



May 8, 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 Hearth Products; 80 Fed. Reg. 7082 (February 9, 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 9, 2015, notice of proposed rulemaking on “Energy Conservation Standards for Hearth Products.” Many small manufacturers have concerns about DOE’s proposal for hearth products, and Advocacy recommends that DOE more clearly determine small business impacts in its Initial Regulatory Flexibility Act Analysis (IRFA), and use its discretion to adopt a regulatory alternative to the proposed standard that is achievable for small manufacturers.

**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 energy efficiency standards for hearth products that would require manufacturers of hearth products to replace standing pilot lights with electronic ignition systems. Advocacy has heard from a number of small businesses with concerns about the impact that this regulation will have on their industry. DOE identified 90 manufacturers of gas hearth products that would be affected by the regulation, 66 of which are domestic small business manufacturers. Advocacy has heard from many small businesses that believe this number is understated, and therefore the impact to the industry is similarly understated. Small businesses are also concerned that DOE has inflated the energy savings that would accrue from enforcement of the rule due to a lack of understanding on how hearth products are utilized by consumers. In addition, small businesses have concerns that DOE's definition of "hearth products" is vague and overbroad. Last, small businesses are concerned about the impact that switching to an electronic ignition system could have on their industry, as electronic ignition technology is not yet completely developed.

The above small business concerns were addressed extensively in an October 7, 2011 comment letter filed by Advocacy on the Energy Conservation Standards for Direct Heating Equipment (July 22, 2011; 76 *Fed. Reg.* 43941). The 2015 proposed regulation at issue is essentially the same as the 2011 proposed regulation. Advocacy hereby incorporates its letter of October 7, 2011 (copy attached). Advocacy would further point out that DOE's assessment of small business impacts is inadequate, and its rejection of significant alternatives is unjustified.

### ***DOE Should More Accurately Determine the Small Business Impact***

DOE acknowledges that small manufacturers will not be able to absorb the cost of converting standing pilot lights to electronic ignition systems as easily as large manufacturers because the components needed for electronic ignition systems tend to be more expensive, and because small businesses traditionally have smaller economies of scale.<sup>1</sup> In their RFA analysis, DOE provided the added cost of electronic ignition systems at representative production volumes, but the economic impact of the proposed rule on small businesses is unclear, because these costs are not relative to revenue. Further, Advocacy has heard from small businesses that DOE did not have accurate information on the relative sales volume of small and large manufacturers of gas hearth products. DOE demonstrated the difference in cost between small and large manufacturers by selecting a sales volume of 1,000 for small businesses, and 10,000 for large businesses.<sup>2</sup> Small businesses maintain that the sales volume for small businesses is extremely overstated, and Advocacy believes that the inaccurate sales volume understates the impact to small businesses. The RFA requires agencies to provide an IRFA so that the agency can reach out to small businesses to determine how the regulation will affect them. Advocacy encourages DOE to reach out to affected small manufacturers so that a more focused inquiry on small business impacts can be made.

### ***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

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<sup>1</sup> Proposed Energy Conservation Standards for Hearth Products; 80 *Fed. Reg.* 7082 at 7125 (February 9, 2015).

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

must be alternatives that both “accomplish the stated objectives of applicable statutes and which minimize significant economic impacts on small entities.”<sup>3</sup> In its IRFA, DOE references boilerplate policy alternatives in its Regulatory Impact Analysis (RIA), but declines to consider any alternatives because all of the alternatives would yield smaller energy savings than the proposed standard.<sup>4</sup> DOE maintains that the Energy Policy and Conservation Act (EPCA) does not allow it to choose any of the less burdensome standards because DOE believes adopting a less burdensome standard would be inconsistent with its statutory mandate under EPCA.<sup>5</sup> 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.

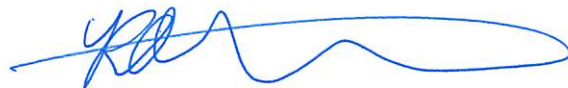
### **Conclusion**

DOE’s proposed energy efficiency standard for hearth products could cause significant economic harm to small manufacturers of hearth products. DOE should better determine the small business impacts of the rule, and consider standards that will achieve significant energy savings without inflicting harm on small business manufacturing. Please do not hesitate to contact me or Rosalyn Steward at 202-205-7013 or [rosalyn.steward@sba.gov](mailto:rosalyn.steward@sba.gov) should you have any questions.

Sincerely,



Claudia Rayford Rodgers  
Acting Chief Counsel



Rosalyn C. Steward  
Assistant Chief Counsel

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

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<sup>3</sup> 5 U.S.C. § 603(c).

<sup>4</sup> *Supra* note 1 at 7126

<sup>5</sup> *Id.*