

Statement of Viktor Anderson
Structural Concepts Corporation
U.S. House Committee on Small Business
March 18, 2015

Mr. Chairman and Members of this Committee, I appreciate the opportunity to testify today on behalf of Structural Concepts Corporation and the Air Conditioning, Heating, and Refrigeration Institute (AHRI). Structural Concepts was founded in 1972, is located in Muskegon, Michigan and is a manufacturer of both remote and self-contained commercial refrigeration equipment. In terms that are likely more familiar to you, we are a company that makes the refrigerated merchandiser or display that you would find at your local grocery store or restaurant. Our products ensure that food is stored safely and is accessible in all corners of our country, from mom and pop bodegas to the largest supermarket chains.

AHRI is the trade association representing manufacturers of HVACR and water heating equipment. AHRI's 315 member companies manufacture quality, efficient, and innovative residential and commercial air conditioning, space heating, water heating, and commercial refrigeration equipment and components for sale in North America and around the world, and they account for more than 90 percent of HVACR and water heating residential and commercial equipment manufactured and sold in North America.

Like so many small businesses across the country, Structural Concepts is deeply rooted in our community. Our friends, our neighbors and our town depend on the jobs we provide. Unfortunately, as suggested by the title of today's hearing, small businesses like ours are facing significant new regulatory burdens from federal agencies. The agencies often show little regard for the impact new requirements can have on our business' ability to stay afloat and continue creating these quality jobs.

Today, I would like to draw the Committee's attention to two recent regulations (one finalized, one proposed) that will have a particularly deleterious impact on Structural Concepts and our employees:

(1) the U.S. Department of Energy’s (DOE) revision to energy conservation standards for commercial refrigeration equipment, and

(2) the U.S. Environmental Protection Agency’s (EPA) change of listing status for certain refrigerant substitutes under the Significant New Alternatives Policy (or SNAP) Program.

Taken together, these two regulations will severely impact Structural Concepts’ ability to retain our current level of employees and to economically produce cost-effective, energy efficient and environmentally friendly refrigeration products.

EXECUTIVE ORDER 13563

In 2011, like other companies across the Nation, we were heartened by President Obama’s issuance of Executive Order 13563, which was designed to improve regulations and regulatory review across the Federal government. President Obama directed each Federal agency to “propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs” and to “tailor its regulations to impose the least burden on society...taking into account, among other things, “the costs of cumulative regulations”. Concurrently, he issued a memorandum on “Regulatory Flexibility, Small Business, and Job Creation” that directed agencies to comply with an existing law, the Regulatory Flexibility Act. As you know, the RFA requires agencies to examine the impacts of regulations on small businesses and seriously consider how to reduce regulatory burdens through flexible approaches such as extending compliance deadlines, simplifying reporting and compliance requirements, or providing different requirements for small firms.

Unfortunately for Structural Concepts and many others, Federal agencies have simply not abided by these extremely important principles in their rulemakings. For example, under the Regulatory Flexibility Act review, the final rule for Energy Conservation Standards for Commercial Refrigeration Equipment clearly states that “the average small manufacturer is expected to face capital conversion costs that are nearly five times typical annual capital expenditures.” While capital conversion costs for large manufacturers are predicted to be 49 percent of annual capital expenditures, the review clearly states, “an average small manufacturer’s conversion costs are expected to be 278 percent of annual capital expenditures.” Despite the resulting difficulty in

obtaining credit, increases in component costs and disadvantageous rise in sale prices, the DOE did not truly examine any alternative approaches to reduce the significant economic impacts on small businesses.

As a result, small businesses like ours are burdened by multiple regulations that either contradict each other, have a high level of difficulty or are simply physically impossible to comply with in the given amount of time. We simply do not have resources to mount legal challenges and are therefore largely left to shoulder the resulting economic burden placed on our industry.

DOE'S ENERGY CONSERVATION STANDARDS FOR COMMERCIAL REFRIGERATION EQUIPMENT

As part of its energy efficiency rulemaking program, DOE promulgated energy conservation standards for commercial refrigeration equipment. In 2009, DOE issued an initial set of standards with a compliance date for industry of 2012. Between 2009 and 2012, Structural Concepts expended a significant amount of resources to comply with DOE's rules. Thousands of hours of research and development, engineering, testing, supply chain and manufacturing work went into this effort. For example, we scaled up an existing technology to eliminate 99% of the electric condensate pans used to remove meltwater from the defrost cycle. This alone accounted for a 30 – 40% energy reduction in our self-contained equipment. We improved the efficiency of our heat exchangers by enlarging them and using rifled tubing. We incorporated energy efficient compressors and motors. This all had to be developed first with initial verification through R&D testing. Then the implementation work began. All this new technology had to be engineered into over 400 existing models. Condensing units had to be developed for multiple product lines. Machine compartments needed to be either resized or reconfigured. Refrigeration systems for each case had to be rebalanced and it doesn't stop there. The two most important regulations to Structural Concepts had to be re-approved for all of our products. These would be product and food safety regulations that ensure we continue to maintain the health and well-being of our customers and end users. This was done through the compliance with Underwriters Laboratory and National Sanitation Foundation standards, In addition to safety testing, additional energy testing was also performed for DOE compliance.

To accomplish all of this we had to dedicate several engineers that would otherwise be customizing or developing products to increase sales and grow our company. We had to increase our capacity,

accuracy and throughput of our test labs. We had to develop new manufacturing processes and supply chains to produce our own condensing units. In the end, we reduced our energy/carbon footprint of our entire self-contained product offering by approximately 50%. We felt proud of the fact that we complied with the new DOE energy levels and in most cases went above and beyond, only to find out it wasn't enough. Last year, only two years after the compliance deadline for the old rules, DOE again issued even more stringent energy efficiency criteria. Unfortunately, the new standards, which have to be met by 2017, obviate many of the investments that were made to comply with the 2012 rule. Quite simply, DOE is not giving small businesses like Structural Concepts time to breathe between one rulemaking and the next.

In developing their final rule, DOE employed questionable assumptions about the feasibility and economic viability of several technological options that were included in the standards-setting process. In some cases, DOE went so far as to require energy savings in excess of *Energy Star* levels, which is supposed to be a designation for products that go above-and-beyond industry norms. They verified their new energy levels in some cases with only a single data point. There are so many configurations for each equipment class I don't know how they justified this. On the other hand, we, as manufactures, are required to have multiple data points if we want to use an alternative efficiency determination method (AEDM) to minimize the testing burden. DOE seems to be setting standards that utilize all of the most efficient technology in existence all at once, something we refer to as "max-tech." Forcing our entire industry to adopt max-tech in a few short years is an extremely expensive way of incentivizing savings that will probably backfire. In fact, DOE's demands are so onerous that many industry participants have decided their best recourse is to file a lawsuit against the agency's final rule.

To comply with DOE's new 2017 standards, Structural Concepts will again have to re-engineer many of our product components and cabinet designs, conduct new rounds of tests mentioned above, and potentially revamp our manufacturing processes. All of these activities will again sap resources that would otherwise be used towards innovation and product development, and will result in an increased price for our customers.

EPA'S CHANGE OF LISTING FOR CERTAIN SUBSTITUTES UNDER THE SNAP PROGRAM

The EPA's SNAP program is the agency's regulatory apparatus for phasing out ozone-depleting chemicals. The EPA proposed a rule last year that will take away the current refrigerant used in all of refrigerated systems on January 1st, 2016 (9 months from now). The alternative refrigerants they proposed are both highly flammable and, therefore, limited in the amount useable in each system. Ironically, many are actually less energy inefficient when used in our applications. The result they would have significantly raised the energy consumption and caused noncompliance to the DOE regulations. In fact, 60 percent of the display cases that we manufacture would not have complied with EPA's new rules until they approved a new refrigerant. EPA approved the use of R450A, the day after comments were due.

To make matters worse, R450A still has its challenges. The supply chain for this refrigerant will take time to develop. Production for the new gas will have to be scaled up. Compressors will have to be tested for safety and reliability. In some applications, the physical size of the compressor will increase to achieve the same refrigeration effect. This will require the machine compartment of each model to be reviewed for redesign. This of course is after each refrigeration system for all models are redesigned for balance. Again, all of the safety testing will need to be redone along with energy usage verification at great expense. In our response to EPA, Structural Concepts informed EPA that the agency's proposed rule would result in more than half of our employees being permanently laid-off.

Herein lies a new problem. When are we supposed to do all of this work? The DOE is requiring us to comply with the new energy levels on January 1st, 2017. The EPA is proposing compliance to their new rules on January 1st, 2016. (Again, only 9 months away). Let's assume that for obvious reasons that date will be extended out. Will we be required to comply with the new EPA rules in 2018? 2019? Currently we need to re-engineer our entire product offering to meet new energy levels by 2017. Then will we need to do it all over again a year or two later? The DOE is mandated to review energy levels every five years. This means that in 2022 we have to review our product yet again.

My point is, if the DOE and EPA do not coordinate their efforts, we could potentially be redesigning our product every two to three years for more than 12 years in a row. When DOE

determined that its new energy efficiency standards were feasible, the agency did not account for EPA's new restrictions on allowable refrigerants. Combined, the two rules will devastate our industry. Agency rules, as currently finalized, will operate at cross-purposes to one another and fail to accomplish their aims; all while reducing economically productive activity in our sector.

The aggregate effect of the regulatory burdens being placed on the commercial refrigeration industry will not be limited to damage suffered by Structural Concepts. By increasing the cost of display cases and other refrigeration technology that so many Americans depend on for their groceries, the Administration risks increasingly placing fresh food out of reach for the average consumer. Many of the grocers who use our display cases are also small businesses, who can ill-afford the additional cost of more expensive refrigeration units. Furthermore if certain equipment classes are made obsolete due to technical and timely infeasibility, the billions of dollars of product not sold through this equipment will have a major economic impact on both major corporations and small mom and pop retailers.

CONCLUSION

My purpose here today is to draw the Committee's attention to the undue burdens faced by small businesses everywhere by the unrealistic rules that federal agencies promulgate without adequate regard for practicality. The reality of these regulations, both specifically designed to address the commercial refrigeration industry, will not only increase our costs, but will force Structural Concepts to reduce the number of products manufactured, throw uncertainty into the current and future products offered and, overall, result in reduced employment. We are not a large corporation with a plethora of resources to redirect towards the review, testing and compliance of new rules. We are a small innovative manufacturer that makes refrigerated display cases, hardly the nexus point of the Nation's energy and environmental policy battles. Our company and thousands of companies like ours across the Nation, make a big difference in the stability of the nascent economic recovery which has only just begun to take hold. With its never-ending wave of new rules and ever-more-stringent standards, the Administration is threatening our ability to do business and provide critical products to American consumers.