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Subject: EO 13563 Preliminary Plan comments from A.O. Smith Corporation
Date: Monday, August 01, 2011 2:59:51 PM

A.O. Smith Corporation Response to Preliminary Plan for Retrospective Analysis of Existing Rules

A.O. Smith Corporation is the largest manufacturer of residential and commercial water heating equipment in the United States. We have the following comments in response to the July 11, 2011, Notice of Availability in the Federal Register, in which DOE sought comments regarding its EO 13563 Preliminary Plan:

- In general, we commend DOE's approach to review significant rules on an on-going basis in order to reduce the burden of complying with obsolete, unnecessary, unjustified, burdensome, or counterproductive rules.
- We commend the steps DOE has already taken to address existing rules, especially: the 18 month extension for compliance with the certification, compliance, and enforcement (CC&E) rule; the proposed rulemaking considering AEDM's; soliciting public input on the potential use of computer simulations in lieu of testing (although we question how that is different than the AEDM measure); and the proposed rule to standardize procedures to protect trade secrets.
- While we do commend DOE for delaying the CC&E rule, we continue to urge DOE to revisit the entire rule. We do note that it is one of the rules identified in the Plan as a candidate for retrospective review, and strongly urge DOE to suspend the rule (not just delay) until the retrospective review is completed. Even with an additional 18 months until compliance, a manufacturer such as A.O. Smith has had to start conducting the required testing immediately in order to even come close to meeting the deadline in 18 months. It would truly be a waste of resources to expend the massive effort needed to comply with the rule, only to have the rule modified or eliminated some months from now as a result of the retrospective review. Not only would the manpower and costs associated with the testing be wasted, but the lost "opportunity cost" of the high-efficiency products that we could have been developing, instead of using all of our available resources on the CC&E rule, would be an unfortunate waste, and delay, of future energy savings opportunities.
- We believe the Public Education information that has been added to the Office of the General Counsel's website is a very good step in informing the public about regulatory reform.
- We are happy to learn that DOE will continue to publish framework documents and preliminary analyses as appropriate in future rulemakings, instead of discontinuing them as outlined in the November, 2010, announcement of steps that would be taken to "streamline" the rulemaking process. We believe this is a positive step to continue to insure that adequate input is received for rulemakings.
- We are also happy to learn that DOE is being responsive to commenters' concerns about duplicative testing and reporting requirements with the ENERGY STAR ® program (especially since we were one of those commenters). We hope that the actual outcome of the coordination efforts between DOE and EPA lives up to the intent of cooperation and reduction of burden on manufacturers.
- We are pleased to see that efficiency standards for water heaters and electric motors are both on the list of candidate rules for retrospective review, along with the previously mentioned CC&E rule, as we believe some aspects of these standards are, indeed, unjustified, overly burdensome, and counterproductive. We do have the same concern expressed earlier about the CC&E rule in regard to the water heater and motor standards, however. It would be extremely disturbing and wasteful to have invested several years of effort into developing equipment that would comply with the next level of efficiency standards for water heaters (for example), only to have the standards modified as a result of the retrospective review. The DOE should consider putting the effective date of these standards on hold until the retrospective review has been completed.
- We are confused on one procedural aspect of the whole concept of retrospective review, though -

since DOE is prohibited from amending such final rules to reduce the stringency of the standards, how can any rule be modified to be less burdensome or be eliminated?_

Thank you for the opportunity to provide our input.

Charles Adams

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