

March 5, 2019

The Honorable Bobby L. Rush
Chairman
House Subcommittee on Energy
U.S. House of Representatives

The Honorable Fred Upton
Ranking Member
House Subcommittee on Energy
U.S. House of Representatives

Subject: **Subcommittee hearing on “Wasted Energy: DOE’s Inaction on Efficiency Standards and Its Impact on Consumers and the Climate”**

Dear Chairman Rush and Ranking Member Upton:

The Consumer Technology Association, as the trade association representing more than 2,200 companies in the \$398 billion U.S. consumer technology industry, welcomes the Committee’s continued engagement in pursuit of our shared commitment to energy efficiency. Energy efficient consumer products are in demand and promote our goal of environmental sustainability.

The title of the Subcommittee’s hearing suggests a focus on the binary question of whether or not a new energy appliance standard has been adopted. The Committee should instead measure success based on the overall effectiveness of DOE and industry’s programs in improving energy efficiency, not on the number of new standards adopted. There has been a growing consensus that flexible collaborative programs with industry can result in superior and faster energy savings while delivering more innovation and features to consumers. These so-called “voluntary agreements” have garnered bipartisan support here in the United States and from governments, energy efficiency advocates, and manufacturers around the world.

The backstory

The history of voluntary agreements in the United States traces back to 2012, when DOE was attempting to consider energy efficiency standards for the set-top boxes used by pay-TV providers. Energy efficiency advocates had raised concerns that set-top boxes had quickly become one of the more significant unregulated sources of energy consumption in the home, in particular because of the emergence of higher-energy consuming digital video recorders. But DOE recognized the impossibility of predicting all the technological and business changes that would have occurred with this fast-changing equipment and market

by the time its rules could have become applicable five years later. Companies were developing new features every year and would constantly have had to petition DOE to adopt or amend allowances and then wait for DOE approval before they could make the feature available to consumers. That result would have delayed or even derailed the introduction of new features to consumers and upgrades to service provider networks, in conflict with EPCA's directive to avoid "any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard,"¹ and the Obama Administration's directive to federal agencies to "promote innovation."² It would have also deprived innovators of first-mover advantages in a competitive market.

Instead, DOE and industry looked for alternatives. In 2009, the European Commission's Ecodesign Directive recognized that voluntary programs can allow for "flexible and appropriate adaptations to technological options and market sensitivities." It instructed its regulators to give priority to voluntary agreements "where such action is likely to deliver the policy objectives faster or in a less costly manner than mandatory requirements." Under this directive, the Commission worked with industry to launch a voluntary agreement for set-top boxes. The Commission staff were closely involved in setting overall expectations, but industry was able to craft the specific targets and rules that would satisfy those expectations.

DOE decided to follow this example, and the results have been spectacular. By law, DOE's rules could not have become effective sooner than 2018, but an independent audit found that by the end of 2017, the set-top box Voluntary Agreement had already saved consumers more than \$3.5 billion in energy - enough electricity to power all homes in Los Angeles for a year - and avoided more than 20 million metric tons of carbon dioxide emissions. Before DOE's first generation of energy efficiency levels could have taken effect, the industry program was already on its second and had already adopted a third set to take effect in 2020. As a result, set-top box energy consumption declined 34 percent in those five years, and new DVRs - which are the most energy-intensive type of set-top box - dropped by nearly 50 percent.

President Obama's Energy Secretary, Ernest Moniz, and Senator Diane Feinstein were thus correct when they predicted in 2013 that the agreement would "save families money by saving energy, while delivering high quality appliances for consumers that keep pace with technological innovation"³ and be "a big win for nearly every American" because DOE standards could not have produced as much savings as quickly.⁴ The agreement was named "Project of the Year" by *Environmental Leader*, a leading daily trade publication covering energy, environmental and sustainability news.

When the initial agreement expired at the end of 2017, the parties coordinated with DOE again to extend it for another four years, with even more rigorous commitments set to take effect in 2020. Secretary Perry

¹ 42 U.S.C. 6295 (o)(2)(B)(i).

² Improving Regulation and Regulatory Review, Executive Order 13563, 76 Fed. Reg. 3821 (Jan. 21, 2011) ("In developing regulatory actions and identifying appropriate approaches, each agency shall ... seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.").

³ U.S. Department of Energy, ENERGY.GOV, U.S. Energy Department, Pay-Television Industry and Energy Efficiency Groups Announce Set-Top Box Energy Conservation Agreement; Will Cut Energy Use for 90 Million U.S. Households, Save Consumers Billions (Dec. 23, 2013), available at <http://energy.gov/articles/us-energy-department-pay-television-industry-and-energy-efficiency-groups-announce-set-top>.

⁴ *Id.*

announced that “DOE supports the commitment from industry to improve energy efficiency and looks forward to the renewal of this voluntary agreement with our private sector partners,” adding that “voluntary industry standards such as this are an effective alternative to government regulation.”⁵

Innovation-friendly flexibility

Another reason that voluntary programs can be more effective than regulation is because they afford the parties more flexible opportunities to achieve energy savings. For example, DOE regulation could have capped the energy that could be used by a DVR set-top box, but it could not have ordered pay-TV providers to reduce the number of DVRs used by consumers. By contrast, the set-top box voluntary agreement has achieved a reduction in the number of DVRs, first by promoting the deployment of “whole-home” solutions that enabled consumers to use a single DVR to record and play back recorded content on any TV in their house, and more recently by promoting the use of apps through which consumers can watch live and recorded content without any operator-provided set-top box at all.

The set-top box agreement was also a model for a second agreement for consumer Internet access “small network equipment” such as modems, routers, and wi-fi extenders. Agility and flexibility were even more important for that equipment because of the rapid pace of hardware and feature evolution. A DOE regulation drafted more than five years prior would have focused on a world in which consumers typically hard-wired a single desktop computer to a modem delivering 1.5 mbps of Internet speed. That rule would have become effective in a world in which consumers wirelessly connect dozens of laptops, tablets, game consoles, alarm and home monitoring systems and other devices over much faster Wi-Fi speeds that need to be robust throughout the home. By contrast, the small network equipment voluntary agreement’s new features process was able to keep pace with this rapid innovation and the agreement has managed to improve the energy efficiency of small network equipment even as features and performance radically increased.

Voluntary programs can include multiple levels of transparency and verification. Performance under the U.S. set-top box and Internet equipment agreements is annually verified and reported under Voluntary Agreements by an independent auditor, D+R International and posted at www.energy_efficiency.us. Under the Voluntary Agreements’ audit and verification program supervised by D+R, select models are tested in a third-party lab or under a supervised testing program with an accredited observer.

While these programs are often described as voluntary agreements, they should not be misunderstood as government abdication to regulatory indifference. Government agencies in the U.S., Canada, Europe, Australia, Japan, South Korea and elsewhere have actively engaged with industry in the development and implementation of these agreements. Secretary Moniz hailed the set-top box agreement as “a collaborative approach among the Energy Department, the pay-TV industry and energy efficiency groups.” The U.S. programs include effective enforcement provisions that require non-compliant parties to remediate extra energy usage caused by their non-compliance. For example, in one instance, a company downloaded new energy-saving software to older models in the January following a year in which it missed its energy commitment, offsetting the extra energy before a government enforcement proceeding could have even completed its fact-finding. A regulator would have lacked the authority to compel such a creative and

⁵ <https://cta.tech/News/Press-Releases/2018/March/Consumers-Will-Save-Billions-More-as-Landmark-Set.aspx>

effective remedy. By spurring the private sector to adopt such programs, it can be possible for a regulator to achieve the Administration's goals more effectively.

A new policy tool

Today, Voluntary Agreements have become known as the superior solution for products where technology and markets change too fast for regulation to keep pace, and there are numerous voluntary energy efficiency programs for many different types of appliances around the world. As we move further into an era of even more complex and rapidly-evolving appliances and consumer technologies, DOE needs these and other new tools to effectively promote energy efficiency without undermining innovation.

EPCA itself requires that DOE tailor its actions to the market. DOE may only adopt regulatory standards that are technologically and economically feasible and produce savings superior to non-regulatory marketplace approaches.⁶ DOE has committed by rule that prior to the adoption of any energy standard it will “fully consider non-regulatory approaches” and “the effectiveness of market forces and non-regulatory approaches,” including “voluntary programs,”⁷ and will disfavor mandatory standards that “would not result in significant energy conservation relative to non-regulatory approaches.”⁸ The Committee should accordingly evaluate DOE's effectiveness by more nuanced yardsticks than simply how many traditional regulatory programs it has adopted.

CTA looks forward to continued engagement with the Committee. CTA's comprehensive approach to energy efficiency includes extensive support for the federal ENERGY STAR program, a foundational role in the industry Voluntary Agreements to improve the energy efficiency of set-top boxes and small network equipment, and a lead role in the development of consensus standard test methods for several categories of consumer electronics. CTA has supported the Connected Devices Alliance (CDA), a collaboration involving

⁶ 42 U.S.C. §§ 6295(o)(2)(B) (“In determining whether a standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering ... the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard”), 6295(o)(3) (“The Secretary may not prescribe an amended or new standard under this section for a type (or class) of covered product if ... the establishment of such standard will not result in significant conservation of energy or ... is not technologically feasible or economically justified”).

⁷ 10 C.F.R. Ch. 11, Appendix A to Subpart C of Part 430—Procedures, Interpretations and Policies for Consideration of New or Revised Conservation Standards for Consumer Products, Objectives, Objective 1(e) (committing DOE to the following objective: “Fully consider non-regulatory approaches. The Department seeks to understand the effects of market forces and voluntary programs on encouraging the purchase of energy efficient products so that the incremental impacts of a new or revised standard can be accurately assessed and the Department can make informed decisions about where standards and voluntary “market pull” programs can be used most effectively. Under the guidelines in this appendix, DOE will solicit information on the effectiveness of market forces and non-regulatory approaches for encouraging the purchase of energy efficient products, and will carefully consider this information in assessing the benefits of standards.”). *See also id.* at 4, Process for Developing Efficiency Standards and Factors to be Considered, Factor (d)(7)(viii) (“analysis of energy savings and consumer impacts will incorporate an assessment of the impacts of market forces and existing voluntary programs in promoting product efficiency, usage and related characteristics in the absence of updated efficiency standards.”).

⁸*Id.* at 5(e)(3)(D) (if a “candidate standard level would not result in significant energy conservation relative to non-regulatory approaches, that standard level will be presumed not to be economically justified unless the Department determines that other specifically identified expected benefits of the standard would outweigh the expected adverse effects.”).

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governments from the Group of 20 (G20) countries and industry representatives to globally coordinate actions related to energy savings from networks and networked devices. As the industry authority on market research and forecasts, technical training and education, engineering standards, and industry promotion, CTA has also facilitated other government and industry energy efficiency public policy efforts, where it advocates for approaches that are globally harmonized and flexible to keep pace with technology, innovation and economic growth.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Shapiro". The signature is fluid and cursive, with the first name "Gary" being more prominent than the last name "Shapiro".

Gary Shapiro
President & CEO

A handwritten signature in black ink, appearing to read "Douglas K. Johnson". The signature is fluid and cursive, with the first name "Douglas" being more prominent than the last name "Johnson".

Douglas K. Johnson
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