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April 1, 2016

Mr. James Raba
U.S. Department of Energy
Office of Energy Efficiency and Renewable Energy
Building Technologies Program, EE-5B
1000 Independence Avenue, S.W.
Washington, D.C. 20585-0121

Re: NODA Energy Conservation Standards for Commercial Boilers,
Docket No. EERE-2013–BT–STD–0030

Dear Jim:

The March 24, 2016 Federal Register included the Department of Energy’s (DOE) Notice of Proposed Rule (NOPR) regarding amended efficiency standards for commercial boilers. At present the comment period for this NOPR ends on May 23, 2016. Along with the Federal Register notice for the commercial boilers efficiency standards NOPR, the Technical Support Documents (TSD) became available. The TSD has 17 chapters and 24 appendices; totaling 726 pages. The 60 day comment period provided by the NOPR is not enough time to review all the data and information in the TSD, gather data and information that support concerns we may have regarding that analysis, and then provide comments on the NOPR.

However, there is a more fundamental issue regarding this rulemaking process. In this rulemaking, DOE continues down the path of violating its own procedures as set forth in the Process Rule, 10 CFR 430, Subpart C, Appendix A. That rule specifically states that “Final, modified test procedures will be issued prior to the NOPR on proposed standards.”¹ On March 17, 2016 the Federal Register included DOE’s NOPR regarding amended test procedures for commercial boilers. The comment period for that test procedure NOPR ends on May 31, 2016; after the deadline for commenting on the commercial boilers efficiency standards NOPR. In AHRI’s January 20, 2015 comments on this docket we noted that DOE expected to issue the NOPR for revising the efficiency test procedures for commercial boilers in the next few months and some time prior to the NOPR for amending the efficiency standards for commercial boilers, which is in accordance with DOE’s Process Rule. DOE has provided no justification for not meeting this expectation, nor offered any reason why a timeframe contrary to DOE’s stated policy in the Process Rule is necessary. Furthermore, proceeding with the standard rulemaking prior to finalization of the test procedure creates confusion for stakeholders and an inability to effectively comment on the standard rulemaking. If stakeholders, and DOE, do not know the exact procedure for testing equipment to determine compliance with the standard, how can they adequately comment on and evaluate the impact of the efficiency standard? It was precisely in order to avoid this confusion, and inability to effectively comment that the Process Rule was implemented. DOE’s proceeding to develop the standard contrary to the Process Rule without any offered justification is arbitrary and capricious.

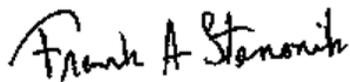
¹ 10 CFR 430, Subpart C., Appendix A.

Since the initiation of both these rulemakings AHRI has emphasized the difficulty and burden to industry to address concurrent test procedure and standards rulemakings covering the same product. It is critical that the revised test procedures be finalized so that the analysis for the revised standard is based properly on the test procedures that will be applied to products to establish their compliance with the revised efficiency standard. Furthermore, there must be sufficient time between the completion of the revised test procedure and the NOPR for the efficiency standard to allow all parties to assess the effect of test procedure revisions on potential increased efficiency standards. The progress of these two rulemakings has not resolved that issue but rather aggravated it. Now, the deadline for submitting comments on the revised standards NOPR is earlier than the deadline for submitting comments on the revised test procedure NOPR.

AHRI is disappointed in DOE's failure to follow its own procedures as set forth in federal regulations in this rulemaking, and frankly, in multiple other rulemakings in recent years. Under other circumstances we would request an extension of that the 60 day comment period for the efficiency standards NOPR to 120 days. In this case we request DOE to suspend the rulemaking on revising the efficiency standards for commercial boilers until the final rule on the revised test procedures for commercial boilers is finalized, in order to bring DOE into compliance with its own Process Rule. As noted on page 15844 of the March 24, 2016 Federal Register notice, DOE is obligated to issue a final rule on revised standards not later than 2 years after the NOPR has been published; i.e. March 24, 2018. The final rule on revised test procedure can be completed by the end of this year, perhaps sooner if there are minimal significant changes. Suspending the efficiency standards rulemaking for 5 to 6 months will not prevent DOE from meeting its March 24, 2018 target date. However it will have the benefits of returning this rulemaking to the normal and proper process of finalizing test procedure changes before considering efficiency standards changes and allowing all interested parties adequate time to participate fully in both rulemakings. A secondary benefit would be that all parties could focus on the content of the rulemaking rather than discussing issues concerning DOE's policies and procedures.

In view of the short 60 day review period for this NOPR we request your immediate attention to this request. If you have any questions or wish to discuss this further, please call us.

Respectfully submitted,



Frank A. Stanonik
Chief Technical Advisor

cc: Mr. Dan Cohen
Mr. Peter Cochran