



CONSERVATION LAW FOUNDATION

March 29, 2010

By First Class Mail and

Email to: MAExemptPetition@ee.doe.gov and brenda.edwards@ee.doe.gov

Ms. Catherine Zoi
Assistant Secretary for Energy Efficiency and Renewable Energy
United States Department of Energy
Section 327 petitions
Appliance Efficiency Standards
Forrestal Building
1000 Independence Avenue, SW
Washington, DC 20585

Re: Petition of the Commonwealth of Massachusetts to Exempt from Federal Preemption Massachusetts' 90% Annual Fuel Efficiency Standard for Non-weatherized gas furnaces, dated October 1, 2009

Dear Assistant Secretary Zoi:

We are very pleased to offer our support for the petition of the Commonwealth of Massachusetts to exempt from federal preemption the 90% Annual Fuel Efficiency ("AFUE") Standard for Non-weatherized Gas Furnaces, dated October 1, 2009 ("the Petition.")

By approving the exemption sought in the Petition the U.S. Department of Energy (DOE) will be simultaneously assisting in the war against global warming, protecting natural gas customers against higher bills and respecting our federalist system of government by allowing a state to chart its own path.

As a great Massachusetts lawyer and judge once wrote: "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." - New State Ice Co. v. Liebmann, 285 U.S. 262, 311, 52 S.Ct. 371, 386-387, (1932) (dissenting opinion of Brandeis, J.)

In this case federal law allows states to seek, and for DOE to grant, an exemption where "unusual and compelling" circumstances exist, allowing this dynamic of the "state as laboratory" to flourish. The following factors clearly establish the existence of such "unusual and compelling" circumstances: 1) the relatively high energy costs in Massachusetts (not expected given the geography that places Massachusetts at the end of the gas pipeline system far from production and large importation centers), 2) the number of "heating degree days" in Massachusetts, well in excess of the national average during an average winter and 3) the

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unusually high number of renters in Massachusetts who have no control whatsoever over the efficiency of the furnace used to heat their homes.

Moreover, state statutory policy regarding Greenhouse Gas (“GHG”) reduction and energy efficiency expansion also create an affirmative set of “unusual and compelling” circumstances. Reaching the goals set by the Global Warming Solutions Act (“GWSA”), 2008 Mass. Acts Ch. 298, and the Green Communities Act (“GCA”), 2008 Mass. Acts Ch. 169 will be require (among many other things) the setting of standards like the one sought in the Petition. Those statutory goals include reducing GHG emissions by 80% (from 1990 levels) by 2050, and reducing fossil fuel use in buildings by 10% (from 2007 levels) by increasing the efficiency of both equipment (e.g. appliances) and the building envelope, and meeting at least 25% of the Commonwealth’s electric load through energy efficiency and other measures.

Of course, the 90% AFUE standard would greatly reduce energy use, costs, and GHG emissions. As explained in the Petition, implementing the standard would, between 2013 and 2030, save the state approximately 19.4 million therms in terms of gas usage and \$144 million in heating costs, and reduce GHG emissions by approximately 100,000 metric tons over the same time period. The average household buying a 90% AFUE furnace would see savings of approximately \$3,600 over the life of the furnace—approximately \$180 in annual fuel costs.

We are, of course, well aware of the agreement¹ entered into by the American Air-Conditioning, Heating and Refrigeration Institute, the American Council for an Energy-Efficient Economy, and other energy efficiency organizations and equipment manufacturers, which recommends that the Department adopt a 90% AFUE standard for non-weatherized furnaces in states with longer and colder winters, including Massachusetts (the “Agreement”). While the Agreement is centered on the same standard sought in the Petition, DOE does not have a deadline for translating the Agreement into regulatory action. Consequently, if the Department does not promulgate a rule based on the Agreement well before October 6, 2010 (the deadline for action on the Petition) if not sooner, we urge approval of the Petition. This step would be fully consistent with later promulgation of a rule implementing the Agreement.

Granting the exemption allowing the 90% AFUE standard in Massachusetts clearly is warranted, if not required, by the “unusual and compelling circumstances” that exist here – in terms of energy prices, the demographics of the residents of Massachusetts and the GHG reduction and energy efficiency growth mandates in place. We ask you to take that action and thank you for your time and attention and please feel free to contact me if you have any questions at skaplan@clf.org or 617-850-1721.

Sincerely,

Seth Kaplan

Seth Kaplan
Vice President for Policy and Climate Advocacy
Conservation Law Foundation

¹ “Agreement on Legislative and Regulatory Strategy for Amending Federal Energy Efficiency Standards, Test Procedures, Metrics and Building Code Provisions for Residential Central Air Conditioners, Heat Pumps, Weatherized and Non-Weatherized Furnaces and Related Matters, October 13, 2009,” available at: <http://www.standardsasap.org/documents/Furnace-ACAgreement.pdf>.