



March 26, 2018

Appliance and Equipment Standards Program  
U.S. Department of Energy  
Building Technologies Office  
Mailstop EE-5B  
1000 Independence Avenue, SW  
Washington, DC 20585-0121

**RE: Request for Information Regarding the Potential Advantages and Disadvantages of Additional Flexibilities in the US Appliance and Equipment Efficiency Standards Program, Docket EERE-2017-BT-STD-0059, RIN 1904-AE11**

*Submitted via email: ProgramDesign2017STD0059@ee.doe.gov*

Dear Department of Energy,

On behalf of the Natural Resources Defense Council, a leading environmental advocacy organization, and its more than 2 million members and activists, we offer the following comments in response to the U.S. Department of Energy (DOE) Request for Information regarding the potential advantages and disadvantages of additional flexibilities in the U.S. appliance and equipment efficiency standards program.

The DOE has developed and updated energy efficiency standards for appliances and equipment for more than 30 years. By all measures, the program is a success: it generates trillions of dollars in savings for consumers, provides manufacturers with regulatory predictability, and sets up a level playing field for industry regardless of where products are manufactured.

This RFI suggests major, untested changes to the efficiency standards program that are likely not within DOE's legal authority. These changes may compete with DOE priorities under existing law to update appliance standards on a regular basis, taking advantage of new technological opportunities that can reduce consumer costs, save energy, help make the appliance industry more competitive, and reduce air pollution emissions. We urge DOE to get back on schedule with required

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rulemakings before diverting its staff and management attention from these valuable and legally required activities into studying hypothetical changes that have questionable benefits.

The ongoing success of the appliance efficiency standards program is due in large part to its straightforward structure. Each standard specifies the maximum amount of energy a product may consume (or the minimum efficiency), based on a test method developed by DOE. The process for developing the standards is public, transparent, and well-established. Manufacturers have a great degree of flexibility on how to comply with the standards, and many manufacturers find innovative ways to re-tool their product lines to comply, often at less cost than predicted by DOE.<sup>1</sup> Minimum efficiency standards are the bedrock for a suite of policies<sup>2</sup> that provide market-based incentives for continual improvement in energy performance while enhancing innovation, competition, and consumer choice. This includes the popular ENERGY STAR program, utility efficiency programs, and other market-based programs that promote efficiency above and beyond a minimum standard.

Minimum appliance efficiency standards are successfully employed in most major economies<sup>3</sup> around the world. The alternatives suggested by DOE to regulate the efficiency of appliances and equipment have not been tried elsewhere.

DOE requests feedback on possible revisions to the energy conservation standards program to adopt some type of market based approach and/or other program flexibilities, with the goals of reducing compliance costs, enhancing consumer choice, and maintaining or increasing energy savings. We have concerns that changing the structure of this long-standing and successful program would *raise* compliance costs and *add* burden for manufacturers, *increase* consumer confusion

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<sup>1</sup> A recent study by the American Council for an Energy Efficient Economy and the Appliance Standards Awareness Project compared the projected and actual costs of nine appliance and equipment efficiency standards. Across the nine rulemakings, DOE estimated an average increase in manufacturer's selling price of \$148. ACEEE and ASAP found that on average the actual change in price was a *decrease* in manufacturer's selling price of \$12. The study can be found at <http://aceee.org/research-report/e13d>.

<sup>2</sup> [https://aceee.org/files/proceedings/2016/data/papers/9\\_418.pdf](https://aceee.org/files/proceedings/2016/data/papers/9_418.pdf)

<sup>3</sup> <https://clasp.ngo/>

about how to choose efficient products, and make energy savings *more difficult* to achieve. While we appreciate DOE's consideration of ways to enhance the standards program, we do not support efforts that would be costly, disruptive, and unnecessary.

We are unaware of broad issues with the current program structure that would be solved by the ideas presented by DOE in this RFI. Some of the changes DOE seeks feedback on could prove more detrimental than constructive. There is significant risk that the overall program energy savings could decrease under a changed program structure, which would mean higher energy bills for consumers and more wasted energy. Furthermore, it is not evident that any of the ideas put forth by DOE would be permissible under current law. For example, DOE has not explained how these market-based approaches can comply with the requirement that standards may not "backslide" or be made less efficient. There are numerous other provisions of the Energy Policy and Conservation Act that would complicate or conflict with these ideas.

*DOE should focus its efforts on its statutorily required obligations*

DOE has missed 14 legally-required deadlines to review existing standards and another eight legally-required deadlines to review test procedures<sup>4</sup>. The regulatory agenda, published in December 2017, lists more than twenty standards and test procedures that DOE indicates they do not intend to address in the next year. This is troubling. DOE's resources are already limited, and efforts like this RFI to "fix" a program that is already working very well distract from updating standards to achieve more savings for consumers to achieve more energy savings and savings for consumers.

*The current program structure already provides manufacturers with flexibility*

DOE suggests in principle that the appliance standards program should establish a target level and allow manufacturers to have the flexibility to meet that target in the least cost way. This is exactly how the program *already* operates in its current form. In addition, DOE is already required to consider non-regulatory approaches to examine major alternatives to new energy conservation standards that

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<sup>4</sup> <https://www.energy.gov/sites/prod/files/2018/02/f49/report-to-congress-on-energy-conservation-standards-activities-appliances.pdf>

potentially could achieve substantially the same regulatory goal at a lower cost<sup>5</sup>. DOE already evaluates options like consumer rebates and tax credits, manufacturer tax credits, voluntary efficiency targets, and bulk government purchasing as part of its current analysis for new and updated standards. The savings from these non-regulatory approaches are always found to be vastly lower than the savings from a minimum standard. For example, non-regulatory alternatives for the recent pool pump standard would have saved at most 61 percent and as little as 6 percent of the savings that will be generated by the adopted standard. The impact on the recent walk-in coolers and freezers standard is even more substantial: non-regulatory alternatives for this equipment would save less than 7 percent, at most, of the savings generated by the adopted standard.

*DOE seeks input on “market-based policy mechanisms such as averaging, credit trading, or feebates” as options for program flexibility.*

To begin with, we do not believe that policy mechanisms such as averaging, credit trading, or feebates are more “market-based” than the current approach. The presence of a minimum efficiency standard does not hinder market forces. In fact, minimum standards help create a large-scale, nationwide market for products. This is one of the main reasons that American appliance manufacturers supported minimum nationwide efficiency standards: they valued the interstate harmonization that strong DOE standards would (and did) provide. We’ve seen products get better and cheaper over time due to market demand, even as new efficiency standards take effect. Global manufacturers can save compliance costs when standards are harmonized across international boundaries. This requires similar structures for standards globally, which is the case under the current system but could be disrupted by trading or averaging schemes.

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<sup>5</sup> For actions that the Administrator of the Office of Information and Regulatory Affairs (OIRA) deems to be “significant” under section (3)(f) of Executive Order 12866, E.O. 12866 requires Federal agencies to provide “an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable non-regulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.” 58 FR 51735, 51741.

A fleet averaging program for appliances, with or without credit trading and/or fee-based compliance, would face challenges related to compliance enforcement. Under the current program structure, each product must comply with the standard per lab testing using the DOE test procedure. It is relatively straightforward for DOE to assess compliance and enforce the standards, a crucial part of maintaining the integrity of the program. Evaluating compliance under the policy mechanisms DOE suggests would require not only lab testing to ensure the product meets the applicable energy limits, but also the submission of model-specific and overall product sales data. This is a major change from the current compliance mechanism and would add burden for manufacturers and require more complex analysis by DOE.

Historically, industry has required sales data to be treated as confidential. DOE has limited ability to assess the accuracy of sales data, and should this data be treated as confidential, other stakeholders will not have access to the data to provide insight on whether it is accurate or complete. The mechanisms DOE suggests will add complexity to ensuring compliance and reduce consumer confidence that products comply with the standard.

The mechanisms DOE is considering in this RFI would allow manufacturers to produce cheaper, lower-efficiency products for certain submarkets in exchange for extra quality and efficiency in other markets, with no guarantee of greater overall energy savings. Which submarkets would benefit from more efficient products, and which would suffer? Landlord and low-income markets, which are most sensitive to price and least sensitive to quality and efficiency, would get the least efficient products – meaning energy bills for those customers would go up. Higher-income targeted markets, which already command the highest markups, would get the higher efficient products. Such an outcome reduces consumer choice in both markets, and hurts the most vulnerable consumers.

#### *Averaging*

An average standard based on the sales of appliances in various categories (akin to the CAFE standards program for vehicles) would make the appliance standards program much more complicated. DOE itself spells out some of the complicating issues in the RFI, including the many products and product classes covered by the standards program; the thousands of manufacturers, retailers, distributors, installers, and importers affected by such a change; and the fact that sales data is

not currently collected. The data collection alone would be daunting and costly for both DOE and manufacturers. We question whether the burdens of increased reporting, tracking, and other administrative efforts necessary for a successful average standard would bring proportional benefits, particularly when there are not broad issues in this highly successful program that would be resolved by an averaging mechanism.

#### *Credit Trading*

DOE cites the example of reducing power plant emissions through credit trading as a mechanism which may benefit the standards program by reducing overall compliance costs. To begin with, we note that power plant emissions trading reduced costs compared to prior predictions, but not necessarily compared to a minimum standard that would have applied to each plant. We do not know what would have happened in the latter case, because it was not tried.

In any case, a credit trading model is not appropriate, as it would not be able to achieve all the goals of the appliance standards program. The entire point of a permit trading system is that companies that can meet a regulatory burden cheaply can sell permits to companies that cannot. While this may be theoretically appropriate for reducing power plant emissions economy-wide, where it may reduce total emissions at the cost of allowing older polluting plants to continue to operate, it is a wholly inappropriate model for appliance standards. The purpose of the efficiency standards program is to not only reduce energy and emissions on a national scale, but to also provide economic benefits for individual consumers. Credit trading would not achieve this consumer-focused objective since, by definition, a subset of products available for purchase would necessarily use more energy.

#### *Feebates*

A “feebate” style compliance mechanism would set a “pivot point,” below which manufacturers would pay a fee to be able to manufacture less efficient equipment, and above which manufacturers would receive a payment for greater efficiency. It is unclear how the pivot point would be set, where the funding to pay manufacturers would come from, and what would happen if the only equipment available in a given market was below (or above) the pivot point. It is also unclear whether manufacturers would be incentivized based on product availability or product sales. Consumer choice could ultimately decrease in some markets.

The CAFE vehicle standards program allows manufacturers to pay a fee if they do not meet their expected fleet efficiency targets for a given year. This fee has not kept pace with inflation and gives manufacturers an inappropriate “out.” Complying by paying a fee in lieu of making efficiency improvements does not generate pollution reductions or consumer savings. If the payment structure was not set perfectly for the appliance standards program, there could be an incentive for manufacturers who make cheap, inefficient products to simply pay the fee, flood the market with inefficient products, and undercut manufacturers making higher quality, more efficient equipment. Costs may also be distributed very unevenly between manufacturers, depending on any given manufacturer’s product mix.

*Market-based compliance mechanisms could limit consumer choice and increase energy costs, particularly for vulnerable consumers.*

A CAFE-style averaging model, a credit trading model, and a “feebate” style model all fall short when it comes to reducing energy costs for consumers, which is one of the primary purposes of the appliance efficiency standards program. A consumer does not buy a fleet that meets an average efficiency level, a consumer buys an individual product that consumes a specific amount of energy. Allowing some manufacturers to sell products that are much more efficient than a given level and others to sell products that are much less efficient means that, by design, there will be a subset of consumers who end up with equipment that uses more energy.

The appliance and equipment market is not perfect. Information about the energy use of a given product can already be difficult and time consuming for the average consumer to find and compare. The efficiency standards program as currently designed helps resolve this market failure by setting an across-the-board minimum efficiency, which lets consumers shop with the confidence that they are purchasing a product that won’t waste energy. Consumers interested in products that are even more efficient benefit from the ease of the market-based ENERGY STAR label. The mechanisms DOE outlines in this RFI would not provide consumers the same level of protection as a minimum standard and may exacerbate market failures from a consumer standpoint, making it more difficult than ever to make informed purchases.

The standards program also provides important protections for renters and lower income consumers. Renters generally do not make the purchasing decisions for the

appliances or equipment in their homes or apartments, yet often they are responsible for paying the utility bills. Lower income consumers may be more likely to purchase less expensive (which often translates to less efficient) models. A minimum efficiency standard means that even the least expensive refrigerator, air conditioner, or dishwasher will meet threshold energy use criteria specified by DOE.

The market based mechanisms outlined by DOE in this RFI will predictably increase the risk of inequity for these vulnerable populations by allowing some products to consume higher amounts of energy than others in the name of compliance flexibility. Manufacturers may have less incentive to innovate and make their products better if they can simply pay a fee to stick with the status quo. Fleet average standards, with or without credit trading, will lead to fewer choices for low-cost products, as these products are low profit and manufacturers will skimp on efficiency to keep prices low. To the extent that there are more choices for consumers, they will be limited to luxury products – where a great deal of choices already exist.

*The impact on existing voluntary programs could be substantial.*

Programs like ENERGY STAR, utility incentive programs, and other voluntary, market-based initiatives are an important complement to minimum efficiency standards, but are not and should not be viewed as a substitute to the standards program. Voluntary programs provide consumers with important information and incentives to choose products that are more efficient than a federal minimum standard. It is unclear how these programs would function if the standards program structure was changed. These programs encourage sales of appliances and equipment above the minimum standard, but if averaging or trading was allowed, any sales of higher efficiency equipment would also enable sales of equipment of a *lower* efficiency. This means that energy savings, on a whole, could decrease. This conundrum would reduce the economic benefits of such popular, voluntary programs, and could make them impossible to administer.

In summary, the efficiency standards program has a long history of success and DOE must work to protect and enhance the benefits generated by the program. The current structure of the standards program provides certainty and predictability for manufacturers and is easy for consumers to understand. Any changes to the



program must be in response to a specific problem, must fully comply with the law, and must not negatively impact the program's success.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren Urbanek". The signature is written in a cursive, flowing style.

Lauren Urbanek  
Senior Energy Policy Advocate



