

MEMORANDUM

TO: DOE Office of General Counsel

FROM: Doug Smith

DATE: February 13, 2012

RE: Disclosure of Permitted Communication Concerning Regional Standards
Enforcement Framework Document -- Docket No. EERE-2011-BT-CE-0077

This memo provides an overview of communications made to DOE staff on the subject of a policy for providing waivers from new regional furnace efficiency standards. The communications occurred at a meeting held at 2:00 pm on February 1, 2012, during the comment period on the Regional Standards Enforcement Framework Document. *See* 76 Fed. Reg. 76328 (Dec. 7, 2011).

Meeting attendees:

Dan Cohen (DOE/OGC)
Ashley Armstrong (DOE/EERE)
John Cymbalsky (DOE/EERE)
Celia Sher (DOE/OGC)
Eric Stas (DOE/OGC)
Paula Gant (American Gas Association)
Robin Roy (Natural Resources Defense Council)
Doug Smith (Van Ness Feldman)

Paula, Robin and Doug reported that they were working with an ad hoc coalition of stakeholders called "The Furnace Waiver Design Group." That Group developed a detailed policy proposal on appropriate waivers from the new regional furnace standards. (The Group subsequently submitted comments in this docket on February 6, 2012. *See* Comments of the Air Conditioning Contractors of America, Alliance to Save Energy, American Council for an Energy-Efficient Economy, American Gas Association, Appliance Standards Awareness Project, Consumer Federation of America, National Consumer Law Center, Natural Resources Defense Council, and Plumbing, Heating, Cooling Contractors - National Association on Regional Standards Enforcement Framework Document.)

Paula, Robin and Doug made the following points:

- DOE should establish a process for providing waivers from the new regional furnace standard.
- Waivers should be available where pre-determined criteria are met and eligibility is documented by the installer. No case-specific application to, or action by, DOE should be required.
- Waiver should be available only for furnace replacement in an existing home, and only if: (a) building conditions or local regulatory restrictions effectually preclude installation of a condensing furnace, or (b) the incremental installation cost (of a condensing furnace v. a non-condensing furnace) is prohibitive.
- An installer should be required to document eligibility for the waiver on a standardized form, to be subsequently submitted to DOE. Documentation should include: building characteristics driving excessive incremental installation cost; regulatory constraints; and project cost data.
- Installers determining waiver eligibility should be required to have appropriate training and certification on the waiver process and criteria.
- In order to ensure that the waiver policy is working as intended, DOE should periodically review experience with the waiver policy to determine whether any adjustment is appropriate. Any significant changes to the waiver policy should be promulgated through an appropriate notice and comment process.