



KYLE PITSOR

Vice President, Government Relations

June 15, 2016

Ms. Brenda Edwards
U.S. Department of Energy
Building Technologies Program
1000 Independence Avenue, SW
Washington, DC 20585-0121

Re: Energy Conservation Program: Certification and Enforcement – Import Data
Collection Notice of Proposed Rulemaking

Docket Number: EERE-2015-BT-CE-0019
Regulatory Information Number: 1990-AA44

Dear Ms. Edwards,

As the trade association representing the manufacturers of electrical, medical imaging, and radiation therapy manufacturers, the National Electrical Manufacturers Association (NEMA) provides the attached supplementary comments on the Department of Energy Notice of Proposed Rulemaking on Certification and Enforcement – Import Data Collection, published in the Federal Register on December 29, 2015 and for which the comment period was reopened via a notice in the Federal Register on May 16, 2016.

NEMA, founded in 1926 and headquartered in Arlington, Virginia, represents nearly 400 electrical and medical imaging manufacturers. Our combined industries account for more than 400,000 American jobs and more than 7,000 facilities across the U.S. Domestic production exceeds \$117 billion per year.

Please find our detailed supplementary comments attached. Our member companies count on your careful consideration of these comments and look forward to an outcome that meets their expectations.

If you have any questions, please contact Craig Updyke of NEMA at 703-841-3294 or craig.updyke@nema.org.

Sincerely,

A handwritten signature in black ink that reads "Kyle Pitsor". The signature is written in a cursive, flowing style.

Kyle Pitsor
Vice President, Government Relations

attachment

NEMA Supplementary Comments on DOE Notice of Proposed Rulemaking Certification and Enforcement – Import Data Collection

Executive Summary

- NEMA reiterates its support for Department of Energy (DOE) enforcement of federal energy conservation standards and coordination with Customs and Border Protection (CBP) to prevent entry into the U.S. of products and equipment intended for use in the U.S. that do not meet those standards.
- NEMA manufacturers of products subject to energy conservation standards report to the Department in accordance with existing regulations about the products they intend to bring on the U.S. market.
- NEMA welcomes the Department's interest in minimizing importer filing burdens and in allowing multiple paths for importers of covered products to provide confirmation of admissibility of their products. However, NEMA remains concerned that the Department's import data collection proposal increases regulatory burden by requiring re-submission to DOE via CBP of data DOE already has on file.
- Moreover, NEMA is concerned that the proposal falls short in addressing willful non-compliance. Specifically, NEMA is concerned by statements included in the May 16 Notice of Re-Opening indicating that DOE is focused only on putting in place mechanisms that would allow the Department to identify whether a product being imported is one that the Department has already determined through available documents, including test reports, to be non-compliant. DOE appears to be ignoring the issue of interdicting imports of products for which documentation is not already on file with the Department.
- The Department has not responded in writing with its views on the viability of a trusted trader approach which NEMA recommends, especially for high volume importers. Such a program would address regulatory burden concerns for law-abiding manufacturers and importers.
- NEMA reiterates its recommendation that DOE proceed to a Supplemental Notice of Proposed Rulemaking and further meetings with stakeholders. NEMA reiterates its recommendation that DOE work with industry to set up pilot implementation of filing requirements, with focus given to imported covered product categories of the highest priority.

Full Commentary

To supplement written comments NEMA submitted on March 9, 2016 and to respond to issues raised in the Department of Energy's May 16 Notice of a Reopening of the Comment Period (hereinafter "Notice of Reopening"), NEMA offers the following comments.

NEMA reiterates its endorsement of the Department's efforts toward more active and rigorous oversight with regard to products that are subject to minimum energy conservation standards.

In the Notice of Reopening, DOE declares that it is “

particularly interested in receiving comments and views of interested parties concerning how to minimize the burden of data collection to importers of covered products or equipment subject to an applicable energy conservation standard, while at the same time providing DOE with traceability information sufficient to determine whether a covered import is one that the DOE has previously identified as noncompliant with the relevant standard and, if so, to provide U.S. Customs and Border Protection (CBP) ‘a description of the noncompliant covered import that is sufficient to enable CBP to identify the subject merchandise and refuse admission thereof into the customs territory of the United States.

Moreover, DOE stated it is

seeking a solution that will allow it to confirm that the covered import does not belong to a basic model that DOE has previously found to be noncompliant and is open to offering options for the importer to provide the necessary information in the least burdensome manner. To this end, DOE seeks comments on potential options to achieving DOE's goal of traceability while minimizing the burden on importers.

In our March 9 comments, we concurred that DOE was justified in requesting an identifier for the product that ties back to the Compliance Certification Management System (CCMS) reports manufacturers are already required to have filed with the Department.

After further examination and consideration of this matter, however, we are troubled by the notion that DOE is sanguine about placing *any* additional burden on manufacturers to submit information to the Department via CBP that the Department already has on file. If the Department does not have the CCMS information on file, it should already have the capability to direct CBP to interdict imports that have not been certified compliant.

We note that CBP, in discussion of its July 5, 2013 Final Rule *Inadmissibility of Consumer Products and Industrial Equipment Noncompliant With Applicable Energy Conservation or Labeling Standards*, stated,

DOE has access to CBP entry information, which includes parties involved in the importation of products regulated by DOE, and which DOE can compare to information in its DOE Compliance and Certification Management System.¹

¹ *Federal Register*, Vol. 78, No. 129, Friday, July 5, 2013, p. 40389

We acknowledge that the Department argues that a common data element needs to be shared among the importer's Customs entry in ACE and the corresponding CCMS report to DOE in order to facilitate "targeting" of shipments and container locations of products that DOE has already identified as being non-compliant. This targeting would minimize disruption of Customs' clearance of compliant or non-regulated cargo and decrease the likelihood that compliant products might be detained. However, this idea appears to have originated not within DOE or from any company or industry group but instead from a coalition of environmental non-governmental organizations.²

However, DOE has not answered the question how DOE is providing information to CBP *now* that allows CBP to prevent clearance of products that DOE has determined to be non-compliant. Is DOE not providing that information because DOE is less familiar with the "CBP-owned" Harmonized System (HS) classification system for traded products, as was mentioned at the February 19 public meeting? Or is it not taking advantage of access to "CBP entry information" to scan for potential non-compliant imports? Our member companies are concerned that there is no track record of collaboration or coordination between DOE and CBP in this area. There is no evidence that DOE has reviewed or learned from the experiences of other agencies that have worked with CBP for years to design, test and pilot the integration of regulatory compliance certifications into the CBP's ACE system. Lessons learned are essential to a successful program deployment.

As noted at the public meeting, under the 2013 CBP rule on inadmissibility of DOE-covered products, CBP is to wait for DOE to provide "a written or electronic notice that identifies the importer and contains a description of the noncompliant covered import that is sufficient to enable CBP to identify the subject merchandise and refuse admission thereof". However, it is important to note that the CBP rule does specifically permit that CBP "may make a finding that a covered import is noncompliant without having received a prior written noncompliance notice" from DOE and to consult with DOE later about the appropriate next step.

Moreover, we are very concerned by the Department's statement in the Notice of Reopening that the import data collection is intended only to assist DOE in targeted products intended to be imported that the Department *already has determined* to be non-compliant and therefore inadmissible. This statement reinforces the Department's statement at the February 19 public meeting that CBP "is not planning to do screening based on this."

In summary, DOE appears to be overly sanguine about placing on the U.S. market of covered products that do not meet its requirements.

However, in order to further advance the discussion launched in the NOPR toward resolution, we add the following supplementary responses on two specific product areas.

² See Earthjustice comments on Docket No. USCBP-2012-0004

Electric motors

As discussed, electric motors are not covered by the current CCMS system as most types of covered motors are tied to the pre-existing Compliance Certification (CC) number system. However, we note that the Department issued on June 10 a pre-publication of the *Federal Register* notice of proposed rulemaking pertaining to the certification, compliance, labeling, and enforcement for electric motors and small electric motors. We are reviewing the June 10 notice with our member companies so the views below are 1) based on the current CC system and 2) may be revised based on the content of that notice.

With regard to the Department's question of what information already present in DOE's records should be required to be submitted prior to importation of a covered motor, NEMA manufacturers recommend the following information be required, of which all except the basic model number are already part of the integral DOE regulation and found on the nameplates of covered products. The seven items should be required for covered small electric motors as well:

- Brand name
- Basic model number
- CC number
- Full load nominal efficiency
- Output in HP or kW
- Speed
- Enclosure type

As noted in previous comments and acknowledged by the Department, electric motor manufacturers are not only concerned about motors imported alone but even more concerned about covered motors imported as a component of a larger system or piece of equipment. These "embedded products" are the highest priority for the U.S. electric motor industry and should be a high priority for the Department.

In order to better ensure DOE and CBP targeting of these products, NEMA recommends that it be made mandatory that importers of equipment known to contain an electric motor, which can be tagged in CBP's ACE system by HS code, certify the compliance of the embedded motor. This target list can be excerpted from the full list of HS codes included in the NOPR. If the compliance of the embedded motor cannot be certified by the importer, then the equipment must be ruled inadmissible to the U.S. DOE should conduct regular audits of these compliance declarations as well.

Additionally, DOE should mandate risk-based physical inspections by CBP of imported electric motors (alone as well as embedded in products) to ensure they contain the CC number and the efficiency level required for the rating. Additionally, random testing of these motors should be conducted to ensure they actually comply within the tolerance efficiency levels.

Lighting

NEMA manufacturers and importers of DOE-covered lighting products recommend that importers be required to provide the brand name of the product and a unique identifier to be determined that would reside in the CCMS report and also be available for submittal in import documentation. The unique identifier avoids duplication and works for domestic manufacturers as well as pure importers. However, generation and management of unique identifiers is not an approach that, as invited by DOE, would minimize burden on importers.

As noted on our previous comments, NEMA would recommend DOE consider a “white list”/trusted trader approach administrable by DOE in close coordination with CBP’s Center for Excellence and Expertise responsible for imports of lighting products.

However, we note that under current law, at least through September 1, 2016, the Department is enjoined from spending any funds to “implement or enforce” minimum energy performance standards on “general service incandescent lamps, intermediate base incandescent lamps and candelabra base incandescent lamps” as well as “BPAR incandescent reflector lamps, BR incandescent reflector lamps, and ER incandescent reflector lamps.”

As a result, there are products that manufacturers and importers may be unable to certify compliance via CCMS due to DOE’s inability to update certification template documents. NEMA is concerned that if these funding prohibitions remains in force when an import collection rule becomes effective manufacturers may have shipments delayed or even find that they are unable to import products which are compliant but not certified in CCMS and requests DOE provide feedback on how this scenario would be addressed by the rule.

As part of its informed compliance activities with a view to implementation of a final rule, we encourage DOE to work with retail and wholesale importers on compliance and enforcement. As noted, we believe pilot testing must begin well in advance of any mandatory compliance date.

END