant-containing appliances that are sold, offered for sale, or
15 distributed in the state under the manufacturer's own name or brand.

16 "Producer" includes:

17 (a) the owner of a trademark or brand under which refrigerants or
18 refrigerant-containing appliances are sold, offered for sale, or
19 distributed in this state, whether or not such trademark or brand is
20 registered in the state; and

21 (b) any person who imports refrigerants or refrigerant-containing
22 appliances into the United States that are sold or offered for sale in
23 the state and that are manufactured by a person who does not have a
24 presence in the United States.

25 6. "Refrigerant" means any substances consisting in whole or in part
26 of a class I or class II ozone-depleting substance, which are used for
27 heat transfer purposes and provide a cooling effect, including, but not
28 limited to, chlorofluorocarbons, hydro-chlorofluorocarbons, or any other
29 substitute substance as may be defined by the United States environ-
30 mental protection agency.

31 (a) A "class I or class II ozone-depleting substance" shall be those
32 substances as defined by 42 USC § 7671a.

33 (b) A "substitute substance" shall be any environmental protection
34 agency approved replacement for a class I or II ozone-depleting
35 substance in refrigeration or air-conditioning end-use.

36 7. "Refrigerant-containing appliance" means any device that contains a
37 refrigerant and can be used for household purposes including, but not
38 limited to, room air conditioners, heat pumps, refrigerators, water
39 coolers, or freezers.

40 8. "Representative organization" means a not-for-profit organization
41 established by a producer or group of producers to implement a
42 collection program.

43 9. "Retailer" means any person who sells or offers for sale refriger-
44 ants or refrigerant-containing appliances to a consumer in the state.

45 10. "Sell" or "sale" means any transfer for consideration of title or
46 the right to use, from a manufacturer or retailer to a person, includ-
47 ing, but not limited to, transactions conducted through retail sales
48 outlets, catalogs, mail, the telephone, the internet, or any electronic
49 means; this does not include donations or reuse.

50 § 27-3403. Producer plan.

51 1. No later than December thirty-first, two thousand twenty-five, a
52 producer, either individually or cooperatively in a group with one or
53 more producers or with a representative organization, shall submit to
54 the department for the department's approval a plan for the establish-
55 ment of a collection program for refrigerants and refrigerant-containing

1 appliances that meets the collection requirements described in this
2 section.

3 2. A producer may satisfy the collection program requirement of this
4 section by agreeing to participate collectively with a group of other
5 producers or with a representative organization. Any such producer
6 participating collectively in a collection program shall notify the
7 department of such participation.

8 3. A producer, group of producers, or representative organization
9 shall update the plan, as needed, when there are changes proposed to its
10 collection program. A new plan or amendment will be required to be
11 submitted to the department for approval when:

12 (a) there is a revision of the collection program's goals; or

13 (b) every three years from the date of approval of a previous plan.

14 4. The plan submitted by the producer or representative organization
15 to the department under this section shall, at a minimum:

16 (a) provide a list of each participating provider and brand covered by
17 the program;

18 (b) provide information on the products covered by the program;

19 (c) describe how the producer, group of producers, or representative
20 organization will safely collect, transport, recycle, and process refri-
21 gerants and refrigerant-containing appliances;

22 (d) describe how the program will provide for the collection of refri-
23 gerant-containing appliances, free of cost and in a manner convenient to
24 consumers, including how the program will achieve, at a minimum, a
25 convenience standard that ensures that all counties of the state and all
26 municipalities that have a population of ten thousand or greater have at
27 least one permanent collection site and one additional permanent
28 collection site for every thirty thousand people located in those areas,
29 that accepts refrigerant-containing appliances from consumers during
30 normal business hours. The producer, group of producers, or represen-
31 tative organization may coordinate the program with existing municipal
32 waste collection infrastructure as is mutually agreeable. Convenience
33 standards shall be evaluated by the department periodically and the
34 department may require additional collection locations to ensure
35 adequate consumer convenience;

36 (e) describe in detail education and outreach efforts to inform
37 consumers, refrigerant-containing appliance installers, and others
38 engaged in the management of discarded refrigerant-containing appliances
39 about the program including, at a minimum, an internet website and a
40 toll-free telephone number and written information included at the time
41 of sale of refrigerant-containing appliances that provides sufficient
42 information to allow a consumer to learn how to return such refriger-
43 ant-containing appliances for disposal, recycling or reuse;

44 (f) describe the methods to be used to reuse or recycle discarded
45 refrigerants and refrigerant-containing appliances;

46 (g) describe the methods to be used to manage or dispose of discarded
47 refrigerants and refrigerant-containing appliances that cannot be recy-
48 cled or reused;

49 (h) describe what, if any, incentives will be used to encourage
50 retailer participation;

51 (i) describe the outreach and education methods that will be used to
52 encourage municipal landfill and transfer station participation;

53 (j) estimate the amounts of refrigerants and refrigerant-containing
54 appliances that were previously sold, offered for sale, or distributed
55 in the state under each producer's name or brand that are discarded in

1 the state annually and describe the sources of data and methodology for
2 estimating such amount; and

3 (k) describe how the program will meet annual performance goals, as
4 determined by the department, provided that at a minimum, the program
5 shall achieve the following recycling rates:

6 (i) a thirty percent recycling rate for refrigerants and refrigerant-
7 containing appliances by five years after the plan is approved under
8 subdivision four of section 27-3409 of this title;

9 (ii) a fifty percent recycling rate for refrigerants and refrigerant-
10 containing appliances by ten years after the plan is approved under
11 subdivision four of section 27-3409 of this title; and

12 (iii) a seventy-five percent recycling rate for refrigerants and
13 refrigerant-containing appliances by fifteen years after the plan is
14 approved under subdivision four of section 27-3409 of this title.

15 § 27-3405. Producer responsibilities.

16 1. Beginning no later than July first, two thousand twenty-six, or six
17 months after the plan is approved under subdivision four of section
18 27-3409 of this title, whichever occurs later, the producer or represen-
19 tative organization shall implement a collection program utilizing
20 collection sites established pursuant to paragraph (d) of subdivision
21 four of section 27-3403 of this title.

22 2. A producer shall not sell, or offer for sale, refrigerants or
23 refrigerant-containing appliances to any person in the state on or after
24 the required date of implementation of the collection program under
25 subdivision one of this section unless the producer and the producer's
26 brands are registered with the department pursuant to this section.

27 3. The collection program shall be free to consumers returning refri-
28 gerant-containing appliances for disposal, recycling or reuse, conven-
29 ient, and adequate to serve the needs of such consumers in all areas of
30 the state on an ongoing basis.

31 4. A producer, group of producers, or representative organization
32 shall maintain records demonstrating compliance with the provisions of
33 this title and make them available for audit and inspection by the
34 department for a period of three years. The department shall make such
35 records available to the public upon request in accordance with the
36 provisions of the state freedom of information law and the regulations
37 promulgated thereunder. Record holders shall submit the records required
38 to comply with such request within sixty working days of written notifi-
39 cation by the department of receipt of the request.

40 5. Producers, groups of producers, and representative organizations
41 shall be responsible for the costs associated with the implementation of
42 the collection program, including but not limited to the cost of
43 collection. Each producer, group of producers, or representative organ-
44 ization shall pay fees established by the department to cover costs
45 incurred by the state in the administration and enforcement of this
46 title. Exclusive of fines and penalties, the state shall only recover
47 its actual cost of administration and enforcement.

48 6. Any person who becomes a producer on or after December thirty-
49 first, two thousand twenty-five shall submit a plan to the department,
50 or notify the department that it has joined an existing plan, prior to
51 selling or offering for sale in the state any refrigerants or refriger-
52 ant-containing appliances, and shall comply with the requirements of
53 this title.

54 7. On or before July first, two thousand twenty-seven, and annually
55 thereafter, each producer, group of producers, or representative organ-
56 ization shall submit a report to the department that includes, for the

1 previous program year, a description of the program, an assessment of
2 compliance with the program's performance goals, and a description of
3 any modifications necessary to achieve such goals. Such report shall
4 include the following:

5 (a) a detailed description of the methods used to collect, transport,
6 and process refrigerants and refrigerant-containing appliances in the
7 state, including collection methods made available to consumers and an
8 evaluation of the program's collection convenience;

9 (b) identification of all collection sites in the state;

10 (c) the total volume of refrigerants and refrigerant-containing appli-
11 ances collected in the state by method of disposition, including reuse,
12 recycling and other methods of processing or disposal;

13 (d) the total cost of implementing the program;

14 (e) samples of all educational materials provided to consumers, a
15 detailed description of efforts undertaken to disseminate such materi-
16 als, and an evaluation of such efforts, including recommendations, if
17 any, for how the educational component of the program can be improved;

18 (f) any modifications necessary to achieve increased participation in
19 the program; and

20 (g) any other information required by the department.

21 § 27-3407. Retailer requirements.

22 1. Beginning July first, two thousand twenty-six, no retailer may sell
23 or offer for sale refrigerants or refrigerant-containing appliances in
24 the state unless the producer of such refrigerants or refrigerant-con-
25 taining appliances is participating in a collection program. A retailer
26 shall be in compliance with this section if, on the date the refriger-
27 ants or refrigerant-containing appliances are offered for sale, the
28 producer is listed on the department's website as implementing or
29 participating in an approved collection program or if the refrigerant-
30 containing appliance brand is listed on the department's website as
31 being included in the program.

32 2. Any retailer may participate, on a voluntary basis, as a designated
33 collection site pursuant to a collection program and in accordance with
34 all applicable laws and regulations.

35 § 27-3409. Department responsibilities.

36 1. The department shall (a) maintain a list of producers who are
37 implementing or participating pursuant to section 27-3403 of this title,
38 (b) maintain a list of each such producer's brands, and (c) post such
39 lists on the department's website.

40 2. Beginning July first, two thousand twenty-six, the department shall
41 post on its website the location of all collection sites identified to
42 the department by the producer in its plans and annual reports.

43 3. The department shall post on its website each producer plan
44 approved by the department.

45 4. Within ninety days after receipt of a proposed plan or plan amend-
46 ment, the department shall approve or reject the plan or the plan amend-
47 ment. If the plan or plan amendment is approved, the department shall
48 notify the producer or representative organization in writing. If the
49 department rejects the plan or plan amendment, the department shall
50 notify the producer or representative organization in writing stating
51 the reason for rejecting the plan or plan amendment. A producer or
52 representative organization whose plan is rejected shall submit a
53 revised plan to the department within thirty days of receiving a notice
54 of rejection. If the department rejects the subsequent proposal, the
55 producer or producers at issue shall be out of compliance and subject to
56 enforcement provisions.

1 5. The department shall submit a report regarding the implementation
2 of this title in this state to the governor and legislature by April
3 first, two thousand twenty-seven and every two years thereafter. The
4 report shall include, at a minimum, an evaluation of:

5 (a) the stream of refrigerants and refrigerant-containing appliances
6 in the state;

7 (b) disposal, recycling and reuse rates in the state for refrigerants
8 and refrigerant-containing appliances;

9 (c) a discussion of compliance and enforcement related to the require-
10 ments of this title; and

11 (d) recommendations for any changes to this title.

12 § 27-3411. Labeling requirements.

13 One year after the plan is approved by the department pursuant to
14 section 27-3409 of this title, refrigerants and refrigerant-containing
15 appliances sold or offered for sale in the state shall be accompanied by
16 the name of the producer and the producer's contact information.

17 § 27-3413. Penalties.

18 Any producer who violates any provision of or fails to perform any
19 duty imposed pursuant to this title shall be liable for a civil penalty
20 not to exceed five hundred dollars for each violation and an additional
21 penalty of not more than five hundred dollars for each day during which
22 such violation continues. Civil penalties shall be assessed by the
23 department after a hearing or opportunity to be heard pursuant to the
24 provisions of section 71-1709 of this chapter.

25 § 27-3415. No preemption of local law.

26 Nothing in this section shall be deemed to preempt any provision of
27 local law, including, but not limited to chapter four-e of title sixteen
28 of the administrative code of the city of New York, provided that the
29 provisions of such local law are at least as stringent as the provisions
30 of this section.

31 § 27-3417. Rules and regulations.

32 The department is authorized to promulgate any rules and regulations
33 necessary to implement this title.

34 § 2. This act shall take effect immediately.