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January 26, 2021

The Honorable Joe Manchin
Chairman
Energy and Natural Resources Committee
U.S. Senate
Washington, D.C. 20510

The Honorable John Barrasso
Ranking Member
Energy and Natural Resources Committee
U.S. Senate
Washington, D.C. 20510

Dear Chairman Manchin and Ranking Member Barrasso:

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) looks forward to working with the Energy and Natural Resources Committee during the 117th Congress on initiatives impacting heating, refrigeration, air conditioning, and water heater manufacturers. In the last Congress, AHRI worked with a bipartisan group of Senators, including Ranking Member Barrasso, to create legislation for a national phase down of a class of refrigerants known as hydrofluorocarbons (HFCs) and allow for a market- and consumer-friendly transition to new and better performing refrigerants and related products and equipment. We welcome the nomination of former Michigan Governor Jennifer Granholm to be Secretary of Energy and look forward to working with Congress and the Department of Energy (DOE) to realize the industry's key priorities in the same bipartisan approach that allowed a federal framework to phase down HFCs to become law last year.

AHRI is the trade association representing manufacturers of heating, cooling, water heating, and commercial refrigeration equipment. More than 300 members strong, AHRI is an internationally recognized advocate for the industry and develops standards for, and certifies the performance of, many of the products manufactured by our members. In North America, the annual output of the heating, ventilation, air conditioning, refrigeration (HVACR), and water heating industry is worth more than \$44 billion. In the United States alone, the HVACR and water heating industry supports 1.3 million jobs and \$256 billion in economic activity annually.

AHRI members manufacture air conditioners, furnaces, water heaters, boilers, commercial refrigeration systems, automatic commercial ice makers, ventilation systems, and many other products that are vital to the health, safety, and comfort, and productivity of the American people. The energy efficiency of many HVACR and water heating products are regulated by DOE and AHRI has been a collaborative participant in this regulatory process since its inception

in 1975. AHRI members provide data, expertise, and insight to policymakers at the Department to advocate for cost effective, energy saving measures that offer net positive impacts for consumers. DOE's appliance efficiency program is a recognized success, but there are opportunities for improvement. The Energy Policy and Conservation Act (EPCA) is now more than 45 years old and does not reflect new technologies and economic realities. We believe the time has come for Congress to take a fresh look at EPCA.

This letter sets forth recommendations that could be taken by the Department of Energy, with oversight by Congress, to facilitate an open, transparent rulemaking process.

Procedural Transparency

A critical component of any successful regulatory regime is certainty for regulated stakeholders. Businesses need certainty about their legal obligations so that they can make plans, effectively dedicate resources, schedule and design new products, and innovate advanced technology. In 2020, DOE finalized a rulemaking that provides stakeholders with many of the solutions that we have requested in years past. This rule, called "the Process Rule," sets forth transparent procedures that DOE must follow when setting regulatory schedules, considering data, and making important decisions about whether a new regulation is cost effective.¹ Some important features of this procedural regulation include:

- *Final test procedures before proposed efficiency standards:* The Process Rule now requires DOE to determine and finalize a test procedure for a given product before it proposes new efficiency standards for that product. It is common sense that a manufacturer must reliably know how to measure product energy use before industry can evaluate whether the product meets or exceeds proposed performance requirements.
- *Definition of Significant Energy Savings:* The Energy Policy and Conservation Act requires that all efficiency regulations save a "significant" amount of energy, to ensure that the benefits are worth the burden. Manufacturers were skeptical about many regulations that did not appear to meet this requirement. The Process Rule defines "significant energy savings" as .3 quadrillion BTU/hour over 30 years. AHRI members agree that this is a reasonable threshold, but importantly, a known quantity gives stakeholders transparency into DOE's decision-making process and focuses DOE's limited resources on products with the greatest potential for energy savings.
- *Reliance on consensus-based test methods:* Every presidential administration since Ronald Reagan has affirmed OMB Circular A-119, which directs agencies to use consensus-based standards that are generated by expert stakeholders and are subject to the ANSI procedural approval process. AHRI firmly agrees that government should not be "reinventing the wheel" and forcing unnecessary re-testing of thousands of units of equipment by manipulating consensus-based industry test methods. Congress concurred with this perspective when it passed the National Technology Transfer and Advancement

¹ Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 85 Fed. Reg. 8626 (February 14, 2020).

Act (NTTAA), which acknowledged the advantage to U.S. domestic industry when federal agencies rely on ANSI consensus standards. Adding costs for U.S. manufacturers by changing established test methods creates a competitive disadvantage in export markets. The Process Rule reaffirms DOE's reliance on these consensus-based standards.

Each of the above points represented a challenge for industry that was addressed in DOE's 2020 Process Rule, and we encourage the Department of Energy to consider its benefits, particularly that fact that it provides regulated stakeholders with transparency and certainty.

The Process Rule Is Designed to Address Regulatory Backlogs

AHRI also acknowledges that the Department should urgently address the regulatory backlog and the dozens of rulemakings with expired statutory deadlines. First, the early action opportunities in the Process Rule allow for the Department to identify the most impactful rulemakings and prioritize resources to address those first. For example, in 2019, a working group of the Appliance Standards Regulatory Advisory Committee (ASRAC) reached consensus on a negotiated rulemaking for new Variable Refrigerant Flow (VRF) test procedures and standards. AHRI encourages DOE to prioritize promulgating amended standards for products like VRF equipment, but we also note that DOE can also meet its statutory obligations by using the procedures set forth in the Process Rule to issue notices of determination of no amended standards for products with no or limited opportunity for energy savings, such as Direct Heating Equipment and Automatic Commercial Icemakers. AHRI offers its expertise to help DOE prioritize its rulemakings and to help identify opportunities to save the most energy in a cost-effective manner.

Another method to advance the promulgation of consensus-based energy conservation standards is negotiated rulemaking. AHRI encourages DOE to engage with the Appliance Standards Regulatory Advisory Committee to initiate working groups of experienced stakeholders that can provide unique insight. Negotiated rules benefit from the balanced perspectives of environmental advocates, manufacturers, utilities, and contractors to inform the development of complex test procedures and energy conservation standards. AHRI has long supported the negotiated rulemaking process and urges DOE to employ this consensus-based approach to generate cost effective energy saving rules.

Certification and Enforcement Regulations

Another policy priority for AHRI is resolving unnecessary administrative burdens associated with regulatory reporting. AHRI supports a strong certification and enforcement program. Our members invest time and resources to develop compliant energy efficient products, and a robust regulatory enforcement regime ensures that other competitors are discouraged from taking unfair advantage by skirting the law. However, some aspects of the certification and enforcement regime are duplicative and unnecessarily burdensome.

DOE requires that manufacturers certify the compliance of each regulated product on the market through reports submitted through the Certification and Compliance Management System

(CCMS), some elements of which are unnecessarily time consuming and burdensome to manufacturers. For example, manufacturers are required to certify a product before it is distributed in commerce, and the product must be recertified if there are any changes made to it. But DOE also requires that an already certified product must be recertified on an annual basis. Annual reports of duplicative information are not valuable, because they simply require the mass re-filing of information already in the CCMS database. The cost of burdensome, repetitive administrative filings is unjustified and should be eliminated. Also, DOE has significantly expanded its reporting requirements by asking manufacturers to submit data that is not necessary to show compliance with federal minimum energy conservation standards. For example, in 2016, DOE expanded reporting requirements for central air conditioners from 22 unique data points to 97. A regulatory reporting spreadsheet with 97 individual fields is burdensome and overbroad. AHRI asks that DOE take care to be more selective in determining which information must be collected to demonstrate compliance.

A simple fix that will dramatically reduce superfluous burden is the timely release of reporting templates. Manufacturers are legally obligated to make reports to DOE on the spreadsheet templates created by the Department, yet DOE is consistently late in releasing these templates. DOE should notify manufacturers at least six months, and preferably one year, before the need for additional information is required or before any changes are made to the reporting templates. In recent years, it has been common for DOE to release needed reporting templates a day or two before the data is due.

For decades, AHRI has hosted the Directory of Certified Product Performance, which publishes performance data for millions of products manufactured by our members. When DOE developed the CCMS in 2009, AHRI wrote a computer program as a service to our members to transmit to the CCMS the millions of pieces of performance data on AHRI's Directory. AHRI is the single largest reporter of certified data to the CCMS; we and other similarly situated stakeholders use software and program code to facilitate the transfer of performance data to DOE. However, this code takes time to write and can only be written or adjusted once the DOE reporting templates are final and published. DOE frequently releases these templates only one or two weeks before they are required, and from time to time, they are released "effective immediately." AHRI has raised our concerns about late templates many times, but the problem continues. During the Biden Administration we hope to finally resolve this chronic issue by ensuring that the policymakers are educated about the CCMS and are amenable to creating a reliable strategy for timely release of reporting templates.

Furnace Regulation

Finally, AHRI is interested in seeing the finalization of a unified metric for gas furnaces, which are currently regulated by three separate metrics that are overly prescriptive and updated on different time schedules. AHRI has petitioned the Department to promulgate a single efficiency metric for furnaces that will significantly reduce the excess regulatory burden. We believe that a single product should not be regulated by multiple tests and differing requirements when a simple, single solution is achievable.

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. We look forward to working together with Congress and the Department of Energy to meet the needs of the current and future marketplace while achieving the nation's efficiency goals.

If you have any questions regarding this submission, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen R. Yurek". The signature is fluid and cursive, with the first name "Stephen" being the most prominent part.

Stephen R. Yurek
President & CEO