Fisher & Paykel Australia Pty Ltd
ABN: 71 000 042 080

16 Parramatta Road, Lidcombe, NSW, 2141
Private Bag 7, Silverwater DC, NSW, 1811

Telephone: (02) 8745 8200
Facsimile: (02) 8745 8209

www.fisherpaykel.com.au

Mr Matthew Butlin,
Commissioner,
Productivity Commission,
GPO Box 1428
Canberra City ACT 2601,

Re; Regulatory Burdens- Manufacturing

Thank you for the opportunity to attend the Draft Report discussion on the environmental regulation section of the review of Regulatory Burdens on Business Manufacturing and distributive trades. I found the discussion stimulating and as a consequence would like to make the following submissions.

Page 120 of the draft report talks about poor compliance and enforcement of the Water Efficiency Labelling and Standards Scheme. We would ask that the point be made that "commencing check testing in 2008" when the scheme came into force mid 2006 is a completely unacceptable situation. We would contend that regulation without effective enforcement is an unfair regulatory burden for manufacturing companies that make a genuine effort to comply with the regulation.

At the bottom of page 121 reference is made to a competitive disadvantage for compliant businesses. In regards the WELS scheme the deleterious impact is significant because various states offer a $150 or $200 rebate for washing machines with a certain WELS rating. Also many domestic and commercial building projects specify a minimum WELS rating for the plumbing products. Therefore the commercial pressure to claim a good water efficiency rating is extremely high. If there is not effective enforcement then an optimistic water efficiency rating can be claimed without any adverse commercial consequences.

Draft response 6.2. We agree with an independent evaluation, but believe that this evaluation has to be publicly available.

On page 123 it is suggested that if enforcement were at the border, then significant resources would need to be allocated to Customs to inspect and test products. The experience resulting from the Ozone Protection Act covered in section 6.6 would indicate that significant resources are not required for inspection.

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Page 129 discusses policies and programs maximising net community benefit and the additional hurdle of duplication because of an emissions trading scheme. We would suggest that "demonstrated market failure" should also be a pre-requisite when policies and programs are evaluated.

Section 6.3 deals with energy labelling and minimum performance standards. The issue of the delays in developing standards was raised. We believe that one aspect that has not been considered is the time and money required to prove a newly proposed test method. Often this will require round robin testing in a number of laboratories to confirm repeatability and reproducibility. Unfortunately this time and cost is often not factored into policy launch schedules. This can result in the policy being launched without the possibility of effective enforcement because the test method has not been proven. Lack of enforcement means that the regulation then becomes an unfair burden on compliant suppliers.

However, we would strongly endorse the recommendation of the productivity commission (PC 2006a) that improvement is required in the timeliness and efficiency with which standards are developed. While a number of steps have been undertaken by Standards Australia to restructure their organisation, there is considerable concern within Fisher & Paykel and we believe other suppliers, that these changes will not be effective. Therefore we would suggest adding an extra response along the lines that, 'There should be an independent evaluation in 2009 of the timeliness and efficiency with which standards are developed. The result of this evaluation should be made publicly available.'

On page 141 the issue of poor compliance and enforcement is raised. It is suggested, "that units are not randomly selected for check testing". Unfortunately while this is technically correct we believe the selection of units for checktesting should be more specifically targeted at product that is likely to fail. Currently DEHWA has an arrangement with a leading consumer organisation to check test appliances that they have already tested for their consumer magazine. This is not target testing units more

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likely to fail, but rather testing popular units that are of interest to this particular consumer organisation.

There is a real concern that the current selection method will ignore suppliers who provide appliances into the market for only a short period. This is often described as event marketing. Suppliers know that if the product is only in the market for six months then they will not be picked up by the current enforcement regime. Even if they are detected the current penalties are not adequate as it is possible to liquidate the entity and consumers are left with no apparent opportunity to achieve compensation. We think that the current situation is a long way from the "fast effective consumer-friendly outcomes" desired by the ACCC. A suggestion at the roundtable discussion on July 21 2008 that "risk profiling" should be employed to maximise the effectiveness of the enforcement effort appears to have merit. We believe this area needs urgent action.

Draft response 6.4 We believe that this independent benchmarking needs to be made available to the public.

At the roundtable I also promised to provide details of the 3 year lead time for implementation of regulatory change that applies in the United States of America. This information is attached.

Yours truly,

Terry Fogarty
Technical Compliance Manager 24 July 2008

US legislation 3 years min from final rule till EIF

Info provided by Chuck Samuels and Wayne Morris of AHAM
2008-07-22

NAECA (National Appliance Energy Conservation Act) section m

or 42 USC 6295 m

http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00006295----000-.html

See section m

(m) Further rulemaking
After issuance of the last final rules required under subsections (b) through (i) of this section, the Secretary may publish final rules to determine whether standards for a covered product should be amended. An amendment prescribed under this subsection shall apply to products manufactured after a date which is 5 years after—
(A) the effective date of the previous amendment made pursuant to this part; or
(B) if the previous final rule published under this part did not amend the standard, the earliest date by which a previous amendment could have been in effect, except that in no case may an amended standard apply to products manufactured within 3 years (for refrigerators, refrigerator-freezers, and freezers, room air conditioners, dishwashers, clothes washers, clothes dryers, fluorescent lamp ballasts, and kitchen ranges and ovens) or 5 years (for central air conditioners and heat pumps, water heaters, pool heaters, direct heating equipment and furnaces) after publication of the final rule establishing a standard.