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Ms. Brenda Edwards
U.S. Department of Energy
Building Technologies Program, Mailstop EE-5B
1000 Independence Avenue SW.
Washington, DC, 20585-0121
(ImportData2015CE0019@ee.doe.gov)

Re: DOE NOPR for Import Data Collection
Docket Number EERE-2015-BT-CE-0019, RIN Number 1990-AA44

Dear Ms. Edwards:

These comments supplement the Air-Conditioning, Heating, and Refrigeration Institute's (AHRI) March 14, 2016 comments on the Department of Energy (DOE) notice of proposed rulemaking (NOPR) regarding Import Data Collection for covered products appearing in the *Federal Register* on December 29, 2015.

AHRI appreciates that DOE has clarified a few points that the objective of this NOPR is to establish a process to prevent the further importation of models which have been certified to DOE and determined by DOE to not be in compliance with the DOE efficiency regulation applicable to that product, and it was not the intent of the NOPR to delay the importation of a covered product subject to energy conservation standards solely due to a failure to certify the covered import.

While AHRI appreciates the additional time to work with our members and submit further comments, additional comments will not be sufficient for DOE to develop an alternative proposal. It will be essential to have a conversation between all stakeholders to form a more effective, less burdensome solution.

Furthermore, it is necessary for DOE to better quantify the extent of the existing problem before any type of conversation, brainstorming workshop, or negotiation could take place and be effective. We understand it is difficult to gather statistics and data to quantify noncompliant importers. However, at a minimum, the following items must be provided to clarify the problem:

- A collection of examples showing the specific problem that needs to be solved
- Demonstration that the problem is relevant to a variety of covered products

- Evidence that the proposed solution can be effective in deterring a meaningful number of noncompliant imports

This information would help us and other stakeholders better understand the severity and nature of the issue for which this NOPR is proposing a solution and allow stakeholders to help develop a less burdensome alternative solution.

Below we have provided information on the items for which DOE seeks additional comments. However, the next action should be to characterize the problem and undertake collaborative process to develop a more appropriate proposal.

Reducing Burden While Linking Imports to Certification Report

DOE has indicated it simply wants to collect the minimal amount of information necessary to link the Customs and Border Patrol (CBP) report for each shipment with the Compliance Certification Management System (CCMS) report, and that a variety of information could be provided as needed to fit the needs of the importer. The reality is that providing any piece of information for every model on each shipment represents an extensive change to existing systems, processes and databases.

DOE indicated it would be willing to accept groupings of models recognizing this introduces more risk for the importer. If a product was to be found noncompliant, all products in that group would be held at the border. If models are grouped for the purpose of reporting at the border, would the group identifier need to be reported separately to CCMS? While this option is intended to ease the reporting burden, it is not clearly described and may not have the intended result, or worse, may have unintended consequences.

While such flexibility would be appreciated, the added reporting still represents a significant burden, and it is unclear if this information would be effective. Furthermore, some AHRI members have expressed concerns about providing an item by item record of what is being imported and the potential breach of business sensitive information.

The proposed additional reporting requirements will certainly create additional burden for manufacturers. Although it is important to minimize this burden, DOE must also demonstrate the resources required to comply with the proposed requirements would provide an equal benefit.

A potential option would be to attach the AHRI Directory Certification Certificate to each shipment for the models included in that shipment. This Certificate is created by the AHRI Directory and contains model number and brand information for each model reported to CCMS through the AHRI Directory. This option could be discussed further during future conversations with DOE and other stakeholders.

Reporting for imported components presents an additional challenge. The proposal requires that imported products report embedded, covered components, which is not a

requirement for products manufactured in the US. Particularly for components, it is necessary to analyze separately the different products covered by this rulemaking in order to develop target solutions that will be effective while reduce reporting burden.

Compliance Date

AHRI is unable to comment on a specific compliance period without a clear understanding of the requirements and implementation plan for this proposed rule. However, AHRI encourages that the necessary software be developed, deployed and tested by a pilot group before a compliance date is chosen. Because of the potential systems development required, AHRI estimates a three year period would be necessary for implementation, the typical time frame given for energy conservation standards for commercial products.

It is unclear how CCMS would be linked to the CBP Automated Commercial Environment (ACE) system because as ACE is not fully deployed.

AHRI requests that an implementation date be based on a time period that begins after the software linking the future ACE system to CCMS has been deployed, and fully tested, rather than on the publication of a final rule.

Additional Concerns

The notice to reopen the comment period does not address the concerns expressed in AHRI's March 14, 2016 comments regarding the reliance on bad actors to police themselves by providing a report with their importation document identifying models that DOE has found to be noncompliant. AHRI and our members have serious doubts an importer will voluntarily identify a model number that is found to be noncompliant by DOE. It is more likely the importer will simply neglect to provide this report when importing products that may be noncompliant. As a result, compliant importers who attend hearings, comment on rulemakings, participate in workgroups, and consistently follow regulations will take on the added burden of reporting for each shipment without any benefit to energy conservation or to the American public.

Each of DOE's covered products relevant to our member's is unique with its own CCMS reporting template and AHRI Directory. It is necessary for DOE to demonstrate that this problem is widespread to justify a proposed reporting requirement that spans all imported covered products. It may be more appropriate to target the specific products and phase in other products incorporating improvements learned through experience. Even if DOE can show this problem applies to a wide range of products, a blanket solution will not be appropriate and, at a minimum, each regulated industry should be reviewed separately.

After reviewing the existing problem; DOE may find that there is simply a lack of communication with importers. Public outreach may be more appropriate or a more suitable first step. AHRI would be willing to assist with distributing fact sheets,

information on best practices, and any other information DOE finds would be helpful in alleviating a found problem.

Conclusion

As stated in AHRI's initial comments, the NOPR itself did not clearly characterize the problem being addressed, or explain what would be required from manufacturers and how the requirements would be implemented. DOE has proposed an overly burdensome solution to a problem that is not fully understood.

AHRI again strongly requests that DOE provide information to clarify the problem, and then form separate working groups (including representatives from CBP) for each industry of covered products to develop an appropriate solution for that industry's unique products. The extended comment period only allows for each stakeholder to meet on their own and is not a substitute for the requested working groups. Information, followed by an open conversation, is needed. At this point, AHRI strongly discourages DOE from releasing an SNOPR without first gathering the necessary information and bringing together stakeholders develop an effective and appropriate solution.

AHRI appreciates the opportunity to provide these additional comments and looks forward to receiving more information from DOE clarifying the existing problem. If you have any questions regarding this submission, please do not hesitate to contact me.

Sincerely,



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