



Linda M. Dempsey

Vice President

International Economic Affairs

March 9, 2016

Ms. Brenda Edwards
U.S. Department of Energy
Building Technologies Program
Mailstop EE-5B
1000 Independence Avenue, SW
Washington, DC 20585-0121
ImportData2015CE@cc.doe.gov

Re: Energy Conservation Program: Certification and Enforcement--Import Data Collection (RIN No. 1990-AA44)

Dear Ms. Edwards:

The National Association of Manufacturers (NAM) welcomes the opportunity to comment on the Department of Energy (DOE) Notice of Proposed Rulemaking (NPRM) for Import Data Collection. Manufacturers in the United States have been demonstrated leaders in promoting energy efficiency. Whether it is making investments at our own facilities or creating new innovative products and solutions for other consumers, manufacturers are facilitating a more energy efficient economy.

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing more than 14,000 manufacturers small and large in every industrial sector and in all 50 states. NAM members include many companies that trade and compete around the world, including many that produce energy efficient products and import products that would fall under the scope of DOE's proposed rule.

In general, the NAM supports DOE's ultimate goal to enforce federal energy conservation standards and prevent entry into United States those products and equipment intended for sale or ultimate use in the United States that do not meet those standards. The NAM has also long supported efforts to facilitate legitimate trade and to streamline procedures at U.S. borders that do not diminish trade, customs, and other law enforcement. Manufacturers have worked closely with U.S. Customs & Border Protection (CBP) as the Automated Commercial Environment (ACE) is deployed for importers and exporters, and we support efforts to implement President Obama's Executive Order on Trade Facilitation. The final International Trade Data System (ITDS) single window should simplify trade for companies by decreasing the cost of competing in the global marketplace and set a new global standard for how a modern import/export regime should function. Streamlining and modernization of compliance burdens and expenses will make U.S. companies more competitive while allowing U.S. government agencies to streamline operations and eliminate inefficient procedures while protecting our borders. Unfortunately, the DOE NPRM moves in the opposite direction of the Executive Order's intent – even though it intends to utilize the ACE system for submission of certification – by creating an additional

requirement at the time of clearance that will impede the flow of international trade into the United States, creating a new import barrier. The proposal, if adopted, would trigger a new, unnecessary and duplicative reporting scheme.

The Energy Policy and Conservation Act of 1975 (EPCA) established an energy conservation program for certain industrial and commercial equipment and authorizes DOE to enforce EPCA's prohibition on the importation of covered products and equipment that do not conform to applicable energy conservation standards. Manufacturers, including importers, of such covered products or equipment are required under current law and regulation to submit annual certifications to DOE that the products or equipment they intend to import and sell in the United States are compliant with all applicable energy conservation standards, using DOE's Compliance and Certification Management System (CCMS). The new proposal would require that an importer of a covered product or equipment subject to an applicable energy conservation standard also provide, prior to importation, a certification of admissibility to the DOE. The proposed certification of admissibility – including detailed information like brand name and individual model numbers – would apply to all covered products and equipment subject to a DOE energy conservation standard contained in the shipment, either as a final product or a component part. While the underlying standards and requirements regarding energy conservation have not changed, the proposed pre-import certification requirement would add a significant administrative burden on importers, which would need to develop new internal processes to comply.

Given the significant impact of the proposed import requirement, the NAM recommends that the DOE fundamentally reconsider the NPRM and review potential impacts on U.S. importers before moving forward. Given that the proposal does not eliminate the annual certification that is already in place, transmitting certifications prior to importation is not only duplicative to the information already available to DOE from the manufacturer but an administrative and financial burden on the U.S. company that would be required to acquire and submit such information prior to importation for every shipment.

The NPRM refers frequently to 10 CFR 429, which requires that manufacturers and importers of covered products or equipment subject to an applicable energy conservation standard to submit a certification report to DOE prior to distributing their products in U.S. commerce. Further, 10 CFR 429.10 “sets forth the procedures for manufacturers and importers to certify that covered products and equipment comply with the applicable energy conservation standards.” In practice, the certification is required by DOE when a new basic model is introduced and annually thereafter. Under §429.5(a), the law states that “any person importing any covered product or covered equipment into the United States shall comply with the provisions of this part...” but does not specifically require certification prior to import. As noted previously, manufacturers and importers of products and equipment that are covered directly by a DOE standard report as needed and annually to the Department under compliance and certification requirements regarding the products they intend to bring into the market. Requiring importers to submit certification information on a transactional basis is, therefore, not necessary as this information is already provided to the DOE in a timely and full manner. Additionally, the NPRM fails to address the justification for the proposal's significant administrative burden, which is likely to adversely impact manufacturers' and importers' supply chains by increasing costs and slowing cross-border trade.

The NAM recommends that DOE reconsider this approach. Rather than require redundant reporting, the DOE should consider leveraging existing authorities and data collections. Further,

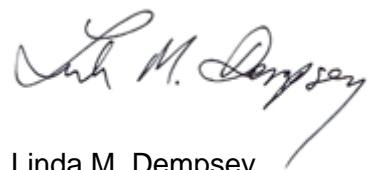
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DOE should utilize existing methods to prioritize violations related to certification or performance. Requiring certifications prior to each importation seems unlikely to capture those importers that either inadvertently or willfully ignore the certification requirements.

As noted above, the NAM has supported the deployment of ACE and the associated “single window” for submission of compliance documentation. Manufacturers stand ready to work with DOE and CBP to identify the information needed to execute effective enforcement while minimizing the reporting burden on companies that have already filed their annual Compliance Certification Management System (CCMS) reports. The NAM recommends that DOE work closely with CBP to launch a pilot program and recruit interested importers to participate. CBP has already tested ACE with importers of products covered by regulations administered by other federal government agencies. If DOE proceeds with any new pre-import requirements, the NAM would encourage DOE to utilize a “trusted trader” approach – particularly for high-volume importers – to better leverage the extensive CCMS compliance certification process and existing CBP risk-management programs.

The NAM appreciates the opportunity to provide views on DOE's proposed rulemaking for import data collection and looks forward to working with DOE and its interagency partners to ensure that manufacturers in the United States benefit from trade facilitation initiatives and enforcement measures at the border.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda M. Dempsey". The signature is fluid and cursive, with a long, sweeping tail that extends downwards and to the right.

Linda M. Dempsey