

October 11, 2012

Krycia Von Burg, Regulations Coordinator
Regulations Section
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Re: AHRI Comments – Safer Consumer Products Proposed Regulations

Dear Ms. Von Burg:

These comments are submitted by the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in response to the proposed regulations on safer consumer products issued by the California Department of Toxic Substances Control (DTSC) in July 2012.

AHRI is the trade association representing manufacturers of heating, cooling, water heating, and commercial refrigeration equipment including manufacturers of commercial HVAC pumps. More than 300 members strong, AHRI is an internationally recognized advocate for the industry, and develops standards for and certifies the performance of many of the products manufactured by our members. In North America, the annual output of the HVACR industry is worth more than \$20 billion. In the United States alone, our members employ approximately 130,000 people, and support some 800,000 dealers, contractors and technicians.

We believe that as written, the proposed regulations create an uncertain regulatory environment for our industry since the chemicals of concern (COC) and the priority products lists will not be published until after the effective date of the regulations. We view the COC and the priority product lists as being essential pieces of the safer consumer products regulations. The proposed regulations also provide DTSC with limitless discretionary authority over a process that will be used to regulate consumer products, thereby eliminating virtually any certainty that a business might have in terms of regulatory treatment once the COC and the priority product lists are published. It will be nearly impossible for manufacturers to design compliant products since compliance is an ever-shifting target under the proposed regulations. It would be difficult for our industry to keep track of an expansive COC list, especially if the list lacks a prioritization process. Rather than targeting thousands of chemicals at once, the DTSC should focus its efforts on targeting chemicals that pose the greatest hazard. The priority product list should be based on scientifically valid criteria that clearly outline how DTSC identified the priority products. The process of developing the priority product list should focus on intentionally-added chemicals in products and reasonable and foreseeable exposure to those chemicals.

The proposed regulations require that the responsible entity submit the preliminary alternatives analysis (AA) report no later than 180 days after the date the product is listed on DTSC's final priority products list. Additionally, the responsible entity is required to submit the final AA report no later than 12 months after the DTSC issues a notice of compliance for

the preliminary AA report. We believe that the 180-day and the 12-month submission deadlines are too stringent given the fact that our industry not only has to face the uncertainty with respect to the COC and priority product lists but may also have to allocate a significant amount of time and resources to develop viable solutions that comply with the proposed regulations.

§ 69501.5.(b)(F)(6) of the proposed regulations indicates that a list of all preliminary AA reports and final AA reports will be posted on DTSC's website. Such language has the potential of publicizing a manufacturer's future production plans, thereby impeding innovation and competition, and could expose industry participants to liability under applicable federal antitrust laws. Hence, the proposed regulations should be amended to clarify that any information designated by a manufacturer to be a "Trade Secret" shall not be included on DTSC's website.

When addressing regulatory duplication, the proposed regulations state that DTSC may exempt a product that is regulated by other federal or state regulatory programs, or international trade agreements. The recognition of duplicative regulations is absolutely essential in the required prioritization process that will determine what chemicals and products will be subject to the safer consumer products regulations. Our industry is already subject to several regulations that are issued by various federal and state regulatory bodies. Some of these regulatory bodies are:

- U.S. Environmental Protection Agency (EPA)
- U.S. Department of Energy (DOE)
- California Energy Commission (CEC)
- South Coast Air Quality Management District (SCAQMD)
- California Air Resources Board

We recommend that DTSC account for the regulations issued by the organizations mentioned above in order to avoid placing an unnecessary burden on our industry through regulatory duplication. Regulatory duplication for any product should be a straightforward question – is the potential health or environmental impact from the chemical in the product regulated by another agency or not? Where that is the case, by definition any action by DTSC would be regulatory duplication and should be avoided. As an example, § 69501.1.(a)(3) of the proposed regulations defines greenhouse gases like hydrofluorocarbons (HFCs), nitrogen oxides and nitrous oxides (NOx) as air contaminants that have adverse impacts on air quality. The proposed regulations state that these “contaminants” have the ability to result in adverse public health and have ecological, soil, or water impacts. On what basis did the department include this language in the proposed regulations? What research study provides a basis for classifying greenhouse gases as air contaminants? Additionally, the fact that this section lists various greenhouse gases suggests that DTSC has not yet accounted for the existing federal and state regulations on greenhouse gases. HFCs are currently regulated by the EPA and have never been classified by EPA as air pollutants. On October 30, 2009, EPA published a final rule with respect to the mandatory reporting of greenhouse gases that requires the reporting of annual emissions of certain HFCs ([74 FR 56260](#)). On March 12, 2004, EPA issued a final rule on venting and sales of refrigerant substitutes ([69 FR 11946](#)). The rule sustains the Clean Air Act prohibition against venting HFCs. DTSC should recognize EPA's efforts with respect to HFCs and remove all references to HFCs from the safer consumer products proposed regulations, so that unnecessary regulatory duplication can be avoided.

AHRI appreciates the opportunity to provide these comments. If you have any questions regarding this submission, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'AR' with a flourish underneath.

Aniruddh Roy
Regulatory Engineer
Air-Conditioning, Heating, and Refrigeration Institute
2111 Wilson Boulevard, Suite 500
Arlington, VA 22201-3001, USA
Phone 703-600-0383
Fax 703-562-1942
aroy@ahrinet.org