

March 14, 2016

*Submitted electronically to [www.regulations.gov](http://www.regulations.gov)*

Regarding: Energy Conservation Program: Certification and Enforcement – Import Data Collection

Docket No. EERE-2015-BT-CE-0019(RIN 1990-AA44)

The North American Association of Food Equipment Manufacturers (NAFEM) is a trade association of more than 550 foodservice equipment and supplies manufacturers providing products for food preparation, cooking, storage and table service in the commercial arena.

We support the general goals of monitoring products and equipment imported into the United States, and the proposition that all products entering the U.S. for sale as final products should be held to the same requirements as those built here for sale. At the February 19 Public Meeting (“Public Meeting”), regarding the purpose of the proposed reporting requirements (the proposed certification of admissibility), the Department verbalized its dual goal of: 1) creating greater awareness and compliance among manufacturers and importers of current certification requirements; and 2) creating a system that will allow real time action at the border regarding the identification and refusal of admission of non-compliant products and equipment. NAFEM supports these specific goals. We are particularly supportive of the Department’s desire to avoid the delay of entry for compliant products and equipment and to propose the minimal additional information needed to achieve its goals without undue burden on manufacturers and importers.

At the same time, we have concerns regarding how the proposed certification would work and any unintended consequences resulting in the delayed entry of compliant products. We also share concerns expressed by participants at the Public Meeting that the proposal will have the most likely effect of: 1) shedding further light on compliant manufacturers and importers (and their compliant products and equipment), while not addressing those not in compliance with current requirements; and 2) falling short of enabling real time response on the part of the U.S. Customs and Border Protection (CBP).

Under the proposal, the process described by the Department at the Public Meeting anticipates that: 1) the manufacturer or importer will submit the information required under the proposed certification of admissibility; 2) the Department will “see” that information in real time, review it against the annual certification information in the Compliance and Certification Management System (CCMS); 3) the Department will then communicate the information from the certification of admissibility to the CBP and information specific to non-compliant products or

Comments of the North American Association of Food Equipment Manufacturers  
Energy Conservation Program: Certification and Enforcement – Import Data Collection  
Docket No. EERE-2015-BT-CE-0019(RIN 1990-AA44)  
March 14 2016

equipment; and 4) the CBP will then act in real time to deny the non-compliant products and equipment admissibility. In the proposal, the Department specifically states that the new information required in the certification of acceptability would enable the Department to identify, “prior to arrival at a U.S. port of entry, shipments that contain covered products or equipment that have been found to be non-compliant, allowing DOE to take appropriate proactive enforcement action” (such as “providing notice to CBP sufficient to allow CBP to refuse admission of the non-compliant covered product or equipment to the U.S.”).

At the Public Meeting, NAFEM noted the need for a better understanding of the actual mechanics and protocols in place for the Automated Commercial Environment (ACE) and its tie in with the CCMS. How will it work? Is ACE ready for implementation? Will manufacturers and importers have ready access to the information they will need to be compliant with the new reporting requirements? Will ACE provide fields for data entry for any new reporting requirements? The Department fails to adequately address these questions. NAFEM member company, True Manufacturing, expressed concern at the Public Meeting with the proposed tie in to the CCMS as a means to verify real time border activity. Manufacturers may not continuously submit the required CCMS information throughout the year to verify the existing data base of products. An importer could have products added to the DOE data base before it would appear in the CCMS.

NAFEM also asked for clarity around the timing of the new reporting, particularly as it relates to product shipments. As an important take-away from the Public Meeting, we now better understand the Department’s thinking and appreciate the desire to identify the additional product information that is most easily accessible to manufacturers and importers, and at the same time give the Department and CBP the level of detail needed to identify the specific items covered by the current and proposed requirements. However, we do not believe the Department has satisfactorily described how the new information will be used to identify non-complying importers and non-compliant goods, or how it will enable the Department and CBP to act in real time to identify and stop entry of non-compliant goods. We believe additional materials are needed as a part of the rulemaking record to provide a more complete description of how the new regime will work, how the proposal will help achieve the Department’s dual goal of greater compliance and real time response capabilities, including assurance that the mechanics are in place for the proposed reporting to work, and a discussion of the alternative regulatory methods that the Department considered.

The Department indicated at the Public Meeting that although not validated with market survey or data, it believes that a significant number of non-compliant goods are imported. It also cited that lack of awareness on the part of the manufacturer or importer represented a significant percent of these goods. Regarding the goal of identifying non-complying manufacturers and importers and deterring non-compliant products and equipment, NAFEM, along with other participants at the Public Meeting, question if there are alternatives to identify

importers who are currently unaware of the current reporting requirements and their annual certification requirements with the CCMS. There also were comments at the Public Meeting suggesting a means of comparing known importers with those reporting covered products as an alternative approach to identifying and educating non-compliers.

Participants at the Public Meeting asked if the certification of admissibility needed to be tied to clearance of covered products and equipment, while others questioned the resources of the Department to review the additional information reported and act in a timely manner and the logistical ability of CBP to identify and disallow admissibility.

Furthermore, during the Public Meeting, NAFEM requested two specific resources from the Department to create clarity around a number of these and other questions raised, and to further demonstrate the rationale and vision of the Department regarding this proposal. First, along with others attending the meeting, we requested a time line (or flow chart) that would clearly show how the proposed reporting will work in real time, particularly as it relates to the expected enhanced ability to identify and stop entry of non-compliant products and equipment.

Second, we requested additional scenarios of covered products and equipment to illustrate compliance with the proposed reporting requirements, how the proposal would affect existing requirements, and how the proposal would enable the Department to meet its dual goal of greater compliance and real time response capabilities. As with others attending the Public Meeting, NAFEM expressed concern regarding the various scenarios whereby a product is imported as a component part to a covered product manufactured in the United States. As articulated by NAFEM member, Hoshizaki America, Inc., NAFEM members import parts, prototype machines, prototype component parts, and partial machines at various points in the design cycle. Without a more complete consideration of these scenarios, and tailored exceptions or clarifications where necessary, the proposal, in its current vagueness, will impose great uncertainty as to compliance on manufacturers.

It is NAFEM's understanding that the proposal also would impact the equipment that manufacturers import as part of their manufacturing and plant infrastructure. For example, a manufacturer of commercial food equipment will buy large metal working machines that may contain a transformer, motors, pumps, small AC equipment, and fans in a single system. Requiring importers to identify all the sub-components will be very burdensome if not impracticable. The non-U.S. suppliers will be challenged to comply with the proposed requirements and the U.S. buyer will be faced with capital equipment that is non-compliant or stopped for extended periods at a port of entry. Participants at the Public Meeting also raised concerns about the importation of replacement parts, particularly if customized.

While the Department presented several scenarios, we believe that additional scenarios are needed to give stakeholders a more complete understanding as to how the proposal will work,

how effectively it will address the core issues, and provide the basis for a comprehensive vetting of any unintended consequences. We look forward to opportunities to discuss options for certain unique scenarios once these have been compiled and stakeholders have had sufficient time to evaluate.

This is not a simple issue, either in identifying the source of the problem or the best solution. To this end, we further request that the Department establish a workgroup of supply chain stakeholders as well as the governmental entities necessary for implementation of a successful program charged with identifying the problems and finding the most effective and least burdensome solution. It is likely a special workgroup for certain sectors may be in order to develop appropriate solutions for these sectors. We believe this will be the most efficient way forward given the questions raised at the Public Meeting.

In summary, we believe the proposal fails to provide an adequate consideration or discussion of alternative regulatory approaches that the Department considered. We also believe the Department fails to succinctly identify the problem or problems that are causing importers to be non-compliant and explain how the information required in this proposal would best identify and educate them towards compliance. We also believe the Department fails to describe how the new regime will work in real time in conjunction with CBP. Moreover, DOE, in the Notice of Proposed Rulemaking and during the Public Meeting, failed to identify how it would enforce this proposed rule, and if it even has the capacity to take on or implement such a broad proposal. Finally, we believe there is a far greater regulatory burden than the 0.03 hours (1.8 minutes) per item of information to be entered into the ACE calculated by the Department, and we question the estimated annual number of 313 annual responses per respondent.

We believe a stakeholder and governmental workgroup is the best pathway towards a solution that can increase compliance and reduce the importation of non-compliant goods. We reiterate our support for the stated goals of the Department and look forward to finding a means to achieve these.

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

Comments of the North American Association of Food Equipment Manufacturers  
Energy Conservation Program: Certification and Enforcement – Import Data Collection  
Docket No. EERE-2015-BT-CE-0019(RIN 1990-AA44)  
March 14 2016