



## DEPARTMENT OF ENERGY

[Case Number 2024-008; EERE-2024-BT-PET-0008]

### **Energy Conservation Program: Notice of Decision and Order Granting an Exemption to E.L Foust Co. From the Department of Energy Air Cleaner Energy Conservation Standards**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of decision and order.

**SUMMARY:** The U.S. Department of Energy (DOE) hereby gives notice of a Decision and Order (Case Number 2024-008) that grants to E.L Foust Co. (ELF) a small business exemption from the DOE air cleaner energy conservation standards. Specifically, ELF is granted an exemption from the Tier 1 energy conservation standards for air cleaners through December 30, 2025.

**DATES:** The Decision and Order is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** The docket, which includes *Federal Register* notices, comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at [www.regulations.gov/docket/EERE-2024-BT-PET-0008](http://www.regulations.gov/docket/EERE-2024-BT-PET-0008).

The docket web page contains instructions on how to access all documents, including public comments, in the docket.

#### **FOR FURTHER INFORMATION CONTACT:**

Mr. Jeremy Domm, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue, SW.,

Washington, DC, 20585-0121. Telephone: (202) 586-9870. E-mail:

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Ms. Ani Esenyan, U.S. Department of Energy, Office of the General Counsel, GC-33,  
1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-4798.

Email: *ani.esenyan@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR part 430, subpart E, DOE gives notification of the issuance of its Decision and Order as set forth below. The Decision and Order grants ELF a small business exemption from the applicable energy conservation standards for air cleaners specified at 10 CFR 430.32(ee)(1) through December 30, 2025. If ELF chooses to make any representations concerning the energy efficiency of the its air cleaner basic models, it must do so in accordance with the DOE test procedure specified in 10 CFR 430.23(hh)(4) and appendix FF to 10 CFR part 430, subpart B (appendix FF).

**Case # 2024-008**  
**Decision and Order**

**I. Authority and Background**

The Energy Policy and Conservation Act, Pub. L. 94-163, as amended (EPCA),<sup>1</sup> authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA<sup>2</sup> established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include air cleaners, the subject of this document. (42 U.S.C. 6292(a)(20))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Consistent with the requirements in 42 U.S.C. 6295, DOE has established energy conservation standards for air cleaners. On April 11, 2023, DOE published a direct final rule adopting the standards and compliance dates consistent with the recommendations from a group of joint stakeholders representing manufacturers, efficiency advocates, and consumer groups. 88 FR 21752. These standards apply to products manufactured in, or imported into, the United States starting on December 31, 2023, for the Tier 1 standards specified in 10 CFR 430.32(ee)(1) and on December 31, 2025, for the Tier 2 standards specified in 10 CFR 430.32.(ee)(2).

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<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Pub. L. 116-260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A-1 of EPCA.

<sup>2</sup> For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

Under 42 U.S.C. 6295(t), DOE may grant a temporary exemption from an applicable energy conservation standard to a manufacturer if DOE finds that the annual gross revenues of such manufacturer from all its operations (including the manufacture and sale of covered products) does not exceed \$8,000,000 for the 12-month period preceding the date of the application. In making this finding, DOE must account for the annual gross revenues of any other person who controls, is controlled by, or is under common control with, such manufacturer (42 U.S.C. 6295(t)(1)). The Secretary may not grant an exemption with respect to any type (or class) of covered product subject to an energy conservation standard unless the Secretary finds, after obtaining the written views of the Attorney General, that a failure to allow an exemption would likely result in a lessening of competition. (42 U.S.C. 6295(t)(2))

Subpart E of 10 CFR part 430 specifies further information regarding the purpose and process for considering applications for small business exemptions under 42 U.S.C. 6295(t). Among these requirements, 10 CFR 430.52(b) specifies that an application shall be in writing and shall include the following:

- (1) Name and mailing address of applicant;
- (2) Whether the applicant controls, is controlled by, or is under common control with another manufacturer, and if so, the nature of that control relationship;
- (3) The text or substance of the standard or portion thereof for which the exemption is sought and the length of time desired for the exemption;
- (4) Information showing the annual gross revenue of the applicant for the preceding 12-month period from all of its operations (including the manufacture and sale of covered products);
- (5) Information to show that failure to grant an exemption is likely to result in a lessening of competition;
- (6) Such other information, if any, believed to be pertinent by the petitioner; and
- (7) Such other information as the Secretary may require.

After receiving an application and accepting it for filing, DOE publishes a notice announcing the application in the *Federal Register*. 10 CFR 430.53(d). DOE transmits notice of the application for exemption to the Attorney General with: (a) a statement of the facts and of the reasons for the exemption, and (b) copies of all documents submitted. 10 CFR 430.54. After obtaining the written views of the Attorney General, the Secretary evaluates whether a failure to allow an exemption would likely result in a lessening of competition (see 10 CFR 430.55) and then issues a decision and order either granting or denying the application (see 10 CFR 430.56) in accordance with 42 U.S.C. 6295(t)(2).

## **II. E.L. Foust Co. Application for a Small Business Exemption**

On May 27, 2024,<sup>3</sup> E.L. Foust Co. (ELF) submitted an application, pursuant to subpart E of 10 CFR part 430, requesting a small business exemption from the energy conservation standards at 10 CFR 430.32(ee). As discussed previously, there are two tiers of standards for air cleaners. Compliance with the Tier 2 standards is not required until December 31, 2025, which is the date on which the requested exemption from the December 31, 2023, Tier 1 standards expires. As such, DOE did not consider an exemption for ELF for the Tier 2 standards. ELF will need to submit a separate application if they wish to request an exemption from the Tier 2 standards. Such an application would need to include current financial information available at that time and information regarding impacts on competition with respect to the Tier 2 standards.

ELF requested an exemption on the basis of its status as a small business. According to ELF, failure to receive a small business exemption would likely result in a lessening of competition in the market for air cleaners. ELF requested that the exemption apply for two years. In its application, ELF referred to the market for air cleaners intended for people with multiple chemical sensitivity. Specifically, ELF stated that its air purifiers are built with zero

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<sup>3</sup> The date in ELF's application is specified as May 26, 2024, but the application was received by DOE via email on May 27, 2024.

plastic or glue to eliminate volatile organic compounds (VOCs), and they offer particulate filtration. ELF claimed that larger companies do not offer these types of air cleaners, and estimated that five manufacturers, including ELF, specifically serve the market by not using plastics and glues in their air cleaners and by providing substantial gas phase filtration media. ELF stated that three of these manufacturers are based in the United States and that if DOE does not grant ELF an exemption, the market would be reduced to two U.S. manufacturers. ELF stated that the effects of the rule on those manufacturers is not known. ELF also stated that less competition in the non-plastic air cleaner market would accelerate the loss of non-plastic air cleaners and those products would become more expensive to consumers.

On October 7, 2024, DOE issued a notice announcing the receipt of and publishing ELF's application for exemption. 89 FR 81059. In accordance with its regulations, DOE also transmitted ELF's application for exemption to the Attorney General along with: (a) A statement of the facts and of the reasons for the exemption, and (b) copies of all documents submitted. 10 CFR 430.54.

In response to the 2024 notice announcing ELF's application, DOE received comments submitted by Daikin Comfort Technologies North America, Inc. (Daikin)<sup>4</sup> and Michael Ravnitzky (Ravnitzky)<sup>5</sup>. Daikin opposed the small business exemption, noting that there are about 5 manufacturers in this segment of the air cleaner market making products without plastics or glue to eliminate VOCs for people who suffer from multiple chemical sensitivity, and that granting the waiver will lessen the energy savings of the air cleaner energy conservation standards and provide an unfair cost advantage for ELF's products. Ravnitzky supported the request for a two-year waiver due to concern for the impact that denying the waiver would have on individuals with multiple chemical sensitivity.

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<sup>4</sup> Daikin's comments can be accessed at: [www.regulations.gov/comment/EERE-2024-BT-PET-0008-0003](http://www.regulations.gov/comment/EERE-2024-BT-PET-0008-0003).

<sup>5</sup> Ravnitzky's comments can be accessed at: [www.regulations.gov/comment/EERE-2024-BT-PET-0008-0002](http://www.regulations.gov/comment/EERE-2024-BT-PET-0008-0002).

### **III. Consultation with Other Agencies**

Per 42 U.S.C. 6295(t)(2), DOE obtained the written views of the Attorney General concerning ELF's application for exemption. Under this statutory provision, DOE may only grant a small business exemption if it has consulted with the Attorney General and finds that a lessening of competition would likely result. In its assessment letter<sup>6</sup> responding to DOE, the Department of Justice (DOJ) concluded that failure to grant ELF's application for a small business exemption for air cleaners would reduce competition to some degree. The basis for DOJ's determination is that, as a result of the standard, ELF will no longer be able to sell its air cleaner products through one of its main distribution channels, and therefore, customers will have one less competitive option through that channel. DOJ made this determination after reviewing ELF's application, as well as the technical analysis supporting the rule from which the exemption is sought. DOJ also reviewed the materials provided in response to the related request for comments, spoke with the company's representative, and reviewed other relevant, publicly available information.

### **IV. Final Decision and Order**

In accordance with 10 CFR 430.55 and 10 CFR 430.56, DOE gives notice of the issuance of its decision and order granting ELF's application for a small business exemption from the Tier 1 standards for air cleaners, specified at 10 CFR 430.32(ee)(1), through December 30, 2025.

In evaluating this matter, DOE first reviewed financial information submitted by ELF as part of its application and found that the annual gross revenues from all its operations (including the manufacture and sale of covered products) did not exceed \$8,000,000 for the 12-month

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<sup>6</sup> The text of the letter is provided at the end of this notice and is available in the docket for this petition at [www.regulations.gov/docket/EERE-2024-BT-PET-0008](http://www.regulations.gov/docket/EERE-2024-BT-PET-0008).

period preceding the date of the application, consistent with 42 U.S.C. 6295(t)(1). DOE then considered whether a failure to allow the exemption would result in a lessening of competition, consistent with 42 U.S.C. 6295(t)(2). After consultation with the Attorney General, DOE has determined that failure to grant a small business exemption would likely result in a lessening of competition. In response to Daikin's comment regarding a lessening in energy savings and potential cost advantage associated with granting the application, DOE notes compliance costs are typically a much larger percentage of revenue for small manufacturers than they are for larger manufacturers. An exemption under 42 U.S.C. 6295(t) allows small manufacturers to spread compliance costs across a longer timeframe. A necessary result of extending the compliance timeframe for a small manufacturer is a reduction in energy savings and a potential cost advantage for the small manufacturer. But the impact is mitigated by the relatively short duration of the exemption period.

After careful consideration of all the material that was submitted by ELF, comments received in this process, and consultation with DOJ, in this matter, it is ORDERED that:

(1) ELF air cleaners are exempt from the applicable energy conservation standards set forth in 10 CFR 430.32(ee)(1).

(2) This Order is in effect through December 30, 2025. For air cleaners manufactured on and after December 31, 2025, ELF is required to comply with the applicable energy conservation standards specified in 10 CFR 430.32(ee)(2).

(3) To the extent that ELF seeks any additional small business exemption from the standards specified in 10 CFR 430.32(ee)(2), it would be required to submit a separate application regarding those standards in accordance with the requirements in 10 CFR part 430, subpart E.

(4) Any representations of energy efficiency that ELF chooses to make for its air cleaners must be made in accordance with the DOE test procedure specified in 10 CFR 430.23(hh)(4) and appendix FF, as well as the representations requirements specified in 10 CFR 429.68.

(5) This Order is issued on the condition that the statements and representations provided by ELF are valid. DOE may rescind or modify this Order at any time if it determines the factual basis underlying the application for small business exemption is incorrect. Likewise, ELF may request that DOE rescind the order if ELF discovers an error in the information provided to DOE as part of its application.

### **Signing Authority**

This document of the Department of Energy was signed on April 21, 2025, by Louis Hrkman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on April 24, 2025.

**Treena V. Garrett,**  
*Federal Register Liaison Officer,*  
*U.S. Department of Energy.*



**DOJ's Letter (Received January 15, 2025)**

**Sent via e-mail to [ani.esenyan@hq.doe.gov](mailto:ani.esenyan@hq.doe.gov) and [ami.grace-tardy@hq.doe.gov](mailto:ami.grace-tardy@hq.doe.gov)  
RE: EL Foust Small Business Exemption**

U.S. Department of Justice  
Antitrust Division

*RFK Main Justice Building  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530*

Ami Grace-Tardy  
Assistant General Counsel for Legislation,  
Regulation and Energy Efficiency  
United States Department of Energy  
1001 Independence Ave., SW  
Washington, D.C. 20585

Dear Ms. Grace-Tardy:

I am responding to your October 8, 2024 letter seeking the views of the Attorney General about the potential impact on competition of E. L. Foust Co.'s application for a small-business exemption from energy conservation standards for conventional room air cleaners.

Your request was submitted in accordance with Section 6295(t) of the Energy Policy and Conservation Act of 1975 (ECPA), as amended. This Section provides that the Department of Energy may not grant a small-business exemption from an energy conservation standard until it has obtained the written views of the Attorney General concerning whether competition would be lessened if the Department of Energy does not grant an applicant's requested exemption. 42 U.S.C. § 66295(t)(2). The Attorney General's responsibility for responding to requests from other departments about the effect of any action, program or practice upon the maintenance and preservation of competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 C.F.R. § 0.40(g). The Acting Assistant Attorney General for the Antitrust Division has authorized me, as the Policy Director for the Antitrust Division, to provide the Antitrust Division's views regarding the potential impact on competition of proposed energy conservation standards on her behalf.

In conducting its analysis, the Antitrust Division applies the standard set forth in 42 U.S.C. § 6295(t)(2) and examines whether failure to grant a small-business exemption would likely result in a lessening of competition, for example, by limiting consumer choice, reducing the number of competitors, or limiting the capability or vigor with which they compete. A lessening of competition could result in higher prices, reduced innovation, and other harms to consumers, workers, and the American economy at large.

We have reviewed E. L. Foust Co.'s notice of application for a small business exemption contained in 89 Fed. Reg. 81059, October 7, 2024, as well as the technical analysis supporting the rule from which the exemption is sought. We have also reviewed the materials provided in response to the related request for comments, spoken with the company's representative, and reviewed other relevant, publicly available information. Based on this review, we have learned that one result of the energy conservation standards is that E. L. Foust Co. will no longer be able to sell its air cleaner products through one of its main distribution channels. Customers will

therefore have one less competitive option through that channel, necessarily reducing competition to some degree. We have no reason, however, to believe the impact on competition would be more substantial than the small businesses' size would suggest.

Sincerely,

/s/ David B. Lawrence

David B. Lawrence

Policy Director

[FR Doc. 2025-07352 Filed: 4/28/2025 8:45 am; Publication Date: 4/29/2025]