

Appliance Standards Awareness Project
American Council for an Energy-Efficient Economy
Consumer Federation of America
National Consumer Law Center

June 2, 2025

Mr. Lucas Adin
Office of Energy Efficiency and Renewable Energy
Building Technologies Office, EE-5B
1000 Independence Avenue SW, Washington, DC 20585

RE: Docket Number EERE–2025–BT–STD–0001: Request for Information concerning Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment

Dear Mr. Adin,

This letter constitutes the comments of the Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEEE), Consumer Federation of America (CFA) and the National Consumer Law Center (NCLC) on behalf of its low-income clients on the request for information (RFI) concerning Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment (“Process Rule”). 90 Fed. Reg 16093 (April 17, 2025). We appreciate the opportunity to provide input to the Department.

In the RFI, DOE seeks comments relating to potential changes to the Process Rule that would align with a recent Executive Order¹ while meeting the Department’s statutory obligations. However, the current Process Rule already provides detailed rulemaking guidance that addresses the topics discussed in the RFI. For example, the current Process Rule already includes consumer choice and market competition and innovation protections; considers manufacturer impacts, including regulatory burden; and provides detailed guidance on cost and benefit analysis and the public comment and review process.

The current Process Rule outlines the detailed statutory criteria that DOE follows in each rulemaking. DOE has requested comment on whether and how the Process Rule should be updated to provide additional detail on how DOE’s rulemaking process satisfies the statutory requirements for establishing new or amended energy conservation standards. EPCA sets forth criteria that DOE must adhere to when promulgating standards. Specifically, EPCA requires that any new or amended standard set by DOE must be technologically feasible and economically justified; result in significant conservation of energy; and not result in the unavailability of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available. Furthermore, EPCA requires DOE to consider seven factors in determining whether a standard is economically justified. The current Process Rule incorporates these statutory requirements. Since the Process Rule already specifies that DOE must meet the statutory requirements, we see no need for these sections to be updated to include additional specificity.

¹ E.O. 14154. 90 Fed. Reg. 8353 (January 29, 2025).

The Process Rule already includes consumer choice protections. As DOE notes in the RFI, there are several provisions in EPCA relating to preserving consumer choice for appliances and other covered equipment.² More specifically, EPCA requires that the Secretary consider any lessening of utility or performance likely to result from a new or amended standard.³ The current Process Rule gives further guidance on how DOE should apply these statutory requirements by stating that DOE will not consider technology options that are determined to have significant impact on a product’s utility or result in the unavailability of any covered product type with specific performance characteristics or features. As an example, there are more than 20 product classes with different standard levels for consumer refrigerator-freezers that ensure consumers have a broad choice of configuration (e.g., side, bottom, or top-mounted freezer). Additionally, in the most recent rulemaking, DOE ensured that newer features (e.g., transparent doors) will remain available by providing additional energy use allowances for these features.⁴

In the RFI, DOE requests comment on how the Process Rule could provide added specificity on ensuring consumer choice. The Department further discusses that consumers and manufacturers may make decisions based on product characteristics that are not related to efficiency such as color and internal arrangements (e.g., shelves and bins) that manufacturers want to market and consumers value.⁵ As discussed above, the Process Rule already provides guidance on how to preserve consumer choice, and product-specific considerations are more easily addressed in individual rulemakings. Regarding features that don’t affect efficiency, it is unclear why these features would be relevant to DOE’s rulemaking analysis. If features exist on the market today that are valued by consumers and have no impact on efficiency, there is no reason to believe they would not be available under new or amended standards.

The Process Rule already includes detailed guidance on analyzing manufacturer impacts, including regulatory burden. Section 13 of the Process Rule outlines detailed principles for DOE to follow in conducting manufacturer impacts analyses.⁶ For example, the Process Rule specifies provisions relating to identifying any issues that require detailed consideration specific to certain manufacturers or technologies; performing a detailed characterization of the industry including manufacturers, trends, finances, etc.; estimating the cost impacts (e.g., capital conversion costs, cash flows, impacts on future sales, etc.); and assessing cumulative regulatory burden associated with other federal regulatory action. In practice, this guidance results in a robust manufacturer impact analysis for each rulemaking that the Secretary weighs to ensure amended standards or test procedures are not unduly burdensome for manufacturers.

The Process Rule already includes market competition and innovation protections. As DOE notes in the RFI, EPCA directs DOE to consult with both the U.S. Attorney General and the Department of Justice in evaluating any lessening of market competition likely to result from a standard.⁷ EPCA directs the Attorney General to provide a written determination on the impact of any lessening of competition for every standards rulemaking, and DOE must consider this determination when prescribing new or

² 90 Fed. Reg. 16096.

³ 42 U.S.C. 6295 (o)(4). www.law.cornell.edu/uscode/text/42/6295

⁴ 89 Fed. Reg. 3026, 3041–3043 (January 17, 2024).

⁵ 90 Fed. Reg. 16097.

⁶ 10 CFR part 430, subpart C, appendix A.

⁷ 90 Fed. Reg. 16097.

amended standards.⁸ The current Process Rule also directs DOE to consider analysis from the Department of Justice pertaining to any lessening of market competition when proposing standards.

Furthermore, the current Process Rule provides additional guidance to DOE pertaining to the evaluation of each technology option under consideration in a standards rulemaking. Under sections 6(a)(3)(iii) and 7(b) of the Process Rule, DOE considers the practicability to manufacture, install, and service a given technology before giving it further consideration in a rulemaking. The Process Rule further states that DOE will not consider technology options that cannot be scaled to meet the market need, or that are proprietary. These considerations, along with the robust manufacturer impact analysis discussed above, ensure that new or amended standards protect existing market competition, which helps foster technological innovation.

Efficiency standards promote market competition and innovation. Seminal work by Porter and van der Linde proposed that well-designed regulations enhance business competition by creating market pressure that motivates innovation and progress, levels the competitive playing field during transitional periods, and provides certainty to businesses that investments to improve products (e.g., efficiency) will be valued in the future.⁹ A more recent study by Brucal and Roberts concluded that as new standards take effect, the price of older, but still compliant products drops.¹⁰ Manufacturers are then incentivized to innovate so that they can introduce new premium models with novel features and higher efficiency, resulting in better products that benefit all consumers. The transformer manufacturer ELSCO states on their website that “appliance and efficiency standards ensure that manufacturers transition away from outdated technology more quickly, pushing them toward innovative and efficient product designs that can help the market as a whole.”¹¹

The Process Rule already directs DOE to estimate national energy, economic, and employment impacts and private impacts on U.S. consumers. DOE has requested comment on whether and how the Process Rule should be updated to ensure that the global effects of a standard be reported separately from its domestic costs and benefits. DOE’s rulemaking analyses already focus on domestic impacts. For example, the Process Rule specifies the analysis that DOE should conduct to evaluate the national energy, economic, and employment impacts, which includes energy savings by fuel type, estimates of the direct and indirect impacts on U.S. employment, and the net present value (NPV) of benefits to U.S. consumers. The Process Rule also specifies the analysis to evaluate private impacts on consumers, which includes energy and operating cost savings for U.S. consumers, changes to purchase rate or cost of the products, and time to pay back first costs. Since the Process Rule already focuses on national benefits and impacts, and significant consideration is given to the private impacts on U.S. consumers, there is no need to amend these sections.

The Process Rule currently specifies opportunity for public comment, and DOE makes supporting materials publicly available. DOE has requested comment on whether and how the Process Rule should be amended to modify public comment and review procedures for rulemakings, consistent with the requirements of EPCA. As DOE notes in the RFI, the statutory requirements for opportunity for public comment for standards rulemaking are already included in the Process Rule, and the Process Rule also

⁸ 42 U.S.C. 6295 (o)(2). www.law.cornell.edu/uscode/text/42/6295

⁹ M. E. Porter & C. van der Linde, *Journal of Economic Perspectives*, 1995, Vol. 9, No. 4, pp. 97-118. www.aeaweb.org/articles?id=10.1257/jep.9.4.97

¹⁰ A. Brucal & M.J. Roberts, *Journal of Environmental Economics and Management*, 2019, Vol. 96, pp. 88-107. www.sciencedirect.com/science/article/pii/S0095069617307647

¹¹ elscotransformers.com/blog/doe-efficiency-standards-for-transformers/#

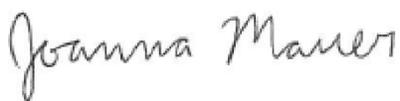
contains similar provisions for coverage determinations and test procedures. DOE further notes that the Department makes rulemaking materials available for public review, as specified in the Process Rule. DOE rulemaking dockets contain technical support documents (TSDs), government regulatory impact models (GRIMs), and national impact analysis (NIA) and life-cycle cost (LCC) spreadsheets for public examination. Since the Process Rule already prescribes appropriate public comment opportunities and directs the DOE to make supporting analysis publicly available, there is no need to amend these sections.

The current Process Rule provides predictability around rulemaking timelines. DOE has requested comment on whether and how the Process Rule should be amended to specify rulemaking prioritization and timelines, consistent with EPCA's requirements. The current Process Rule states that an objective of the procedures is to “increase predictability of the rulemaking timetable” and outlines the rulemaking steps. The Process rule also specifies the timing between the finalization of a test procedure and the end of the comment period on a standards NOPR, which allows stakeholders to gain familiarity with new test procedures prior to providing comments on a proposal for amended standards.¹² For a subset of commercial equipment, “ASHRAE equipment,” the Process Rule separately defines the timelines for ASHRAE trigger rulemakings.¹³ In addition, the current Process Rule outlines the factors the Department will consider when establishing priorities for rulemaking activity and directs DOE to offer opportunity for public input as the Department prepares its Regulatory Agenda. Since the current Process Rule already provides predictability around rulemaking timelines and describes the prioritization process, there is no need to amend these sections.

The Process Rule provisions should not be mandatory. The Process Rule was non-binding guidance from its issuance in July 1996 through April 2020. In 2021, the Department noted that in making the Process Rule binding, “DOE made a policy determination at the time it issued the February 2020 Final Rule that ‘promot[ing] a rulemaking environment that is both predictable and consistent’ outweighed the need for ‘flexibility to fit the appropriate process to the appliance standard or test procedure at issue.’”¹⁴ Such an overly rigid approach—without any flexibilities—could result in missed opportunities for energy and water savings, delay rulemakings, and increase the potential for litigation solely over the question of whether DOE has followed all the procedures in the Process Rule. For these reasons, DOE was correct in restoring the non-binding status to the Process Rule in the 2021 Final Rule.

Thank you for considering these comments.

Sincerely,



Joanna Mauer
Deputy Director
Appliance Standards Awareness Project



Matt Malinowski
Director, Buildings Program
American Council for an Energy-Efficient Economy

¹² 86 Fed. Reg. 70892 (December 13, 2021).

¹³ DOE is required to consider amending the existing efficiency standards and federal test procedures for certain equipment when ASHRAE 90.1 is updated.

¹⁴ 86 Fed. Reg. 70892, 70896 (December 13, 2021).



Courtney Griffin
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Berneta Haynes
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(On behalf of its low-income clients)