January 31, 2012

Office of the General Counsel, Department of Energy

Dear Mr. Cohen,

Unfortunately we missed the dead line for the first set of comments regarding regulatory burden. We've searched the web at http://www.regulations.gov for any comments from the first round due on January 5, 2012 and could not find any.

The situation we described last year (see below) has not improved. We are waiting for additional rules from DOE but don't believe they'll provide the needed relief from regulatory burden. This past year we've invested $250,000 in energy testing. Those resources could have been used to develop new and better products. We expect to invest more dollars in 2012.

Since your last request for information in 2011, we did more research in EPACT 2005. The below is an excerpt from the law. Our legislators identified the value and cost efficiency of using third party programs to verify the performance of self contained equipment. It's unfortunate the DOE did not apply this approach to remote cases and instead generated a burdensome certification and enforcement process that raises the cost to manufactures and taxpayers.

Sincerely,

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‘‘(2) Any State or local standard issued before the date of enactment of this subsection shall not be preempted until the standards established under section 342(a)(9) take effect on January 1, 2010.

‘‘(e)(1)(A) Subsections (a), (b), and (d) of section 326, subsections (m) through (s) of section 325, and sections 328 through 336 shall apply with respect to commercial refrigerators, freezers, and refrigerator-freezers to the same extent and in the same manner as those provisions apply under part A.

‘‘(B) In applying those provisions to commercial refrigerators, freezers, and refrigerator-freezers, paragraphs (1), (2), (3), and (4) of subsection (a) shall apply.

‘‘(2)(A) Section 327 shall apply to commercial refrigerators, freezers, and refrigerator-freezers for which standards are established under paragraphs (2) and (3) of section 342(c) to the same extent and in the same manner as those provisions apply under part A on the date of enactment of this subsection, except that any State or local standard issued before the date of enactment of this subsection shall not be preempted until the standards established under paragraphs (2) and (3) of section 342(c) take effect.

‘‘(B) In applying section 327 in accordance with subparagraph (A), paragraphs (1), (2), and (3) of subsection (a) shall apply.

‘‘(3)(A) Section 327 shall apply to commercial refrigerators,

freezers, and refrigerator-freezers for which standards are established under section 342(c)(4) to the same extent and in the same manner as the provisions apply under part A on the date of publication of the final rule by the Secretary, except that any State or local standard issued before the date of publication of the final rule by the Secretary shall not be preempted until the standards take effect.

''(B) In applying section 327 in accordance with subparagraph (A), paragraphs (1), (2), and (3) of subsection (a) shall apply.

''(4)(A) If the Secretary does not issue a final rule for a specific type of commercial refrigerator, freezer, or refrigerator-freezer within the time frame specified in section 342(c)(5), subsections (b) and (c) of section 327 shall not apply to that specific type of refrigerator, freezer, or refrigerator-freezer for the period beginning on the date that is 2 years after the scheduled date for a final rule and ending on the date on which the Secretary publishes a final rule covering the specific type of refrigerator, freezer, or refrigerator-freezer.

''(B) Any State or local standard issued before the date of publication of the final rule shall not be preempted until the final rule takes effect.

''(5)(A) In the case of any commercial refrigerator, freezer, or refrigerator-freezer to which standards are applicable under paragraphs (2) and (3) of section 342(c), the Secretary shall require manufacturers to certify, through an independent, nationally recognized

testing or certification program, that the commercial refrigerator, freezer, or refrigerator-freezer meets the applicable standard.

''(B) The Secretary shall, to the maximum extent practicable, encourage the establishment of at least 2 independent testing and certification programs.

''(C) As part of certification, information on equipment energy use and interior volume shall be made available to the Secretary.

From: Bruce Hierlmeier
Sent: Monday, March 21, 2011 11:51 PM
To: 'Regulatory.Review@hq.DOE.gov'
Cc: Dave Morrow
Subject: Regulatory Burden RFI Executive Order 13563

March 21, 2011

Office of the General Counsel, Department of Energy

Dear Mr. Harris,

The current certification, compliance and enforcement regulations for Commercial Refrigeration Equipment (CRE) "simply makes no sense". The regulations define the basic model as any product that has a different energy use or efficiency level. It does not allow for modeling the performance of our equipment. Our equipment is customized per order and by mixing and matching different combinations we have 118,000 basic models. The requirement to test two models to get an average energy level increases the number of tests to 236,000. At an average test cost of $3,000, our total costs will be over $700,000,000. The rule needs to be redone.

I do not think the process the DOE used for Commercial Refrigeration Equipment was fair and it needs to be changed. The DOE began the process by working on efficiency regulations and asked questions about cost and impact on manufacturers and the industry. At no time did the DOE publish or discuss the definition of a basic model for this equipment or limitations on using modeling techniques to determine energy efficiency. When companies were asked the economic impact of the legislation, we could not predict the over burdensome test requirements that resulted from the recent certification, compliance and enforcement rule making. The new certification, compliance and enforcement rules makes the assumptions and outcome of the efficiency regulations invalid. Any future rulemaking needs to be done in tandem with both the efficiency regulation and the certification, compliance and enforcement regulation so the full cost and impact to manufacturers can be determined.

The certification, compliance and enforcement rules basically ignore and discount the value of voluntary test programs like the equipment certification program AHRI operates.
These programs operate at no cost to the government or tax payer and provide an accurate method for validating the performance of our equipment. The public is certain about the performance of product certified by these programs.

The government assumes we are guilty of non compliance unless we prove otherwise. Manufacturers should be able to do in-house testing and modeling and after applying sound engineering principles certify the rating they publish. If there is a question about the rating, the government can do challenge tests on the product and level penalties if companies are cheating. The federal government is overstepping its reach in the private sector by assuming all product fails to meet the standard unless the manufacturer can prove otherwise.

Sincerely,

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