

FRONT LINE REPORTING: VIEWS FROM INSIDE THE TRENCHES

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I am thrilled to be included among such a distinguished group to talk about our experiences in the enforcement of U.S. federal energy efficiency regulations.

The efficient use of energy is a global concern, and the effective enforcement of energy efficiency regulations should be a global priority.

There is much that nations can do together to improve the enforcement of energy efficiency rules – and conferences such as this one provide a valuable opportunity to exchange ideas and learn from each other's experiences.

Until recently, the US federal government did not do very much to enforce its energy efficiency rules – and, in fact, did not even adopt those rules in a timely fashion.

I am here today to discuss how and why we are now doing things differently.

Our Department of Energy has long been required by law to adopt rules requiring manufacturers of a range of commercial and consumer products to meet minimum standards of energy efficiency.

And our legislature provided us with a strict timetable for adopting those rules.

Unfortunately, by the time that I joined the agency, it had fallen so far behind schedule that a federal court had threatened to hold the last Secretary of Energy in contempt if we failed to meet new deadlines that the court imposed.

That threat automatically applied to my boss, Nobel-Prize-winning physicist Steven Chu, when he took office as the Secretary of Energy in January 2009.

Thus when I joined the agency I was informed that one of my first priorities was to ensure that we did not miss those court-imposed deadlines for issuing new energy-efficiency rules.

Since the Secretary arrived at the Department, not a single court deadline has been missed.

To the contrary, the Department has announced a series of efficiency standards that will reduce greenhouse gases and save consumers billions of dollars per year.

Moreover, we have reformed our regulatory process to ensure that we will meet all of the existing deadlines, and within 18 months we will have caught up on the backlog.

As Secretary Chu has said, when it comes to addressing climate change and promoting energy security, improved energy efficiency is not just low-hanging fruit—it's fruit lying on the ground.

Improving the energy efficiency of the products that we all use is a critical component of any rational energy strategy.

And meeting our deadlines for adopting energy efficiency rules is an obvious first step.

But as a lawyer, once I was sure that we could execute our obligation to adopt our rules in a timely way, I asked the next most obvious question: How were we enforcing these regulations?

The answer was a little shocking: We weren't.

When I arrived at DOE, the agency had never brought an enforcement action against any manufacturer for violating its energy-efficiency certification requirements or standards.

And this is not because there had been no violations.

The truth is, adopting regulations and not enforcing them is worse than doing nothing at all.

Lax enforcement lets bad actors gain an unfair economic advantage over law-abiding competitors.

This not only distorts competition in the short-term, but undermines the long-term competition that drives innovation.

Why would anyone spend scarce corporate resources to develop efficient products if a competitor can falsely claim to be selling the same thing without making the investment?

False certifications also prevent consumers from voting with their wallets for efficient products.

Markets cannot work without accurate information.

It was thus clear that enforcement of our energy efficiency standards had to become a major priority for the Department.

As a result, with the full support of the Secretary, my office has undertaken a series of actions to enforce the Department's energy-efficiency standards.

Here are some of the things we have done:

First, we issued guidance to clarify certification obligations.

These certifications are supposed to inform both DOE and consumers that certified products deliver the required energy and cost savings.

Moreover, certification data is often essential to determine whether underlying standards are being met.

Accordingly, we made clear that DOE treats energy-efficiency certifications based upon improper or inadequate data as independent violations of the law.

Second, we created an Enforcement Team and then an enforcement office. Hard to enforce regulations if it is no one's job to do so.

Third, we announced a thirty-day window for filing energy-efficiency certifications.

During that window, we received certifications for over 600,000 residential appliances from over 160 manufacturers.

We are reviewing this data and, where appropriate, have begun to bring enforcement actions against companies that failed to comply with our reporting requirements.

Just last week, we issued 27 proposed penalty notices for manufacturers selling uncertified products in the United States – four times as many certification cases as we had previously brought.

Fourth, we announced a commitment to investigate all credible allegations of energy efficiency violations.

Any time we receive credible information that a product does not comply with our energy efficiency standards, we promptly open an investigation, gather the necessary data, and pursue timely and rigorous enforcement action, where appropriate.

We even put a button on our website to make it easy to report energy efficiency violations.

But we also promptly and publicly close investigations where there is no violation – as we did last week for a dishwasher manufacturer.

Fifth, we have begun to take action when manufacturers have not met their obligations.

We issued DOE's first test notice and its first subpoena to check compliance with our energy efficiency standards.

We signed DOE's first consent decree with a manufacturer whose products failed to meet our energy efficiency standards.

We issued DOE's first notices of civil penalty for failure to comply with our certification requirements.

We entered into DOE's first agreements settling certification cases for civil penalties.

We issued DOE's first notice of noncompliance requiring that a product that failed to meet our standards be removed from the market.

And then we followed up on these "firsts" with continued enforcement actions.

We have now initiated sixty-nine enforcement actions.

We have now removed from the U.S. market sixty-six products that failed to meet our minimum energy-efficiency standards.

We have now collected over \$350,000 USD in penalties or settlements.

These efforts, and others we are still working on, are designed to send a simple message: from now on, compliance with all aspects of DOE energy efficiency standards will be expected, and compliance will be enforced.

But we really are just starting

We have initiated a rulemaking to reform our certification and enforcement regulations to put the Department in the best position possible to enforce the federal conservation standards.

For example, we proposed revisions to our certification rules to require annual reporting – to ensure that the Department and the public have accurate comprehensive information about the energy efficiency of products sold in the United States.

And we proposed revisions to our enforcement regulations to provide us the authority to test any product, at any time, to determine its compliance with the federal standards.

Our goal is to establish a practical and fair approach to certification, compliance, and enforcement that will allow the Department to effectively enforce its standards and ensure a level playing field in the marketplace without unduly burdening regulated entities.

As we move beyond these basic steps, we are reviewing a recently submitted consensus recommendation on *regional* standards for residential central air conditioners, furnaces and heat pumps to determine whether the recommendation meets statutory requirements.

In a large country with great geographic diversity, regional appliance standards may represent a next-generation approach to energy efficiency standards.

What heating and cooling equipment is most efficient will vary depending on regional climate.

This new approach has the potential to maximize energy efficiency and spur the development of innovative technologies.

But it also comes with a new challenge – how regional standards can be consistently and fairly enforced, particularly since our enforcement authority applies only to manufacturers.

We have not yet finalized our approach to this issue – but we do have some ideas.

Finally, as we think about what the future holds, we think about how international cooperation can assist our efforts.

What can we do to share enforcement information? What can we do to share test results?

I would think that simply by identifying enforcement points of contact, creating a protocol for information sharing, and mechanisms for international referrals, our enforcement programs can leverage each other's efforts to achieve our common goals.

Perhaps we can even work together to harmonize our testing regimes – and make it possible for manufacturers to test their products once rather than 100 times?

I think there is a lot for us to talk about and a lot that we can accomplish together.

As I hope you agree, we have done a lot on enforcement in a short time. We have attempted to do it fairly and transparently.

The goal of the Department's enforcement efforts, however, could not be more clear.

An effective enforcement system can create the incentives that encourage compliance and discourage attempts to game the system.

But such a system can do more than just discourage wrongdoers.

It can also encourage manufacturers to turn their creative powers towards the challenge of building—product by product—a comfortable and sustainable lifestyle that can scale globally.

Secretary Chu has consistently stressed the environmental **and** economic benefits of directing the power of human innovation towards the creation of the energy-efficient products that will be in demand across the globe throughout this new century.

Those are the goals that will guide our revitalized enforcement efforts.

Thank you.