



February 12, 2019

VIA REGULATIONS.GOV

The Honorable Andrew Wheeler
Acting Administrator, U.S. Environmental Protection Agency
EPA Docket Center
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Comments on EPA’s proposed rule “Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces (Sell-Through Amendment)” (Docket ID No. EPA-HQ-OAR-2018-0195) and advance notice of proposed rulemaking “Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces” (Docket ID No. EPA-HQ-OAR-2018-0196).

Dear Acting Administrator Wheeler:

The U.S. Small Business Administration’s Office of Advocacy (Advocacy) submits the following comments in response to the Environmental Protection Agency’s (EPA’s) November 30, 2018 notices on the New Source Performance Standard (NSPS) for Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces.^{1,2} Advocacy supports the amendment to add a sell-through provision for new hydronic heaters and forced-air furnaces, but strongly encourages EPA to include new residential wood heaters as well. Further, Advocacy encourages EPA take additional measures to reduce the burden of the NSPS on small businesses in order to encourage a vibrant market in these products and encourage customers to replace their older dirtier heaters.

The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. No. 94-305 to advocate the views of small entities before federal agencies and Congress. Because Advocacy is an independent office

¹ “Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces (Sell-Through Amendment),” 83 Fed. Reg. 61574 (November 30, 2018), Docket ID No. EPA-HQ-OAR-2018-0195.

² “Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces” 83 Fed. Reg. 61585 (November 30, 2018), Docket ID No. EPA-HQ-OAR-2018-0196.



within the U.S. Small Business Administration (SBA), the views expressed by Advocacy do not necessarily reflect the position of the Administration or the SBA.³ The Regulatory Flexibility Act (RFA),⁴ as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),⁵ 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,”⁶ EPA is required by the Regulatory Flexibility Act to conduct a SBREFA panel to assess the impact of the proposed rule on small entities,⁷ 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.⁸ 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.⁹

Background

In 2015, EPA published a final NSPS for new residential wood heaters, new residential hydronic heaters, and new forced-air furnaces.¹⁰ In general, this rule establishes emission standards for new appliances that burn wood to heat homes. The rule applies to manufacturers that make the appliances and retailers that sell them.

EPA implemented the emission standards in two steps. With Step 1, effective shortly after publication, EPA intended to codify existing emission practices. EPA included a six-month “sell-through” period, which allowed retailers to sell some existing non-compliant appliances. Step 2 has an effective date of May 2020, with no “sell-through” provision.

In November 2018, EPA published two notices in the *Federal Register* requesting comment on changes to the 2015 rule: a proposed rule to provide “sell-through” for new hydronic heaters and new forced-air furnaces; and an advance notice of proposed rulemaking seeking comment on several aspects of the rule, including the Step 2 emission limits and compliance date.

Advocacy Comments

Small businesses represent most of the manufacturers of residential wood heaters, hydronic heaters and forced-air furnaces. These businesses have expressed concern about the economic

³ 15 U.S.C. § 634a, *et. seq.*

⁴ 5 U.S.C. § 601, *et. seq.*

⁵ Pub. L. 104-121, Title II, 110 Sta. 857 (1996) (codified in various sections of 5 U.S.C. § 601, *et. seq.*).

⁶ *See* 5 U.S.C. § 609(a), (b).

⁷ Under the RFA, small entities are defined as (1) a “small business” under section 3 of the Small Business Act and under size standards issued by the SBA in 13 C.F.C. § 121.201, or (2) a “small organization” that is a not-for-profit enterprise which is independently owned and operated and is not dominant in its field, or (3) a “small governmental jurisdiction” that is the government of a city, county, town, township, village, school district or special district with a population of less than 50,000 persons. 5 U.S.C. § 601.

⁸ Small Business Jobs Act of 2010 (PL. 111-240) §1601.

⁹ *Id.*

¹⁰ 80 Fed. Reg. 113672 (March 16, 2015).

impacts of the NSPS since before their promulgation, extending back to the SBREFA panel concluded in 2011. Small businesses and their representatives were highly critical of the 2014 proposed rule and have raised concerns to Advocacy in its Regional Regulatory Reform Roundtables.¹¹

The primary goal of the NSPS is to reduce emissions from residential wood-burning appliances. Although these appliances have gotten cleaner through the years, most of the appliances in homes remain high emission and uncertified. Most of the emission benefits from the NSPS come from the change out of these older stoves for future cleaner-burning but more expensive options.

However, “most of the households that use residential wood heat are lower income or lower middle income households. Affordability and ease of operation are critical to these households before they change out to a cleaner burning – lower-emission - residential wood heater from the current, high emission, uncertified residential wood heaters that nearly 75% of them now use.”¹² Industry experience indicates that change-out subsidies can have a very large impact; the corollary is that increases in the price of replacement appliances significantly reduce sales. If the full effect of the NSPS is to reduce both the availability and affordability of wood-burning appliances, then the benefits of the NSPS will be stymied.

A varied and competitive marketplace in certified appliances is necessary for the NSPS to be successful. But small businesses believe that the NSPS does not provide the time necessary to bring compliant products to market, let alone a full range of offering that consumers desire. In the 2015 Regulatory Impact Analysis, EPA projected a six-year research and development cycle to bring their products from Step 1 compliance to Step 2 compliance but provided only five years before only Step 2-certified products could be sold. And, because of reported delays in the EPA certification process, small businesses have had less than those five years to bring Step 2-certified products to market before their sales of Step 1-compliant products has been cut off.

Small businesses have even less time because of the market structure. The market for residential wood-burning appliances is unpredictable, and the NSPS is serving to make it even more inhospitable for small businesses. As the Hearth, Patio and Barbecue Association (HPBA) wrote in their public comments on the 2014 proposed rule, the market has been extremely volatile, with no clear pattern of sales trends or customer preferences. Manufacturers and retailers have great difficulty predicting how many of what models to manufacture or purchase for sale each year. “For retailers this is a particularly vexing problem because they have not only to guess how many stoves to buy, but how many sales people, installers and services techs they will need to support their sales. Their profitability depends on keeping careful watch over inventory and overhead.”¹³

¹¹ See U.S Small Business Administration Office of Advocacy, What Small Businesses Are Saying and What Advocacy Is Doing About It: Progress Report on the Office of Advocacy’s Regional Regulatory Reform Roundtables June 2017–September 2018, December, 2018, available at <https://advocacy.sba.gov/regulatory-reform/regulatory-reform-follow-up/>.

¹² Comment from Leah P. Hauer, Northwest Hearth, Patio and Barbecue Association (May 1, 2014), Docket ID No. EPA-HQ-OAR-2009-0734-1543, p. 3.

¹³ Comment from David Y. Chung, Crowell & Moring LLP on behalf of the Hearth, Patio and Barbecue Association (May 2, 2014), Docket ID. EPA-HQ-OAR-2009-0734-11643, Attachment 7, pp 6-7.

This is playing out today, with retailers no longer purchasing Step 1-compliant stoves and purchasing only Step 2-certified stoves, over a year before the compliance date. Combined with delays in obtaining the necessary testing and in the EPA-mandated certification review, small manufacturers needed to have products ready almost two years before the 2020 compliance date. This has caused major hardship in all product categories. HPBA reports that its membership has fallen due to economic hardship in the industry.

Hardship for small businesses will have negative consequences for the NSPS. Small businesses generally finance R&D with existing sales, so future offerings for Step 2-certified stoves, hydronic heaters and forced-air furnaces may be much more limited than the range of products offered in the past. Competition and innovation may be similarly limited. HBPA, which operates the largest trade show in this industry, reports that the market is significantly narrower this year than last and that prices are significantly higher in some segments of the market. Without a varied and competitive market in wood-burning appliances, the environmental benefits of the NSPS, gained through the change-out of older, dirtier and uncertified wood stoves, will be significantly lower than expected.

Recommendations

Advocacy recommends that EPA take all reasonable steps to reduce the burden on small businesses that manufacture (or used to manufacture) appliances subject to the NSPS. EPA should consider whether it adequately accounted for the market characteristics when it established the compliance timetable for the NSPS, allowing small businesses enough time to develop robust lines of Step 2-certified stoves.

For this reason, Advocacy strongly supports the proposal to provide a “sell-through” for hydronic heaters and forced-air furnaces and strongly supports extending a similar provision to wood heaters.

In addition, in response to the Advance Notice of Proposed Rulemaking, Advocacy recommends EPA consider the following measures to reduce the burdens on small businesses.

- Delay the step 2 compliance date by at least two years. Small businesses have lost the sales of their step 1-compliant appliances for the 2019-2020 winter, which has had the effect of forcing exit from the market and delaying R&D for step 2-compliance appliances. They will need more time to get back on track, even with a sell-through. In the absence of a sell-through, they will need even more time.
- Review certification procedures to eliminate delays that do not contribute to environmental benefits. EPA should examine its records of step 2 certification to determine whether EPA pre-approval has prevented non-compliant appliances from coming to market. If the significant delays reported by industry are a result of incomplete submissions that have not required subsequent changes to the underlying appliance, then EPA should allow self-certification based on third-party testing. If EPA continues its pre-approval process, then it must provide better guidance to applicants.

- Reconsider treating all residential wood heaters as one product category. EPA regulates residential wood heaters fueled by wood pellets the same as those fueled by cord wood. While this is consistent with EPA's stated desire to not show preference to any particular fuel in its air quality regulations, it may not be appropriate in a market where the vast majority of intended air quality benefits come from replacements rather than new installations. A customer seeking to replace a wood heater fueled by cord wood is discouraged from changing out if the available replacements are mostly fueled by pellets.

Advocacy looks forward to continuing to work with EPA on reducing regulatory burdens on small businesses and strives to be a resource to the agency for all small business-related concerns. If Advocacy can be of further assistance, please contact me or Assistant Chief Counsel David Rostker at (202) 205-6966 or david.rostker@sba.gov.

Sincerely,

/s/

Major L. Clark III
Acting Chief Counsel for Advocacy

/s/

David Rostker
Assistant Chief Counsel
Office of Advocacy

Attachment

cc: The Honorable Neomi Rao, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget