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Air-Conditioning, Heating, and Refrigeration Institute

March 21, 2011

Daniel Cohen, Esq.
Office of General Counsel
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Re: Regulatory Burden RFI

Dear Mr. Cohen:

These comments are submitted by the Air-Conditioning, Heating and Refrigeration Institute (AHRI) in response to the U.S. Department of Energy's (DOE) notice appearing in the Federal Register on February 3, 2011 requesting information to assist DOE in reviewing existing regulations and in making its regulatory program more effective and less burdensome.

AHRI is the trade association representing manufacturers of heating, cooling, water heating, and commercial refrigeration equipment. 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. Among the products which our members manufacture and which are covered by DOE efficiency regulations are furnaces, boilers, air-conditioners, heat pumps, water heaters (both residential and commercial types); residential direct heating equipment; pool heaters; commercial unit heaters; and commercial refrigerators, walk-in coolers/freezers and icemakers. Considering this range of products, our manufacturers may be the largest single group directly affected by DOE regulations.

Analysis of Existing Rules

For the majority, if not all, of the DOE covered products manufactured by our members a schedule for periodic review of efficiency standards is established already either by federal legislation or DOE regulation. Based on this existing situation, we do not recommend any changes to DOE's current process of reviewing efficiency regulations for any of the DOE covered products manufactured by AHRI's members.

In the case of the related efficiency test procedures, DOE has mechanisms in place that can be used to identify situations where test procedure revisions may be needed. Those procedures include the waiver process and the website recently established to provide a place to request

interpretations or ask other questions regarding DOE's test procedures. Some DOE test procedures reference, in whole or in part, existing consensus national standards. For those test procedures, it may be worthwhile to consider a more formalized process of reviewing new editions of the consensus national standards as they are developed.

Reducing Regulatory Burden

The February 3, 2011 Federal Register notice explained that Executive Order 13563, was issued by President Obama to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. The notice identified several things that the Executive Order required. Three of those things are paraphrased below:

• Agencies adopt regulations upon a reasoned determination that the benefits justify the costs; and that the regulations impose the least burden consistent with obtaining the regulatory objectives.
• Agencies coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.
• Agencies consider low-cost approaches that reduce burdens and maintain flexibility.

We believe that recent DOE regulations concerning certification, compliance and enforcement of efficiency standards for residential and commercial products have failed to satisfy the basic concept of the Executive Order and, specifically in the case of the three requirements noted above, have not complied with the order.

In the case of the reporting requirements that were implemented for residential products at the beginning of 2010, there was a parallel reporting activity being established by the Environmental Protection Agency (EPA) for its Energy Star program. However the EPA established separate requirements that were unnecessary for the objective of validating that a product covered by DOE efficiency regulations had an efficiency rating that met the applicable energy star criterion. DOE's reporting requirements, developed in accordance with federal legislation, were sufficient. Those requirements recognized that manufacturers are responsible for accurately rating their models and obligated to do so by federal law. Disregarding the significance of these DOE requirements, EPA established additional reporting requirements for the same DOE covered products that imposed a new testing burden on manufacturers as well as redundant reporting requirements that had a cost but no benefit. The certification of a model's rating to DOE is according to federal law and should be considered final. If there had been coordination between agencies to simplify and harmonize regulations to reduce costs and promote certainty for businesses and the public, then the only thing that EPA should have required is verification that the model had been certified to DOE.

We recognize that in this case the greater fault lies with EPA. But, since it is DOE that is seeking information, we wanted to take this opportunity to note this redundant reporting situation.

The other regulation that we believe has fallen short of the Executive Order is the final rule on certification, compliance and enforcement published in the March 7, 2011 Federal Register. Particularly with regard to commercial products, this final rule has significantly increased manufacturers certification reporting and testing costs. When compared to the certification, compliance and enforcement final rule adopted by DOE in January 2010 for these same commercial products, the March 2011 final rule provides no benefit to most manufacturers, and penalizes those participating in Voluntary Independent Certification Programs (VICP).

Based on our estimate, industry's cost to comply with the testing requirements of the March 2011 final rule will be well over $500 million. It will require several years to complete all the necessary tests. This assumes that enough laboratories are available to handle the demand; our information indicates that is not the case. There is also a significant secondary effect. Manufacturers' resources of facilities and personnel are limited. A testing activity of this magnitude pushes aside research and development activities. If new concepts and designs cannot be tested in the laboratory they can never advance past the stage of being a design or concept on paper only. The testing required by the March 2011 final rule will curtail our members' ability to continue to develop new, more efficient and better performing products.

The January 5, 2010 final rule, which was superseded by the March 2011 final rule, had a long development time. One of the basic concepts that evolved over that time was to develop certification and enforcement regulations that recognized the value of independent certification programs and utilized the benefits of such programs. That concept very strongly matches the requirements of adopting the regulations that impose the least burden on society, consistent with obtaining the regulatory objectives, and considering low-cost approaches that reduce burdens and maintain flexibility. For most commercial HVAC and water heater equipment within AHRI's scope, efficiency certification programs existed before any federal minimum efficiency standards were established for those products. Those programs provided verification of efficiency ratings for American consumers, competing manufacturers, code officials, state and federal agencies with no direct costs to those parties.

The January 5, 2010 final rule included provisions that were specific to participants in VICPs. We are not aware of any complaints to DOE that products in such programs were being rated inaccurately or that those regulations were lax. We do know that those provisions in the January 2010 final rule did provide the least burdensome, least costly and most flexible way to provide

certification information to DOE. Yet DOE, of its own accord and without sufficient explanation, has eliminated in the march 2011 final rule the specific provisions that reflected a reasoned determination to utilize to the fullest benefit the certification programs that existed and which would impose no significant added cost to manufacturers.

The February 3, 2011 Federal Register notice listed 11 questions intended to assist in the formulation of comments. To that end, our comments do address many of the issues raised in those questions. In a few cases, a direct answer to the question noted appears to be the best way to provide our comment.

(6) Does the Department currently collect information that it does not need or use effectively to achieve regulatory objectives?

DOE has developed templates for reporting efficiency rating information in support of its certification regulations that requests other information that is not directly related to the efficiency rating of the models and is not necessary for achieving the objective of the certification requirements.

(7) Are there regulations, reporting requirements, or regulatory processes that are unnecessarily complicated or could be streamlined to achieve regulatory objectives in more efficient ways?

In addition to the reporting form complication noted above and our major concerns with the new certification and enforcement final rule, the certification requirements for commercial refrigeration equipment present a unusual complication in that, unlike most other commercial equipment, DOE's regulation does not provide an option of an Alternative Efficiency Determination Method (AEDM). The concept of an AEDM has been established by DOE to give needed testing flexibility to manufacturers of commercial equipment. Why would it not be extended to all commercial equipment covered by DOE regulations?

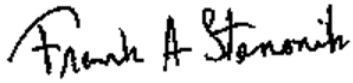
(9) Are there any of the Department's regulations that fail to make a reasoned determination that its benefits justify its costs; or that are not tailored to impose the least burden on society, consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; or that fail to select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity)?

As it applies to DOE minimum efficiency regulations, this question about existing regulations seems to be off the point of this notice. Once DOE minimum efficiency standards have been finalized, manufacturers initiate the necessary steps to have their models in compliance on or before the effective date of the standard. It no longer matters whether the costs of models complying with the efficiency standard are justified by the benefits or what amount of burden is

imposed on society or whether the net benefits have been maximized no longer. Any comments that we might submit in this regard will not change the regulation. These issues will be considered anew when a specific minimum efficiency standard is considered for revision.

We appreciate this opportunity to provide comments to assist DOE in streamlining its regulatory process and reducing the regulatory burden on manufacturers.

Respectively Submitted,



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