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June 15, 2016

Ms. Laura Barhydt
U.S. Department of Energy
Building Technologies Program, Mailstop EE-%B
1000 Independence Ave, SW
Washington, D.C. 20585-0121

Re: DOE NOPR for Import Data Collection
Docket No. EERE-2015-BT-CE-0019 (RIN 1990-AA44)

The North American Association of Food Equipment Manufacturers (NAFEM) submits the following comments on the U.S. Department of Energy (DOE) proposed rulemaking on Import Data Collection, EERE-2015-BT-CE-0019 (RIN 1990-AA44).

NAFEM is a trade association made up of over 550 foodservice equipment and supplies manufacturers providing products for food preparation, cooking, storage, and table service in the commercial arena.

Per our previous comments on this issue, NAFEM supports 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. 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. We also share concerns expressed by other industry stakeholders 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).

At the Public Meeting in February, 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 Compliance Certification Management System (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? While NAFEM appreciates the opportunity to submit additional comments, these questions have yet to receive an adequate response from the Department.

NAFEM also asked for clarity around the timing of the new reporting, particularly as it relates to product shipments. 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 stakeholders, 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.

Furthermore, during the Public Meeting, NAFEM requested two specific resources from the Department to create clarity around a number of these issues 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 would work in real time, particularly as it relates to the expected enhanced ability to identify and stop entry of non-compliant products and equipment. NAFEM continues to urge the Department's development of such a flow chart.

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. 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.

NAFEM continues to 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.

The issue this proposed rulemaking attempts to address is not simple, either in identifying the source of the problem or the best solution. We have requested that the Department establish a working group 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. We continue to believe a special working group, for certain sectors, may be in order to develop appropriate solutions for these sectors. We take this opportunity to again call for such working groups for certain sectors.

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.

Since the Public meeting, there has been no further information regarding how DOE 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.

DOE should clearly define enforcement challenges, provide data that justifies such action, and better explain coordination efforts with other federal agencies. NAFEM continues to believe that a stakeholder and governmental working group is the best pathway towards a solution that can increase compliance and reduce the importation of non-compliant goods.

We ask that you seriously consider these suggestions or withdraw the rule altogether.

Respectfully submitted,

NORTH AMERICAN ASSOCIATION OF FOOD EQUIPMENT MANUFACTURERS

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