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Testimony
of
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Before the
Subcommittee on Energy and Power
U.S. House of Representatives

Hearing on
Home Appliance Energy Efficiency Standards Under the Department of Energy—Stakeholder Perspectives

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Summary

The Issue:

The Appliance Standards and ENERGY STAR programs have been successful. Energy efficiency gains across core major appliance categories are dramatic and undeniable. For many home appliances, the opportunities for additional savings beyond those already achieved are severely diminished as products are nearing maximum efficiency under available technology. For those products, further amended standards or ENERGY STAR specifications are likely to result in insignificant energy savings, increased costs to consumers and manufacturers, and degraded performance and functionality.

The Proposed Solutions:

1. AHAM supports HR 8, the pending energy legislation, which would make technical corrections to EPCA and ensure DOE adheres to the existing processes designed to promote transparency and stakeholder engagement.
2. AHAM calls upon Congress to modernize EPCA, while retaining national standards and not rolling back existing standards, by, among other things:
    - Ending mandatory serial rulemaking and permitting amended standards only when justified;
    - Including a list of covered products for which no further rulemaking is needed;
    - Requiring DOE to meaningfully consider cumulative regulatory burden;
    - Mandating procedures regarding transparency and public engagement; and
    - Applying the Administrative Procedure Act to the ENERGY STAR program.

Introduction—Changes are Needed to the Appliance Standards and ENERGY STAR Programs

Chairman Whitfield, Ranking Member Rush and members of the Subcommittee, thank you for the opportunity to testify on behalf of the Association of Home Appliance Manufacturers (AHAM) regarding the Energy Policy and Conservation Act of 1975, as amended (EPCA). We appreciate the Committee addressing the evolving use of EPCA to pursue ever more stringent and unjustified efficiency standards and ensuring that the law is applied in a way that achieves its core mission without compromising the integrity or functionality of home appliances and other products.

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's membership includes more than 150 companies throughout the world. In the U.S., AHAM members employ tens of thousands of people. AHAM members produce more than 95% of the household appliances shipped for sale in the U.S. and Canada. The factory shipment value of these products is more than $30 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.

AHAM has been a major stakeholder in the Appliance Standards and ENERGY STAR programs since their commencement. We have been involved in all the legislation that has culminated in today's Appliance Standards Program, including the National Appliance Energy Conservation Act in 1987. We strongly support a system of federal standards and state preemption and we do not support a rollback of any standards. It is critical to a thriving domestic industry and U.S. employment and to ensure fully featured, moderately priced products, that we have one set of nation-wide standards.

There have been more than 30 standards, including amended standards, that apply to the 10 (soon to be 12) AHAM products under the program. There have also been numerous test procedure revisions accompanying these standards revisions. In many cases, we have supported specific standards in legislation or as part of regulatory negotiations. We question whether any other regulated industry anywhere in the federal regulatory scheme, or indeed anywhere in the world, has been subject to so many continuing and unending standards and rulemakings on the same products. So, our criticism of the operation of the Appliance Standards Program at this time is based on both deep experience and strong support for its existence.

The reality is that for many product categories, continuing endless, sequential rulemakings is not justified, threatens product utility, and is only rationalized by the Department of Energy (DOE) through its use of opaque, black box calculations such as the Social Cost of Carbon.

Similarly, we have engaged with ENERGY STAR in all its forms and through its various reorganizations. It has been a successful program in which our companies have been integrally

involved. AHAM operates verification programs for seven products in partnership with the Environmental Protection Agency (EPA) and DOE. Like the Appliance Standards Program, however, ENERGY STAR has drifted from its original mission. We supported the first statutory authorization for ENERGY STAR and at least some minimum level of due process and procedures for what otherwise was a totally discretionary, de facto regulatory program run by EPA.

Unfortunately, it has become increasingly obvious that in an attempt to maintain relevance when many product categories no longer had room for significant efficiency improvements, EPA has migrated from an energy-related program into other areas beyond its expertise and authority. This drift must be considered in concert with the reality that the success of the program has essentially made it mandatory in the marketplace. It now is necessary for Congress to bring this program under much more traditional procedures and criteria such as the Administrative Procedure Act which applies to virtually every other program EPA administers. It is also important that Congress make clear that ENERGY STAR is about energy efficiency only, not about EPA's ideas regarding quality, functionality, sustainability or other non-energy factors (though it is critical that product functionality be considered in selecting the qualification levels). If a new qualification level cannot be justified by reasonable consumer payback or would negatively impact product functionality, then it should not be changed, or perhaps a category has exhausted its utility in the program.

Summary of Key Solutions: The Appliance Standards Program Has Made Great Achievements in Energy Savings, but the Program Must Change After 30 Years of Continuous Rulemakings to Protect the Critical Functionality of and Consumer Satisfaction with American Appliances

AHAM and its members are committed to providing energy efficient home appliances that have a direct, positive impact on the lives of consumers. The energy efficiency gains across all of the core major appliance categories are dramatic and undeniable. For example, the most commonly purchased modern refrigerator uses only the same amount of electricity as a 50 Watt light bulb.

For many home appliances, the opportunities for additional savings beyond those already achieved are severely diminished as products are nearing maximum efficiency under available technology and, in some cases, the basic laws of thermodynamics. For those products, further amended standards are likely to result in insignificant energy savings and will increase costs to consumers and manufacturers beyond an acceptable level. And for some products, more stringent energy conservation standards will likely result in degraded performance and functionality. Unfortunately, we have already seen this exemplified in a dishwasher proposed standard, as is explained below.

AHAM supports modest statutory changes in HR 8, this Committee's pending energy bill, to ensure that DOE does not depart from its own guidance, known as the Process Improvement Rule.[1] This includes the need for DOE to finalize test procedure changes well before pursuing standards revisions so that affected parties can understand the significance of proposed new standards. Otherwise, DOE creates a veritable Tower of Babel in which nobody can analyze or fully communicate about what energy use is being measured. The pending legislation also

[1] 10 C.F.R. 430 Appendix A to Subpart C.

requires transparency in DOE's various contractor-operated computer models so the public can evaluate their input, operation, and output and file useful comments, thereby avoiding the black box syndrome.

Even with those technical corrections, however, much more fundamental reform is needed to focus and prioritize DOE's activities. The relentless march of rulemakings that is now baked into the law and DOE's program shows little regard for how efficient products are or the potential for adverse consequences to product utility. Accordingly, we call on Congress to modernize EPCA by recognizing the diminishing energy savings opportunities for many products and ending the sequential rulemakings except in extraordinary circumstances where significant justification can be demonstrated.

A modernized EPCA should evaluate cumulative regulatory burden and the actual impacts of past rules and should improve transparency and stakeholder engagement. This is the best way to preserve the national standards program and build upon its successes while still recognizing the realities of limited opportunities for further energy savings that are economically justified, technologically feasible, and do not negatively impact product performance.

About EPCA

EPCA was originally signed into law more than 40 years ago in response to the 1973 energy crisis, creating the first comprehensive approach to federal energy policy. The primary goals of EPCA were to:

- increase energy production and supply
- reduce energy demand
- increase energy efficiency, and
- help the Executive Branch respond to supply disruptions.

EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles (Energy Conservation Program), which was designed to improve energy efficiency for consumer products, including home appliances, and certain commercial and industrial equipment. EPCA also allows the Secretary of Energy to classify additional types of consumer products as covered products. The Energy Conservation Program consists of four parts: testing, labeling, minimum energy conservation standards, and certification and enforcement procedures.

For home appliances, EPCA requires that, six years after the issuance of every final rule establishing or amending standards, DOE either publish a determination that no amendment to the standard is justified or publish a proposed rule to amend the standard. This is commonly referred to as the "six year lookback." AHAM supported this provision as part of a legislative compromise. But, after decades, it is reasonable to reconsider its continued application. The lookback requirement is unending and has proven to be a prescription for a huge regulatory edifice built around churning out often dozens of rulemakings each year regardless of their significance or justification.

Since the law was enacted in 1975, the U.S. has made great strides in reducing energy use. Home appliance manufacturers have played a significant role in that success by innovating to

create products that save time, effort, water and energy, as well as enhance style, convenience, and ease of use. Specific examples include appliances that take less time to set/start, refrigerators with more internal volume using the same footprint, appliances that can monitor and diagnose themselves, and smart grid enabled appliances. Appliances today are thinner, lighter, longer-lasting and have greater capacities without increases in size. At end of life, more than 90% of white goods are properly recycled, pointing to sustainability of products.

Federal Standards

AHAM supports federal efficiency standards in lieu of state standards and has been involved with and supported appliance related energy legislation for 30 years. A single, uniform standard throughout the U.S., and even throughout North America and beyond, is vastly preferable to a patchwork of 50 disconnected state-by-state standards. Federal appliance standards based on industry input and, often, stakeholder agreement is a path to more reasonable regulation and protection of consumer interest in a full diversity of products by manufacturer, brand, features and price points. Rational, definite standards with sufficient lead time, when coupled with incentive programs, can also minimize the damage to U.S. employment.

By participating in consensus negotiations leading to legislated standards or those that are the subject of multi-party petitions to DOE, AHAM has helped DOE to first catch up to and then meet the rulemaking schedules in EPCA. Due to the successful partnership between DOE, efficiency advocates, and manufacturers, the Energy Conservation Standards Program has been a huge success. The program has expanded from 13 to more than 60 products. It has established robust efficiency standards for numerous covered products, some of which have been regulated

repeatedly because of mandatory, serial rulemaking requirements under EPCA's six year lookback provision.

Currently, the DOE- administered program has grown to cover products representing roughly:

- 90% of home energy use;
- 60% of commercial building energy use; and
- 30% of industrial energy use.

Home appliances are an energy efficiency success story. Accordingly, energy consumption of home appliances has steadily decreased according to AHAM's 2014 Energy Efficiency and Consumption Trends data.

The energy efficiency gains across all of the core major appliance categories are dramatic and undeniable. Refrigerators are being produced at larger capacities, and yet are 50 percent more efficient than they were 20 years ago. Refrigerators, refrigerator-freezers, and freezers with an added ENERGY STAR designation are at least 10 percent more efficient than the federal standard. The most commonly purchased modern refrigerator uses only the same amount of electricity as a 50 Watt light bulb. Clothes washers are another example of the energy efficiency success, with tub capacities growing larger and energy consumption declining. A new clothes washer uses 73 percent less energy than it did in 1990. In fact, replacing an 8-year old washer with one of average efficiency will save the American consumer $130 per year in utility bills, and more than 5,000 gallons of water per year.

ENERGY STAR models enjoy additional energy and water savings. Dishwashers, room air conditioners, freezers and other major appliances offer similar energy efficiency gains. But all this accomplishment is only used by DOE as a predicate for more regulation with the assumption that these product categories will always be ripe for more regulatory mining. That is wrong and Congress needs to stop the mechanical, unending churn of the regulatory machinery.

Diminishing Returns

For products that have already been subject to two or three rounds of standards regulation, as many of the products under AHAM's scope have, EPCA's required serial rulemaking process, driven by the mandatory six year lookback, is beginning to result not only in significant cumulative regulatory burden on manufacturers, but also in diminishing returns for consumers and the environment. Most regulated home appliances have been through at least three rounds of standards revisions. The chart in Appendix A shows the many standards for our products and how far into the future standards are already in the queue to be revised or implemented for the first time.

For many home appliances, the opportunities for additional savings beyond the significant savings already achieved are severely diminished as they are nearing maximum efficiency under available technology. For those products, further amended standards will likely result in insignificant energy savings and increased cost to consumers and manufacturers beyond an acceptable level. Moreover, for some products more stringent energy conservation standards will likely result in degraded performance and functionality.

For example, in 2015 DOE proposed amended standards for residential dishwashers, which had just undergone a standards change in May 2013. Among other things, AHAM demonstrated that: 1) it would take consumers 20 years to recoup the cost of a new dishwasher, longer than most consumers live in their home and longer than the expected life of the dishwasher; 2) the majority of consumers would experience a net cost; and 3) product performance would be at risk.

With regard to product performance, AHAM members performed investigative testing to demonstrate the impact DOE's proposed standards would have on dishwashers' ability to remove adhered soils and grease. AHAM members then conducted consumer surveys regarding the performance test results and consumers commented that, for example, the dishes were "yucky," "unsanitary," "unappetizing," "filthy," and "nasty." In fact, according to one survey, 70 percent of the consumers surveyed were somewhat, very, or extremely likely to serve family and friends from the dishwasher at the current standard level. Not one person would serve family or friends from the dishwasher at the proposed levels. Moreover, AHAM pointed out that if dissatisfied with product performance, consumers are likely to pre-rinse dishes, which increases water use. Product performance is at the very essence of the bargain in EPCA between obtaining energy efficiency improvements while protecting consumers from being deprived of products that work well and perform the desired function. This is not only meaningful to any understanding of technical feasibility, but is also explicitly a requirement for economic justification under the "safe harbor" provision in 42 U.S.C. § 6295(o)(2)(B)(IV).

Demonstrating diminishing returns, recent standards have resulted in minimal energy savings and it is reasonable to think that trend will continue. The 2013 dishwasher standard, per DOE's

analysis saved only 0.07 quad and the 2014 room air conditioner standard and 2019 dehumidifier standards each saved under a quad—about 0.3 quad each. And, as shown in the table below, the percentage of consumers experiencing a net cost (i.e., those for whom the lifecycle cost of the product will be greater than the savings at the new efficiency level) per DOE's own analysis (which AHAM has consistently shown is overly optimistic), is high.

Appliance Standard	**Percent of Consumers Experiencing Net Cost Per DOE's Analysis**
2015 Clothes Dryer	Up to 32
2019 Dehumidifier	Up to 28.7
2013 Dishwasher	19 for standard size
Proposed Dishwasher	53 for standard size
Proposed Portable Air Conditioner	13 for residential consumers
2014 Room Air Conditioner	Up to 33.6
2014 Refrigerator/Freezer	Up to 45.7

Not only are consumers experiencing a net cost to achieve minimal savings, but the payback periods for those who will experience a benefit are long. The payback period—the time it takes consumers to recover the increased purchase cost of a more-efficient product through lower operating costs—for the current dishwasher standard (effective May 30, 2013), per DOE's analysis is 11.8 years for a standard size product. And, per AHAM's analysis the proposed dishwasher standard would have a 20 year payback period for a standard size product (DOE's analysis indicates a 9 year payback period). These payback periods are compared to the 13 year lifetime of the product. Similarly, the last refrigerator/freezer standards (effective September 15, 2014) had a median payback period, per DOE's analysis, of 9.5 years for top mount refrigerators. And the last room air conditioner standard (effective June 1, 2014) had payback periods of up to 10 years for one product class according to DOE's analysis. Per DOE, the clothes dryer standard (effective January 1, 2015) had consumer a payback period of 11.7 years for gas clothes dryers.

The same is true for ENERGY STAR specifications. For example, according to EPA's analysis the expected consumer savings for the latest dishwasher specification were only about $6 per year. And the 2014 refrigerator, refrigerator-freezer, and freezer ENERGY STAR specification saves a consumer only about $5-7 per year compared to a product that meets the 2014 DOE standard for those products. According to EPA's analysis, the ENERGY STAR specification for compact refrigerators would save consumers only $3.65 per year.

To achieve these minimal energy savings, impacts on manufacturers have also been significant. The table below shows the loss in the industry's value that the DOE's own analysis predicted for several recent home appliance rulemakings.

Appliance Standard	Loss in Industry Net Present Value (%)
2015 Clothes Washer	33
2013 Dishwasher	13.3
Proposed Dishwasher	17.7-34.7
2019 Dehumidifier	20.9
Proposed Portable Air Conditioner	30.6
2014 Room Air Conditioner	18.6
2014 Refrigerator/Freezer	21.7 for standard size refrigerator-freezers

These negative impacts are unsustainable. Congress must act to prevent future grievous damage to products, consumers, and manufacturers. With each amended standard EPCA requires, the energy savings potential will decrease while costs to consumers and manufacturers will increase and product performance will be increasingly at risk.

Because EPCA's goals have been achieved for many products, these continued mandatory, serial rulemakings no longer make sense for all products. Accordingly, as described in fuller detail

below, AHAM supports revisions to EPCA that will recognize the successes already achieved and pursue additional savings through a more focused set of requirements. New standards rulemakings for product categories that have had multiple standards should cease unless there is clear evidence of extraordinary savings opportunities.

Until changes can be made to EPCA, and in cases where the data support it, DOE should exercise its authority to determine that no amended standards are justified. Moreover, DOE must adhere strictly to the processes that have been put in place to ensure that, for those standards that continue, standards are technologically feasible and economically justified.

Similarly, in cases where the data support it, Congress should direct EPA to sunset ENERGY STAR specifications where no significant energy savings exist or where more stringent levels would risk increased consumer costs or degradation in product performance.

Cumulative Regulatory Burden—Multiple, Related Standards for the Same Product or Manufacturer

Manufacturers in this country are drowning in a sea of regulations that often apply to the same product and may even be contrary to each other. For example, in the climate regime, DOE regulates energy efficiency, the most important, but indirect, effect on carbon emissions, but without coordinating on timing and impact with EPA's program, which regulates the less climate-impactful use of refrigerants that are critical to energy efficiency. Likewise, EPA tends to ignore the impact of its actions on energy efficiency. Scarce corporate resources are spent

dealing with non-integrated DOE and EPA requirements, while at the same time maintaining safety and quality.

President Obama has followed other presidents in requiring agencies to consider cumulative regulatory burden. DOE guidance and analysis that was required after the standards program was subject to a congressional appropriations moratorium in the 1990s purports to quantify cumulative regulatory burden—multiple related standards for the same product or manufacturer—in its analysis. This analysis, however, is often perfunctory and does not appear to consider the extent of the many burdens associated with regulation.

Home appliance manufacturers are subject to many, often simultaneous, regulatory requirements from not only DOE, but also EPA, the Federal Trade Commission, the Consumer Product Safety Commission, and the Federal Communications Commission among others. For example, the table below lists the proposed, final, and upcoming regulations for refrigerator/freezers from just these agencies:

Agency	Regulation	Expected Compliance Date
EPA	SNAP,* Foam Blowing Agent	2020
EPA	SNAP,* Refrigerant	2021
EPA	ENERGY STAR (voluntary)	2014, 2017 update
DOE	Test Procedure Revision	2022
DOE	4th Standards Update	2022
FTC	Revised EnergyGuide Label	2016, and again TBD**

*Significant New Alternatives Policy Regulation to ban certain hydrofluorocarbons as acceptable alternatives.
**Could be as early as a second change required in 2016 depending on the date FTC publishes a Final Rule

To meet the Appliance and Equipment Standards Program's goal to realize energy savings from appliance standards avoiding at least 3 billion metric tons of carbon emissions, by 2030, DOE plans to complete 26 standards rulemakings covering 30 products between 2014 and 2016. It

also intends to complete ten standards rulemakings covering 12 products between 2017 and 2020. Although DOE often lists rules impacting manufacturers in its analysis, it does not appear to take the close look at the cumulative impact that we believe is warranted.

A true cumulative regulatory burden analysis should not only consider the sheer number of rulemakings to which appliance manufacturers are subject, but should also account for the timing and technical and economic relationship of those rulemakings. For example, DOE's recent practice of amending the test procedure while at the same time proposing amended standards increases the burden on manufacturers in responding to DOE's proposed rules. When the rulemakings parallel each other, it is difficult, if not impossible, to comment on the proposed energy conservation standard because the test procedure is not yet settled and manufacturers cannot determine how their products perform in relation to the proposed standards.

For manufacturers, there is always a flurry of activity leading up to the compliance date of a new or amended standard. This includes adding new capital equipment, sourcing new and sometimes more costly materials, redesigning products, retooling factories, etc. Home appliances are now in an endless cycle of regulation, where as soon as one compliance effort ends or is near completion, another round of regulation to change the standard again begins. For example, DOE issued a request for information on amended energy conservation standards for residential clothes dryers only a few months after compliance with the most recent standard for clothes dryers was required. There is no time for manufacturers to catch their breath.

Just as importantly, there is no time for DOE, manufacturers or efficiency advocates to assess the success of standards or review their impacts on consumers and manufacturers. It would seem that, as part of its retrospective review, DOE should not be so driven to issue standards that it does not take into account whether an amended standard is justified. Without DOE fully reviewing the success/impact of past rules, consumers are at risk of increased product cost and the simultaneous loss of functionality, features and choice. Among other effects, certain product models could be at risk, with disparate impact on low and fixed income consumers.

Finally, a complete analysis of cumulative regulatory burden must consider the sheer number of products the regulated manufacturers make, in addition to the one being regulated in a particular rule, that are subject to proposals to amend standards or to promulgate standards for the first time. The time and resources needed to evaluate and respond to DOE's proposed test procedures and energy conservation standards for all of these products should not be discounted. When these rulemakings occur simultaneously, the cumulative burden increases dramatically.

The same is true when compliance dates are clumped together for all of these products, as it was with the last major round of standards for products in AHAM's scope, as shown in the table below. The ENERGY STAR specification also changed effective on these dates and new EnergyGuide labels were required. For many AHAM members, this meant a revamp of product lineups for several of the major product categories in less than a year, bookended by changes to commercial clothes washers in January 2013, residential dishwashers in May 2013, and microwave ovens in June 2016.

June 2014	September 2014	January 2015	March 2015
Room Air Conditioners	Refrigerator/ Freezers	Clothes Dryers	Clothes Washers

DOE should be required to take this into account in its analysis as well as in its planning.

Stakeholder Participation

DOE's aggressive administration of the standards program burdens manufacturers and deprives stakeholders of a sufficient opportunity to participate in rulemakings. Specific examples of this include DOE's failure to publish final test procedures before proposing standards and DOE's recently shortened rulemaking process.

To keep pace with an accelerated timeline for revising energy conservation standards, DOE has repeatedly failed to finalize test procedures before proposing standards. This is significant because the test procedure is the method by which manufacturers will be required to demonstrate compliance with the proposed standard once finalized.

Minimally acceptable engineering analysis and sound policy conclusions can only be based on a known and final test procedure that government, manufacturers and other stakeholders have had the opportunity to use in evaluating design options and proposed standard levels. EPCA specifically requires that compliance with a new standard must be measured using a defined test procedure. This requirement is meaningless if a test procedure is not finalized well before a proposed rule is issued, much less finalized, so that all stakeholders can evaluate the significance and the meaning of the possible standards. Otherwise, the resulting analysis is chaotic and based on too much speculation to be acceptable.

Surely no standard can pass the substantial evidence test if it is not based on a final test procedure. And that test procedure must have been based on a full and useful opportunity for the public to comment on it and its impact on proposed standard levels. Section 7 of DOE's own Process Improvement Rule states that DOE will attempt to identify any necessary modifications to test procedures when "initiating the standards development process." Further, section 7(b) states that "needed modifications to test procedures will be identified in consultation with experts and interested parties early in the screening stage of the standards development process." And section 7(c) states that "final, modified test procedures will be issued prior to the ANPR and proposed standards." The same principles apply to new test procedures, and the Process Improvement Rule indicates that it also applies to development of new standards.

Not only does the practice of proceeding with standards development without a final test procedure raise concerns about the quality of DOE's analysis and make it difficult for stakeholders to engage meaningfully in the rulemaking process, it also increases regulatory burden. In several recent rulemakings, such as those for portable air conditioner standards and conventional cooking product standards, AHAM and its members sought to provide data on the efficiency of products in the market. Absent a final test procedure, however, it was difficult (if not impossible) to do so. Lab time is limited and best spent on activities not related to rulemaking, such as product development. Companies are not inclined to continually test their products under various versions of DOE's proposed test procedures or under existing test procedures not necessary for any current compliance or marketing need. To do so is expensive and time consuming. In some cases, AHAM has been able to obtain some test data, but not

enough to be useful in a standards analysis because it would provide an incomplete and potentially inaccurate picture of the market. In some cases where amendments are significant or a test procedure is new, it would not match DOE's test data under the proposed test procedure, thus causing the type of confusion and chaos discussed above.

DOE has also been short-circuiting the rulemaking process by forgoing such critical pre-proposal steps as public data availability, stakeholder input, and company interviews. These steps should not be overlooked—they provide DOE with a better understanding of the realities of the current market and product mix and could have prevented many analytical errors that have been strewn throughout DOE's recent rules, such as the proposed dishwasher standard. In addition, the pre-proposal steps allow stakeholders time to prepare much more useful comments for DOE's consideration. Indeed, the Process Improvement Rule was originally developed in large part because DOE was conducting nontransparent analyses and in isolation from real-world data, which resulted in the need for much more engagement among government, DOE contractors, and industry stakeholders. After 20 years of successful adherence to the Process Improvement Rule, it now seems that DOE has unilaterally authorized itself to waive portions of the Rule, thus rendering it meaningless.

Similarly, EPA's process for changing and developing ENERGY STAR specifications is not consistent. Although EPA provides opportunity for public comment, there is no formalized notice and comment process for specification levels and test procedures. While the ENERGY STAR Guiding Principles provide factors EPA often reviews in developing new or revised specifications, the principles do not mandate that all of the factors be reviewed every time, nor

do they provide sufficient insight into when EPA will review each of the factors. Because the ENERGY STAR program has been so successful, it has become essentially mandatory in the marketplace. As such, a more formalized process that provides consistency and certainty as well as requires a fuller technical analysis is necessary, hence our call for ENERGY STAR to be subject to the Administrative Procedure Act like a traditional federal regulatory program.

Lack of Transparency

DOE uses complex modeling and analysis based on various economic, technical, and business assumptions on the possible future impact different levels of efficiency could have on consumers, manufacturers, and the nation. Impacted stakeholders do not have full access to the assumptions and models upon which the DOE's analysis is based. DOE's technical and economic analytical assumptions and models should be available for public review, analysis, and use. AHAM and others have raised numerous comments and objections to DOE's models and assumptions with no effective forum to resolve these differences. DOE has frequently simply dismissed these critiques.

Similarly, EPA does not regularly share all of the data supporting its ENERGY STAR specification revisions for home appliances. For example, during the development of the most recent revision to the dehumidifier specification, AHAM requested data regarding EPA's analysis of the consumer payback period and EPA refused to provide it. It appears that EPA publicly shares data in other categories such as consumer electronics, but fails to share that same data for appliances unless or until stakeholders request it (and even then, EPA sometimes refuses to provide data). Without regular access to that data, stakeholders cannot evaluate the proposed

specifications. In addition, it is not clear that all decisions are supported by data. For example, meaningful data on consumer energy savings is needed as is a better-defined and more transparent consumer payback period analysis. AHAM has long been a proponent of EPA relying on the extensive analysis DOE has done in its technical support documents and then consulting with manufacturers if any gaps in the analysis exist, perhaps because time has passed since the analysis was completed.

ENERGY STAR Mission Creep

The ENERGY STAR program was initiated to "identify and promote energy-efficient products." But, faced with decreased energy savings opportunities, EPA has been struggling to remain squarely focused on energy efficiency and has been delving into areas market forces should determine such as product performance, capacity, features and warranties that are outside its authority. EPA has also made proposals in ENERGY STAR specification revision processes that would encroach on other regulations or government programs such as environmental sustainability, recyclability, toxic chemicals, and ozone depleting substances.

AHAM supports DOE and EPA's efforts to provide incentives to manufacturers, retailers, and consumers for continual energy efficiency improvement, as long as product performance can be maintained for the consumer. Unfortunately, EPA has been attempting to ensure performance is not compromised by considering a mandatory performance metric—a level of performance that must be met in order to qualify for ENERGY STAR. AHAM does not disagree with EPA that product performance should be taken into account in the ENERGY STAR program. But AHAM does not agree that EPA should set minimum levels of product performance in order to qualify

for ENERGY STAR. Instead, market forces should and do determine acceptable levels of performance and AHAM members compete fiercely with regard to product performance. Manufacturers themselves have the most interest in ensuring that consumers receive superior performance, regardless of the energy and water efficiency of the product. It should not be the role of government, particularly in a voluntary program authorized to set energy efficiency criteria, to set performance requirements.

Thus, AHAM believes that EPA should conduct an analysis similar to DOE's in which, during its specification setting process, it considers the potential impact on performance. And, if a more stringent specification would negatively impact performance, that level should not be selected. In the context of diminishing returns, this may mean that some specifications need to be sunset, especially if there would also be minimal energy savings or consumer savings achieved by the specification.

Solutions

It is likely that problems of the magnitude described above can only be addressed through significant changes to EPCA. Those will take time and, in the interim, immediate fixes are needed to ensure DOE adheres to the processes it once followed and supported under the Process Improvement Rule. Accordingly, AHAM supports language in the House Energy Bill (HR 8) that would make technical corrections to EPCA. Specifically, that language, among other things, would require that:

- standards be economically and technically justified;
- DOE not close a proposed standards comment period earlier than 180 days after publication of a final test procedure; and
- DOE provide an opportunity for public input prior to publishing a proposed rule.

These technical corrections should not be controversial. In large part they simply codify what DOE, efficiency advocates, and industry agreed to in developing the Process Improvement Rule.

In addition, we urge DOE to use its existing authority under EPCA to, where justified for a particular product, make a determination that no further amendments to the energy conservation standards are economically justified and/or technologically feasible. AHAM is committed to working with DOE on this effort by providing it with the data necessary to make such determinations.

Another option to achieve continued savings without the burden of rulemaking is to promote accelerated replacement of older, less efficient models with new ones meeting the most recent efficiency standards. This can expedite consumers' access to reduced energy costs and deliver new products and features that are more advanced than the currently installed product base. It also reduces overall demand on the grid, without excessive burdens on manufacturers or the time-consuming process of issuing new standards that eke out a modicum of additional savings.

A combination of minor, technical corrections to EPCA and a DOE commitment to make determinations not to revise certain energy conservation standards will help to mitigate some of

the concerns raised above, but will not solve them and leaves several concerns unaddressed. Thus, broader EPCA reform is necessary that would:

- end serial rulemaking by requiring DOE to demonstrate certain threshold energy savings before moving to regulate and include a presumption against further regulation unless there are technological advancements that improve efficiency;
- include a list of covered products for which there can be no further rulemakings;
- require DOE to meaningfully consider cumulative regulatory burden;
- establish clear minimums of time that must elapse between completion of a test procedure and proposal of a related efficiency standard;
- mandate procedures enabling public input prior to issuance of a proposal;
- increase transparency around the government assumptions and models on which standards are based;
- adopt a preference for negotiated rulemaking;
- prohibit non-energy performance requirements in energy standards and ENERGY STAR specifications; and
- apply the Administrative Procedures Act to ENERGY STAR.

Conclusion

Our ultimate objective is to improve the U.S. regulatory environment in measureable ways that foster a fairer, more predictable, more open and more efficient regulatory landscape. Accordingly, we call on Congress to modernize EPCA so that it addresses current circumstances by recognizing the diminishing energy savings opportunities for many products, evaluating

cumulative regulatory burden and the actual impacts of past rules, and improving transparency and stakeholder engagement. This is the best way to preserve the national standards program and build upon its successes while still recognizing the realities of limited opportunities for further energy savings that are economically justified, technologically feasible, and do not negatively impact product performance.

APPENDIX A: Home Appliance Standards and Revisions Since Inception of the Appliance Standards Program

	Effective Year of Standard																
Appliance	1988	1990	1993	1994	2000	2001	2004	2007	2010	2011	2012	2013	2014	2015	2016	2018	2019
Refrigerator/Freezer		Original	1st Update			2nd Update							3rd Update				
Room Air Conditioner		Original			1st Update								2nd Update				
Clothes Dryer	Original			1st Update	Reviewed									2nd Update			
Clothes Washer	Original			1st Update			2nd Update	3rd Update		4th Update				5th Update		6th Update	
Dishwasher	Original			1st Update					2nd Update			3rd Update					
Kitchen Ranges and Ovens		Original									Reviewed						
Dehumidifiers								Original			1st Update						2nd Update
Microwave Ovens															Original		
Portable Air Conditioners																	Original
Wine Chillers																	Original