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Before the Department of Energy
Docket No. EERE-2014-BT-STD-0036
RIN 1904-AD35

Hearth, Patio, and Barbecue Association's
Supplemental Request for Extension of Comment Period on
Proposed Energy Conservation Standard for "Hearth Products"
80 Fed. Reg. 7082 (February 9, 2015)

March 31, 2015

The Hearth, Patio & Barbecue Association ("HPBA") has already requested several actions with respect to DOE's notice of proposed rulemaking entitled "Energy Conservation Program for Consumer Products: Energy Conservation Standards for Hearth Products; Proposed Rule," 80 Fed. Reg. 7082 (February 9, 2015) (the "NOPR"). In particular, on March 20, 2015, HPBA filed a submission requesting:

1. That the proposed rule be withdrawn and the notice treated as a request for information;
2. That DOE clarify the range of products potentially at issue in the rulemaking;
3. That DOE make certain key information and documentation not disclosed in the record available for review and comment; and
4. An extension of the comment period.

HPBA reiterated these requests at the March 23, 2015 public meeting concerning the NOPR, and – in the course of that meeting – DOE responded by significantly clarifying the range of products at issue. Because some additional clarification is necessary (as explained below) and HPBA's other requests have not yet been addressed, HPBA renews all of its pending requests for the reasons already set forth in HPBA's March 20, 2015 submission. As an interim measure – pending DOE's response to the requests outlined above – HPBA requests that the deadline for submission of comment be extended by 45 days, to Tuesday, May 26, 2015.

Request for Additional Clarification

HPBA appreciates DOE's clarification of the range of products at issue in the rulemaking at the March 23, 2015 public meeting. HPBA now understands that the range of products potentially at issue is limited to the following:

1. Vented gas fireplaces;

2. Vented gas fireplace inserts;
3. Vented freestanding gas stoves;
4. Vented gas log sets;
5. Vent-free fireplaces;
6. Vent-free gas fireplace inserts;
7. Vent-free freestanding gas stoves;
8. Vent-free gas log sets;
9. Outdoor gas fireplaces;
10. Patio heaters; and
11. Outdoor fire pits/fire tables.

HPBA believes that categories 1-10, individually, are sufficiently well-defined to facilitate substantial, directed comment. However, the eleventh category, which HPBA has referred to above as outdoor “fire pits/fire tables,” requires additional clarification. HPBA’s concern is that two quite different categories of products appear to answer to the general description provided: the first category consists of products that – like outdoor fireplaces – are designed to be installed in a fixed location and may be fueled with gas or propane; the other consists of portable products, more in the nature of lawn or patio furniture than fireplace products, with fuel supplied by small propane tanks. While HPBA believes that neither of these categories is an appropriate subject of DOE regulation, the two categories are materially different for purposes of regulatory analysis and it is important to clarify whether the latter category needs to be addressed in comment. Because products fueled by small propane tanks cannot even theoretically raise the concerns DOE seeks to address, HPBA does not believe they can reasonably be included in the range of products covered by this rulemaking. Accordingly, HPBA requests clarification that the eleventh category of products identified above is limited to installed products.

Request for Interim Extension of the Comment Period

Under DOE’s rulemaking procedures for the development of energy conservation standards, HPBA would have had at least one opportunity to review and comment on a preliminary technical support document (“TSD”) before any proposed rule issued. In particular, HPBA would already have had a substantial opportunity to review and provide comment with respect to DOE’s market and technology assessment, screening analysis, engineering analysis, energy use determination, analysis of equipment price markups, life-cycle cost and payback period analysis, product shipments analysis, national impact analysis, and preliminary manufacturer impact analysis. Had that occurred, HPBA would now be focused on reviewing and analyzing a revised TSD, which should include a life-cycle subgroup analysis addressing utility, emissions, and employment impacts. See TSD Chapter 1 at Table 1.4.1. Unfortunately, DOE did not follow its normal rulemaking procedures in this rulemaking. As a result, this is the first and only opportunity HPBA has had to review any version of a TSD addressing any of the issues involved in this rulemaking, and the task involved in reviewing and responding to the relevant issues is dramatically greater than would ordinarily be the case at the proposed rule stage. Therefore, a period of time, in addition to the minimum 60-day comment period for a proposed energy conservation standard, is therefore necessary.

HPBA is particularly concerned that it be allowed adequate time to develop the kind of product-specific data and information needed to address key issues raised by the proposed rule. As indicated at the public meeting, HPBA believes that information on a number of critical issues is lacking, and that many of the assumptions made to fill those data gaps are materially in error. HPBA is currently gathering data and information to address some of these issues, but it is important to recognize the diversity of the range of products involved and the fact that the industry targeted by the NOPR is made up almost entirely of small businesses, many of which are relatively specialized. As a result, the information collection challenges are considerable, and HPBA will need significant additional time to develop reliable information.

Conclusion

HPBA respectfully reiterates its March 20, 2015 requests. Pending DOE's response to those requests, HPBA requests additional clarification of the range of products at issue as outlined above, and requests that the April 10, 2015 deadline for submission of comment be extended 45 days, to May 26, 2015. A prompt response to the requests for (i) withdrawal, (ii) clarification of scope, (iii) identification of and access to materials referenced in the TSD but not currently available for review, and (iv) the 45-day extension of the comment period -- with the most time-sensitive response being to the comment period extension request -- would be greatly appreciated.

Please call me if you have any questions.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ryan Carroll". The signature is written in a cursive, flowing style.

Ryan Carroll
Director of Government Affairs
Hearth, Patio & Barbecue Association