From:	Bijit Kundu
To:	Anderson, Mary
Subject:	SENSITIVE: draft comments to DOE regulatory Review RFI
Date:	Tuesday, June 27, 2017 9:15:01 AM
Attachments:	DOE Regulatory RFI - draft 2.docx

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See attached ASAP's draft comments. Please treat as confidential.

From: Andrew deLaski [mailto:adelaski@standardsasap.org]
Sent: Tuesday, June 27, 2017 8:58 AM
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Cc: Marianne DiMascio <mdimascio@standardsasap.org>
Subject: draft comments to DOE regulatory Review RFI

Hi all: Here is a first draft of ASAP et al comments for the DOE "Regulatory Review" RFI. Thanks to Dan Bressette who contributed the opening paragraphs on energy efficiency policy goals (which I've edited some).

My understanding is that ASE and ACEEE are interested in co-signing these comments, and that a few others on this list are developing their own comments. Separate comments from a range of stakeholders will be very valuable in this docket. But if others would also like to potentially sign on to these comments please let me know.

This draft is a bit rougher than I'd like, but I wanted to get it into circulatiion before I leave on vacation today for a week. Please send me any comments by the end of the day on Wednesday July 5, so I can work on incorporating feedback in the next draft when I return from vacation. They are due on July 14.

Please also treat the document confidentially.

Thanks

Andrew

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Alliance to Save Energy
American Council for an Energy-Efficient Economy
Appliance Standards Awareness Project
(Add any other signatories)

July 14, 2017

Mr. Daniel Simmons
Acting Assistant Secretary for Energy Efficiency and Renewable Energy
U.S. Department of Energy
1000 Independence Ave.
Washington, DC 20585

Via email to Regulatory.Review@hq.doe.gov

Dear Mr. Simmons:

Thank you for the opportunity to provide comments and suggestions in response to the U.S. Department of Energy's (DOE's) "Reducing Regulation and Controlling Regulatory Costs" request for information.

For over 40 years, energy efficiency has been a core element of federal energy policy, which has also provided a critical foundation for additional policies developed and implemented by state and local governments. U.S. DOE and other agencies have executed the directives passed by Congress on a bipartisan basis to improve the energy efficiency of new and existing homes and commercial buildings; appliances, equipment, lighting, and other devices; and vehicle fleets.

The result of the prioritization of energy efficiency in federal policy is a more energy-productive economy. Between 1970 and 2016, U.S. gross domestic product nearly quadrupled (up from $4.7 trillion to $18.6 trillion in real dollars). Over that same time, U.S. energy consumption only increased by 43% (increasing from 67.8 quadrillion British thermal units (BTUs) (quads) to 97.4 quads). This tremendous economic growth occurred as we experienced significant economic and technological modernization across society. And not to be overlooked: American homeowners, consumers, and businesses saved over $800 billion in avoided energy costs in the process.

U.S. regulatory efforts have been essential for this success. In particular, the DOE's appliance standards program has delivered enormous benefits. The Appliance Standards Awareness Project (ASAP) and American Council for an Energy-Efficient Economy (ACEEE) estimate that over the period 1987 to 2035 existing standards will have saved consumers $2.4 trillion.[1] ADD MORE ABOUT LEVELS OF ENERGY SAVGINS – E.G. Electricity savings in 2015 equaled 13% of US consumption in that year.

Comment [Ad1]: We've framed up the comments as a defense of EE broadly, but, since it's a regulatory RFI we only have to get specific about regulatory programs. The comments address appliance standards, but should we also say something about DOE responsibilities related to building codes? Any other efficiency related programs need a mention (Manufactured housing rule?)

[1] deLaski and Mauer, *Energy-Saving States of America: ….* February 2017.

Your current undertaking—collecting insights and information from the public on U.S. DOE's regulatory programs and seeking suggestions for improvement—is a chance to take a fresh look at energy efficiency policies and programs through a modern lens. In these comments we suggest important goals which DOE's regulatory programs help to achieve, we review key features of regulatory structure of the US appliance standards and we offer recommendations for streamlining and improvement.

Goals for energy-efficiency policy

We encourage you to consider energy efficiency and specifically U.S. DOE's obligations and authorities to promulgate regulations as a means to achieve four important goals.

1. Improve the long-term **affordability** of homes and energy-consuming products.
   U.S. DOE's main regulatory activity that concerns energy efficiency involves the development and establishment of standards for a range of appliances, equipment, lighting, and other devices. These standards are informed by public review and comment over the course of an extensive stakeholder process that involves in-depth technical analyses. These standards have been positively proven to lower utility bills by billions of dollars each year, well in excess of any increases in incremental first costs. Once a new standard is set, market pressures cause manufacturers to direct significant engineering resources to developing products that comply at minimum cost. In general, they are successful at making new, energy efficient products at lower cost than DOE can predict. For consumers and businesses, savings accrue for as long as a given product is in use, and provide a "built-in" energy efficiency feature that controls costs even during times of relatively high energy prices.

2. Reduce strain and promote energy system **reliability**.
   As more energy-consuming products are brought into service in homes, office buildings, and factories, energy efficiency helps limit and control overall demand and usage at the premise level. The energy sector relies on energy efficiency to mitigate what would otherwise be a constant rush to build new generation and transmission resources to meet surging energy needs. Energy efficiency is therefore a useful planning tool to "even out" demand and consumption, which gives state regulators more options and provides relief to utility customers from high energy bills (even when prices are relatively low).

3. Increase **choice** in the marketplace.
   U.S. DOE's regulatory activities, policies, and programs have contributed to more choice for consumers and businesses than ever before. Much of this is done collaboratively, between government and industry, which has led to breakthroughs in technology and countless innovations. Partly due to lighting standards (passed by Congress and implemented by U.S. DOE), and partly due to public- and private-sector investments in research and development, the lighting industry is among the best case studies on energy efficiency. The U.S. led the light-emitting diode (LED) lighting revolution, and American consumers now have countless choices (and combinations of choices to fit their needs) of

bulbs, fixtures, controls, and "smart" features, all while costs have decreased by 94% since 2008. Other examples include DOE's work on advanced compressors, which helped provide the technological foundation for improved refrigerator standards and, more recently DOE work that has helped spur a new generation of super-efficient roof top air conditioners.

The finding that policies that remove the most inefficient choices from the market actually enhance customer choice is perhaps counter-intuitive but has been borne out in research. Researchers at the London School of Economics examined products subject to US regulations and concluded, "Contrary to common belief, we find an indication that prices declined while quality and consumer welfare increased, especially when more stringent energy efficiency standards were enforced."[2] Another recent study found that product quality and reliability improved over the period products were regulated.[3] ASAP and ACEEE examined ten regulated products before and after standards took effect and found that product performance generally stayed the same or improved and new features became available.[4] This research also found that prices declined or stayed the same. (ADD RFF.)

4. Make the U.S. more energy-secure through supply and grid **resiliency**.
The U.S. is one of the world's most dynamic and competitive energy markets, which contributes to exposure to risks that could upset our supplies, weaken our economy, and disrupt our society. President Trump has talked about US "energy dominance." Energy efficiency is an effective policy strategy to conserve domestic resources and lower wasted supplies that can be saved for later use in an uncertain future. As energy efficiency is increasingly deployed, distributed energy resources—including new storage technologies—can be more optimally scaled and more cost-effectively dispatched in times of scarcity and need.

Policies that advance these goals, including DOE's regulatory efforts, have additional collateral benefits such as job creation and environmental gains. Jobs impacts are raised in the RFI, so we address them here.

Jobs impacts

(General paragraph on EE jobs) Energy efficiency creates jobs in two ways: first through directly employing people making energy efficient devices and providing energy efficiency services and, second, by shifting spending to more job intensive sectors of the U.S. economy.[5]

[2] Brucal, A. and M. Roberts *Do energy efficiency standards hurt consumers? Evidence from household appliance sales.* London School of Economics and Political Science
[3] Taylor, P.ii.
[4] Mauer et al. *Better Appliances: An Analysis of Performance, Features and Price as Efficiency Has Improved.* ASAP and ACEEE, May 2013.
[5] Macroeconomic research demonstrates that shifting consumer spending from the energy sector to the rest of economy creates jobs. The energy sector is relatively capital intensive relative to the rest of the economy. When consumers and businesses save money on their utility bills, those saving get spent or invested elsewhere, creating economic activity and jobs.

Comment [Ad2]: In this draft, I have described job impacts as "collateral benefits". An alternative approach would be to include that as a fifth goal. What do reviewers think? (note that environmental benefits are included as a collateral bene too, but not developed. Should we say more about public health and environment benefits?

Comment [Ad3]: I'm hoping that Dan or another reviewer who has some familiarity with recent work opn EE jobs can write this general paragraph addressing EE jobs.

ACEEE and ASAP published a report in 2011 showing that savings from standards resulted in 340,000 more jobs in the US economy in 2010 than would have been the case absent any standards.[6] This number will grow as the savings from standards grows.

Of course, standards also affect manufacturers. Where manufacturers choose to make a given products is a complex decision dependent on relative costs of labor, proximity to markets and suppliers, international trade rules and other factors. The required efficiency of the product probably has very little to do on where a manufacturer chooses to make a product. We are aware that some manufacturers have claimed that efficiency standards cause them to move jobs to lower labor cost markets. We are not aware of substantial evidence to support this claim: if it is cost advantageous to make an energy-efficient product outside the US, it will be cost advantageous to make an inefficient product outside the US. Pressure on manufacturers to reduce costs by reducing labor costs by moving production or with automation exist with or without efficiency standards.

Public health and environmental impacts: saving energy reduces emissions from the power sector which are dangerous for human health and the environment. Of course, the federal government has other regulatory programs designed to reduce emissions. The emissions reductions from energy efficiency are essentially

Key Features of DOE's Appliance Standards Program

The US appliance standards program consists of four key features: standards; test methods, labeling and certification, compliance and enforcement (CCE). The Federal Trade Commission has responsibility for labeling of consumer products, but all other elements of US appliance standards are DOE's responsibility. Standards provide for a minimum level of energy or water efficiency or maximum level of usage; the test methods provide for a uniform approach to measurement and CCE ensure that product purchasers receive products that actually achieve the efficiency requirements.

Most of the products subject to the national standards program originally were covered by state regulation. Over the course of the past thirty years, manufacturers have consistently expressed support for national standards over state regulation. As a result, federal laws enacted by Congress in 1987, 1988, 1992, 2005 and 2007 each added new products to the national standards program. Congress enacted each law on a bipartisan basis generally with broad support from manufacturers, state government representatives and energy efficiency advocacy organizations.

Underlying the laws is a fundamental deal: Congress preempted the states, removing their authority to regulate products within scope of the federal program, but, in exchange, took over the responsibility for keeping standards and their underlying test methods up-to-date and ensuring compliance. Congress charged DOE with those responsibilities. The laws generally

[6] Gold, R. and S. Nadel. *Appliance and Equipment Standards Jobs: A Moneymaker and Job Creator in all 50 States.* ACEEE. May 2011.

established schedules for reviewing standards on a product-by-product basis until 2007, when Congress generalized the DOE obligations. The 2007 law required DOE to review each standard at least once every six years to determine if an update is warranted. Subject to statutory criteria, DOE can decide that no update is needed at that time or propose a new standard. If DOE proposes a new standard, a final revision is due after two more years. Thus, if the agency decides a revision is needed, the law allows for eight years between revised standards. For test methods, the law requires DOE to review standards every seven years to ensure that they are up-to-date. Therefore, the core of DOE's regulatory responsibility consists of carrying out the reviews of existing standards and test methods and ensuring compliance with current standards and test methods.

DOE has generally overestimated regulatory costs

A growing body of rigorous economic analysis demonstrates that DOE has historically overestimated the cost to comply with new regulations. Retrospective analysis of five DOE rulemakings found that, "rulemaking analyses significantly overestimated observed product prices."[7] The London School of Economics research cited above similarly found that prices declined after standards took effect, a finding in direct conflict with DOE predictions. [8] Earlier work by signatories to this letter reached the same finding: Analysis of historical data showed that the actual median price product increase across DOE rulemaking conducted between x and y was only 5% of what DOE predicted.[9] In other words, real world benefits are likely much larger than $2.4 trillion.

One of the executive orders DOE seeks to implement concerns regulatory budgets. In the past, DOE's pattern of overestimating costs has not been a barrier to adoption of new standards because the benefits to buyers of the product in the form of product lifetime energy and water bill savings have easily outweighed the (overestimated) costs. But, under the new policy, it appear that costs are to be considered on their own, independent of the benefits generated. Therefore, DOE overestimation of costs could be far more consequential, causing the administration to slow down or not pursue efficiency standards. That result would be contrary to the goals described above.

Comment [Ad4]: The logical next step is that DOE should work to improve their methods – but do we trust this DOE to do that work impartially?

Recommendations

We believe DOE generally has done a good job of carrying out these responsibilities in a way that minimizes regulatory burden, however, there are some areas that can be improved.

1. **DOE should maintain a robust and transparent process for reviewing appliance standards.**
   At time in the past, DOE has fallen behind statutory deadlines for reviews. DOE has missed some deadlines for both standards and test methods and a few more deadlines are

[7] M. Taylor, C.A. Spurlock and H.C. Yang. *Confronting Regulatory Cost and Quality Expectations: An Exploration of Technical Change in Minimum Efficiency Performance Standards.* Resources for the Future. October 2015.
[8] Brucal. (insert page #)
[9] Nadel, S. and A. deLaski. *Appliance Standards: Comparing Predicted and Observed Prices.* ACEEE and ASAP. July 2013.

approaching in the months ahead. DOE should seek adequate budget and staffing to carry out its legal obligations to catch up on overdue deadlines and meet future obligations. Updates to these standards, when warranted, have the potential to help achieve the goals described above.

2. **DOE should publish final test methods in advance of proposed updated to standards.**
   Manufacturers and other stakeholders cannot reliably evaluate the impacts of a proposed new standard on their business without knowing the test method. We understand that DOE often discovers needed updates or clarifications to test methods in the course of its analysis and investigation for potential new standards. However, DOE should endeavor to publish final any revision to test methods in advance of proposed new standards so that manufacturer have time to familiarize themselves with any changes and test their own products. This will enable manufacturers and others to better evaluate the impact of a potential revised standard on their business.

3. **DOE should publish certification templates well in advance of deadlines for data submittals**
   DOE has significantly streamlined and improved its certification requirements in recent years. DOE should make available templates and forms for new or revised certification requirements at least a few months in advance of legal deadlines so that manufacturers have time to understand their obligations, ask questions of the agency and conduct any needed testing.

4. **DOE should maintain a robust enforcement program**
   DOE's enforcement program has been effective in recent years at uncovering non-compliance. Although a range of companies have been found non-compliant, a disproportionate share have been overseas manufacturers. DOE's enforcement program is essential both for ensuring US consumers get the level of efficiency claimed, but also for protecting domestic manufacturers who play by the rules.

5. **DOE should coordinate certification requirements with the California Energy Commission to the extent possible.**
   In addition to DOE, state of California regulations also require manufacture certification of efficiency performance. DOE should coordinate with California's regulatory authorities to minimize burden on manufacturers. For example, consistent certification requirements and forms could reduce certification costs.

6. **DOE should renew and re-invigorate the negotiated rulemaking process**
   DOE has made very successful use of the formal negotiated rulemaking process, most recently affirming three negotiated rules in May of this year. This process, overseen by a Federal Advisory Committee, has very effectively identified and proposed regulatory outcomes specifically designed to reduce regulatory burden. The extensive interactions between DOE, the regulated industry and other interested parties has consistently uncovered solutions that might not have been found or might not have been legally available in the normal rulemaking process. For example, this process enabled a delayed

compliance date for new central air conditioner standards to better ensure coordination with EPA refrigerant rules, thereby enabling manufacturers to make the product changes required for both rules at the same time. The negotiated rulemaking process is time-consuming and expensive, and only works when parties are willing to work collaboratively and compromise to find solution which meet DOE's statutory criteria. In addition, some rulemakings are relatively straightforward. Therefore, negotiated rulemakings should be reserved for complex rules that offer the greatest potential public benefits and potentially large industry investments.

7. **Move labeling from FTC to DOE.**
DOE and FTC have worked to reduce duplicative reporting requirements. DOE should ensure that this work continues and that certification for all products is well-coordinated. In the long term, Congress may want to transfer responsibility for consumer product labeling from FTC to DOE so that energy labeling is housed in the same agency as other regulatory policies for improving efficiency.

Comment [Ad5]: Do reviewers agree with this recommendation? If so, does it make sense to include it?

Thank you for considering these comments. We look forward to continuing working with you to improve DOE regulatory efforts.

Sincerely,