

ONE HUNDRED SIXTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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April 9, 2019

The Honorable Daniel Simmons
Assistant Secretary, Energy Efficiency and Renewable Energy
U.S. Department of Energy
Forrestal Building
1000 Independence Avenue, SW
Washington, DC 20585

Dear Assistant Secretary Simmons:

Thank you for appearing before the Subcommittee on Energy on March 7, 2019, at the hearing entitled "Wasted Energy: DOE's Inaction on Efficiency Standards and Its Impact on Consumers and the Climate." We appreciate the time and effort you gave as a witness before the Subcommittee.

Pursuant to Rule 3 of the Committee on Energy and Commerce, members are permitted to submit additional questions to the witnesses for their responses, which will be included in the hearing record. Attached are questions directed to you from me and other members of the Committee. In preparing your answers to these questions, please address your responses to the member who has submitted the questions using the Word document provided with this letter.

To facilitate the publication of the hearing record, please submit your responses to these questions by no later than the close of business on Friday, April 26, 2019. As previously noted, this transmittal letter and your responses as well as the responses from the other witnesses appearing at the hearing, will all be included in the hearing record. Your written responses should be transmitted by e-mail in the Word document provided with this letter to Adam Fischer (adam.fischer@mail.house.gov). You do not need to send a paper copy of your responses to the Committee. Using the Word document provided for submitting your responses will also help maintain the proper format for incorporating your answers into the hearing record.

The Honorable Daniel Simmons
Assistant Secretary of Energy Efficiency and Renewable Energy
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Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Adam Fischer with the Committee staff at (202) 225-2927.

Sincerely,


Frank Pallone, Jr.
Chairman

Attachment

cc: The Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce

The Honorable Bobby Rush
Chairman
Subcommittee on Energy

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy

Subcommittee on Energy
Hearing on
“Wasted Energy: DOE’s Inaction on Efficiency Standards and
Its Impact on Consumers and the Climate”
March 7, 2019

The Honorable Daniel Simmons, Assistant Secretary
Energy Efficiency and Renewable Energy, U.S. Department of Energy

The Honorable Frank Pallone, Jr. (D-NJ)

1. Mr. Simmons, you mention in your testimony that DOE has issued 7 final rules pertaining to energy conservation standards and 2 final rules pertaining to test procedures.
 - a. What are those rules? When were they issued? Which were statutorily required?
 - b. Why were these rules issued, yet other rules that were completed during the previous administration still have not been published in the Federal Register?

2. In the February 2019 Notice of Proposed Rulemaking on definitions of lamps, DOE leans heavily on the idea that the legal basis for the January 2017 final rules “misconstrued existing law.” DOE states that its now-proposed narrower definitions are “more legally justifiable than the definitions contained in the January 2017 rules.” In some respects, the NOPR argues that the 2017 definitions were “unauthorized as a matter of law,” or “may have overstepped” DOE’s authority. As I understood your explanation at our March 7 hearing, DOE has chosen to propose a rule to reverse the 2017 final rules on lamp definitions because those rules are inconsistent with EPCA and would subject DOE to significant litigation risk.
 - a. Has DOE concluded that the January 2017 final rules modifying the definitions of “general service lamp” and “general service incandescent lamp” are legally flawed? If so, please explain DOE’s view on its legal concerns with the 2017 final rules.
 - b. NEMA filed a petition for judicial review of the January 2017 final rules on lamp definitions. That litigation between DOE and NEMA was settled. The settlement, interestingly, contains no terms relating to reconsidering or revising the January 2017 lamp definitions. Instead, all three commitments by DOE related to procedural steps DOE will take with respect to considering revised lamp

standards. The absence of any terms of this settlement concerning modifications to the challenged lamp definitions themselves suggests that neither DOE nor NEMA believed that 2017 lamp definitions required revisions. If DOE believed there were legal errors in the 2017 lamp definitions, please explain why changes to the definitions were not addressed in the 2017 settlement of a challenge to the legality to those definitions.

- c. Given that any judicial challenges to the legality of the 2017 final rules were required to be filed within 60 days of the final rules, and the only timely judicial challenge has been settled by DOE, please explain what legal risk remains with respect to the definitions in the 2017 final rules.
3. You suggest that DOE is on safer legal ground to withdraw the 2017 definitional changes and revert to the statutory definitions.
 - a. Did the Energy Independence and Security Act of 2007 amend EPCA by adding 42 U.S.C. § 6295(i)(6)(A)(i)(II) to require DOE to undertake a rulemaking to determine whether exceptions for certain incandescent lamps built into the statutory definitions should be discontinued?
 - b. Were the January 2017 final rules promulgated in response to this statutory direction to consider whether exceptions for certain incandescent lamps should be discontinued?
 - c. If so, please explain how the 2017 changes in regulatory definitions promulgated as a result of a rulemaking undertaken at the direction of Congress presents undue risk of being found to be inconsistent with EPCA.
4. Given that the 2017 final rules were developed in rulemakings undertaken at the direction of Congress, and that the 2017 final rules were subject to a petition was resolved without any changes to the final rules, it appears that the 2019 NOPR to withdraw the 2017 final rules is motivated by a policy interest in narrowing the applicability of energy efficiency standards, not by legitimate concerns that retaining the 2017 final rules creates undue legal risk. Please explain how policy objectives and legal risk assessment factored into DOE's decision to propose to withdraw the January 2017 final rules on lamp definitions.
5. Given DOE's failure to promulgate a final rule on revisions to standards for general service lamps, does the backstop requirement in that 42 U.S.C. § 6295(i)(6)(A)(v) – which provides that “the Secretary shall prohibit the sale of any general service lamp that does not meet a minimum efficacy standard of 45 lumens per watt” effective January 1, 2020 – apply?
 - a. If not, please explain why not? Please explain DOE's construction of the language in 42 U.S.C. § 6295(i)(6)(A)(i)-(v) that supports your position.

6. Under DOE's construction of EPCA, if DOE does not issue a final rule on amended standards for general service lamps before January 1, 2020, would the backstop standard come into effect on January 1, 2020? If not, please explain what applicability, if any, DOE believes 42 U.S.C. § 6295(i)(6)(A)(v) has after January 1, 2020.
7. Under DOE's construction, in what sense would section 42 U.S.C. § 6295(i)(6)(A)(v) function as a "backstop" to put in place standards in the event of inaction by DOE?
8. In your testimony you outlined four phases of setting standards (framework document, preliminary analysis, proposed rule, and final rule), and blamed missed deadlines on the time it takes to complete the process. So that we can better understand the delays please specify:
 - a. How long did each of the four phases take for each standard set by DOE using this process in the previous administration?
 - b. How long has each of the phases that has been initiated taken so far for each of the sixteen standards for which DOE has missed statutory deadlines?

The Honorable Bobby Rush (D-IL)

1. Why did DOE fall behind the statutory deadlines for proposed rules or final rules on efficiency standards for each of the following products:
 - a. Small electric motors?
 - b. Pool heaters?
 - c. Water heaters?
 - d. Clothes dryers?
 - e. Room air conditioners?
 - f. Cooking products?
 - g. Refrigerators and freezers?
 - h. Fluorescent lamp ballasts?
 - i. Dedicated outdoor air systems?
 - j. Computer room A/Cs?
 - k. VRF A/Cs and heat pumps?
 - l. Commercial water heaters?
 - m. Residential clothes washers?
 - n. Evaporatively cooled commercial ACs?
 - o. Water-cooled commercial ACs?
 - p. Metal halide lamp fixtures?
2. Please explain what funding, staffing, or other barriers may have prevented timely issuance of proposed rules or final rules for any of these standards.

- a. If such challenges persist, what resources does DOE need to resolve them?
 - b. If these challenges no longer persist, have they been resolved such that you can commit to timely completion of future standards rulemakings?
3. Following the March 7 hearing, a DOE spokesperson indicated to the media that 13 of the 16 delayed standards actions would be completed “in the coming months,” including actions on clothes dryers, cooking products, and electric motors.
- a. When DOE refers to “in the coming months,” what does it mean? Will the actions be completed within six months? By the end of 2019?
 - b. Please specify which 13 standards actions will be completed “in the coming months.”
 - c. Please specify which 3 standards actions may not be completed “in the next coming months.”
 - i. When will these standards actions be completed?
 - d. For the standards actions which will be completed in the near future, what specific steps have you taken to accelerate the process?
 - i. Would application of those same steps similarly accelerate the promulgation of other standards actions? If not, why not?
4. Would funding levels for EERE consistent with the President’s proposed FY2019 budget (65% below current levels) affect EERE’s ability to issue the required standards actions on the timetable you’ve identified?
5. Will the proposed new criteria for judging the significance of energy savings (>0.5 quads of savings over 30 years, or >10% energy savings over current standard) in the Process Rule be applied to the 16 delayed standards rulemakings?
- a. If so, does DOE believe that any of the delayed rulemakings will not provide significant energy savings?
6. Will the proposed procedural changes to the Process Rule be applied to the completion of the 16 delayed standards rulemakings?
- a. If so, please explain whether and how application of the revised process may further delay the completion of those rulemakings.

The Honorable Peter Welch (D-VT)

Thank you for your participation and insight as part of our committee's recent appliance efficiency standard hearing. I was very glad to hear that the Department is committed to meeting statutory deadlines in the appliance and equipment standards program.

1. It has come to my attention that the Secretary of Energy is several months late in certifying the energy efficiency improvements associated with the latest model energy codes. I'm specifically referring to the 2018 International Energy Conservation Code (residential). The statutory deadline for a DOE assessment was September 2018. When does DOE plan to certify this?
2. In your testimony, you reported that DOE has completed seven final rules pertaining to energy conservation standards and two final rules pertaining to test procedures under the Appliance Standards Program. Can you please provide us a list of the specific final rules completed, when they were completed, and the specific action taken by the agency in that final rule?
3. In response to a question, you said that you expected DOE would complete "some" standards within the next year. Subsequently, you confirmed in an interview with Utility Dive that you would complete 13 of 16 overdue standards this year. Can you please tell us which 13 and which specific actions you expect the agency to complete within the next year?

The Honorable Richard Hudson (R-NC)

1. Assistant Secretary Simmons: Thank you for being here today as we examine appliance efficiency standards and affordable energy for consumers. Electrolux Appliances is a North Carolina based appliance manufacturer with facilities all over North Carolina. Just outside my district at their facility in Kinston, North Carolina they manufacture dishwashers. They pride themselves on innovation and providing more efficient appliances and helping to ensure the benefit is to the consumers. Would you elaborate on the “look back” requirements, what they are for and if they make for more effective standards?
 - a. Is there sufficient time in the current standard setting cycle to assess the effectiveness of previous standards?
 - b. In your experience, does DOE do an effective job assessing whether past standards have actually achieved what was promised?
 - c. How can analysis in this process be improved to ensure more effective standard setting?

2. Assistant Secretary Simmons: Let me ask a basic question: are new standards typically based on an average consumer? And if so, does this mean that, say, a product that may make sense for the heavy use of a family, may not make sense for a couple or otherwise small household?
 - a. How does the standard process take into account the range of consumer preferences?
 - b. Are there ways to address the range of consumer preferences so certain groups, like the elderly, aren't priced out of the market for new products?

The Honorable Jeff Duncan (R-NC)

Mr. Simmons - Thank you for being here. I want to bring attention to an appliance manufacturer in my district, Electrolux. Electrolux has manufactured refrigerators at its plant in Anderson, South Carolina since 1988. The Anderson plant produces nearly 2 million refrigerators each year and employs approximately 1,900 full-time and contract employees. The company is in the process of investing \$250 million to modernize this plant so that they can continue producing highly efficient refrigerators.

They are supportive of the Appliance Standard Program and are not in favor of rolling back any standards, but they do believe there are ways to improve the process.

Investment and innovation by the appliance manufacturers are what drives results. In the standards program. I've seen firsthand the technology at the Anderson plant and the work many of my constituents are doing to improve the efficiency of these high-tech fridges. Over the 30 years the Anderson plant has been manufacturing fridges, the fridges have become almost 30 times more efficient.

Consumers want energy efficient products and if companies like Electrolux aren't producing them, they won't be successful.

1. Electrolux wants to be involved in improving the program. How can the DOE better utilize the resources and expertise that manufacturers have to better improve the process?
 - a. I understand the updated process rule requires test procedures first before implementing standards. How will this improve the effectiveness of the program?
 - b. Will this help Office of Energy Efficiency and Renewable Energy focus on areas and implement rules that can achieve the most efficiency gains?
2. I commend the DOE in doing what they can to maximize reliable stakeholder input. You even mentioned that technological innovation is the driving force behind energy efficiency successes. I have seen this first hand with product engineers I have visited at Electrolux. In your opinion, what can be done to better improve the program and capitalize on the gains already achieved by manufacturers. How can we provide them with more regulatory certainty?
 - a. Should new efficiency standards be rolled out based on the amount of "significant energy savings" for consumers rather than just to meet a statutory deadline?

The Honorable Bill Flores (R-TX)

1. Assistant Secretary Daniel Simmons: On February 6, 2019 DOE announced a notice of proposed rulemaking concerning the definition of general service lamps. You stated in your testimony that DOE's proposal will maintain the existing statutory definition of general service lamps and withdraw the definitions established in January 2017. You stated further that DOE is showing that it will follow the text of the law.
 - a. Please cite the relevant statutory text and provide DOE's rationale for the proposed rulemaking.
 - b. If energy savings can be economically justified, is DOE authorized to establish separate energy conservation standards for the types of bulbs that are proposed to be withdrawn from the January 2017 definitions?