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September 28, 2011

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

Dear Secretary Chu:

I am writing to renew my September 13, 2011, request that the Department withdraw the Notice of Proposed Rulemaking (NOPR) entitled "Energy Conservation Program Standards for Direct Heating Equipment," published at 76 Fed. Reg. 43941 (July 22, 2011).

The request to withdraw the NOPR is being renewed because the NOPR is itself imposing unnecessary burdens on HPBA and its members. In particular, HPBA has learned that Navigant Consulting, an agent of DOE, has only now – 19 days before the NOPR's October 14th comment deadline – started to contact HPBA members with written questions and requests for facility visits in an effort to obtain information the Department should have had in hand and analyzed well before it ever issued a proposed rule.

It must be noted that the burdens of responding to these last minute requests – and the burdens of commenting on the NOPR – are considerable, and that, to date, the Department has submitted virtually no relevant data, documentation or research to explain, support or clarify the NOPR. As a matter of law, these materials must be available to the regulated community in advance for the purpose of preparing comments. One cannot but question the circular Catch-22 logic of the Department asking industry to do the research that the Department will use to defend the NOPR that will kill the industry.

HPBA and its members are certainly willing to consider undertaking efforts to respond to legitimate inquiries in the context of normal rulemaking activity, even though the Department will not have completed its basic information gathering exercise before the comment period on this prematurely proposed rule has closed. Accordingly, to consider undertaking the burdens necessary to respond to the Department's inquiries, HPBA and its members request answers to the following questions:

1. Does the Department intend to issue a new notice of proposed rulemaking once it has gathered and analyzed the information it is now attempting to collect? As indicated in my correspondence of September 13th, the NOPR was based on wildly inaccurate information and assumptions, and it is without question that any final rule would have to rest on a completely different basis. While it appears that the Department has recognized this fact and is now actively

gathering information, HPBA and its members can only guess at what the Department will do with the newly-collected data.

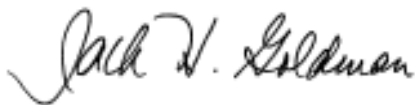
2. Will the Department provide an opportunity for HPBA and its members to question DOE representatives as to the basis for such a proposed rule? By statute, DOE is required to provide such an opportunity during the rulemaking process. However, Department representatives repeatedly refused to respond to questions about the NOPR at the September 1st public meeting.

3. On what basis has the Department concluded that heating efficiency standards are technologically achievable or economically justified for decorative vented gas fireplaces and gas log sets? By statute, a determination that standards are technologically feasible is required when a NOPR is issued, and interested parties are entitled to an opportunity to comment on whether standards are technologically achievable or economically justified before they are imposed.¹ The July 22, 2011 NOPR would subject decorative vented gas fireplaces and gas log sets to heating efficiency standards, yet it was issued without any determination that such standards would be technologically feasible. In fact, DOE has never offered any explanation as to how heating efficiency standards would be technologically achievable or economically justified for decorative vented gas fireplaces or gas log sets.

Again, with slightly over two weeks left to the comment period – and over three weeks after the extension of the comment period was announced – the Department’s rulemaking record remains woefully lacking, providing no ability to judge the purpose, rationale or science behind the NOPR.

In summary, on behalf of HPBA and its members, I request that DOE withdraw the NOPR of July 22, 2011, due to the complete lack of supporting data submitted by the Department and the burdens upon the industry of fulfilling the Department’s last minute requests for such data.

Sincerely yours,

A handwritten signature in cursive script that reads "Jack H. Goldman".

Jack H. Goldman
President & CEO

¹ 42 U.S.C. §6295(p)(1)-(2).