

**STATEMENT OF**

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**U.S. DEPARTMENT OF ENERGY**

**BEFORE THE**

**COMMITTEE ON ENERGY AND COMMERCE**

**U.S. HOUSE OF REPRESENTATIVES**

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Mr. Chairman and members of the Committee, thank you for the opportunity to testify on the energy conservation standards program at the Department of Energy (DOE). Appliance efficiency standards have proven potential to greatly reduce energy use, and are the most cost-effective means of delivering energy savings in the mid-term.

Established Federal standards for appliances and other equipment have made a significant contribution to energy efficiency. By the end of this year, it is anticipated that Federal residential energy efficiency standards that have gone into effect since 1988 will save a cumulative total of 34 quadrillion Btus (quads) of energy by the year 2020, and 54 quads by 2030. The estimated cumulative net present value of consumer benefits amounts to \$93 billion by 2020 and grows to \$125 billion by 2030.<sup>1</sup> There is even greater potential for energy savings in the future as the Department adopts new standards and updates existing ones.

## STANDARDS PROGRAM HISTORY

I would like to give you some background history of the program, an overview of where we are now, and outline our plan for successful implementation in the coming years. The standards program has been shaped and expanded by several pieces of legislation beginning with the Energy Policy and Conservation Act (Pub. L. No. 94-163; EPCA) of 1975, which required DOE to set energy conservation targets for specified residential appliances. That law was amended and updated in 1987 by the National Appliance Energy Conservation Act (Pub. L. No. 100-12; NAECA). NAECA established initial standards for 11 types of residential appliances and included requirements and deadlines for updating those standards through rulemakings conducted by the Department using criteria included in the law. The Energy Policy Act of 1992 (Pub. L. No. 102-486) expanded coverage to include additional equipment such as commercial heating, air conditioning, and water heating equipment as well as distribution transformers, certain lamps, and electric motors. And finally, the Energy Policy Act of 2005 (Pub. L. 109—58; EPCA 2005) imposed new standards and expanded the Department's authority to regulate a range of new products.

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<sup>1</sup> Department of Energy, Report to Congress on Appliance Energy Efficiency Rulemakings, including Battery Chargers and External Power Supplies, January 31, 2006.

Congressional legislation has been instrumental and definitive in shaping the Department's efficiency standards program. In particular, EFACT 2005 provided additional stimulus to governmental efforts to accelerate and prioritize energy efficiency standards. We fully recognize that the process needs improvement. Over the last two years we have revamped our internal processes as well as sought to work with Congress and stakeholders to complete all pending rulemakings as expeditiously as possible.

### CURRENT STATUS AND PROCESS

As is well known, over the last three decades the Department has fallen behind in setting and updating required standards. The frustration felt by Congress and by many stakeholders is amply justified. I understand the skepticism as to whether the Department can remedy this long-standing problem. Past delays are the result of many factors over many years, and cannot be traced to a single administration or management team. I am not here to defend that history, but I do want to provide some context. This is a challenging area of significant complexity, but the scale of potential energy savings for our Nation demands that we address it with renewed commitment.

By law, energy conservation standards setting must incorporate both the cost and benefits to the consumer and nation, as well as the impact on manufacturers. The Department's technical and economic analyses must be thorough, accurate, and publicly vetted with stakeholders to support the very difficult decisions involved in setting standards levels that are safe, technologically feasible, economically justified, and result in significant conservation of energy, as required by law. As prescribed by EPCA, energy conservation standards are generally established by a three-phase public process: advance notice of proposed rulemaking (ANOPR), notice of proposed rulemaking (NOPR), and a final rule. DOE seeks extensive public comment during both the ANOPR and NOPR phases of the rulemaking process. The last step in the rulemaking process is the publication of a final rule in the *Federal Register*. The final rule promulgates standard levels based on all of the analyses and explains the basis for the selection of those standards. It is accompanied by a final Technical Support Document.

In addition to the cost-benefit analyses and factors that Congress directed the Department to consider in rulemakings and the public comment requirements, the Department must also conduct reviews for 13 other requirements, such as the Regulatory Flexibility Act and the National Environmental Policy Act of 1969. Many of these reviews require preparation of additional analyses and/or reviews by other entities such as the Office of Management and Budget, Small Business Administration, Department of Justice, and Federal Trade Commission. Then, after receipt of comment from these agencies, DOE may be required to prepare additional analyses or changes. Nearly one-third of the time to produce a conservation standard is devoted to accomplishing these required external reviews.

In 1996, seeking ways to improve the rulemaking process while fulfilling all legal requirements, the Department published “Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products” (the “Process Rule”). 61 FR 36974 (July 15, 1996). The Process Rule set guidelines for developing efficiency standards designed to provide for more productive interaction between the Department and interested parties, especially during the early stages of the rulemaking and analytical processes. These changes have led to more collaboration among stakeholders and the Department, and fewer conflicts, but in some cases they may have added to the time required to complete certain rulemakings. And, as we have all come to realize, such delays have real consequences in terms of lost energy savings and economic benefits.

#### RENEWED DEPARTMENT COMMITMENT TO STANDARDS PROGRAM

Since arriving at the Department of Energy last year, I have made efficiency standards a top priority, as has Secretary Bodman, who has overseen significant progress during his tenure. The Department is unequivocally committed to addressing the backlog of rulemakings and meeting all of its statutory requirements. On January 31, 2006, the Department submitted a report to Congress on its standards activities prepared in response to Section 141 of EPACT 2005. The report publicly laid out our action plan and schedule for rulemakings out to the year 2011. Since committing to this schedule for the standards program, the Department has met 100 percent of its

targets, a new trend we intend to maintain. We have completed eight rulemakings since EPACK 2005, including test procedure rulemakings and codification of prescribed standards, and have made significant progress on others that were underway prior to EPACK 2005. In 2006 alone, we began standards rulemakings for 12 additional products. These recent accomplishments represent a pace substantially more aggressive than at any prior time in our history.

Final rules for electric distribution transformers and residential furnaces and boilers are on schedule and expected to be issued by September 30<sup>th</sup> of this year. The Department has published a notice of proposed rulemaking for a single-product test procedure (residential central air conditioners and heat pumps) and a final rule for multiple test procedures. The final rule for the test procedures adopted included:

- ceiling fans;
- ceiling fan light kits;
- dehumidifiers;
- medium base compact fluorescent lamps;
- battery chargers;
- external power supplies;
- torchieres; unit heaters;
- automatic commercial ice makers;
- commercial prerinse spray valves;
- illuminated exit signs;
- traffic signal modules and pedestrian modules;
- refrigerated bottled or canned beverage vending machines;
- very large commercial package air-conditioning and heating equipment;
- commercial refrigerators, freezers, and refrigerator-freezers; ice-cream freezers;
- commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit and without doors; and
- commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit.

As indicated above, since publication of the initial report to Congress last year, the Department has initiated five standards rulemakings, affecting twelve products. These twelve products are residential water heaters, pool heaters, direct heating equipment, dishwashers, ranges and ovens, dehumidifiers, commercial clothes washers, incandescent reflector lamps, fluorescent lamps, incandescent general service lamps, beverage vending machines, and a complex set of commercial refrigeration products (counted as one product here). The Department has met all obligations as scheduled in last year's report to Congress, and will endeavor to meet all future deadlines as well.

Our Department's senior leadership has been vocal and demonstrated a strong commitment to improving the energy conservation standards program. In three successive years, the President has requested budget increases for this program; the fiscal year 2008 request seeks \$13.6 million. In addition, the flexibility provided by the FY 2007 continuing resolution allowed the Department to shift additional funding into accelerating efficiency standards. These increased resources, in combination with streamlining and accelerating our internal process, are making a difference, and have led to real efficiency gains.

An example of the process improvements we are making is the use of product bundling within a single rulemaking. Prior to issuing our report to Congress, each of our priority rulemakings dealt only with a single product at a time. Therefore, in redesigning our process we recognized the significant economies of scale associated with bundling multiple products into a single rulemaking, when appropriate. For example, for the home appliance rulemaking we brought together four product categories that for the most part are manufactured by the same companies. This bundling allows us to address the backlogged rulemaking for residential dishwashers and cooking products while at the same time meeting the new EPCACT 2005 deadline for commercial clothes washers and residential dehumidifiers. We are on schedule to publish an ANOPR on this rulemaking this summer, but I am pleased to say that, as a result of the collective efforts of industry and other stakeholder groups, a consensus agreement has been reached on dishwashers and dehumidifiers, as well as other home appliance products. It is possible that the bundled approach to rulemaking may have helped stimulate the development of the consensus stakeholder recommendations. The Department made technical resources available to the

negotiation parties at their request. It is our understanding that this analytical support provided a foundation on which a consensus could be developed. We also understand that the parties that developed the consensus proposal have submitted their proposal to Congress. We enthusiastically support the concept of consensus standards and look forward to the opportunity to review the specific recommendations in the proposal.

Regarding additional categories of appliances and equipment with significant unrealized potential for cost-effective energy efficiency gains, I would cite our current five-year plan included in our January 31, 2006, report to Congress. That plan, which addresses all rulemakings mandated by law, covers many products that could produce significant energy savings and some that have much less potential. For instance, distribution transformers, which handle all electricity going into homes, institutions, and businesses, have a much greater energy savings potential than pool heaters, which are more of a niche product. While the magnitude of the energy savings and emission reductions that will result from efficiency standards for these products is impossible to predict accurately, we are confident that the net benefits for consumers and the country will be large.

## STRATEGIES FOR SUCCESS

I would like to highlight some of the Department's strategies on how we plan to continue to expedite standards setting. In addition to bundling similar products, we have organized and manage staff and contractors into seven technology teams to focus on similar areas. Those areas are heating, transformers and motors, lighting, home appliances, space cooling, commercial refrigeration, and battery chargers and external power supplies.

The Department is also implementing a substantially improved document review and clearance process with an intra-agency Crosscutting Review Team that includes the Appliance Standards Program, the Office of General Counsel, and the Office of Policy and International Affairs. This team identifies and addresses critical legal and policy issues early in the rulemaking and analysis process and provides the technology teams with improved clarity and direction on such issues.

Finally, there are a number of legislative proposals to modify or supplement the current statutory requirements governing the standards program standards.

In February, Secretary Bodman sent legislation to Congress requesting authorization to streamline the standards process and bring more efficient products to market sooner. This fast-track legislative proposal would allow the Department to move directly to a Final Rule for certain products when a clear consensus for a standard exists among manufacturers, efficiency advocates, and other stakeholders. By using this process, we would be able to promulgate an energy efficiency standard directly when all relevant interests jointly have negotiated and submitted an agreed proposed standard that meets all statutory criteria. In some cases, directly proposing a final rule would shorten the time to a completed standard by nearly a third and shave months off the rulemaking process. To be clear, if the Department determines that a consensus does not exist, this proposal would not preclude rulemaking; it would simply require the Department to use the traditional three-stage process. The proposal is consistent with existing statutory directives and OMB guidance on use of consensus proposals.

Other pending legislative proposals would fix various problems with the existing statute, provide DOE with needed flexibility in some areas, establish statutory efficiency standards for several products, and mandate DOE to develop standards for other products. We are hopeful that constructive legislation in this area will be enacted before the end of this year.

Looking forward, the Department's current rulemaking schedule proposes issuing a final rule for commercial refrigerators in January 2009, in addition to the two final rules expected this fall for electric distribution transformers and residential furnaces and boilers. But an opportunity exists to accelerate rulemakings for many other products. We believe there are incentives already in place to encourage the achievement of new or improved standards through consensus recommendations. From the perspective of stakeholders, consensus proposals reduce uncertainties in the pace and content of rulemakings. These proposals often contain provisions of value to stakeholders which are not typically considered in a rulemaking but increase the benefits and mitigate the burdens of standards. In this regard, we are aware that there are ongoing stakeholder discussions to develop consensus standards proposals for several different

products. Our legislative proposal for expedited rulemaking would grant DOE the authority to respond quickly to these recommendations, accelerating the promulgation of the standards and of the corresponding energy savings.

Legislating appliance standards that have achieved the consensus of stakeholders is another, perhaps the most time-effective way, to implement new and revised efficiency standards. Should this avenue be considered for any product, we would appreciate the opportunity to work with Congress on technical and definitional details to avoid future complications and problems.

In addition to the fast track authority we seek for consensus proposals, there may be other opportunities to streamline the rulemaking process. This Committee has raised the issue of modifying the criteria or expediting the process for revised appliance standards. We agree that this is an important and complex topic, and would welcome the chance to work with the Committee on proposals for improving the process.

## CONCLUSION

I would like to conclude by emphasizing that the Department has been diligently implementing the productivity enhancements described in the Department's January 31, 2006 report to Congress. These enhancements are enabling the Department to meet its aggressive schedule of rulemakings, designed to clear the backlog of delayed actions that accumulated during prior years, and simultaneously fulfill all new requirements of EPCACT 2005. Our multi-year schedules are firm and achievable. The Department is demonstrating concrete progress, and we intend to keep the momentum going. We want an open and positive dialogue with Congress and stakeholders to ensure that the Department keeps its commitments. We must -- and we are -- moving forward.

Mr. Chairman, this concludes my prepared statement, and I would be happy to answer any questions the Committee members may have.