From: Crawford, Jim [mailto:Jim.Crawford@irco.com]
Sent: Friday, February 03, 2012 3:12 PM
To: Regulatory.Review
Cc: Vershaw, Jim
Subject: Regulatory Burden RFI [76 FR 75798]

David Cohen
Assistant General Counsel for Legislation, Regulation and Energy Efficiency
U.S. Department of Energy
Office of General Counsel
1000 Independende Avenue SW
Washington, DC 20585

Dear Mr. Cohen,

The following comments are provided on behalf of Ingersoll Rand [IRCO], Residential Solutions, manufacturer of Trane and American Standard residential air conditioners, heat pumps, furnaces and accessories therefore. --- Ingersoll Rand appreciates the opportunity to comment on the Department of Energy's request for information on "Reducing Regulatory Burden" in the spirit of Executive Order 13563.

It is ironic that the response interval for the RFI on reducing regulatory burden overlaps the interval for responding to the NODA on ***Enforcement of Regional Standards for Residential Furnaces and Central Air Conditioners and Heat Pumps*****,** 76 FR 76328, much as last year's regulatory burden RFI response time window overlapped that of the issuance of the ***Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment; Final Rule,*** 76 FR 12422. The planned expansion of enforcement constitutes a step increase in the regulatory burden on the manufacturers of the covered equipment and their customers. Therefore, the enforcement rule could be used to illustrate the points in response to the RFI since it substantially increases the burden on the manufacturers, distributors and dealers of "covered products". Comments illustrating a few of the more severe burdens of the enforcement rule were submitted by AHRI on March 11, 2011.

Since the IRCO comments submitted last year are not cited on the DOE GC web page, http://energy.gov/gc/services/open-government/restrospective-regulatory-review , those comments are resubmitted, with emphasis on key points excerpted from the Executive Order 13563 in both the current RFI and that of 76 FR 12422.

First, it is important to note that the rule-making process itself can impose substantial burdens on manufacturers.

In establishing rules for appliance regulations, DOE-EERE can draw on a very substantial standards-setting budget somewhere in the range of $35 million [FY 2010 appropriation] to $70 million [FY 2012 Request] for "Equipment Standards and Analysis" as reported in the DOE/EERE Fiscal Year 2012 Congressional Budget at http://www1.eere.energy.gov/ba/pba/pdfs/fy12_budget.pdf. This is augmented by support from commercial contractors and the DOE labs, the latter assumed to be funded to some degree by other funds. Regardless of the details, the point is that the DOE resources can all work together

on individual projects, and that DOE has sufficient resources to fund a product leader for each product type.

Industry would seem, on the surface, to have comparable resources to balance the picture. However, personnel from the several manufacturers are severely restricted by anti-trust rules from working together. A simple example would be estimation of product cost for various efficiency levels. This is an area where DOE can draw on internal resources, the national labs and external contractors, while the manufacturers cannot match those resources. Individual manufacturers may have good estimates of their own costs, but they cannot share those with other manufacturers to arrive at industry cost distributions, for example.

There are corresponding burdens in the analytical area where DOE draws on internal resources, two or more national labs and commercial contractors or consulting firms.

Several factors from Executive Order 13563, cited in the RFI, merit discussion in the context of burden on manufacturers.

- Do *benefits justify costs*? All too often, the analyses performed by DOE use periods of several decades for analysis of payback or energy savings for new standards. It is obvious that modest benefits over very long periods inflate the appearance of the benefits. Those inflated estimates work a hardship on both manufacturers and the consumer. As a starting point to correct this imbalance, the analysis period should never be longer than the expected life of the covered product in question or the expected time to the next rule making, whichever is shorter.

- The 3% to 7% *Discount Rate* used by DOE in cost-effectiveness analyses is far too low. The lower of these numbers is on the order of the rate of inflation. Thus, in effect, use of such a low number places a value of zero on the *time value of money* which is what the use of discount in economic analyses is supposed to be all about. --- Recognizing the magnitude of the average household debt, it is likely that a very large percentage of emergency replacements of HVAC systems will be carried on a credit card at an interest rate on the order of 13%. With the average share of the credit card debt plus student loan debt of over $15,000 per household, ready cash for the replacement should not be assumed. In the past, DOE has argued that equipment purchases would be financed as part of a mortgage. Even in good times, some ¾ of air conditioner or heat pump unit sales are for replacement. These would not be on mortgages. In the current housing market, less that ¼ of units are going to new construction, further reducing the chance to finance on a mortgage.

- Estimating the *least burden on society* is admittedly a difficult task. The burden analyses do not give adequate consideration to the segment of society represented by the employees and families that draw their livelihood from the manufacture, distribution, sales and service of the covered products and the parts and materials that go into these products. That represents several million people. In the current economy, many of those people are unemployed or under-employed. This is not due to excess regulation of HVAC products, but increased regulation could exacerbate the situation. --- It might be argued that the effect on the workforce is covered by the manufactures' impact analysis [MIA]. However, the MIA is too detached from solid data to be reliable; and past experience indicates that even if a manufacturer gives the DOE contractors actual cost data, that data may be ignored by the contractors in developing the cost estimates.

Furthermore, the scope of the MIA is not broad enough to embrace the range of affected individuals mentioned here, such as distributors and dealers.

- The *costs of cumulative burdens* are almost impossible to estimate. Since there are literally thousands of laws and regulations that govern the operation of any manufacturing business, attempting to provide cost estimates for the cumulative burden would have only one sure outcome -- an added burden for the human and financial resources needed to attempt such an estimate.

- *Maximizing net benefits* to include the factors of "[economic, environmental, public health and safety, and other advantages; distributive impact; and equity]" is attractive in concept but is not possible. Several of these positive attributes may be in competition, such that increasing one will decrease another. A simple illustration of this might be that the economic interests of some of the stakeholders are in competition with those of others. --- An axiom in optimization classes is that *the greatest good for the greatest number of people is one greatest too many*. The general principle can be elaborated further if necessary. That applies here as well. Note also that the notion of "least burden on society" is more or less the inverse of "maximizing net benefits", subject to the same process limitations in seeking an optimum.

- The DOE rule-making process in recent years has been rather good about "*encouraging public participation* [if "'public" is taken to mean stakeholders] *and an open exchange of views, with an opportunity for the public to comment*". However, there are several opportunities to improve the process; These include:

    - Restoration of the ANOPR to the regulatory process.
    - Making the stakeholders privy to the analytical processes, such as those that lead to the TSD or Framework Document for example. As it is now, the DOE contractors obtain data from the manufacturers and other sources, and the next time the manufacturers see them is at the public hearings, which is far too late to correct misinterpretations, misapplications or just plain errors in applying the manufacturers' data.
    - Making transparent the presently opaque analytical process that are used in development of the regulations, TSD, framework documents, etc.
    - Publishing a detailed agenda before public hearings and making the visual materials to be presented by DOE and the contractors available with sufficient lead time for the stakeholders to respond more effectively in the hearings; and
    - Providing the opportunity for the stakeholders to make presentations at public hearings using visual materials. This will lengthen the public hearings, but that would be very worthwhile in the interest of communication and cooperation.
    - The last two points strongly suggest that consideration ought to be given to replacing or augmenting the "hearings" with truly interactive "workshops".

- Finally, the most effective way for each branch of government to respond to the spirit of the Executive Order would be for the government to itemize the laws and regulations under their purview and then to undertake an in-house case-by-case review of the burdens on the regulated community. A few questions should be answered:

    - Do we need this rule?
    - If so, why?
    - Is there a better way to doing it?

Taking rules on a case-by-case basis would permit proper deliberation on the impact of the rules and regulations and provide the elements to establish a plan for fewer and simpler rules and regulations. --- If this is considered to be too burdensome on the government, it is manifestly far more so on the regulated community.

If there are any question on which you seek further elaboration, please contact the following:

Jim VerShaw
Chief Engineer
Ingersoll Rand
Residential Solutions
6200 Troup Highway
Tyler, Texas 75707
jim.vershaw@irco.com

903-730-4470

Submitted by:

Jim Crawford, Consultant
jim.crawford@irco.com

Office 903-730-4534
Mobile 903-520-9049