

Appliance Standards Awareness Project  
American Council for an Energy-Efficient Economy  
California Energy Commission  
Consumer Federation of America  
Natural Resources Defense Council  
Northeast Energy Efficiency Partnerships  
Northwest Energy Efficiency Alliance

March 16, 2020

Francine Pinto  
U.S. Department of Energy  
Office of the General Counsel, GC-33  
1000 Independence Avenue, SW  
Washington, DC 20585

**RE: Docket Number EERE-2017-BT-STD-0062/RIN 1904-AE84: Procedures for Evaluating Statutory Factors for Use in New or Revised Energy Conservation Standards**

Dear Ms. Pinto:

This letter constitutes the comments of the Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEEE), California Energy Commission (CEC), Consumer Federation of America (CFA), Natural Resources Defense Council (NRDC), Northeast Energy Efficiency Partnerships (NEEP), and Northwest Energy Efficiency Alliance (NEEA) on the supplemental notice of proposed rulemaking (SNOPR) for procedures for evaluating statutory factors for use in new or revised energy conservation standards. 85 Fed. Reg. 8483 (February 14, 2020). We appreciate the opportunity to provide input to the Department.

In the SNOPR, DOE proposes to change the Department's decision-making process for selecting energy conservation standards. We strongly oppose the proposal, which would clearly violate the Energy Policy and Conservation Act (EPCA) and would likely result in lost energy savings. Further, DOE has failed to address the concern that the proposal will result in selecting standards that are not the maximum levels that are technologically feasible and economically justified as required by the statute. DOE has also mischaracterized decisions in prior rulemakings in an attempt to suggest that the SNOPR would not be a significant departure from past practice. Finally, while DOE claims that the proposed change would help the Department satisfy its obligation to review standards, it would instead make it more difficult given the additional analysis that would be required.

**DOE's proposal in the SNOPR would violate EPCA.** EPCA requires that any new or amended efficiency standard "achieve the maximum improvement in energy efficiency . . . which the Secretary determines is technologically feasible and economically justified."<sup>1</sup> To date, DOE has used the "walk-down" process to determine which standard level to adopt. DOE implements this process by first starting at the "max-tech" trial standard level (TSL) and evaluating whether that level is economically justified. If DOE concludes that that level is not economically justified, the Department then proceeds to the next-highest TSL and makes the same evaluation until reaching a level (if any) that the Department

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<sup>1</sup> 42 U.S.C. 6295(o)(2)(A).

determines is economically justified. This process ensures that the maximum level that is technologically feasible and economically justified is selected. DOE is now proposing that the Department would conduct “a comparative analysis of the benefits and burdens of all of the proposed TSLs, including relative comparisons of each TSL’s benefits and burdens as part of an holistic analysis among all TSLs.”<sup>2</sup> DOE does not show how such a comparative analysis would lead to selecting standard levels that represent the maximum levels that are technologically feasible and economically justified as required by EPCA.

DOE claims that the Department has done such comparisons in the past. Specifically, DOE points to the 2016 final rule for dehumidifiers and says that in that rule, “DOE stated that one TSL would minimize disproportionate impacts to small, domestic dehumidifier manufacturers relative to two other TSLs under consideration.”<sup>3</sup> However, DOE is mischaracterizing the decision-making process in that rule. In discussing TSL 2, which was the level ultimately adopted, DOE noted that the impacts on small domestic manufacturers would be significantly lower than at TSL 4 and TSL 3. But DOE’s decision to reject TSL 4 and TSL 3 was not based on a comparison to TSL 2. Rather, DOE determined that TSL 4 and TSL 3 were not economically justified because the burdens would outweigh the benefits.<sup>4</sup> Consistent with the current walk-down process, DOE then determined that TSL 2 was economically justified (and therefore the maximum level that was technologically feasible and economically justified) because the benefits would outweigh the burdens.

**DOE’s proposal would likely result in lost energy savings.** We are concerned that under DOE’s proposal, the Department could choose efficiency levels lower than the maximum levels that are technologically feasible and economically justified. In addition to being illegal, such an outcome would result in lost energy savings. For example, in the 2011 final rule for room air conditioners, DOE adopted TSL 4. DOE estimated that the standards would save 0.31 quads and yield net present value (NPV) savings of \$0.57 to \$1.47 billion.<sup>5</sup> The energy savings at the next-lowest TSL, TSL 3, were about 30% less than at TSL 4 (0.21 quads), while the NPV at TSL 3 was slightly greater (\$0.71 to \$1.51 billion).<sup>6</sup> In this case, DOE determined that TSL 4 represented the maximum level that was technologically feasible and economically justified. But under DOE’s proposal in the SNO PR, DOE would have had to compare TSL 4 to the other TSLs including TSL 3. DOE states in the SNO PR that if DOE determines that more than one level is economically justified, DOE may select the level that maximizes net benefits, for example.<sup>7</sup> Because TSL 3 had a slightly greater NPV than TSL 4, under the proposal in the SNO PR DOE may have chosen TSL 3, which would have resulted in lost energy savings compared to TSL 4 (in addition to being impermissible under the statute).

**DOE has failed to address the concern that the proposal will result in selecting standards that are not the maximum levels that are technologically feasible and economically justified.** In the SNO PR, DOE argues that concerns that the proposal will result in selecting standards that are the most economically justified, instead of standards that reflect the maximum levels that are technologically feasible and economically justified, are “misplaced.”<sup>8</sup> However, DOE has failed to explain why this is the case. DOE

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<sup>2</sup> 85 Fed. Reg. 8486.

<sup>3</sup> 85 Fed. Reg. 8487.

<sup>4</sup> 81 Fed. Reg. 38387 (June 13, 2016).

<sup>5</sup> 76 Fed. Reg. 22456-57 (April 21, 2011).

<sup>6</sup> 76 Fed. Reg. 22553.

<sup>7</sup> 85 Fed. Reg. 8487.

<sup>8</sup> Ibid.

states that if the Department “determines more than one trial standard level is economically justified, DOE will select the standard that results in the maximum improvement in energy efficiency *with the greatest beneficial impact given burdens*” (emphasis added). But if more than one standard level is economically justified and DOE does not select the highest of those levels, the Department clearly would not be selecting the maximum level that is technologically feasible and economically justified.

DOE then seems to claim that in two prior rules the Department either did not select the maximum level that was economically justified or selected a level based on a comparative analysis. But this was clearly not the case. DOE first references the 2015 final rule for general service fluorescent lamps (GSFLs). DOE explains that TSL 5 would have resulted in maximum energy savings and positive net benefits, but DOE chose not to adopt TSL 5 due to negative impacts on industry net present value (INPV) and a portion of consumers.<sup>9</sup> By “positive net benefits,” we assume that DOE is referring to positive NPV. (The NPV at TSL 5 was \$1.6 to \$4.9 billion.)<sup>10</sup> DOE seems to be suggesting that TSL 5 was economically justified but that the Department chose to adopt a lower level that was also economically justified. But that is plainly false. TSL 5 did have a positive NPV, but a positive NPV does not by itself mean that a TSL is economically justified under the statute. Rather, economic justification is determined based on consideration of the seven factors.<sup>11</sup> In the GSFL rule, DOE determined that TSL 5 was not economically justified due to the potential reduction in INPV and negative LCC savings experienced by consumers of a particular type of lamp.<sup>12</sup> DOE then considered TSL 4 and determined that it would be economically justified (and therefore the maximum level that was technologically feasible and economically justified).

In the second example, DOE says that in the 2016 final rule for dehumidifiers, TSL 2 was selected, at least in part, “because it minimized the impact to small business manufacturers compared to other TSLs.”<sup>13</sup> However, as noted above, DOE did not do any such comparison in determining that TSL 4 and TSL 3 were not economically justified. Rather, DOE determined that TSL 4 was not economically justified because the benefits would be outweighed by the potential impact on product availability and the potential significant negative impacts on small domestic manufacturers. Similarly, DOE determined that TSL 3 was not economically justified because the benefits would be outweighed by the significant negative impacts on small domestic manufacturers. DOE then determined that TSL 2 was economically justified (and therefore the maximum level that was technologically feasible and economically justified) because the benefits would outweigh the burdens.<sup>14</sup>

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<sup>9</sup> We note that the SNOPR states that in the GSFL rule DOE found that TSL 5 would decrease INPV by 24%, which is not accurate. DOE found that TSL 5 would result in a change in INPV ranging from a decrease of 24% to an increase of 29%.

<sup>10</sup> 80 Fed. Reg. 4141 (January 26, 2015).

<sup>11</sup> The seven factors are (1) the economic impact of the standard on manufacturers and consumers; (2) the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard; (3) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard; (4) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard; (5) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard; (6) the need for national energy and water conservation; and (7) other factors the Secretary considers relevant. 42 U.S.C. 6295(o)(2)(B)(i).

<sup>12</sup> 80 Fed. Reg. 4142.

<sup>13</sup> 85 Fed. Reg. 8487.

<sup>14</sup> 81 Fed. Reg. 38387-88.

In both examples, DOE implemented the standard walk-down process, ensuring that the level selected was the maximum level that was technologically feasible and economically justified.

**The proposed change would make it more difficult for DOE to satisfy its obligation to review standards.** In the SNOPR, DOE argues that the proposal “will enable DOE to more readily and consistently satisfy its continuing obligation to review its standards, as well as its separate ongoing obligations to review all of its test procedures, on a cyclical basis, by helping DOE to quickly identify those areas that will yield the most beneficial information from DOE’s efforts to amend or establish standards producing significant energy conservation for a given regulated product or equipment.”<sup>15</sup> However, rather than allowing DOE to “more readily and consistently satisfy its continuing obligation to review its standards,” the proposal in the SNOPR would instead increase the amount of analysis required, thus making it more difficult for the Department to fulfill its obligation.

Specifically, DOE to date has conducted analysis for each of the TSLs, which the Department relies on to determine the maximum level that is technologically feasible and economically justified. Under the proposal in the SNOPR, DOE would be required to conduct additional “comparative analysis,” including “assessing the incremental changes in costs and benefits for each TSL’s benefits and burdens relative to other TSLs and as part of an holistic analysis across all TSLs.”<sup>16</sup> This would not be a simple task. DOE explains in the SNOPR that it would require for each TSL considered “a comparison of the benefits and burdens of that standard, determined by considering the seven factors listed in EPCA, against the benefits and burdens of the baseline case (no new standards case) and all other TSLs as an incremental comparison.”<sup>17</sup> For a rulemaking with 5 TSLs this could require 105 separate complex comparisons. (Just examining TSL 5 would compare 7 factors against 4 other TSLs and the baseline case, or 35 considerations.)

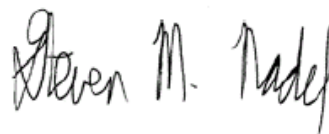
In summary, we strongly urge DOE to withdraw the SNOPR. In addition to clearly violating EPCA, DOE’s proposal would likely result in lost energy savings and would make it more difficult for the Department to fulfill its statutory obligations to review and update standards.

Thank you for considering these comments.

Sincerely,



Joanna Mauer  
Technical Advocacy Manager  
Appliance Standards Awareness Project



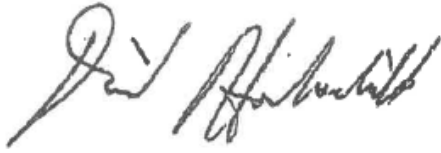
Steve Nadel  
Executive Director  
American Council for an Energy-Efficient  
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<sup>15</sup> 85 Fed. Reg. 8487.

<sup>16</sup> 85 Fed. Reg. 8490.

<sup>17</sup> 85 Fed. Reg. 8486.



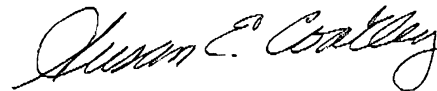
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