

April 3, 2015

*Via regulations.gov*

The Honorable Ernest Moniz, Secretary  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

**Re: Comments on Proposed Energy Conservation Standards for Commercial Warm Air Furnaces; 80 Fed. Reg. 6182 (February 4, 2015).**

Dear Secretary Moniz,

The U.S. Small Business Administration's Office of Advocacy (Advocacy) submits the following comments in response to the Department of Energy's (DOE's) February 4, 2015, notice of proposed rulemaking on "Energy Conservation Standards for Commercial Warm Air Furnaces." One small manufacturer has concerns about DOE's proposal for gas-fired commercial warm air furnaces, and Advocacy recommends that DOE use its discretion to adopt a regulatory alternative to the proposed standard that is achievable for this small manufacturer.

**About the Office of Advocacy**

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), gives small entities a voice in the Federal rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, Federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy. The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.

**Advocacy's Comments**

DOE proposes raising the energy efficiency standards for commercial warm air furnaces. There are two types of equipment classes covered by this rulemaking: oil-fired furnaces and gas-fired

furnaces. In each equipment class, DOE located one small business that will be affected by the proposed rule if it is adopted. The small manufacturer of oil-fired furnaces is already manufacturing their furnaces at the efficiency level in the proposed rule, so that firm is unlikely to be impacted by the rulemaking. However, the small manufacturer of gas-fired furnaces currently manufactures their furnaces at an 80 percent efficiency level, and according to DOE's own analysis, the small manufacturer will incur significant conversion costs to upgrade their equipment lines to the 82 percent efficiency level in the proposed rule.

### ***DOE Should Contact the Small Manufacturer to Determine the Small Business Impact***

Advocacy has spoken with the small manufacturer about the proposed standards, and it is concerned that the proposed standards are not economically feasible within the three year period prescribed by DOE. In their RFA analysis, DOE speculated that small businesses would not be "differentially impacted" from large businesses in the market, but this speculation is based on their assumption that gas-fired furnaces are a low volume sales market<sup>1</sup>. Further, DOE was unable to make contact with the small manufacturer DOE identified, and therefore unable to assess the true impact of the proposed regulation on that small firm. The RFA requires agencies to provide an Initial Regulatory Flexibility Act Analysis (IRFA) so that the agency can connect with small businesses to determine how the regulation will affect small businesses. Advocacy is happy to facilitate contact between DOE and the affected small manufacturer, so that a more focused inquiry on small business impacts can be made.

The vast majority of gas-fired commercial warm air furnaces are currently manufactured by large companies that together account for approximately 93 percent of the listings. The single small business manufacturer remaining in the market has seven percent of the listings (approximately 17 of the 250 CWAF listings).<sup>2</sup> Despite DOE's assertion that the small manufacturer would not be affected differently from its large counterparts, Advocacy believes the small manufacturer will not be able to absorb the cost of conversion as easily as a large manufacturer because small businesses traditionally have smaller economies of scale, and as noted by DOE, less access to outside capital to support major transitions.<sup>3</sup>

Adopting energy efficiency standards that impede the ability of small manufacturers to remain in the market is harmful from both an economic and energy efficiency standpoint. Small businesses produce 13 times more patents per employee than larger firms and employ more than 40 percent of high technology workers. Maintaining a small business presence in any industry is important not only for the economy, but also promotes competition which leads to development, innovation and growth.

### ***DOE Should Adopt an Alternative Standard to Reduce Small Manufacturing Impacts***

DOE should exercise its discretion to adopt a standard for commercial warm air furnaces that still achieves significant energy savings without imposing costs that will cause small businesses to exit the market. The Energy Policy and Conservation Act (EPCA) expressly permits DOE to determine whether the benefits of the proposed standard exceed the burden of the proposed

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<sup>1</sup> Proposed Energy Conservation Standards for Commercial Warm Air Furnaces; 80 *Fed. Reg.* 6182 at 6227 (February 4, 2015).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

standard by balancing, *inter alia*, energy savings with costs to manufacturers. DOE may adopt a less burdensome standard as long as it achieves significant energy savings.<sup>4</sup> For example, adopting Trial Standard Level (TSL) 2 instead of TSL4 would reduce costs for small businesses by 70 percent and will still result in a 1.1 percent increase in national energy savings over the current baseline.<sup>5</sup> Adopting TSL4 would result in a 2.3 percent increase in national energy savings, but the cost to small businesses will triple.<sup>6</sup> Given the cost differential and the serious economic harm that could come to this small business, Advocacy believes that DOE has ample basis in the record to make the determination that adopting TSL2 will achieve significant energy savings and is economically justified under EPCA.

### ***DOE Must Explain Its Rationale for Rejecting Significant Alternatives***

The RFA requires that agencies analyze significant alternatives to proposed rules that will reduce disproportionate impacts of their rules on small entities. Significant alternatives under the RFA must be alternatives that both “accomplish the stated objectives of applicable statutes and which minimize significant economic impacts on small entities.”<sup>7</sup> In its IRFA, DOE cites to voluntary efficiency targets and TSL1, TSL2 and TSL3 as significant alternatives to the proposed rule.<sup>8</sup> However, DOE indicates in its IRFA that EPCA does not allow it to choose any of the less burdensome standards.<sup>9</sup> Advocacy is concerned that DOE has foreclosed consideration of significant alternatives because DOE believes adopting a less burdensome standard would be inconsistent with its statutory mandate under EPCA. Advocacy disagrees, and for the reasons stated above, believes that DOE can and should consider less burdensome alternatives which would still accomplish the energy goals of this regulation.

### **Conclusion**

Small business compliance with DOE’s proposed energy efficiency standard for commercial warm air furnaces will contribute very little towards overall energy savings, but will cause significant economic harm to small manufacturers of gas-fired furnaces. DOE should consider standards that will achieve significant energy savings without inflicting serious harm on small business manufacturing. Please do not hesitate to contact me or my staff at 202-205-7013 should you have any questions.

Sincerely,



Claudia Rayford Rodgers  
Acting Chief Counsel

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<sup>4</sup> 42 U.S.C § 6313 (a)(6)(B)(ii).

<sup>5</sup> Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Commercial Warm Air Furnaces; calculated from table 7.5.1 on page 122 (January 16, 2015).

<sup>6</sup> *Id.*

<sup>7</sup> 5 U.S.C. § 603(c).

<sup>8</sup> *Supra* note 1 at 6228.

<sup>9</sup> *Id.*



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cc: The Honorable Howard Shelanski  
Administrator, Office of Information and Regulatory Affairs,  
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