

October 12, 2010

Via Electronic Submission

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

Re: Energy Conservation Program: Test Procedures for Walk-In Coolers and Walk-In Freezers; Proposed Rule.¹ (RIN 1904-AB85)

Dear Secretary Chu:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits the following comments regarding the Department of Energy's proposed energy efficiency test procedures for the walk-in coolers and walk-in freezers. Advocacy understands that there is significant concern from small manufacturers regarding the burden the proposed procedures would impose on their operations and recommends that the Department give further consideration to alternative test procedures that would meet the Department's regulatory obligations while reducing the burden on small businesses.

About the Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within Small Business Administration (SBA), so 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),² gives small entities a voice in the 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.³

¹ *Energy Conservation Program: Test Procedures for Walk-In Coolers and Walk-in Freezers; Supplemental notice of proposed rulemaking*, 75 Fed. Reg. 555068 (September 9, 2010).

² *Small Business Regulatory Enforcement Fairness Act of 1996*, Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.) (SBREFA).

³ *Id.*

Background

On January 4, 2010, DOE published proposed energy efficiency test procedures for commercial walk-in coolers and freezers.⁴ Following publication of the proposal, DOE received significant feedback from the walk-in manufacturing industry. In response, DOE has published a supplemental notice of proposed rulemaking incorporating several changes to the test procedures DOE initially proposed. DOE's proposed testing approach incorporates a definition of the term "basic model" and requires that manufacturers test and certify energy efficiency ratings for each basic model of walk-in cooler or freezer they produce.

Advocacy has been contacted by individuals from small walk-in manufacturing firms who have had serious concerns about the proposed test procedures, specifically DOE's basic model approach. The individuals Advocacy has spoken with have expressed their concern that the proposed testing procedures put small manufacturers at a competitive disadvantage and could cause industry consolidation. Advocacy appreciates that DOE has been responsive to these concerns and is soliciting further feedback regarding the economic impact various proposed procedures would have on the industry.

Comments

Advocacy commends DOE for continuing to work with stakeholders to develop test procedures that will minimize the compliance burden for small manufacturers of walk-in coolers and freezers. In its Initial Regulatory Flexibility Analysis (IRFA), DOE correctly characterizes the walk-in manufacturing industry as being comprised of a few large companies and a large number of small companies, half of which have fewer than 100 employees. A significant share of the market for walk-in coolers and freezers is comprised of the sale of custom units. Because of this, many manufacturers might find themselves in the position of having to test hundreds, if not thousands, of basic models every year. DOE estimates that the cost of energy efficiency testing for one basic model might range between \$8,000 to \$46,000.

Through conversations with small walk-in manufacturers, Advocacy has also learned that small manufacturers produce a higher proportion of customized cooler and freezer systems (i.e., more "basic models") than their larger counterparts, who generally produce fewer basic models. Small manufacturers have told Advocacy that their ability to provide a variety of custom models for their customers allows them to compete with their larger counterparts that cannot offer the same variety. Advocacy strongly recommends that DOE carefully examine the disproportionate burdens that small manufacturers could face under its proposed testing procedure and adopt a test procedure that will help avoid any industry consolidation and allow small walk-in manufacturers to maintain their competitive edge.

⁴ *Energy Conservation Program: Test Procedures for Walk-in Coolers and Walk-in Freezers; Notice of Proposed Rulemaking and Public Meeting*, 75 Fed. Reg. 186 (January 4, 2010).

Advocacy believes there are alternatives to the proposed testing procedure that would be less burdensome while still allowing DOE to meet its obligations under EPCA. Specifically, in its IRFA for the proposed rule, DOE states that it could consider allowing manufacturers to rely on component suppliers for test results, and manufacturers could then use these values in the calculations of energy consumption for each basic model they produce. Advocacy believes there is significant industry support for this alternative and that it warrants further consideration by DOE. Additionally, DOE's IRFA states that DOE might consider allowing manufacturers to group basic models into a "family" of models and only require the lowest-efficiency basic model in the family to be certified. Advocacy believes there is also strong industry support for this alternative and recommends that DOE consider adopting this approach in addition to other burden-reducing alternatives.

Conclusion

Advocacy appreciates the efforts DOE has made to develop a testing procedure that does not disadvantage small manufacturers of walk-in coolers and freezers, and encourages DOE to examine the feasibility of adopting the burden-reducing alternatives discussed above. Advocacy would be happy to assist DOE in conducting any further outreach with small manufacturers as it continues to develop this rule. Please contact me or Jamie Belcore Saloom at 202/ 205-6533 should you have any questions.

Best regards,

//signed//
Winslow L. Sargeant, Ph.D.
Chief Counsel for Advocacy

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Jamie Belcore Saloom
Assistant Chief Counsel for Advocacy