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July 18, 2014

Steven P. Croley, Esq.
Office of General Counsel
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Re: Regulatory Burden RFI

Dear Mr. Croley:

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 in the July 3, 2014 Federal Register requesting information to assist DOE in reviewing existing regulations and in making its regulatory program more effective and less burdensome. These comments build on comments which AHRI had submitted in response to previous Request for Information (RFI) notices issued by DOE.

Analysis of Existing Rules

AHRI's previous comments addressed this subject from a general perspective. Some recent rulemaking activities now cause us to address the following specific examples.

Walk in Coolers and Freezers

This rule was issued in June 2014. DOE issued a test procedure for these products less than a month before the final efficiency standard. Consequently, the supporting analysis was based on ratings determined from an incompletely defined test procedure. There were many unexplained changes between the proposed rule and final rule stages, including standards that increased from the proposed to final rule. In some cases, it is not clearly established that the efficiency standard is technologically feasible, as some product classes have efficiency requirements that are higher than the maximum technological level specified in DOE's engineering analysis.

Furnace Fan Efficiency

The test procedure for measuring furnace fan efficiency was finalized in January, 2014. The furnace fan efficiency standard was issued in July 2014. Although the test procedure was finalized several months before the efficiency standard rule, the analysis conducted to support the efficiency standard rule was based on the proposed test procedure rather than that finalized test procedure. This hampered DOE's assessment of the impact of the proposed energy conservation standards on the utility of the product. The analysis failed to recognize that the rule will make a covered product unavailable. It also resulted in the underestimation of product lifecycle costs, overestimation of energy savings, underestimation of payback periods, and underestimation of the hardship on consumers with low or fixed incomes.

Water Heater Universal Efficiency Descriptor Test Procedure

This rule was issued on July 11, 2014. However the rule was not limited to revising the test procedure to measure the efficiency of water heaters. It added certification and enforcement requirements covering the rated storage volume of storage type water heaters. This aspect of the rule requires immediate review. It is not an efficiency performance characteristic of water heaters and these added requirements addressed a matter that is outside DOE's authority. These added requirements regarding the rated storage volume do not affect the testing of the water heater for efficiency and hot water delivery capacity. Those requirements do effect the current minimum efficiency standards. This inappropriate certification requirement will raise the current minimum EF requirement for 30 and 40 gallon gas water heaters, for 50, 65, 80, 100 and 120 gallon electric water heaters and for 30 gallon oil water heaters. This "test procedure" rule has raised the federal minimum efficiency standards for residential water heaters. Such an action clearly violates the statutory regulations governing the process by which DOE establishes and revises minimum efficiency standards.

Efficiency Standards for Commercial Refrigeration Equipment

This rule, issued in March 2014, was developed with several procedural and technical flaws of such significance that AHRI, the National Association of Food Equipment Manufacturers, and Zero Zone, Inc. have filed a legal challenge to the rule. AHRI and Zero Zone have also challenged the related test procedure, which was issued one month after the publication of the final efficiency rule.

These examples illustrated a trend that is of concern to us. In recent rulemakings, stakeholders have not had timely and adequate access to the models and assumptions supporting DOE's engineering analysis. As a result DOE's process has not been transparent, as required by Executive Order 13563 and the Process Rule. AHRI believes this lack of transparency has resulted in mistakes and inaccurate assumptions in DOE's technical analyses. Additionally, in recent rulemakings DOE has not complied with the Process Rule requirement of issuing final, modified test procedures prior to the NOPR on proposed standards. This has resulted in inaccurate analysis and significant changes in the standards and supporting analysis from the NOPR to the final rule stage, with no opportunity for stakeholders comment. Also, DOE has not adequately analyzed the impact of these late changes to the test procedures upon the related standards, as required by EPCA. Although this RFI is focused on reviewing existing regulations, we must take this opportunity to urge DOE to conduct its rulemaking with an increased emphasis on transparency and compliance with DOE's Process Rule (10 CFR 430 Subpart C to Appendix A).

Reducing Regulatory Burden

We continue to be concerned about a lack of coordination between DOE and the Environmental Protection Agency (EPA). Our previous comments focused on the area of reporting requirements. DOE has certification reporting requirements for residential products. EPA has separate and distinct reporting requirements for the subset of these same residential products that are covered by its Energy Star program. In these comment we add the issue of EPA regulations that will change the refrigerants which are available for use in various products covered by DOE efficiency standards. In several recent rules, including some of those noted above, DOE has disregarded the issue of alternate refrigerants that manufacturers will be forced to use because of proposed EPA regulations. EPA is working on regulations to eliminate the use of certain refrigerants, some of which are commonly used in products, such as

commercial refrigeration equipment, covered by DOE's efficiency standards. EPA has proposed phasing out the use of these refrigerants by 2016, well before the compliance date in recently adopted efficiency standard rules. DOE's analysis for these rules made no attempt to consider either the efficiency changes that will result from using alternate refrigerants or the cost to manufacture models at various efficiency levels using those same alternate refrigerants. Serious concerns about safety, availability, cost, and impact on efficiency were dismissed as "uncertain" because there was no finalized EPA rule, even though EPA had made repeated public statements on the issue and was well underway in its rulemaking process. As a result DOE's rulemakings have not adequately included any of these issues affecting consumers, manufactures and efficiency. One of the objectives of Executive Order 13563 is that agencies coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public. We again urge DOE to take the lead in coordinating the appropriate actions with EPA both to eliminate redundant and unnecessary reporting requirements and to analyze properly the effects of alternate refrigerants which may be required to be used in the future.

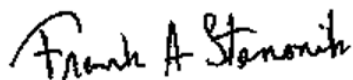
The July 3, 2014 Federal Register notice listed 10 questions intended to assist in the formulation of comments. The comments above generally address some of the issues raised in those questions. Also, comments previously submitted by AHRI did specifically address some of these questions. To those we add the following direct answer to the question noted.

(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?

DOE should consider ways to harmonize rulemakings that are separate and distinct but which apply to the same covered products. For example, there have been separate rulemakings to address minimum energy efficiency standards for air conditioners and heat pumps and stand-by/off-mode performance of these same products. Similarly, there has been a furnace fan rulemaking (noted above) which is disconnected from the overall furnace efficiency rulemaking. If the process for these types of rulemakings can be synchronized, the regulatory burden on manufacturers can be reduced. Manufacturers typically have design cycles for the different products which they manufacture. The normal process is to go through the complete design cycle for a given product type and then move on to other products one at a time. When distinct DOE requirements are imposed on the same product on different schedules, this orderly process is disrupted and for some products the manufacturer is driven towards a never-ending design cycle for that product. This imposes unnecessary costs on manufacturers as well as disrupting the design cycle for the company's other products, which were not subject to those requirements. We encourage DOE to consider whether there are ways to coordinate or synchronize these types of rulemakings.

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

Respectfully submitted,



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