

**Testimony of Stephen R. Yurek
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**Before the
Subcommittee on Energy and Power
U.S. House of Representatives**

**Hearing on
Home Appliance energy Efficiency Standards Under the
Department of Energy – Stakeholder Perspectives**

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Summary

The Issues:

The Energy Policy and Conservation Act, or EPCA -- is almost 40 years old and has not been updated to 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:

- Include the technical corrections to EPCA that are contained in H.R. 8.
- 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 Whitfield, Ranking Member Rush, 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 315 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 a 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 the back of our collective minds the needs of our customers who are, after all, the people who buy and use our equipment to cool their data centers and hospitals, and heat their schools and homes. 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, but when the government keeps promulgating regulations that increase the cost of our equipment, we end up in the situation in which we find ourselves today, where innovation loses to regulations, and customers find their only option is to repair older equipment than buy new higher efficiency products.

I am here today to discuss three main points:

One, the process Congress set forth for setting efficiency standards – that is, the Energy Policy and Conservation Act, or EPCA -- is almost 40 years old and has not been updated to reflect new technologies and economic realities. In addition, it has been misapplied by the Department of Energy on some occasions, and Congress has had to step in several times to fix DOE rulemaking errors, the most recent occurrence being just last year¹.

Two, in addition to the impact on our industry, consumers are paying a heavy price, both in real monetary costs and in comfort and safety, for this endless cycle of rulemakings resulting in higher and higher efficiency mandates. 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 or in some cases using more energy.

Finally, American jobs are being lost – many of them exported – because of the promulgation of ever more stringent efficiency regulations. Our industry has lost *one third* of its workforce in the

¹ S. 535, Energy Efficiency Improvement Act of 2015, Section 201, Grid-enabled water heaters

United States since 2001 – that is according to the Bureau of Labor Statistics². Of the 55,000 jobs lost since 2001, nearly 30,000 were lost between 2001 and 2005, before the recession. And the worst thing is, as I will illustrate in a moment, regulators admit that these regulations cost jobs.

Mr. Chairman, my members have been working for years to meet regulation after regulation. While the Clinton Administration's DOE issued just six major efficiency rules during his eight years in office, the Obama Administration's DOE issued eight major efficiency rules *in 2014 alone* – a record, according to the Office of Information and Regulatory Affairs (OIRA). And DOE's Unified Agenda³ indicates that between 2015 and the end of the administration, 11 additional major efficiency rules can be expected to be issued.

There are very real consequences from this rush to regulate. Yes, complying with these rules costs my member companies millions and millions of dollars, but what is far more important – and should be far more worrying to Congress – is that American jobs are being lost and consumers, who are already feeling severe wage squeezes, are being forced to pay more for products they rely on in their everyday lives, from comfort cooling and heating to refrigeration to hot water.

As passed by Congress and amended several times, EPCA requires that all efficiency standards meet the twin tests of economic justification and technological feasibility. That means that rules

² U.S. Department of Labor, Bureau of Labor Statistics, <http://data.bls.gov/pdq/surveyoutputervlet>

³ Office of Information and Regulatory Affairs, Office of Management and Budget, http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=1900&Image58.x=24&Image58.y=9

should not place an undue burden on either industry or consumers and that DOE may not set efficiency standards at such a level as to be infeasible for manufacturers to make the product. And yet, DOE has issued rules that use unrealistic assumptions in its analyses to justify higher efficiency levels than are economically justified for consumers. I will give you a few examples:

- Those same regulators proposed a new rule setting standards for commercial packaged boilers⁴ 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.
- In rules setting new standards for residential boilers⁵ and commercial refrigeration equipment⁶, regulators justified the economic impact of the higher efficiency levels by assuming that no matter how much a product increases in price, demand for that product would never decrease. In fact, we have seen in our own research that consumers will look for cheaper, less efficient alternatives to meet their heating and cooling needs to avoid paying a higher price.
- Because of a provision known as the “anti-back sliding provision,”⁷ DOE is prohibited from making any modifications to an effective rule if that modification could be construed as increasing energy use, even if there are mistakes in the rule. Several times

⁴ Energy Conservation Program: Energy Conservation Standards for Commercial Packaged Boilers; Proposed Rule, 81 Fed. Reg. 15,836 (March 24, 2016).

⁵ Energy Conservation Program: Energy Conservation Standards for Residential Boilers: Final Rule 81 Fed. Reg. 2,320 (January 15, 2016).

⁶ Energy Conservation Program: Energy Conservation Standards for Commercial Refrigeration Equipment; Final Rule 79 Fed. Reg. 17,726 (March 28, 2014).

⁷ 42 U.S.C 6295(o)(1)

Congress has enacted specific legislation to fix DOE's rules. This provision needs to be modified.

- Finally, in its commercial refrigeration rule⁸, DOE estimated that roughly half of end users (convenience stores, supermarkets, delis, bars, and restaurants) would actually lose money if the standard were implemented, and yet it went ahead anyway.

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. It is important to bear in mind that in nearly every case, the product or equipment at the new mandated efficiency level is already available for purchase. A consumer or business could at any time go ahead and buy that product on their own without any "help" from the government. So, these regulations are forcing consumers to spend more money to purchase equipment they do not value at that particular time based on theoretical models that project that energy will be saved and consumers will benefit. DOE has never looked back to see what the energy savings actually were or if consumers actually ever benefited from spending more money.

Cost is important to consumers – even more so now than in the past. In a 2015 national consumer survey⁹, one quarter of homeowners said that cost was the most important consideration when shopping for new HVAC and water heating equipment for their homes. That is more than double the percentage in a 2007 survey of a similar nature. Energy savings were the most important factor for only 10 percent of those surveyed, which was down from 17 percent in

⁸ Energy Conservation Program: Energy Conservation Standards for Commercial Refrigeration Equipment; Final Rule 79 Fed. Reg. 17,726 (March 28, 2014).

⁹ Finn Partners (for AHRI), National Consumer Survey, June 2015

2007. And one of the reasons cost is so important to consumers is that many of them have very little in the way of emergency savings. A Federal Reserve survey¹⁰ issued just two weeks ago found that 46 percent of consumers don't have readily available cash for a \$400 emergency. The vast majority of new equipment purchases in our industry are unplanned.

Another method DOE utilizes to economically justify higher efficiency levels is by employing unrealistically low discount rates to make it appear that estimated benefits for large swaths of consumers are higher than they are. As my fellow panelist, Sofie Miller, noted in her 2015 paper¹¹ examining the benefits of energy efficiency rules between 2007 and 2014, DOE tallies the benefits of its standards by treating consumers as a homogeneous group, when that does not reflect reality, as noted earlier in the consumer survey. Miller notes that when consumers do not place the same value on energy efficient products that DOE does, the mandates represent huge net costs because consumers are forced to accept something they do not value if they want to be comfortable and safe in their homes. Either they accept the huge net costs or they find alternatives, such as repairing their old, less efficient equipment, which saves no energy, or purchasing stop-gap alternatives such as window units or portable heaters. I would submit to you that consumers should not be placed in that position by their government.

Finally, I would like to discuss jobs, which I know is a subject near and dear to the heart of every member of Congress, because we are talking about your constituents. I mentioned earlier that my industry has lost a third of its workforce over the past 15 years. While not all of that was due

¹⁰ Federal Reserve System Report on the Economic Well-Being of U.S. Households, May 25, 2016
<http://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf>

¹¹ *Whose Benefits Are They, Anyway?* Sofie E. Miller, The George Washington University Regulatory Studies Center <https://regulatorystudies.columbian.gwu.edu/whose-benefits-are-they-anyway-examining-benefits-energy-efficiency-rules-2007-2014>

to regulations, and I am not making that claim, regulations clearly are a significant factor and will continue to be a factor. The Department of Energy projects future job losses in several of its rulemakings for our products:

- In its proposed rule for residential gas furnaces¹², DOE admits that small businesses would be adversely affected. One of those businesses represents 32 percent of the product listings in DOE's database, none of which meets the proposed standard. Another represents seven percent of the DOE database listings, and 91 percent of its products do not meet the proposed standard. Those businesses would have to invest significant resources to comply or face severe contraction or elimination.
- In its rule setting new standards for vertical air conditioning units¹³, DOE estimates that 65 percent of the products manufactured by the small business with the largest segment market share would not meet the new standard. It noted that the other small business manufacturer would “need to redesign its entire product offering or leave the...market.”
- In its proposed standard for residential furnaces¹⁴, issued in March 2015, DOE estimated that total conversion costs are 244% greater for small businesses than other manufacturers. Capital conversion costs are 506% greater, and product conversion costs are 98% greater for small businesses than for their larger competitors.

¹² Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Furnaces; Proposed Rule, 80 Fed. Reg. 13,119 (March 12, 2015).

¹³ Energy Conservation Program: Energy Conservation Standards for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps; Final Rule, 80 Fed. Reg. 57,438 (September 23, 2015).

¹⁴ Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Furnaces; Proposed Rule, 80 Fed. Reg. 13,119 (March 12, 2015).

- The Department of Energy in a recent rulemaking governing energy efficiency standards for commercial air conditioners¹⁵ stated “It is possible that the small manufacturers will choose to leave the industry or choose to be purchased by or merged with larger market players.”
- In the rulemaking for residential furnaces¹⁶, DOE noted that the regulation would cost small businesses an estimated 18 percent of their revenue, while large companies would only have to absorb an estimated 3 percent hit.
- In a proposed rule for commercial refrigeration equipment¹⁷, DOE acknowledged that in one potential scenario 3,672 jobs could be lost if “all existing production were moved outside of the United States.”

I cannot be alone in believing that the United States government should not be in the business of encouraging the outsourcing of American jobs thus costing its citizens their livelihoods.

I have outlined some of what my industry believes are very serious issues with the current process. Now, I want to ask that the Committee consider three broad modifications to EPCA that will enable my industry and all stakeholders to institute a process that will be fair, open,

¹⁵ Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Small, Large, and Very Large Air-Cooled Commercial Package Air Conditioning and Heating Equipment and Commercial Warm Air Furnaces; Final Rule, (81 Fed. Reg. 2,420 (January 15, 2016)).

¹⁶ Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Furnaces; Proposed Rule, 80 Fed. Reg. 13,119 (March 12, 2015).

¹⁷ Energy Conservation Program: Energy Conservation Standards for Commercial Refrigeration Equipment; Final Rule 79 Fed. Reg. 17,726 (March 28, 2014).

effective, and equitable among all stakeholders. EPCA is now almost 40 years old, and was based on a very different economy and very different technologies. It is time that Congress convened stakeholders and revised the law to better reflect today's technologies and economic realities. These changes should be implemented in phases, with the collaboration of all stakeholders.

- First, the technical corrections passed by the House in December as part of H.R. 8 are important, yet stop-gap, measures that will interject rationality and openness into the rulemaking process. Mandating common sense solutions will allow DOE to base proposed standards on better assumptions and analyses. They will also force the Department to consider the real-world cumulative impact of product efficiency standards among agencies, businesses, and consumers. Finally, and just as vital, the language in H.R. 8 will give stakeholders at least 6 months to evaluate the feasibility of a proposed minimum efficiency standard if a new test procedure is also proposed. I urge all members of the upcoming conference committee to ensure these technical corrections remain part of the final energy bill.
- Second, deeper EPCA reform should stress flexibility and enhanced technical and economic justifications. In short, a substantive modification to various EPCA provisions is necessary if we are to achieve its original purpose: to drive energy efficiency while ensuring there is a benefit to all stakeholders. We must adjust to current technology in today's economy rather than work within a system established almost 40 years ago.

- Finally, fundamental EPCA processes need to be overhauled to maximize transparency and stakeholder engagement. Institutionalizing deliberative procedures in the ordinary course of rulemaking is vital to ensure that rules are truly responsive to the needs of all stakeholders. No one committee testimonial or single federal agency has all the answers to create a new regulatory framework. However, at the behest of Congress, a gathering of stakeholders could meet to discuss and recommend a new regulatory framework that will create a more open process, still conserve energy, and help manufacturers remain competitive in the global marketplace.

EPCA Reform Should Stress Flexibility and Enhanced Technical and Economic Justification.

Pursuant to the President’s Climate Action Plan, the Department of Energy (DOE) has or will promulgate 23 product efficiency standards by 2018. As these 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 may result in poorly constructed rules that place an undue burden on small businesses with wide-ranging ramifications for our industry and the 1 million employees who depend on it.

Such a robust process of justification and analysis was envisioned by 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,” (emphasis added) while also taking into account “the cost of cumulative regulations.” The President 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 increasing DOE-promulgated efficiency standards.

Yet, before or shortly after an efficiency standard's effective date, DOE announces the commencement of its work on the next version of that standard, and expects manufacturers to respond to and recommend a new set of standards. The endless work on minimum standards negate our members' substantial resource expenditures and start a cycle of continuous attempts to come into compliance. 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 over 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” energy savings, and “significant energy savings” should be defined as a minimum of 1.0 quadrillion BTUs, or quad of energy savings.

A series of other process-based reforms also would add to the workability and flexibility of EPCA.

- First, the Committee could require a justification for new rulemakings. A “look back” provision could require that DOE’s analysis and modeling tools be scrutinized to determine the salience 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 could help to champion well-constructed rules that result in real-world, as opposed the theoretical, energy savings, while bringing to light and helping to reform poorly-constructed rules.

As contemplated by Executive Order 13563, the “cost of cumulative regulations” should also be meaningfully taken into account as part of the justification for new rules. Specifically, costs and resource constraints caused by DOE product standards affecting the same companies should be specifically accounted for in the cost-benefit analysis so as to minimize regulatory burdens, heighten the potential for innovation, and ensure that EPCA truly comports with economic and environmental realities. In furtherance of these

goals, parties could also be allowed to petition to challenge the technical feasibility or economic justification underlying the rule. This modified “anti-backsliding” provision would help to address conflicting regulations or unseen economic events or circumstances that impact compliance.

- In addition, the Committee could enact process-based reforms that minimize transaction costs and fine-tune the regulatory process. Specifically, DOE should be provided with the flexibility to correct technical errors in a rulemaking before the amended standard becomes effective.

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. Yet, as DOE promulgates rules according to an accelerated regulatory schedule, necessary constructive dialogue falls by the wayside. The end result has been numerous oversights, including errors in technical and economic assumptions. As a result, we sometimes find ourselves at loggerheads with DOE and must ask for Congressional intervention or even pursue legal relief. This combative approach becomes inevitable when DOE does not actively collaborate with all involved stakeholders throughout the rulemaking.

Policies that appropriately balance competing political and policy preferences emerge when industry and government works to create standards driven by consensus. Against this backdrop,

DOE's Process Improvement Rule¹⁸ was intended to create a fair and balanced process for developing economic and technical analyses and the rules that flow from them. The rule was adopted by DOE in 1996 to satisfy a Congressional standards appropriations moratorium adopted in response to nontransparent DOE regulatory actions. Yet, as industry and DOE views increasingly come into conflict, it becomes clear that the rule is not being followed by DOE so inclusion of all or portions of the Process Rule could be made specific statutory requirements.

Success would also be easier to achieve if stakeholders had more regulatory tools at their disposal. I ask that the Committee consider requiring that DOE increase utilization of negotiated rulemakings in new or amended rulemakings. Such a requirement would facilitate dialogue, engagement and ultimately 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.

This Administration has made tangible commitments to transparency. For example, a May 9, 2013 Executive Order aimed to make government information more readily available, explaining that:

“openness in government strengthens our democracy, promotes the delivery of efficient and effective services to the public, and contributes to economic growth. As one vital benefit of open government, making information resources easy to find, accessible, and

¹⁸ See 10 CFR 430, Subpart C, Appendix A.

usable can fuel entrepreneurship, innovation, and scientific discovery that improves Americans' lives and contributes significantly to job creation.”¹⁹

In spite of this proclamation, many DOE rulemakings are not fully transparent. DOE routinely does not provide full access to technical and economical analytical assumptions, methods, and models used to justify proposed efficiency levels. Making such information public would aid all involved parties in tailoring their approach to be collaborative, responsive, and in the interests of the economy and the environment. An ancillary benefit would be to clarify that DOE may not use methods or models that are protected by copyright or other legal agreement such that stakeholders are denied full access during the rulemaking process, as has been the case in the past. Rulemakings are conducted using taxpayer money and as such DOE should not be allowed to use methods or models not available for full review by the public and stakeholders.

Conclusion

Finally, Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee, as I stated earlier, the ideas presented in my testimony are not the only possible solutions to fixing, changing, or modernizing the regulatory process. They are, however, ideas that should be considered and discussed among all affected stakeholders. AHRI wants to be open and candid with Congress, allied trade associations, efficiency advocates, and the Department of Energy on ways we can all work together to fix and update this almost 40 year old law. We call on 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.

¹⁹ See: [https://www.whitehouse.gov/the-press-office/2013/05/09/executive-order-making-open-and-machine-readable-new-default-government-](https://www.whitehouse.gov/the-press-office/2013/05/09/executive-order-making-open-and-machine-readable-new-default-government)

I appreciate the chance to appear today, I look forward to answering any questions you might have and to working with you as we move forward on this important issue.