

**Testimony of Stephen R. Yurek
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**Before the
Subcommittee on Energy
Committee on Energy & Commerce
U.S. House of Representatives**

**Hearing on
"Wasted Energy: DOE's Inaction on Efficiency Standards
and Its Impact on Consumers and the Climate."
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Summary

The Issues:

The Department of Energy must do all it can to complete its scheduled efficiency standards rulemakings in a timely manner.

The Energy Policy and Conservation Act, or EPCA -- is almost 45 years old and does not reflect new technologies and economic realities. An endless cycle of efficiency rulemakings continues to have an adverse impact on our global competitiveness and the American jobs we create.

Consumers are being asked to pay more than they can afford for heating, cooling, and water heating equipment, which can lead to use of alternatives, some of which compromise consumer comfort and safety, while saving less energy or in some cases using more energy.

Our Proposed Solution:

Congress should:

- Ensure that new efficiency standards are justified by requiring regulators to analyze the current standard to determine its effectiveness with respect to costs and energy savings.
- Institute a more realistic standards revision schedule to allow time for manufacturers and the market to adjust to new standards and regulators to use a more inclusive rulemaking process.
- Convene all stakeholders for the purpose of creating a new regulatory framework for federal energy efficiency rulemakings, while not impacting those currently in place or in the pipeline.

Introduction

Chairman Rush, Ranking Member Upton, and Members of the Subcommittee, good morning and thank you for inviting me to testify on this important topic. My name is Stephen Yurek and I am the President and CEO of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI).

AHRI has 320 member companies that manufacture quality, safe, efficient, and innovative residential, commercial, and industrial air conditioning, space heating, water heating, and commercial refrigeration equipment and components for sale in North America and around the world. AHRI's member companies represent more than 90 percent of the HVACR and water heating equipment manufactured and sold in North America and employ over 100,000 people in manufacturing plants around the United States. That number increases to more than 1.3 million American jobs when you include those involved in distribution, installation, and maintenance of the equipment our members manufacture.

I want to make it clear that our industry has a long and proven record of leadership when it comes to innovation and energy efficiency. In fact, the products and equipment our members produce are 50 percent more efficient than they were just 20 years ago. But even as we innovate and develop the next generation of highly efficient equipment, we always have in mind the needs of our customers who are, after all, the people who buy and use our equipment to cool their data centers and hospitals, heat their schools and homes, and keep our food supply fresh and safe. It is the goal of every business to provide what the customer needs, and in our case, that means offering products in a wide range of price points with a wide range of features. In short, we recognize that not all of

our customers can afford the top-of-the-line, highest efficiency equipment – a fact that needs to be considered when government promulgates regulations that increase equipment costs for consumers. Those who cannot afford equipment at efficiency levels set at unreasonable levels often repair the lesser efficiency equipment they already have, negating energy savings that might have been realized at more reasonable minimum standards.

I am here today to discuss three main points:

One, we agree that it is imperative that the Department of Energy do all in its power to promulgate regulations in a timely manner while adhering to the requirements that any standard be technically feasible and economically justified.

Our industry is unequivocally opposed to avoidable delays in rulemakings, as we have always been. In fact, in 2006, we joined a lawsuit against the Department of Energy seeking to eliminate the backlog of rules in the pipeline at the time.

Two, we applaud DOE for recently issuing a proposed rule updating the Process Rule to make improvements in the regulatory process for appliance efficiency standards that is more transparent, economical, and predictable.

Three, we believe that the above two points make the case for bi-partisan Congressional action to reauthorize and reform the nearly 45-year-old Energy Policy and Conservation Act to bring it into the modern era.

Mr. Chairman, AHRI and its member companies that have regulated products are best served when an efficiency standard rulemaking is thorough, with solid economic and technical analyses and stakeholder input. This can best be done when the full regulatory schedule is available, rather than cut short because of the need to catch up to meet mandated statutory deadlines. The history of “feast or famine” rulemaking schedules by DOE negatively impacts consumers and manufacturers. For consumers, it increases the cost of products they rely on for their comfort, health, and safety. When products cost more than consumers can afford, they find alternatives, some of which compromise their comfort and safety, while saving less energy or none at all, and in some cases using even more energy. For manufacturers, it increases uncertainty and hampers planning for future research, development, test, and production of the next generation of air conditioning, heating, commercial refrigeration, and water heating equipment. Predictability and certainty make for economical and efficient manufacturing, which creates and sustains jobs and helps avoid unnecessary impacts on consumers.

So, we join the subcommittee in its call for the Department of Energy to do everything in its power to complete rulemakings in a timely manner. One thing we do not want is a rulemaking backlog such as occurred in the early 2000s that resulted in a flood of hastily created rules that might not have been created with proper stakeholder collaboration and solid technical input.

To that end, we are pleased that the Department just last week issued its proposed Process Rule by which it intends to administer the Congressionally-mandated energy efficiency standards program going forward. While we will submit comments with suggestions on ways that proposed rule

might be improved, we are pleased that DOE intends for the rule to be binding on the Department, rather than mere “guidance,” as claimed by DOE in the past. When all parties are aware of the process, rulemakings are more transparent, economical, and predictable.

We are particularly happy that this Department of Energy intends to do what no previous Department has done, namely put a value on what amount of energy saved, combined with the estimated costs of compliance, constitutes an “economically justified” rule. In the past, the justification was based on little more than a gut feeling or, in some cases, whether a rule was projected to save any energy at all.

In a particularly egregious example, DOE in 2016 proposed a new rule setting standards for commercial packaged boilers¹ that would save just eight tenths of a percent more energy than the existing standard, but would cost manufacturers between 13.1 and 23.8 *million dollars* to produce a new line of equipment. This is why we support defining economic justification.

Finally, we are pleased that the Department intends to henceforth issue test procedures prior to issuing rules, which means that manufacturers will have a way to measure whether their products meet the specified efficiency levels. It might seem like common sense to most people – and it is indeed common sense – but that does not mean that process has always been followed in the past. This provision alone would make this rule worth the effort to update it, in our view.

¹ Energy Conservation Program: Energy Conservation Standards for Commercial Packaged Boilers; Proposed Rule, 81 Fed. Reg. 15,836 (March 24, 2016).

In sum, Mr. Chairman and members of the Subcommittee, we believe that this moment in time is an excellent one to take a fresh look at the Energy Policy and Conservation Act, or EPCA, which is the law that governs all that we're discussing here today.

While EPCA was a bipartisan response to the energy crisis of the mid-1970s and has, by all accounts, worked well for its original intent, the fact remains that it is nearly 45 years old. A tremendous amount has changed since then. For example, in 1975, *after* a 10 percent increase, the price of OPEC oil skyrocketed to...\$13 a barrel! It also is the year that Jimmy Hoffa disappeared, but I assure you I am not here to open up that can of worms.

What I would like to do for the next few moments, is to summarize ways in which EPCA is no longer appropriate for today and to offer our commitment to work together in a bipartisan manner with all stakeholders and both sides of the aisle to make some consensus changes to this law so that it can work for all of us as we approach the half century mark.

A fair and accurate reading of the law will indicate that the current 6-year, endless cycle of rulemakings was never envisioned under the original Act. In fact, it was intended for each product class to undergo at the most two rulemakings and then base future rulemakings on a finding of the potential for "significant energy savings" rather than a mandatory six-year review cycle that was added in 2005.

Standards for central air conditioners are, for example, on their fourth iteration, with no end in sight. In contrast, residential gas furnaces have, for a number of reasons, not undergone a successful rulemaking since Ronald Reagan, who last week would have celebrated his 108th birthday, was President.

Despite that, however, shipments of the highest efficiency gas furnaces have steadily increased in the coldest states and regions, which is a strong indication that when higher efficiency makes financial sense for consumers, they choose it. On the other hand, we have found that when new products and equipment cost more than consumers can afford, they find alternatives, some of which compromise their comfort and safety, while saving less energy or none at all, and in some cases using even more energy.

We are not suggesting no additional rulemakings, nor would we ever suggest rolling back efficiency standards for any product category. We do, however, believe that the efficiency standards program has drifted out of step with technology and the marketplace and is in need of updating.

Accordingly, I would like to briefly outline several reforms we believe would make this law much more meaningful and successful in today's economy and technological state.

First, EPCA reform should stress flexibility and enhanced technical and economic justification. As rules are adopted, it is important that they be subjected to appropriate scrutiny, robust cost benefit analyses, and careful debate. Giving short shrift to such analysis in order to meet statutory

deadlines may result in poorly constructed rules that place an undue burden on small businesses with wide-ranging ramifications for our industry and the more than 1.3 million employees who depend on it.

Such a robust process of justification and analysis was envisioned by the Obama Administration's Executive Order 13563, which was designed to improve regulation and regulatory review across the federal government. The order compelled each federal agency to make a "reasoned determination" that a regulation's benefits justify its costs. It further required that regulations be tailored to "impose the *least burden* on society," while also taking into account "the cost of cumulative regulations." President Obama at the time also issued a memorandum concerning small businesses that directed agencies to comply with the Regulatory Flexibility Act, or RFA. The RFA directs agencies to examine the impact of regulations on small businesses and to consider more flexibility to minimize costs. While these declarations are an important starting point for assessing the true costs and benefits of EPCA-mandated efficiency standards, their application must be expanded if EPCA is to be appropriately tailored to the needs of a modern economy.

Specifically, these principles should be expanded as they apply to EPCA's requirement for mandatory, serial rulemakings. The Executive Order contemplates "flexible approaches" to regulatory activity and encourages the pursuit of "alternative regulatory approaches." Small businesses, in particular, feel the burden of expending resources --- including research and development, engineering, testing, supply chain and manufacturing work, and legal effort --- to come into compliance with ever- changing DOE-promulgated efficiency standards.

But rather than encouraging a process by which standards once set are given time to work (or not), before a standard is even in effect, DOE announces the commencement of its work on the next version of that standard, all to comply with the 6-year rulemaking cycle..

Manufacturers and the market are simply not given enough time to adjust to new regulatory requirements. Heating, cooling, water heating, and refrigeration equipment is designed to remain in service for more than a decade, so the market for new products must be viewed in the long-term, not in six-year increments.

Serial rulemaking must end, especially for products that have been through at least 2 full rulemakings. Furthermore, new, more onerous requirements need to be justified by more than trivial projected energy savings, and as much as we appreciate DOE proposing to finally define “significant energy savings,” we believe it should be defined as a minimum of 1 quadrillion BTUs, or quad of energy savings. Anything less is not worth the time and effort and funding it takes to promulgate the rulemaking and develop, manufacture, and ship the new mandated products.

Second, a reformed EPCA could require that new rulemakings be undertaken only after a “look back” to determine the effectiveness of the previous rule as it pertains to actual energy savings and associated costs. The “look back” could also determine the extent to which DOE utilized actual market data to reflect the implementation and impact of the prior rule. This examination process would result in well-constructed rules that have real-world, as opposed to theoretical, energy savings, while bringing to light and helping to reform poorly-constructed rules.

Why do we support look back rules? Because every time DOE issues a new rule, it issues a press release that extols its estimate of the rule's benefits in cost savings for consumers and energy savings for the nation. But at no time has DOE ever looked back to see what the energy savings actually were or if consumers actually ever recovered the additional money it cost them up-front for the more efficient equipment. That needs to change.

Third, the EPCA processes should be reformed to maximize transparency and stakeholder engagement. Transparency and accountability are not just abstract ideals, but are meaningful *processes* that help to facilitate sound regulations, policies, and decisions. Accordingly, a reformed EPCA could require that DOE increase utilization of negotiated rulemakings. Such a requirement would facilitate dialogue and engagement and would ultimately result in more sound regulations. Negotiated rulemakings are a more cost-effective, expeditious, and open process with which to develop rules. Experience dictates that this has the potential to address numerous concerns relating to transparency, accountability, and the responsiveness to stakeholders. Policies that appropriately balance competing political and policy preferences emerge when industry, consumers, other stakeholders, and government work to create standards driven by consensus.

Conclusion

Mr. Chairman and Members of the Subcommittee, many people believe that divided government such as we have today makes it less likely for progress to be achieved on important issues. AHRI does not see it that way. Rather, we see an opportunity for people of good will to meet in a spirit of cooperation and compromise to bring about necessary change. We do not pretend to have a

monopoly on good ideas and we do not believe that if we do not get everything we want, we will sit back and wait for a more opportune time. The opportune time is now.

In our view, divided government is the perfect incubator for consensus changes and progress on important issues. Displays of raw power based on numbers are impossible in such an atmosphere, leading instead, we hope, to a spirit of compromise and progress. AHRI and our members are committed to openness and cooperation with Congress, allied trade associations, efficiency advocates, and the Department of Energy on ways we can all work together to improve this nearly 45-year-old law. We invite all stakeholders to join us and work together to craft an updated regulatory scheme that meets the needs of the current and future market while achieving the nation's efficiency goals.

I appreciate the chance to appear today, and I am happy to answer any questions you might have.