

March 16, 2020

Lauren Miller
Colorado Department of Public Health and Environment
Air Pollution Control Division
4300 Cherry Creek Drive South
Denver, CO 80246
(Submitted via email to cdphe.commentsapcd@state.co.us)

Re: AHRI Comments to Colorado: Draft Regulation Number 22 – Colorado Greenhouse Gas Emission Reduction Requirements

Dear Ms. Miller,

The Air Conditioning Heating and Refrigeration Institute (AHRI) submits this letter in response to the Colorado Department of Public Health and Environment (CDPHE) Air Pollution Control Division (the Division) Draft Regulation Number 22 part B prohibitions on the Use of Certain Hydrofluorocarbons (HFCs) in Aerosol Propellants, Chillers, Foam, and Stationary Refrigeration End-Uses.

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 that the manufacture of products intended for service or maintenance is permitted;
4. Administration Requirements (e.g. disclosure, labeling, and recordkeeping);
5. Building codes should adopt ASHRAE 15 (2019) and UL 60335-2-40 to allow for the installation of equipment using low-GWP alternatives;
6. Request to delay supermarket equipment compliance date until July 1, 2021; and
7. Technician training requirements.

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” along with a proposed definition of Nominal Compressor Capacity:

“New” means products or equipment that are manufactured after the date of prohibition or equipment first installed for an intended purpose with new or used components after the date of prohibition, expanded by the addition of components to increase ~~system~~ the total nominal compressor capacity after the date of prohibition, or replaced or cumulatively replaced such that the cumulative capital cost of replacement after the date of prohibition 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 the Division’s proposed regulation is intended to adopt these requirements for equipment being *installed* in Colorado. As written, the draft language may ban warehousing and the transport of non-Colorado 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.

Furthermore, 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 Colorado and are willingly compliant with HFC regulations in every state banning their use.

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

*“Use” means any utilization of any substance, including but not limited to utilization in a ~~manufacturing process or~~ product *installed* in the State of Colorado, consumption by the end-user in the State of Colorado, ~~or in intermediate applications in the State of Colorado, such as formulation or packaging for other subsequent applications. For the purposes of this regulation, use excludes residential use~~, but it does not exclude manufacturing for the purpose of 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 the Division’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 I.C.2:

*Except where an existing system is retrofit after the date of prohibition, nothing in this regulation requires a person that acquired a product or equipment containing a prohibited substance prior to the applicable date of prohibition in Section I.E.1. to cease use of that product or equipment. Products or equipment manufactured prior to the applicable date of prohibition specified in Table 1 of Section I.E.1 (including spray foam systems not yet applied on site) may be sold, imported, exported, distributed, installed, and used after the specified date of prohibition. **Products, equipment, or substances may be manufactured, sold, imported, exported, distributed, installed, and used if it is manufactured after the applicable effective date of the restrictions specified in Section I.E.1 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. AHRI would like to reiterate its support for an express 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. 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 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 the Division staff to showcase the AHRI Directory capabilities that could be adapted to help manufacturers comply with internet disclosures as we have done for other Climate Alliance states.

AHRI strongly requests flexibility in administrative requirements including an express allowance of internet or electronic disclosures in lieu of physical labels.

B. PROPOSED LANGUAGE FOR A GENERIC DISCLOSURE STATEMENT

AHRI appreciates the Division's consideration of our previous comments to require a generic disclosure statement that aligns as much as possible with other states' requirements.

C. REQUEST TO REMOVE RECORDKEEPING REQUIREMENTS

AHRI request that the Division 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 Colorado 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 Division 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 the removal of all recordkeeping requirements from Part B of the draft regulation.

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

AHRI recommends that the Division 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 Colorado 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 Division 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 and the supermarket industry plans for equipment well in advance of its installation. The Division's proposed timeline allows less than one year for manufacturers to process through inventory, design, test, and certify new designs, and train technicians on updated safety and servicing requirements. A delayed compliance deadline will help to ensure that manufacturers have sufficient time to prepare for, and ensure compliance with, Colorado'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 again for providing stakeholders the opportunity to provide feedback during the rulemaking process, and for your discussions 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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