

HOUSE COMMITTEE ON ENERGY
SUBCOMMITTEE ON ENERGY
Questions for the Record Responses from Daniel Simmons
“Wasted Energy: DOE’s Inaction on Efficiency Standards and
Its Impact on Consumers and the Climate”
March 7, 2019

QUESTIONS FROM REPRESENTATIVE FRANK PALLONE, JR.

Q1. 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.

Q1a. What are those rules? When were they issued? Which were statutorily required?

A1a. The table below lists the requested information.

Rule Name	Date Published	Statutorily Required?
Energy Conservation Program: Energy Conservation Standards for Certain External Power Supplies	1/29/2019	Yes
Energy Conservation Program: Test Procedures for Integrated Light-Emitting Diode Lamps	9/21/2018	No
Energy Conservation Program: Energy Conservation Standards for Ceiling Fan Light Kits	5/16/2018	Yes
Energy Conservation Program: Energy Conservation Standards for Rough Service Lamps and Vibration Service Lamps	12/26/2017	Yes
Energy Conservation Program: Test Procedure for Dedicated-Purpose Pool Pumps	8/7/2017	No
Energy Conservation Program: Energy Conservation Standards for Walk-In Cooler and Freezer Refrigeration Systems	7/10/2017	Yes

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Energy Conservation Program: Energy Conservation Standards for Miscellaneous Refrigeration Products	5/26/2017	No
Energy Conservation Program: Energy Conservation Standards for Residential Central Air Conditioners and Heat Pumps	5/26/2017	Yes
Energy Conservation Program: Energy Conservation Standards for Dedicated-Purpose Pool Pumps	5/26/2017	No

Q1b. Why were these rules issued, yet other rules that were completed during the previous administration still have not been published in the Federal Register?

A1b. DOE has published several rules that were underway during the previous administration, including standards for dedicated-purpose pool pumps, residential central air conditioners and heat pumps, miscellaneous refrigeration products, walk-in coolers and freezers, and test procedures for dedicated-purpose pool pumps and integrated light-emitting diode lamps.

DOE has multiple statutory requirements to satisfy when setting energy conservation standards. In addition to statutory deadlines, DOE must also abide by the requirements of 42 U.S.C. 6295(o)(3)(B), which prohibits the Department from issuing any energy conservation standard unless such standard will result in significant conservation of energy or water, in the case of showerheads, faucets, water closets, or urinals, and that the establishment of such standard is both technologically feasible and economically justified.

Further, in evaluating whether a standard is economically justified, under 42 U.S.C. 6295(o)(2)(B), DOE must consider seven factors:

1. the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

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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.

DOE is striving to meet its statutory obligations. The Energy Policy and Conservation Act of 1975, as amended (EPCA), requires DOE, not later than 6 years after issuance of any final rule establishing or amending a standard, as required for a product under EPCA, to publish either a notice that the standards do not need to be amended or a proposed standards rule. Specific products and equipment may be subject to separate statutory requirements for more frequent review of energy conservation standards. For example, if the standards contained within ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers) standard 90.1 are updated by that organization, DOE must initiate rulemakings reviewing the appropriateness of those standards and either codifying them into DOE’s regulations as presented by ASHRAE or setting standards at a more stringent level, if the more stringent level is justified by clear and convincing evidence.

Critical to the review of each energy conservation standard is the associated test procedure. EPCA requires that DOE, at least once every seven years, review its test procedures and either amend the test procedures or determine that the test procedures do not need to be amended. By statute, test procedures must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of the

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representative average use cycle or period of use and not be unduly burdensome to conduct. Manufacturers of covered products and equipment must use the Federal test procedures as the basis for certifying compliance with the applicable energy conservation standard and for making representations about the efficiency of that product or equipment. When updates to test procedures are finalized in advance of the issuance of proposed standards, manufacturers will have experience using the new test procedure, which may provide additional insights into the proposed standards. Addressing test procedure issues prior to proposing standards allows stakeholders to better assess the potential effects of the proposed standard levels.

In its review of energy conservation standards and test procedures, DOE works with stakeholders through direct participation in the development of consensus test methods and the negotiated rulemaking process. The negotiated rulemaking process in particular allows for real-time adjustments to the rulemaking analyses, allows parties with differing viewpoints and objectives to negotiate face-to-face, and provides a more direct opportunity for manufacturers to provide data for the analyses.

Given the context in which energy conservation standard and test procedure rulemakings are conducted, a number of issues impact the timing of energy conservation standard rulemakings:

Sequencing of Test Procedures and Energy Conservation Standards in Rulemaking Schedules: DOE is working hard to meet its statutory deadlines and has prioritized test procedure rulemakings to better inform its standards analysis. Last year, in response to a request for information (RFI) on its rulemaking process (*i.e.*, the 1996 Process Rule), DOE received numerous comments and suggestions from stakeholders. Multiple industry trade associations recommended that DOE adhere to the 1996 Process Rule by issuing a final test procedure prior to beginning work on establishing new or amended energy conservation standards. For manufacturers a sufficient interval between these rulemaking processes is critical to gain experience with the new test procedure, evaluate engineering

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designs, and test products. Only then can they meaningfully participate in the standards rulemaking phases by contributing data and helping to assess the impacts of potential standards on product design, product costs, energy use and consumer utility.

The 1996 Process Rule guidance calls for test procedures to be issued prior to the notice of proposed rulemaking (NOPR) on proposed energy conservation standards. This sequencing allows manufacturers and other stakeholders to better assess the effects of the proposed standard levels. However, to achieve this sequencing, DOE needs to begin the process of test procedure revisions in advance of standards NOPR issuance dates. In the past, DOE has not been consistent in following this process.

DOE agrees that it is important that manufacturers have a clear indication of testing requirements and necessary testing data prior to the issuance of any energy conservation standards. DOE has worked to implement these recommendations into its current schedules. Work is ongoing for each of the corresponding rulemakings.

Development of Market Data. Evaluation of energy conservation standards and test procedures requires an understanding of the market in which the covered products and equipment are sold and used. As discussed, EPCA requires DOE, not later than 6 years after issuance of any final rule establishing or amending a standard, as required for a product under EPCA, to publish either a notice that the standards do not need to be amended or a proposed standards rule. The statute also requires updated standards to provide a minimum lead time for manufacturers to comply, three-to-five years depending on the product or equipment. As such, given the length of time necessary to complete a standards rulemaking, DOE may need to start an evaluation of an energy conservation standard before, or shortly after, the compliance date of the standard. It can take time for manufacturers to gain experience manufacturing and selling covered products and equipment that comply with recently updated energy conservation standards. Time may be required for the market to react to products and equipment that comply with updated standards. The same may be true for consumer use of such products and equipment. In

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these circumstances, there may be limited relevant market, product, or energy/consumer use data on a prior regulatory update. This lack of data impacts the ability of DOE to evaluate further updates to the energy conservation standards.

Efforts to Harmonize with Industry Activities for Test Methods: At present, DOE is working with many private-sector groups to better harmonize regulations with industry programs. For example, DOE participates in meetings of private-sector standards setting bodies (e.g., ANSI, Air-Conditioning, Heating, and Refrigeration Institute, ASHRAE, Association of Home Appliance Manufacturers) in developing their standards. In such instances, evaluation and analyses of a test procedure occurs under a consensus committee process. DOE’s participation helps to ensure that DOE is informed of the latest test procedure development issues and can maximize harmonization with these private-sector test methods.

DOE Participation in Negotiated Rulemaking: DOE supports this form of rulemaking activity and is currently negotiating test procedures and standards for Variable Refrigerant Flow Air Conditioners and Heat Pumps. To promote negotiated rulemakings in appropriate cases, DOE established the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) in 2012. ASRAC working groups are established for specific products and in each negotiated rulemaking proceeding, DOE includes a process whereby the working group discusses and votes on how to define consensus consistent with the Negotiated Rulemaking Act. DOE’s role in the negotiated rulemaking process is to provide technical advice to the parties and provide legal input where needed. DOE also has a vote in the consensus process among all the parties of ASRAC.

Consideration of Rulemaking Petitions and Waivers: There are several ongoing rulemaking petitions before DOE. These include the “short cycle” dishwasher product class; cooking products test procedure; furnaces and commercial water heaters energy conservation standards; and furnace AFUE 2. DOE published a Notice of Petition for Rulemaking and request for comment on each of these petitions. Through these notices,

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DOE requested comments on each petition, as well as any data or information that could be used in DOE’s determination of whether to proceed with each petition. DOE is currently evaluating the information received during the comment periods for these respective petitions. How DOE ultimately addresses these petitions may impact our evaluation of the associated energy conservation standards.

DOE also evaluates requests for test procedure waivers in which manufacturers assert that a covered product or equipment model contains a design characteristic that prevents testing according to the prescribed test procedures, or that the prescribed test procedures evaluate that model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. After the granting of any waiver, DOE must publish in the *Federal Register* a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. The evaluation of a waiver request may coincide with an evaluation of a test procedure as required by EPCA.

DOE has taken a number of steps to improve its rulemaking process. DOE has requested information, held public meetings, and published a proposal to improve the 1996 Process Rule. In looking to improve its process, DOE has requested comment on a more targeted evaluation of the potential energy savings, technological feasibility, and economic justification of amended standards, allowing for a streamlined evaluation of those products and equipment for which significant additional energy savings are not likely. DOE has also issued an RFI to better understand whether there are provisions in DOE’s test procedures that could be improved to produce results that are more representative of average use cycles or periods of use. DOE has also issued an RFI to better understand the emerging market for “smart” appliances and commercial equipment. By improving coordination between energy conservation standard and test procedure rulemakings and streamlining its reviews, in conjunction with a better understanding of energy and consumer use developments, DOE will be better positioned to meet its statutory obligations.

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Q2. 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.

Q2a. 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.

A2a. DOE has determined that the legal basis underlying the revisions made in the two January 2017 final rules misconstrued existing law. Different lamp types addressed in the rulemaking presented different legal issues. For example, in the January 2017 definition rules, DOE included five lamp types (rough service lamps, shatter-resistant lamps, 3-way incandescent lamps, high lumen incandescent lamps, and vibration service lamps) in the definition of General Service Incandescent Lamp (GSIL). Therefore, those five lamp types could be considered for standards as a type of General Service Lamp (GSL). However, in the same legislation that required DOE to consider energy standards for GSLs, Congress had explicitly subjected those five lamp types to potential standards under a separate provision of the statute.

As another example, in one of the definition rules issued in January 2017, DOE postponed its decision on the exemption for incandescent reflector lamps (IRL), which it had previously proposed to discontinue. Accordingly, that rule perpetuated the IRL exemption in DOE’s regulatory definition. In DOE’s second definition final rule, issued simultaneously in January 2017, DOE determined to discontinue the IRL exemption, and it amended its definition of GSL accordingly.

Beyond the incongruity of those simultaneous actions, Congress stated explicitly, in two

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separate places in the statute, that IRLs are not GSLs. First, in the definition of GSL, the statute, without ambiguity, states that the term “general service lamp” does not include incandescent reflector lamps. Further, IRLs are explicitly excluded from the definition of GSIL, which is a type of GSL. As with the five lamp types mentioned above, IRLs are subject to potential standards under a different provision of the statute.

- Q2b. 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.
- A2b. DOE is not at liberty to discuss details of litigation settlement discussions. However, it is incorrect to say that the settlement did not address potential modification of the challenged definitions. One aspect of the settlement obligated DOE to issue a Notice of Data Availability (NODA) requesting market data for GSILs and other incandescent lamps. That data was to be used to assist the Department in making a determination regarding whether standards for GSILs should be amended. The agreement stated that, because the Department had previously been prohibited by law from collecting data with respect to GSILs, any data received in response to the NODA could result in a reassessment of the assumptions and determinations made in the two definition final rules that were the subject of the challenge.
- Q2c. 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.
- A2c. DOE will not speculate on potential lawsuits that may be filed by other parties. DOE remains obligated to take action to consider potential energy conservation standards for GSLs. Any such standards based on unauthorized lamp types could be legally defective.

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Moreover, DOE believes it inappropriate to leave in place rulemakings that are not supported by law.

- Q3. You suggest that DOE is on safer legal ground to withdraw the 2017 definitional changes and revert to the statutory definitions.
- Q3a. 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?
- A3a. Congress instructed DOE to initiate a rulemaking process prior to January 1, 2014, to consider two questions: (1) whether to amend energy conservation standards for general service lamps and (2) whether “the exemptions for certain incandescent lamps should be maintained or discontinued.” DOE initiated the GSL standards rulemaking process by publishing in the *Federal Register* a notice of availability of a framework document. DOE later issued a proposed rule amending the energy conservation standards for GSLs (March 2016 NOPR). The March 2016 NOPR focused on the first question that Congress directed DOE to consider—whether to amend energy conservation standards for general service lamps. In the March 2016 NOPR proposing energy conservation standards for GSLs, DOE stated that it would be unable to undertake any analysis regarding GSILs and other incandescent lamps because of a then applicable congressional restriction on the use of appropriated funds to implement or enforce 10 CFR 430.32(x) (Appropriations Rider).

In response to comments to the March 2016 NOPR, DOE conducted additional research and published a notice of proposed definition and data availability (NOPDDA), which proposed to amend the definitions of GSIL and GSL. DOE explained that the October 2016 NOPDDA related to the second question that Congress directed DOE to consider—whether “the exemptions for certain incandescent lamps should be maintained or discontinued,” and was not a rulemaking to establish an energy conservation standard for GSLs. In the NOPDDA, DOE clarified that it was defining what lamps constitute GSLs

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so that manufacturers could understand how any potential energy conservation standards might apply to the market.

On January 19, 2017, DOE published two final rules concerning the definition of GSL. The January 2017 definition final rules amended the definitions of GSIL and GSL by bringing certain categories of lamps that had been excluded by statute from the definition of GSIL within the definitions of GSIL and GSL. Like the October 2016 NOPDDA, DOE stated that the January 2017 definition final rules related only to the second question that Congress directed DOE to consider, regarding whether to maintain or discontinue certain “exemptions.” Thus, neither of the two final rules issued on January 19, 2017, purported to establish energy conservation standards applicable to GSLs.

- Q3b. Were the January 2017 final rules promulgated in response to this statutory direction to consider whether exceptions for certain incandescent lamps should be discontinued?
- A3b. As stated above, the January 2017 definition final rules related only to the second question that Congress directed DOE to consider, regarding whether to maintain or discontinue certain “exemptions.”
- Q3c. 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.
- A3c. As stated in response to Question 1, DOE has determined that the legal basis underlying the revisions made in the two January 2017 final rules misconstrued existing law.
- Q4. 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.
- A4. As stated in response to Question 3a, the January 2017 definition final rules stated explicitly that they related only to the second question that Congress directed DOE to

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consider, regarding whether to maintain or discontinue certain “exemptions.” That is, neither of the two final rules issued on January 19, 2017, purported to establish energy conservation standards applicable to GSLs. DOE remains obligated to address that question. Determining the legally appropriate scope of any such standards is part of the process of meeting that obligation.

Q5. 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?

A5. No.

Q5a. 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.

A5a. Congress instructed DOE to initiate a rulemaking process to consider two questions: (1) whether to amend energy conservation standards for general service lamps, and (2) whether the exemptions for certain incandescent lamps should be maintained or discontinued. The statute states that “if the Secretary determines that the standards in effect for general service incandescent lamps should be amended, the Secretary shall publish a final rule not later than January 1, 2017, with an effective date that is not earlier than 3 years after the date on which the final rule is published.” The statute also contains a “backstop” requirement that states “if the Secretary fails to complete a rulemaking in accordance with [the statutory criteria] or if the final rule does not produce savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt, effective beginning January 1, 2020, the Secretary shall prohibit the sale of any general service lamp that does not meet a minimum efficacy standard of 45 lumens per watt.”

DOE has not issued a rule addressing the first question stated above, *i.e.*, whether to amend

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energy conservation standards for general service lamps. As DOE made clear throughout the rulemaking proceeding, the Appropriations Rider prevented the Department from issuing a rule that addressed this question. The obligation to issue a final rule by January 1, 2017, the failure of which could lead to implementation of the backstop, was predicated on the Secretary first making a determination that standards applicable to GSILs, a type of GSL, needed to be amended. However, the law prohibited the Secretary from doing so. As such, the backstop could not have been triggered because DOE has not yet made the determination that would potentially have required the issuance of a final rule.

- Q6. 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.
- A6. DOE has stated that it remains obligated to make the determination required in the first question posed by Congress, *i.e.*, whether to amend energy conservation standards for general service lamps.
- Q7. 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?
- A7. DOE has stated that it remains obligated to make the determination required in the first question posed by Congress, *i.e.*, whether to amend energy conservation standards for general service lamps.
- Q8. 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:
- Q8a. How long did each of the four phases take for each standard set by DOE using this process in the previous administration?
- A8a. The following table lists the energy conservation standards and, where applicable, determinations of no need for an updated standard, finalized by the previous administration.

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Product	Duration (in months)			
	Preliminary Analysis	NOPR	Supplemental NOPR	Final Rule / Direct Final Rule
Cooking Products	20	11		6
General Service Fluorescent Lamps and Incandescent Reflector Lamps	21	13		3
Refrigerated Beverage Vending Machines	24	11		3
Commercial Clothes Washers	20	11	13	2
Small Electric Motors	17	11		3
Direct Heating Equipment	26	11		4
Consumer Water Heaters	26	11		4
Pool Heaters	26	11		4
Residential Clothes Dryers	28	*		14
Room Air Conditioners	28	*		14
Residential Central Air Conditioners	22	*		15
Residential Furnaces	Initial Document Pub	*		18
Residential Refrigerator-Freezers	14	10		12
Fluorescent Lamp Ballasts	26	13		7
Water- and Evaporatively-Cooled Commercial Air Conditioners	**	8	2	2
Variable Refrigeration Flow Systems	**	8	2	2
Computer Room Air Conditioners	**	8	2	2
Residential Clothes Washers	**	*		33
Distribution Transformers	Initial Document Pub	11		14
Microwave Ovens	20	11	40	16
External Power Supplies	15	18		22
Metal Halide Lamp Fixtures	15	29		6
Commercial Refrigeration Equipment	11	29		6
Electric Motors	22	16		6
Walk-in Coolers and Freezers	15	41		9
Furnace Fans	25	15		8
Commercial Clothes Washers	**	19		9
General Service Fluorescent Lamps	17	14		9
Automatic Commercial Ice Makers	14	26		10
3-Phase Commercial Unitary Air Conditioners less than 65 kBtu	**	Initial Document Pub		6

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Packaged Terminal Air Conditioners and Heat Pumps	**	19		10
Single Package Vertical Air Conditioners and Heat Pumps	**	44		9
High-Intensity Discharge Lamps	12	20		14
Ceiling Fan Light Kits	18	10		5
Refrigerated Beverage Vending Machines	14	12		5
Commercial Air-Cooled Air Conditioners and Heat Pumps	**	20		15
Commercial Warm-Air Furnaces	**	21		11
Residential Boilers	12	14		10
Commercial and Industrial Pumps	**	26		10
Pre-rinse Spray Valves	**	10		7
Battery Chargers	15	18	41	9
Dehumidifiers	21	12		12
Direct Heating Equipment	**	12		6
Miscellaneous Residential Refrigeration	34	*		23
Dishwashers	**	Initial Document Pub		24
Central Air Conditioners	10	*		16
Dedicated Purpose Pool Pumps	**	*		20
Ceiling Fans	18	15		12

NOTE:

- * DOE published a NOPR and a direct final rule on the same day for these rulemakings. For all rulemakings listed the direct final rule was adopted later.
- ** DOE did not publish a preliminary analysis for these rulemakings.

Q8b. 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?

A8b. The table below includes only those rulemakings (both for standards and determinations) for which the associated documents have been published. DOE is in the process of undertaking work on the standards that are not listed (water heaters, refrigerator/freezers, dedicated outdoor air systems, computer room ACs, variable refrigerant flow systems, clothes washers, unitary ACs, and room ACs) and cannot provide information on timing as that is not yet public.

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Product	Duration (in months)			
	Preliminary Analysis	NOPR	Supplemental NOPR	Final Rule
Small Electric Motors	0*	-		-
Pool Heaters	7	42*		-
Clothes Dryers	49*	-		-
Room Air Conditioners	46*	-		-
Consumer Cooking Products	**	16	15	31*
Fluorescent Lamp Ballast	46*	-		-
Commercial Water Heaters (Storage & Instantaneous Water Heaters)	**	19		34*

NOTE:

* These stages have not been completed as of April 17, 2019. The value listed represents the number of months, as of April 17, 2019, from the previous stage’s publication.

** DOE did not publish a preliminary analysis for these rulemakings.

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QUESTIONS FROM REPRESENTATIVE BOBBY RUSH

Q1. Why did DOE fall behind the statutory deadlines for proposed rules or final rules on efficiency standards for each of the following products?

A1. DOE has multiple statutory requirements to satisfy when it is setting energy conservation standards. In addition to statutory deadlines, DOE must also abide by the requirements of 42 U.S.C. 6295(o)(3)(B), which prohibits the Department from issuing any energy conservation standard unless such standard will result in significant conservation of energy or water, in the case of showerheads, faucets, water closets, or urinals, and that the establishment of such standard is both technologically feasible and economically justified.

Further, in evaluating whether a standard is economically justified, under 42 U.S.C. 6295(o)(2)(B), DOE must consider seven factors, including:

1. the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;
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.

DOE is striving to meet its statutory obligations. EPCA requires DOE, not later than 6 years after issuance of any final rule establishing or amending a standard, as required for a product under EPCA, to publish either a notice that the standards do not need to be

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amended or a proposed standards rule. Specific products and equipment may be subject to separate statutory requirements for more frequent review of energy conservation standards. For example, if the standards contained within ASHRAE standard 90.1 are updated by that organization, DOE must initiate rulemakings reviewing the appropriateness of those standards and either codifying them into DOE’s regulations as presented by ASHRAE or setting standards at a more stringent level, if the more stringent level is justified by clear and convincing evidence.

Critical to the review of each energy conservation standard is the associated test procedure. EPCA requires that DOE, at least once every seven years, review its test procedures and either amend the test procedures or determine that the test procedures do not need to be amended. By statute, test procedures must be reasonably designed to produce test results that measure the energy efficiency, energy use or estimated annual operating cost during a representative average use cycle or period of use and not be unduly burdensome to conduct. Manufacturers of covered products and equipment must use the Federal test procedures as the basis for certifying compliance with the applicable energy conservation standard and for making representations about the efficiency of that product or equipment. When updates to test procedures are finalized sufficiently in advance of the issuance of proposed standards, manufacturers will have experience using the new test procedure, which may provide additional insights into the proposed standards. Addressing test procedure issues prior to proposing standards allows stakeholders to better assess the potential effects of the proposed standard levels.

In its review of energy conservation standards and test procedures, DOE works directly with stakeholders through participation in the development of industry consensus test methods and the negotiated rulemaking process. The negotiated rulemaking process in particular allows for real-time adjustments to the rulemaking analyses, allows parties with differing viewpoints and objectives to negotiate face-to-face, and provides a more direct opportunity for manufacturers to provide data for the analyses.

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Given the context in which energy conservation standard and test procedure rulemakings are conducted, a number of issues impact the timing of energy conservation standard rulemakings:

Sequencing of Test Procedures and Energy Conservation Standards in Rulemaking Schedules: DOE is working hard to meet its statutory deadlines and has prioritized test procedure rulemakings to better inform its standards analysis. Last year, in response to a request for information (RFI) on its rulemaking process (*i.e.*, the 1996 Process Rule), DOE received numerous comments and suggestions from stakeholders. Multiple industry trade associations recommended DOE adhere to the 1996 Process Rule by issuing a final test procedure prior to beginning work on establishing new or amended energy conservation standards. Having a sufficient interval between these rulemaking processes is critical for manufacturers to gain experience with the new test procedure, evaluate engineering designs, and test products. Only then can their participation in the standards rulemaking phases be meaningful by contributing data and helping to assess the impacts of potential standards on product design, product costs, energy use and consumer utility.

The 1996 Process Rule guidance calls for test procedures to be issued prior to the notice of proposed rulemaking (NOPR) on proposed energy conservation standards. This sequencing allows manufacturers and other stakeholders to better assess the effects of the proposed standard levels. However, to achieve this sequencing DOE needs to begin the process of test procedure revisions far in advance of standards NOPR issuance dates. In the past DOE has not consistently followed this process.

DOE agrees that it is important that manufacturers have a clear indication of testing requirements and necessary testing data prior to the issuance of any energy conservation standards. DOE has worked to implement these recommendations into its current schedules. Work is ongoing for each of the corresponding rulemakings.

Development of Market Data. Evaluation of energy conservation standards and test

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procedures requires an understanding of the market in which the covered products and equipment are sold and used. As discussed, EPCA requires DOE , not later than 6 years after issuance of any final rule establishing or amending a standard, as required for a product under EPCA, to publish either a notice that the standards do not need to be amended or a proposed standards rule. The statute also requires updated standards to provide a minimum lead time for manufacturers to comply, for example, three to five years depending on the product or equipment. As such, given the length of time necessary to complete a standards rulemaking, DOE may need to start an evaluation of an energy conservation standard before, or shortly after, the compliance date of the standard. It can take time for manufacturers to gain experience manufacturing and selling covered products and equipment that comply with recently updated energy conservation standards. Time may also be required for the market to react to products and equipment that comply with updated standards. The same may be true for consumer use of such products and equipment. In these circumstances, there may be limited relevant market, product or energy/consumer use data on a prior regulatory update. This lack of data impacts the ability of DOE to evaluate further updates to the energy conservation standards.

Efforts to Harmonize with Industry Activities for Test Methods: DOE is currently working with many private-sector groups to better harmonize regulations with industry programs. For example, DOE participates in meetings of private-sector standards setting bodies (e.g., ANSI, AHRI, ASHRAE, AHAM) in developing their standards, where evaluation and analyses of a test procedure occurs under a consensus committee process. DOE’s participation helps to ensure that DOE is informed of the latest test procedure development issues and can maximize harmonization with these private-sector test methods.

DOE Participation in Negotiated Rulemaking: DOE supports this form of rulemaking activity and is currently negotiating test procedures and standards for Variable Refrigerant Flow Air Conditioners and Heat Pumps. To promote negotiated rulemakings in appropriate cases, DOE established the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) in 2012. ASRAC working groups are established for specific

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products and in each negotiated rulemaking proceeding, DOE includes a process whereby the working group discusses and votes on how to define consensus consistent with the Negotiated Rulemaking Act. DOE’s role in the negotiated rulemaking process is to provide technical advice to the parties and provide legal input where needed. DOE also has a vote in the consensus process among all the parties of ASRAC.

Consideration of Rulemaking Petitions and Waivers: There are several ongoing rulemaking petitions before DOE. These include the “short cycle” dishwasher product class, cooking products test procedure; furnaces and commercial water heaters energy conservation standards; and furnace AFUE 2. DOE published a Notice of Petition for Rulemaking and request for comment on each of these petitions. Through these notices, DOE requested comments on each petition, as well as any data or information that could be used in DOE’s determination of whether to proceed with each petition. DOE is currently evaluating the information received during the comment periods for these respective petitions. How DOE ultimately addresses these petitions may impact our evaluation of the associated energy conservation standards.

DOE also evaluates requests for test procedure waivers in which manufacturers assert that a covered product or equipment model contains a design characteristic that prevents testing according to the prescribed test procedures, or that the prescribed test procedures evaluate that model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. After the granting of any waiver, DOE must publish in the *Federal Register* a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. The evaluation of a waiver request may coincide with an evaluation of a test procedure as required by EPCA.

DOE has taken a number of steps to improve its rulemaking process. DOE has requested information, held public meetings, and published a proposal to improve the 1996 Process Rule. In looking to improve its process, DOE has requested comment on a more targeted

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evaluation of the potential energy savings from amended standards, allowing for a streamlined evaluation of those products and equipment for which significant additional energy savings are not likely. DOE has also issued an RFI to better understand whether there are provisions in DOE’s test procedures that could be improved to produce results that are more representative of average use cycles or periods of use. DOE has also issued an RFI to better understand the emerging market for “smart” appliances and commercial equipment. By improving coordination between energy conservation standard and test procedure rulemakings and streamlining its reviews, in conjunction with a better understanding of energy and consumer use developments, DOE will be better positioned to meet its statutory obligations.

Q1a. Small electric motors?

A1a. On March 9, 2010, DOE published a final rule in the *Federal Register* establishing energy conservation standards for small electric motors. Compliance with these energy conservation standards was required starting on March 9, 2015, (or March 9, 2017 for small electric motors which requires listing or certification by a nationally recognized safety testing laboratory).

On July 31, 2017, DOE published an RFI in the *Federal Register* soliciting public comments, data, and information on all aspects of the existing DOE test procedure for small electric motors, including any needed updates or revisions to the test procedures. Initiation of work on the energy conservation standards was deferred while DOE evaluates revised test procedures in response to petitions for rulemaking.

On November 2, 2017, DOE published a notice of petition and request for public comment in the *Federal Register* pertaining to test procedures for small electric motors. This notice announced receipt and published petitions from the National Electrical Manufacturers Association (NEMA) and UL LLC (UL) requesting that DOE incorporate the International Electrotechnical Commission test methods as alternative test methods in addition to the existing test methods referenced in its regulations for determining the energy efficiency of

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certain electric motors and small electric motors. On April 23, 2019, DOE published a NOPR pertaining to test procedures for small electric motors and other electric motors.

On April 9, 2019, DOE published an RFI in the *Federal Register* initiating a data collection process to determine whether to amend the current energy conservation standards for small electric motors. That RFI was open for public comment until May 25, 2019. DOE currently is considering the comments received on the RFI.

Q1b. Pool heaters?

A1b. Energy conservation standards for pool heaters currently only cover gas-fired pool heaters, although EPCA provides authority to cover pool heaters regardless of fuel type. On January 6, 2015, DOE published a final rule in the *Federal Register* that expanded the scope of the test procedures to include electric pool heaters in anticipation of possible consideration of future standards for these products and amended test procedures for gas-fired pool heaters. On March 26, 2015, DOE published an RFI in the *Federal Register* initiating a data collection process to determine whether to amend the current energy conservation standards for pool heaters. On October 26, 2015, DOE published a notice of data availability in the *Federal Register* that focused on electric pool heaters as the efficiency of those products has not previously been regulated by DOE.

DOE is currently considering comments received in response to the notice of data availability and RFI and evaluating potential energy conservation standards for electric and gas-fired pool heaters.

Q1c. Water heaters?

A1c. On April 16, 2010, DOE published a final rule in the *Federal Register* amending energy conservation standards for consumer water heaters. Compliance with the energy conservation standards contained in the April 2010 final rule was required starting on April 16, 2015.

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On December 18, 2012, the American Energy Manufacturing Technical Corrections Act (AEMTCA) amended EPCA to require that DOE publish a final rule establishing a uniform efficiency descriptor and accompanying test methods for consumer water heaters and certain commercial water heating equipment. The purpose of the uniform efficiency descriptor was to replace the existing efficiency metrics—energy factor (EF), thermal efficiency (TE), and standby loss (SL)—with a single uniform efficiency descriptor covering all water heaters, except for those with no possible residential applications. On July 11, 2014, DOE published a final rule that fulfilled these requirements by establishing uniform energy factor (UEF) as the metric for all consumer water heaters and residential-duty commercial water heaters.

AEMTCA further required that, beginning one year after the date of publication of DOE’s final rule establishing the uniform descriptor (*i.e.*, July 13, 2015), the efficiency standards for consumer water heaters and residential-duty commercial water heaters must be denominated according to the uniform efficiency descriptor, and that DOE must develop a mathematical conversion for converting the measurement of efficiency from previous test procedures and metrics to the uniform efficiency descriptor. DOE published a NOPR on April 14, 2015, and a supplemental NOPR on August 30, 2016, which included proposed mathematical conversion factors for converting existing EF, TE, and SL values to UEF values, and the proposed energy conservation standards expressed in terms of the UEF metric.

DOE published the final rule adopting the conversion factors and standards denominated in UEF for consumer water heaters and certain commercial water heaters on December 29, 2016. Manufacturers then had a 1-year transition period, during which time they could re-rate existing models in terms of UEF using the conversion factors published in the December 2016 final rule, in lieu of using UEF test data. Because analysis of potential energy conservation standards is dependent upon having reliable information about the efficiency of products on the market, the initiation of the consumer water heaters standards

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review was timed to allow the market to settle following this major overhaul of the efficiency metric and test method. Because manufacturers had until the end of 2017 before being required to rate models using UEF test data, consistent efficiency ratings in the market providing the appropriate basis for an analysis were not available until 2018.

A November 10, 2016, test procedure final rule for commercial water heating equipment clarified the coverage and applicability of standards for consumer and commercial water heaters. Specifically, DOE indicated that under EPCA, the input capacity is the primary determining factor of whether a water heater is consumer or commercial, and other factors such as the storage volume and hot water delivery temperature should not be used in determining whether a water heater is consumer or commercial. Prior to this clarification, manufacturers were testing and rating numerous consumer water heater models with large storage volumes (*e.g.*, 120 gallons) or high outlet water temperatures using the commercial water heater test procedures and metrics. DOE’s clarification of the definitions for consumer and commercial water heaters has impacted both water heater markets due to the need of manufacturers to re-test and re-rate models using the appropriate test methods and metrics. DOE provided manufacturers with an appropriate transition period to correct the classification of their water heaters. Subsequent to that rulemaking, manufacturers have raised to DOE the need to revise relevant definitions to carefully distinguish between residential and commercial water heaters and the standards applicable to each.

On October 18, 2018, DOE received a petition from the American Public Gas Association (APGA), Spire, Inc., the Natural Gas Supply Association (NGSA), the American Gas Association (AGA), and the National Propane Gas Association (NPGA), referred to as the “Gas Industry Petitioners,” asking DOE to: (1) issue an interpretive rule stating that DOE’s proposed energy conservation standards for residential furnaces and commercial water heaters would result in the unavailability of “performance characteristics” within the meaning of EPCA (*i.e.*, by setting standards which can only be met by condensing combustion technology products/equipment and thereby precluding the distribution in commerce of non-condensing combustion technology products/equipment); and (2)

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withdraw the proposed energy conservation standards for residential furnaces and commercial water heaters based upon such findings. On November 1, 2018, DOE published the petition and requested the submission of written comments on the petition, as well as any data or information that could be used in DOE’s determination whether to proceed with the petition. While the petition specifically relates to commercial water heaters and residential furnaces, it potentially impacts all covered products and equipment that utilize combustion and condensing technology to improve efficiency.

Q1d. Clothes dryers?

A1d. On April 24, 2011, DOE published a direct final rule in the *Federal Register* amending the energy conservation standards for clothes dryers. Compliance with the energy conservation standards were required starting on January 1, 2015.

On October 23, 2014, DOE published a notice of public meeting in the *Federal Register* pertaining to test procedures for clothes dryers and held that public meeting on November 13, 2014. On March 27, 2015, DOE published an RFI in the *Federal Register* initiating a data collection process to determine whether to amend the current energy conservation standards for clothes dryers.

Additionally, DOE will consider relevant comments received in response to its September 2018 request for information regarding “emerging smart technology appliance and equipment market” and its March 2019 request for information regarding “measurements of average use cycles or periods of use” as part of the ongoing test procedure evaluation.

Q1e. Room air conditioners?

A1e. On April 24, 2011, DOE published a direct final rule in the *Federal Register* amending the energy conservation standards for room air conditioners. DOE adopted this direct final rule on August 24, 2011, and compliance with the energy conservation standards were required starting on June 1, 2014.

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On June 18, 2015, DOE published an RFI regarding the energy conservation standard and test procedures for room air conditioners. Based on the feedback from interested parties received in response to the June 2015 RFI, DOE published another RFI on August 4, 2017, focused on the test procedure for room air conditioners. The August 2017 RFI requested further comments on the test procedure topics raised in the June 2015 RFI and on other issues relevant to the conduct of such a rulemaking that were not specifically identified in that document.

DOE began evaluating potential test procedure amendments based on the feedback received in response to the August 2017 RFI. However, in April 2018, DOE received a petition for waiver from the room air conditioner test procedure for variable-speed room air conditioners. The petition for waiver and application of an interim waiver was published on June 29, 2018, and a final Decision and Order for this waiver has not yet published. DOE is considering the issues raised in the waiver petition in its evaluation of the test procedure.

More recently, in December 2018, DOE began participating in the AHAM process to develop an update to their industry standard for room air conditioners, RAC-1. This process is ongoing.

Q1f. Cooking products?

A1f. On April 8, 2009, DOE published a final rule in the *Federal Register* establishing energy conservation standards for gas cooking products without an electrical supply cord. Compliance with the energy conservation standards were required starting on April 9, 2012.

EPCA required that DOE publish either a notice of determination that the standards do not need to be amended, or a NOPR that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). DOE fulfilled this requirement by publishing a NOPR on June 10, 2015, proposing energy conservation standards for ovens.

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On July 2, 2015, DOE published a final rule in the *Federal Register* establishing test procedures for ovens. Additionally, on December 16, 2016, DOE published a final rule in the *Federal Register* establishing test procedures for cooking tops, based on a water-boiling test method, and subsequently repealed the July 2015 final rule that established test procedures for ovens.

On September 2, 2016, DOE published a supplemental NOPR proposing new and amended energy conservation standards for cooking tops and ovens.

On October 13, 2017, DOE received a petition from AHAM to withdraw the cooking top test procedure. On March 26, 2018, DOE received a second petition from AHAM to withdraw and immediately stay the effectiveness of the cooking top test procedure. On April 25, 2018, DOE published the petition from AHAM in the *Federal Register* and requested the submission of written comments.

DOE is currently evaluating comments on whether it should grant the petition and undertake a rulemaking to consider the proposal contained in the petition.

Q1g. Refrigerators and freezers?

A1g. On September 15, 2011, DOE published a final rule in the *Federal Register* amending the energy conservation standards for refrigerators, refrigerator-freezers, and freezers. Compliance with the energy conservation standards contained in the September 2011 final rule were required starting on September 15, 2014.

DOE has also published an RFI on June 30, 2017 regarding potential amendments to its test procedures for refrigerators and freezers. Shortly after publishing that RFI, in August 2017, DOE started participating in AHAM committee meetings working to update their industry test method with the goal of being able to incorporate by reference the updated AHAM standard as the DOE test procedure. That process is still ongoing.

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Additionally, DOE will consider relevant comments received in response to its September 2018 request for information regarding “emerging smart technology appliance and equipment market” and its March 2019 request for information regarding “measurements of average use cycles or periods of use” as part of the ongoing test procedure evaluation.

Q1h. Fluorescent lamp ballasts?

A1h. On November 14, 2011, DOE published a final rule in the *Federal Register* amending the energy conservation standards for fluorescent lamp ballasts. Compliance with the energy conservation standards were required starting on November 14, 2014.

On June 23, 2015, DOE published a framework in the *Federal Register* initiating the process to determine whether to amend the current energy conservation standards for fluorescent lamp ballasts. On March 18, 2019, DOE published a NOPR in the *Federal Register* proposing amended test procedures for fluorescent lamp ballasts. The comment period was open until May 17, 2019. DOE currently is considering the comments received on the NOPR.

Q1i. Dedicated outdoor air systems?

A1i. On October 26, 2016, ASHRAE 90.1 was updated to include, in part, new minimum efficiency levels and test procedure requirements for dedicated outdoor air systems (DOAS), a category of commercial package air conditioning and heating equipment for which standards and a test procedure had not previously been established. These revisions to ASHRAE 90.1 triggered DOE’s obligation to review these test procedures and energy conservation standards pursuant to the requirements of EPCA. EPCA required DOE to publish an analysis of the energy savings potential of amended energy efficiency standards for DOAS, and then either publish a final rule adopting the efficiency levels specified in ASHRAE 90.1 or publish a final rule adopting more stringent energy efficiency standards.

On July 25, 2017, DOE published an RFI requesting comment on issues related to the current industry test method for DOAS, AHRI 920. At that time, DOE started participating

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in AHRI committee meetings working to update AHRI 920. DOE has participated in weekly to biweekly meetings throughout the entire revision process (~40-50 total meetings), which have addressed the issues DOE identified in the July 2017 RFI as well as other issues, including test methods for DOAS with ventilation energy recovery systems. There are a significant number of revisions being developed in the revised AHRI 920, though DOE understands that AHRI is close to finalizing this revised industry test method.

Q1j. Computer room A/Cs?

A1j. On October 26, 2016, ASHRAE 90.1 was updated to include, in part, amended minimum efficiency levels and test procedure requirements for computer room air conditioners (CRACs). These revisions to ASHRAE 90.1 triggered DOE’s obligation to review these test procedures and energy conservation standards pursuant to the requirements of EPCA. EPCA requires DOE to publish an analysis of the energy savings potential of amended energy efficiency standards for CRACs, and then either publish a final rule adopting the efficiency levels specified in ASHRAE 90.1 or publish a final rule adopting more stringent energy efficiency standards.

On July 25, 2017, DOE published an RFI requesting comment on issues related to the industry test methods for CRACs, AHRI 1360 and ASHRAE 127.

AHRI then published an updated industry test method in December 2017. DOE identified several issues with the updated industry method and has initiated efforts to work with AHRI to address these issues in a new revision.

Additionally, the ASHRAE 90.1-2016 updated standards for CRACs relied on a new efficiency metric, which DOE initially identified as resulting in reduced stringency for most of the equipment classes. As such, DOE was not able to update the Federal standards consistent with the ASHRAE 90.1-2016 levels. DOE worked with AHRI in the fall of 2018 to develop updated CRAC efficiency requirements for ASHRAE 90.1-2019 (which is expected to publish in fall 2019) that would not be backsliding relative to the current

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Federal standards.

Q1k. VRF A/Cs and heat pumps?

A1k. On October 26, 2016, ASHRAE 90.1 was updated to include, in part, amended minimum efficiency levels and test procedure requirements for variable refrigerant flow air conditioners and heat pumps (VRFs). On July 25, 2017, DOE published an RFI requesting comment on issues related to the current industry test methods for equipment addressed in ASHRAE 90.1, including VRFs.

In January 2018, the Appliance Standards and Rulemaking Federal Advisory Committee met and recommended forming a VRF Working Group to discuss and, if possible, reach consensus on a proposed rule for test procedures and energy efficiency standards for VRFs. On April 11, 2018, DOE published Notice of Intent to establish a working group for VRF multi-split systems to negotiate a Notice of Proposed Rulemaking for the test procedure and energy conservation standards.

The Working Group meets regularly as announced via notices published in the *Federal Register* and has held 12 meetings since August 2018. The most recent meetings were held on April 17-18, 2019.

Q1l. Commercial water heaters?

A1l. EPCA, as amended, required DOE to publish either a notice of determination that the standards do not need to be amended, or a NOPR with new proposed energy conservation standards (proceeding to a final rule, as appropriate) for commercial water heating equipment. On May 31, 2016, DOE published a NOPR proposing to amend energy conservation standards for commercial water heating equipment.

The proposed standards included in the May 2016 NOPR were at efficiency levels that if finalized would effectively require the use of condensing technology for some equipment classes of commercial water heating equipment. Subsequent to this NOPR, DOE received

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a petition from the “Gas Industry Petitioners,” on October 18, 2018, asking DOE to: (1) issue an interpretive rule stating that DOE’s proposed energy conservation standards for residential furnaces and commercial water heaters would result in the unavailability of “performance characteristics” within the meaning of the EPCA, as amended (i.e., by setting standards which can only be met by condensing combustion technology products/equipment and thereby precluding the distribution in commerce of non-condensing combustion technology products/equipment); and (2) withdraw the proposed energy conservation standards for residential furnaces and commercial water heaters based upon such findings.

On November 1, 2018, DOE published the petition from the Gas Industry Petitioners and requested the submission of written comments. Through that notice, DOE seeks comment on the petition, as well as any data or information that could be used in DOE’s determination of whether to proceed with the petition. DOE currently is considering the comments received on the petition.

Q1m. Residential clothes washers?

A1m. On May 31, 2012, DOE published a direct final rule in the *Federal Register* amending energy conservation standards for residential clothes washers. DOE adopted this direct final rule on October 1, 2012.

As discussed above, EPCA requires that subsequent to the issuance of this final standard, DOE must publish either a notice of determination that the standards do not need to be amended, or a NOPR that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate).

Because the January 1, 2018 compliance date specified in the rule has now passed, DOE is able to conduct a market analysis reflective of the most recent standards update. Conducting an analysis before the compliance date specified in a standards rule does not allow DOE to incorporate into that analysis important data and information on the impact

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of the previous standards on consumers and manufacturers.

Q1n. Evaporatively cooled commercial ACs?

A1n. On May 16, 2012, DOE published a final rule in the *Federal Register* amending the energy conservation standards for commercial packaged air conditioning and heating equipment – evaporatively-cooled. Compliance with the energy conservation standards was required starting on June 1, 2013, for certain classes of equipment and June 1, 2014, for the remaining classes of equipment.

EPCA required that DOE publish either a notice of determination that the standards do not need to be amended, or a NOPR that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). DOE is focusing on the development of revised test procedures based on industry test standards.

On July 25, 2017, DOE published an RFI in the *Federal Register* soliciting public comments, data, and information on all aspects of the existing DOE test procedure for evaporatively-cooled and water-cooled commercial ACs, among other equipment categories, including on any needed updates or revisions to the test procedures.

DOE has worked with AHRI and participated in committee meetings to revise the industry test method, a new version of which was published in March 2019. DOE is now participating in committee meetings to publish an addendum to the recently published industry test procedure that will address several remaining issues identified in the development of the March 2019 version. DOE has prioritized finalization of an updated industry test procedure (and corresponding DOE test procedure).

Q1o. Water-cooled commercial ACs?

A1o. Same response as for 1n. above.

Q1p. Metal halide lamp fixtures?

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A1p. The Energy Independence and Security Act of 2007 (EISA 2007) required DOE to publish two rounds of energy conservation standards for metal halide lamp fixtures. The first round required DOE to publish a final rule amending energy conservation standards for metal halide lamp fixtures by January 1, 2012. DOE published a final rule amending energy conservation standards February 10, 2014. Compliance with these energy conservation standards was required starting on February 10, 2017. DOE was then required to publish a final rule further amending energy conservation standards for metal halide lamp fixtures. The schedule of rulemakings as established in EISA 2007 provided approximately seven years between the two rounds of energy conservation standard rulemakings.

DOE initiated a data gathering process for the metal halide lamp fixture test procedure by publishing an RFI on May 30, 2018. DOE received comment on issues discussed in the RFI and will consider those issues in its evaluation of potential test procedure amendments.

Q2. Please explain what funding, staffing, or other barriers may have prevented timely issuance of proposed rules or final rules for any of these standards.

A2. Funding or staffing issues are not an issue for DOE to complete the work as described above.

Q2a. If such challenges persist, what resources does DOE need to resolve them?

A2a. DOE has the resources necessary to complete the necessary rulemakings described above.

Q2b. If these challenges no longer persist, have they been resolved such that you can commit to timely completion of future standards rulemakings?

A2b. DOE is striving to meet its statutory obligations based on current levels of funding and staff.

Q3. 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.

Q3a. 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?

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A3a. As part of the semi-annual Unified Agenda process, DOE submits to OMB a list of regulatory actions that the Department plans to take in the 12 months following publication of the Agenda. The last Agenda was published in October 2018.

Q3b. Please specify which 13 standards actions will be completed “in the coming months.”

A3b. DOE is actively conducting rulemaking on 13 appliance actions with missed deadlines. The below information is available via DOE’s Unified Agenda. DOE’s planned regulatory actions will be further updated in the Spring Unified Agenda.

Product	Next Regulatory Action, Per Agenda
Small Electric Motors and Other Electric Motors	Request for Information (RFI) <i>This RFI was published on 4/9/2019</i>
Test Procedure for Small Electric Motors and Other Electric Motors	Proposed Rule <i>This proposal was published on 4/23/2019</i>
Clothes Dryers	Preliminary Analysis
Commercial Water Heating Equipment	Final Rule
Conventional Cooking Products	Supplemental Notice of Proposed Rulemaking
Fluorescent Lamp Ballasts	Preliminary Analysis
Test Procedures for Fluorescent Lamp Ballasts	Proposed Rule <i>This proposal was published on 3/18/2019</i>
Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces	Supplemental Notice of Proposed Rulemaking
General Service Lamps	Supplemental Notice of Proposed Rulemaking
Refrigerators, Refrigerator-Freezers, and Freezers	Proposed Rule
Room Air Conditioners	Preliminary Analysis
Test Procedure for Room Air Conditioners	Proposed Rule
Test Procedure for Certain Commercial Unfired Hot Water Storage Tanks	Notice of Data Availability

Q3c. Please specify which 3 standards actions may not be completed “in the next coming months.”

A3c. Per the Fall 2018 Unified Agenda, the Department did not plan to take action on certain ASHRAE equipment, including computer room air conditioners, evaporatively-cooled commercial air conditioners, and dedicated outdoor air systems, in the months following the Agenda’s release in October 2018. However, updated information on the status of specific rulemakings—including those detailed above—will be available when the

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Department’s Spring 2019 Unified Agenda is released.

Regarding computer room air conditioners (CRACs), on July 25, 2017, DOE published an RFI requesting comment on issues related to the industry test methods for CRACs, AHRI 1360 and ASHRAE 127. AHRI then published an updated industry test method in December 2017. DOE identified several issues with the updated industry method and has initiated efforts to work with AHRI to address these issues in a new revision.

Additionally, the ASHRAE 90.1-2016 updated standards for CRACs relied on a new efficiency metric, which DOE initially identified as resulting in reduced stringency for most of the equipment classes. As such, DOE was not able to update the Federal standards consistent with the ASHRAE 90.1-2016 levels. DOE worked with AHRI in the fall of 2018 to develop updated CRAC efficiency requirements for ASHRAE 90.1-2019 (which is expected to be published in fall 2019) that would not be backsliding relative to the current Federal standards.

Regarding evaporatively-cooled commercial ACs, on July 25, 2017, DOE published an RFI in the *Federal Register* soliciting public comments, data, and information on all aspects of the existing DOE test procedure for evaporatively-cooled and water-cooled commercial ACs, among other equipment categories, including on any needed updates or revisions to the test procedures.

DOE has worked with AHRI and participated in committee meetings to revise the industry test method, a new version of which was published in March 2019. DOE is now participating in committee meetings to publish an addendum to the recently published industry test procedure that will address several remaining issues identified in the development of the March 2019 version. DOE has prioritized finalization of an updated industry test procedure (and corresponding DOE test procedure) with regard to an energy conservation standards rulemaking.

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Regarding dedicated outdoor air systems (DOAS), on July 25, 2017, DOE published an RFI requesting comment on issues related to the current industry test method for DOAS, AHRI 920. At that time, DOE started participating in AHRI committee meetings working to update AHRI 920 with the goal of being able to incorporate by reference the updated AHRI 920 as the DOE test procedure. DOE has participated in weekly to biweekly meetings throughout the entire revision process (~40-50 total meetings), which has addressed the issues DOE identified in the July 2017 RFI as well as other issues, including test methods for DOAS with ventilation energy recovery systems.

Given the significant number of revisions being developed in the revised AHRI 920, DOE held off on developing a test procedure NOPR and starting an energy conservation standard rulemaking. DOE understands that AHRI is close to finalizing this revised industry test method.

- Q3d. When will these standards actions be completed?
- A3d. DOE is currently in the process of developing its spring regulatory agenda, which will update public information on the expected timing of DOE’s regulatory activities.
- Q3d. For the standards actions which will be completed in the near future, what specific steps have you taken to accelerate the process?
- A3d. DOE has prioritized finalizing test procedures for the associated energy conservation standards rulemakings, and is also working to respond to several petitions that must be resolved before the Department can finalize certain standards.

Further, DOE has taken a number of steps to improve its rulemaking process. DOE has requested information, held public meetings, and published a proposal to improve the 1996 Process Rule. In looking to improve its process, DOE has requested comment on a more targeted evaluation of the potential energy savings from amended standards, allowing for a streamlined evaluation of those products and equipment for which significant additional energy savings are not likely.

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DOE has also issued an RFI to better understand whether there are provisions in DOE’s test procedures that could be improved to produce results that are more representative of average use cycles or periods of use. DOE has also issued an RFI to better understand market trends and issues in the emerging market for appliances and commercial equipment that incorporate smart technology. By improving coordination between energy conservation standard and test procedure rulemakings and streamlining its reviews, in conjunction with a better understanding of energy and consumer use developments, DOE will be better positioned to meet its statutory obligations.

Q3e. Would application of those same steps similarly accelerate the promulgation of other standards actions? If not, why not?

A3e. The actions outlined in 3.d. above apply to all standards rulemakings that DOE is undertaking. The Department is working to promulgate the necessary standards and meet its statutory obligations. However, because different standards actions are in differing stages of development, they will not all be completed on the same timeframe.

DOE has multiple statutory requirements to satisfy when it is setting energy conservation standards. Beyond statutorily required deadlines, DOE must also abide by the requirements of 42 U.S.C. 6295(o)(3)(B), which prohibits the Department from issuing any energy conservation standard unless such standard will result in significant conservation of energy or water, in the case of showerheads, faucets, water closets, or urinals, and that the establishment of such standard is both technologically feasible and economically justified.

Further, in evaluating whether a standard is economically justified, under 42 U.S.C. 6295(o)(2)(B), DOE must consider seven factors, including:

1. the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;
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,

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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.

Q4. 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?

A4. This level of funding would allow DOE to complete its statutorily required rulemakings.

Q5. 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?

A5. For all proposed and final rules, including those with missed deadlines, DOE will apply the statutory criteria in 42 U.S.C. 6295(o)(3)(B), which prohibits the Department from issuing any energy conservation standard unless such standard will result in significant conservation of energy or water, in the case of showerheads, faucets, water closets, or urinals, and that the establishment of such standard is both technologically feasible and economically justified.

Q5a. If so, does DOE believe that any of the delayed rulemakings will not provide significant energy savings?

A5a. Please refer to the previous response to question 5.

Q6. Will the proposed procedural changes to the Process Rule be applied to the completion of the 16 delayed standards rulemakings?

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- A6. DOE is considering amendments to the Process Rule and is currently seeking public comment on those proposals. DOE will finalize a standards rule based on any changes adopted in the final Process Rule. However, for all proposed and final rules, including those with missed deadlines, DOE will apply the statutory criteria in 42 U.S.C. 6295(o)(3)(B), which prohibits the Department from issuing any energy conservation standard unless they will result in significant conservation of energy or water, in the case of showerheads, faucets, water closets, or urinals, and that the establishment of such standard is both technologically feasible and economically justified.
- Q6a. If so, please explain whether and how application of the revised process may further delay the completion of those rulemakings.
- A6a. Please refer to the previous response to question 6.

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QUESTIONS FROM REPRESENTATIVE PETER WELCH

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.

- Q1. 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?
- A1. DOE published its preliminary analysis regarding energy efficiency improvements in the 2018 International Energy Conservation Code in the *Federal Register* on May 2, 2019. This proposed determination was open for public comments for 30 days following publication. DOE currently is considering the comments received on its preliminary analysis.
- Q2. 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?
- A2.

Rule Name	Date Published	Action
Energy Conservation Program: Energy Conservation Standards for Certain External Power Supplies	1/29/2019	Implemented the provisions of the Power and Security Systems Act and EPS Improvement Act.
Energy Conservation Program: Test Procedures for Integrated Light-Emitting Diode Lamps	9/21/2018	Amended the test procedure for integrated light-emitting diode lamps to be consistent with ENERGY STAR test requirements.

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Energy Conservation Program: Energy Conservation Standards for Ceiling Fan Light Kits	5/16/2018	Implemented the provisions of the Ceiling Fan Energy Conservation Harmonization Act of 2018 pertaining to compliance dates.
Energy Conservation Program: Energy Conservation Standards for Rough Service Lamps and Vibration Service Lamps	12/26/2017	Implemented statutory energy efficiency requirements for rough service lamps and vibration service lamps.
Energy Conservation Program: Test Procedure for Dedicated-Purpose Pool Pumps	8/7/2018	Established a test procedure for dedicated-purpose pool pumps.
Energy Conservation Program: Energy Conservation Standards for Walk-In Cooler and Freezer Refrigeration Systems	7/10/2017	Amended the energy efficiency standards for walk-in coolers and freezers.
Energy Conservation Program: Energy Conservation Standards for Miscellaneous Refrigeration Products	5/26/2017	Established new energy conservation standards for miscellaneous refrigeration products.
Energy Conservation Program: Energy Conservation Standards for Residential Central Air Conditioners and Heat Pumps	5/26/2017	Amended the energy conservation standards for residential central air conditioners and heat pumps.
Energy Conservation Program: Energy Conservation Standards for Dedicated-Purpose Pool Pumps	5/26/2017	Established new energy conservation standards for dedicated-purpose pool pumps.

Q3. 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

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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?

- A3. DOE is actively conducting rulemaking on 13 appliance actions with missed deadlines. The below information is available via DOE’s Unified Agenda. DOE’s planned regulatory actions will be further updated in the Spring Unified Agenda.

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QUESTIONS FROM REPRESENTATIVE RICHARD HUDSON

- Q1. 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?
- A1. EPCA requires DOE, not later than 6 years after issuance of any final rule establishing or amending a standard, as required for a product under EPCA, to publish either a notice that the standards do not need to be amended or a proposed standards rule (42 U.S.C. 6295(m)(1)). EPCA also requires DOE to, at least once every seven years, review its test procedures and either amend the test procedures or determine that the test procedures do not need to be amended. 42 U.S.C. 6293 (b)(1)(A)). DOE can use this review period to assess whether the market has changed significantly since the last rulemaking, including innovation and technological changes. However, as described below, on occasion this can lead to circumstances in which DOE does not have adequate information or data to review.
- Q1a. Is there sufficient time in the current standard setting cycle to assess the effectiveness of previous standards?
- A1a. In some cases, DOE must initiate the rulemaking cycle for a product very shortly after— or even before—compliance with the previous standard was required.

The statute requires updated standards to provide a minimum lead time for manufacturers to comply, generally three to five years depending on the product or equipment. As such, an evaluation of an energy conservation standard may start before, or shortly after, the compliance date of such standard. It can take time for manufacturers to gain experience manufacturing and selling covered products and equipment that comply with a recently updated energy conservation standard. Additionally, time may be required for the market to react to products and equipment that comply with updated standards. The same may be

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true for consumer use of such products and equipment. In these circumstances, there may be limited relevant market, product, or energy/consumer use data on a prior regulatory update. This lack of data impacts the ability of DOE to evaluate further updates to the energy conservation standards.

Q1b. In your experience, does DOE do an effective job assessing whether past standards have actually achieved what was promised?

A1b. DOE’s review of its previous standards has primarily been focused on market conditions and technological changes rather than a retrospective analysis of previous standards’ outcomes.

Q1c. How can analysis in this process be improved to ensure more effective standard setting?

A1c. DOE is committed to working with stakeholders to improve its process for establishing energy conservation standards. In conjunction with its proposed Process Rule, in February the Department announced that it is initiating a peer review of its analytical methodology to identify areas for improvement. DOE intends to use this information to make its analyses more representative of real-world conditions and to better anticipate the effects of its standards.

Q2. 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?

A2. As part of its standards-setting process, DOE often analyzes how product use might vary from household to household with a special focus on the effects of standards on low-income households and the elderly. Households may have very different needs and, as a result, a product that makes sense for one household may not necessarily make sense for another. DOE estimates the proportion of households who may be disparately affected when setting energy conservation standards for appliances.

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Q2a. How does the standard process take into account the range of consumer preferences?

A2a. Statute currently requires DOE to consider impacts of any potential standard on consumers, along with product utility and performance. DOE takes this statutory obligation seriously and recognizes the importance of preserving consumer choice. DOE uses a consumer choice model as part of its standards analysis to reflect household decision-making and preferences, and also considers the proportion of households who are disparately affected when setting energy conservation standards for appliances.

DOE also is conducting a peer review of its analytical methods and, as part of this process, is interested in soliciting input on how to better account for consumer preferences in the standard-setting process.

Q2b. 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?

A2b. DOE often analyzes how product use might vary from household to household as part of its standards-setting process, with a special focus on the effects of standards on low-income households and the elderly. DOE agrees that this is an important consideration and takes this information into account during the rulemaking process to try to ensure that there are not disproportionate impacts on vulnerable groups.

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QUESTIONS FROM REPRESENTATIVE JEFF DUNCAN

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.

Q1. 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?

A1. DOE has worked hard to establish a process that includes a wide spectrum of stakeholders in the development of new energy conservation standards. Because these stakeholder perspectives are a crucial component of the rulemaking process, the Department is proposing amendments to its Process Rule to enhance opportunities for early stakeholder participation.

In its review of energy conservation standards and test procedures, DOE seeks opportunities to work more directly with stakeholders. DOE relies on robust stakeholder input to ensure that affected households and businesses will benefit from any new standards, and that new standards will not result in distributive effects that have disparate impacts on particular regions, low-income households, or small businesses.

Affected stakeholders currently have the opportunity to comment on DOE proposals at both the request for information and proposed rule stages, as well as the opportunity to

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participate in public meetings in person or via webinar. These opportunities to engage are made public through notices in the *Federal Register*. The data and expertise that stakeholders provide at these stages inform the Department’s rulemaking efforts.

Q1a. I understand the updated process rule requires test procedures first before implementing standards. How will this improve the effectiveness of the program?

A1a. Test procedures lay out the rules of the road by illustrating how energy use will be measured for compliance and certification. It’s crucial to establish those rules of the road before establishing new standards so that regulated parties know what will be required of them under a new, higher standard.

Additionally, finalizing a test procedure before setting new efficiency standards allows stakeholders to participate more effectively in the standards-setting process and can inform the Department regarding energy use and new technologies before embarking on a new standards rulemaking.

This change ensures that the processes DOE uses to promulgate its rules are predictable for advocates, manufacturers, and consumers alike, and also reduces the burden to stakeholders participating in the rulemaking process.

Q1b. Will this help Office of Energy Efficiency and Renewable Energy focus on areas and implement rules that can achieve the most efficiency gains?

A1b. DOE’s proposed changes to its Process Rule start the Department off on the right foot by focusing first on satisfying DOE’s statutory requirements for rulemaking. These amendments would introduce an “early assessment” to the rulemaking process to enable DOE to determine whether new or amended conservation standards meet DOE’s statutory criteria. Through this “early assessment” process, DOE will seek data from stakeholders on the product in question and whether the market has changed sufficiently since DOE’s last standard to merit a new standard. DOE will only move forward with a standards rulemaking if a new or amended standard has the potential to meet Congress’ criteria for

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doing so, as outlined in 42 U.S.C. 6295(o)(3)(B).

This prioritization allows DOE to focus its technical and analytical expertise on new and amended standards that would result in the maximum improvement in energy efficiency that is technologically feasible and economically justified.

Q2. 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?

A2. One goal of DOE’s 1996 Process Rule—and the amendments DOE proposed in February—is to provide and enhance certainty for stakeholders. DOE has not rigorously followed the 1996 Process Rule in many instances, particularly with regard to the timing of test procedures, which has led to uncertainty and frustration for stakeholders.

Our recent proposed changes to the 1996 Process Rule aim to address that problem by requiring the Department to finalize test procedures 180 days before proposing a new energy conservation standard. This change ensures that the processes DOE uses to promulgate its rules are predictable for advocates, manufacturers, and consumers alike, and also reduces the burden to stakeholders participating in the rulemaking process.

Further, DOE’s proposed Process Rule would be binding on the Department, further enhancing stakeholder certainty. DOE should be held accountable for complying with its own procedures so that the public will have confidence in the transparency and fairness of DOE’s regulatory process.

Q2a. 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?

A2a. DOE has multiple statutory requirements to satisfy when it is setting energy conservation standards. Beyond statutorily required deadlines, DOE must also abide by the

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requirements of 42 U.S.C. 6295(o)(3)(B), which prohibits the Department from issuing any energy conservation standard unless such standard will result in significant conservation of energy or water, as in the case of showerheads, faucets, water closets, or urinals, and that the establishment of such a standard is both technologically feasible and economically justified.

Further, in evaluating whether a standard is economically justified, under 42 U.S.C. 6295(o)(2)(B), DOE must consider seven factors, including:

1. the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;
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.

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QUESTIONS FROM REPRESENTATIVE BILL FLORES

- Q1. 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.
- Q1a. Please cite the relevant statutory text and provide DOE’s rationale for the proposed rulemaking.
- A1a. Different lamp types addressed in the rulemaking present different legal issues. For example, in the January 2017 definition rules, DOE included five lamp types (rough service lamps, shatter-resistant lamps, 3-way incandescent lamps, high lumen incandescent lamps, and vibration service lamps) in the definition of General Service Incandescent Lamp (GSIL). Therefore, those five lamp types could be considered for standards as a type of General Service Lamp (GSL). However, in the same legislation that required DOE to consider energy standards for GSLs, Congress explicitly subjected those five lamp types to potential standards under a separate provision of the statute. *See* 42 U.S.C. 6295(l)(4)

As another example, in one of the definition rules issued in January 2017, DOE postponed its decision on the exemption for incandescent reflector lamps (IRL), which it had previously proposed to discontinue. Accordingly, that rule perpetuated the IRL exemption in DOE’s regulatory definition. In DOE’s second definition final rule, issued simultaneously in January 2017, DOE determined to discontinue the IRL exemption, and amended its definition of GSL accordingly.

Beyond the incongruity of those simultaneous actions, Congress stated explicitly, in two separate places in the statute, that IRLs are not GSLs. First, in the definition of GSL, the statute, without ambiguity, states that the term “general service lamp” does not include incandescent reflector lamps. 42 U.S.C. 6291(30)(BB) Further, IRLs are explicitly

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excluded from the definition of GSIL, which is a type of GSL. 42 U.S.C. 6291(30)(D) As with the five lamp types mentioned above, IRLs are subject to potential standards under a different provision of the statute.

Q1b. 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?

A1b. Yes.