North American Association of Food Equipment Manufacturers  
161 N. Clark Street, Suite 200  
Chicago, IL 60601  

April 8, 2015

Submitted electronically to the Federal Rulemaking Portal:  
http://www.regulations.gov

In the matter of Improving EPA Regulations: EPA-HQ-OA-2011-0156

The North American Association of Food Equipment Manufacturers (NAFEM) is a trade association comprised of more than 525 foodservice equipment and supplies manufacturers. The association’s members constantly seek opportunities to improve equipment, both in response to market demands and as an innovative means of product improvement. NAFEM members helped develop and actively participate in ENERGY STAR in recognition of the role of voluntary, market-driven incentives for improving the efficiency of commercial foodservice equipment and supplies. NAFEM and its members support measures to limit the impact of ozone depleting substances and efforts to increase the energy efficiency of commercial foodservice equipment while continuing to provide the products, performance and reliability expected in the marketplace.

EPA requests comments on its “periodic retrospective review” of its regulations, citing Executive Order 13563, “Improving Regulation and Regulatory Review,” and Executive Order 13610, “Identifying and Reducing Regulatory Burdens.” These documents further principles and directives established in Executive Order 12866, “Regulatory Planning and Review.” NAFEM supports the principles articulated in these Orders and strongly believes they should be given meaning beyond periodic reviews. The value and strength of these principles is in their actual application in active rulemaking and their ability to influence final rules. We find, however, that they are often ignored and given only a pro forma acknowledgement at the end of agency proposals, rather than revealing themselves as elements that influence the development of regulatory proposals and yield actual outcomes by way of final rulemaking.

Executive Order 13563 emphasizes, as general principles of regulation, the importance of balancing the protection of public health, welfare, safety and the

---

3 Executive Order 12866 of September 30, 1993, found at 58 F.R. 51735 (October 4, 1993)
environment with the promotion of economic growth, innovation, competitiveness and job creation. It also emphasizes the importance of promoting predictability and reducing uncertainty. As undeniably important as protecting public health, welfare, safety and the environment is, NAFEM would emphasize the Order’s proposition of promoting economic growth, innovation, competitiveness, and job creation as countervailing considerations:

Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.4

NAFEM finds that regulations as proposed and as finalized often make weak attempts to fully understand and calculate the impacts on manufacturers, their supply chain vendors, and the end users of their goods and services. Of great significance and concern to NAFEM and its members, is the proposed delisting of HFCs and identification of alternative refrigerants that manufacturers will be required to incorporate into the manufacture of their equipment and systems. The current proposal limits commercial refrigeration equipment to four refrigerant options: Ammonia, CO₂, Isobutene and Propane, notwithstanding the known toxicity, flammability, and costs of these alternatives and the greater energy efficiency potential of the HFCs in use today. We also find that the proposed timeline fails to take into full consideration the time and investments needed to retrofit manufacturing plants and processes and market dislocation that will occur. When compared to the resulting global warming benefit that EPA itself calculates, we believe the proposal violates this very core principle of regulation found in Executive Order 13563.

As pointed out in verbal testimony by NAFEM on August 27, 2014:

The proposal will raise the cost of finished goods while reducing the number and diversity of products consumers need in the marketplace. U.S. manufacturers also will be significantly disadvantaged in the domestic and global markets because European manufacturers have a significant head start with these refrigerants and are more likely to meet a strict deadline than domestic manufacturers. These impacts, paired with the high levels of capital required to develop, manufacture and test products with new refrigerants by the extremely short compliance window of 2016, will cause

4 See Section 1, General Principles of Regulations, Executive Order 13563 (January 18, 2011).
refrigeration manufacturers to cut jobs, move out of the refrigeration industry, or close their doors entirely.\(^5\)

Executive Order 13563 also calls on public participation that includes seeking the views of those subject to rulemaking:

> Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.\(^6\)

NAFEM believes that meaningful input prior to publication of a proposed rule is lacking in many instances. For example, regarding the listing of substitutes for refrigeration, NAFEM member Hoshizaki America has questioned the test method used in assessing flammability and fire safety and also points out the need to test and evaluate the venting of flammable refrigerants.\(^7\) NAFEM member Traulsen questions EPA's assumption that a trained service network will exist for flammable refrigerants and believes EPA's reliance on fire extinguishers in settings where such equipment will be in use is inappropriate and unrealistic.\(^8\) If taken up in dialogue with stakeholders and subject matter experts prior to developing the proposal, such information gathering and agreement among stakeholders could result in more realistic and potentially more achievable proposals. It would clearly result in a more efficient rulemaking process.

\(^5\) See Comment submitted by Charlie Souhrada, Director, Member Services, North American Association of Food Equipment Manufacturers (NAFEM) at [http://www.regulations.gov](http://www.regulations.gov) under docket number EPA-HQ-OAR-2013-0748 and identification number RIN 2060-AS04

\(^6\) See paragraph (c) of Section 2, *Public Participation*, Executive Order 13563 (January 18, 2011).

\(^7\) See Comment submitted by Stephen Schaefer, Administrator Engineering Group, Team Leader, Hoshizaki America, Inc. at [http://www.regulations.gov](http://www.regulations.gov) under docket number EPA-HQ-OAR-2013-0748 and identification number RIN 2060-AS04

\(^8\) See Comment submitted by Mary Dane-Greenhow, Agency Approval Engineer, Traulsen–ITW Food Group, LLC at [http://www.regulations.gov](http://www.regulations.gov) under docket number EPA-HQ-OAR-2013-0748 and identification number RIN 2060-AS04
Furthermore, we find that agency reliance on consultants in the development of rules, standards or models can often result in a process that lacks transparency. In cases of engineering and technological, or in instances where an agency may deem its own expertise lacking, pre-rule making dialogue and even negotiated rulemaking with stakeholders who do possess knowledge, expertise, or experience could be an option more in line with this principle of participation.

With these comments NAFEM seeks in particular to emphasize Section 3 of Executive Order 13563 that acknowledges that the regulated community is subject to rules from various agencies and establishes the principle that agencies should seek to harmonize their rules and otherwise coordinate with each other in their rulemaking.

Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.⁹

Executive Order 13610 further promotes this principle, calling on agencies to simplify and harmonize regulations that impact small businesses. This order also emphasizes a hallmark of Executive Order 12866, calling on agencies to consider the cumulative effects of their regulations:

Consistent with Executive Order 13563 and Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), agencies shall give consideration to the cumulative effects of their own regulations, including cumulative burdens, and shall to the extent practicable and consistent with law give priority to reforms that would make significant progress in reducing

---

⁹ See Section 3, Integration and Innovation, Executive Order 13563 (January 18, 2011).
those burdens while protecting public health, welfare, safety, and our environment.\(^\text{10}\)

NAFEM believes this coordination includes intentional dialogue and communication among agencies, and outcomes resulting in coordination that is acknowledged and given transparency in the rulemaking process. We believe this principle covers not only a review of existing regulations that may have over time become redundant, inconsistent, or overlapping, but also covers pending proposals, implementation timelines of rules already promulgated, and elements of an agency’s regulatory agenda.

Looking back, what regulations may either be outdated, superseded, or now create conflicts with other regulations? Looking ahead, what elements in the agency’s regulatory agenda and regulatory plan are inconsistent or lack coordination with other regulations, proposed or promulgated, by EPA or other rulemaking agency? In a sense, the more forward looking an agency is in application of these principles, the more consistent its actions will be with these principles. The same inquiry should be made with current proposals and timelines or phase-in schedules.

A prime example of regimes that lack agency coordination is the regulatory landscape that is currently being remade for commercial refrigeration equipment. Our comments here are not intended to question the role of regulation in this area; however, consistent with the principles of Executive Order 13563, EPA and the Department of Energy (DOE) are simultaneously involved in imposing new requirements on manufacturers of certain types of refrigeration equipment that have significant cost, productivity and competitiveness consequences. Both agencies make assumptions about technology applications in the same equipment, independent of each other and towards different regulatory goals, despite that fact that manufacturers and their vendors have repeatedly told both agencies that the gains expected are not achievable.

In particular, consistent with the principles of Executive Orders 13610 and 13563, EPA should coordinate its current and planned regulatory agenda with DOE where the availability of HFC refrigerants plays a significant role in the regulatory propositions and conclusions made in multiple DOE proceedings.

When raised by NAFEM within the public comment period for proposed energy conservation standards for walk-in coolers and freezers, consider DOE’s response in June 2014:

\(^{10}\) See Section 3, Setting Priorities, Executive Order 13610 (May 10, 2012).
NAFEM requested that DOE incorporate the phase out of HFCs in its analysis. NAFEM stated that alternative refrigerants could add to overall engineering costs and reduce energy savings... The use of alternative refrigerants is not a direct result of this rule and is not included in this analysis. Furthermore, there is no regulatory requirement to use alternative refrigerants at this time. DOE does not include the impacts of pending legislation or regulatory proposals in its analysis, as any impact would be speculative. For this final rule, DOE does not include the impact of alternative refrigerants in its analysis.¹¹

NAFEM recently suggested the same need for coordination in its comments filed with EPA's docket on the listing of refrigerant substitutes¹²:

Additionally, the Agency must list suitable alternative refrigerants that do not have a detrimental effect on the energy efficiency improvements of the Department of Energy’s recently finalized energy conservation standards demand on the same products the Agency is regulating. To create a situation where no alternative refrigerants are available that will allow manufacturers to meet both the Department’s and the Agency’s standards is counter-intuitive and defeats the twin goals of the agencies to protect human health and the environment and to address the causes of climate change.¹³

¹¹ See 79 F.R. 32050 at 32092 (June 3, 2014).
¹³ See the written comments of the North American Association of Food Equipment Manufacturers (September 8, 2014) at http://www.regulations.gov under docket number EPA-HQ-OAR-2013-0748 and identification number RIN 2060-AS04 (See Comment submitted by Charlie Souhrada, Director, Member Services, North American Association of Food Equipment Manufacturers).
As with the listing of alternative refrigerants, NAFEM has voiced concerns with the delisting of HFCs in use today. Without repeating NAFEM’s recently filed comments to EPA’s docket on the listing of refrigerant substitutes, consistent with Section 1 of Executive Order 13563, we believe EPA should more carefully consider the full regulatory impact of its fast-track delisting of HFC refrigerants on manufacturers, food equipment users, and American jobs.

Consistent with Section 3 of Executive Order 13563, EPA should consider the impact of its timeline for delisting HFC refrigerants on the existing regulatory regimes of state and local governments. These locals have adopted fire codes and building codes that assume known refrigerant usage, in equipment serviceable by a mature sales and service sector.

Additional examples for opportunities for coordination between EPA and other regulatory entities are EPA’s ENERGY STAR verification process and DOE’s testing requirements of the same equipment and the labeling requirements for ENERGY STAR equipment. For ENERGY STAR equipment manufactured for sale in California and Canada, the manufacturer must list its equipment specifications in seven, different locations.

In conclusion –

The principle of coordination among agencies overseeing various regulatory regimes and rulemaking efforts, and its corollary principle of harmonization of regulations among the various agencies, strongly suggest an active dialogue of review, planning, and strategic rollout of regulatory proposals and rule promulgation and implementation between EPA and DOE relative to commercial refrigeration equipment, allowable refrigerants, and energy efficiency standards.

The goals of reducing greenhouse gas emissions and realistic energy efficiency gains should not result in uncoordinated regulatory requirements as is occurring within the context of EPA’s delisting of HFCs and DOE’s imposition of energy efficiency standards on multiple classes of refrigeration equipment.

Given the important role that refrigerants play in the technology and energy efficiency assumptions by DOE, the principles of regulation articulated by the various Executive Orders would suggest a more unified and deliberate approach involving both agencies and the impacted regulated community.

Respectfully submitted,

North American Association of Food Equipment Manufacturers

By:
Charlie Souhrada, CFSP
Director, Member Services
North American Association of Food Equipment Manufacturers
161 N. Clark Street, Suite 200
Chicago, IL 60601
Phone: (312) 821-0212
Email: csouhrada@NAFEM.org