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June 2, 2025

Mr. Lucas Adin
U.S. Department of Energy
Office of Energy Efficiency and Renewable Energy
Building Technologies Office, EE-5B
1000 Independence Avenue SW
Washington, DC 20585-0121

Re: Request for Information: *Energy Conservation Program: Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment*, EERE-2025-BT-STD-0001, RIN 1904-AF72, 90 Fed. Reg. 16093 (April 17, 2025)

Dear Mr. Adin:

The American Gas Association ("AGA"), American Public Gas Association ("APGA"), and National Propane Gas Association ("NPGA") (collectively, "Joint Commenters") respectfully submit these comments in response to the above-referenced proceeding regarding the request for information ("RFI") to identify potential modifications to the Department of Energy's ("Department" or "DOE") procedures, interpretations, and policies for considering new or revised standards and test procedures for consumer products and certain commercial and industrial equipment ("Process Rule").[1] Joint Commenters appreciate the opportunity to provide the Department with feedback on this proceeding.

[1] *Energy Conservation Program: Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment*, EERE-2025-BT-STD-0001, RIN 1904-AF72, 90 Fed. Reg. 16093 (April 17, 2025).

I. Identity and Interest

AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 79 million residential, commercial, and industrial natural gas customers in the U.S., of which 94 percent — more than 74 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies, and industry associates. Today, natural gas meets more than one-third of the United States' energy needs.[2]

APGA is the trade association for more than 730 communities across the U.S. that own and operate their retail natural gas distribution entities. They include not-for-profit gas distribution systems owned by municipalities and other local government entities, all locally accountable to the citizens they serve. Public gas systems focus on safely providing reliable, and affordable energy to their customers and support their communities by delivering fuel to be used for cooking, clothes drying, and space and water heating, as well as for various commercial and industrial applications.[3]

NPGA is the national trade association of the propane industry with a membership of about 2,400 companies, and 36 state and regional associations that represent members in all 50 states. Membership in NPGA includes retail marketers of propane gas who deliver the fuel to the end user, propane producers, transporters and wholesalers, and manufacturers and distributors of equipment, containers, and appliances. Propane gas fuels millions of installations nationwide for home and commercial heating and cooking, in agriculture, industrial processing, and as a clean air

[2] For more information, please visit www.aga.org.
[3] For more information, please visit www.apga.org.

alternative engine fuel for both over-the-road vehicles and industrial lift trucks. Roughly 75% of NPGA's members have fewer than 100 employees and are considered small businesses.

Joint Commenters' members serve residential and commercial consumers, the majority of whom use natural gas appliances, such as furnaces, boilers, water heaters, *etc*.[4] Therefore, Joint Commenters have a direct and vital interest in both the minimum efficiency standards for these products and the procedures used by the Department to adopt these standards.

II. Joint Commenters Support Energy Efficiency & Conservation Efforts

A. Joint Commenters and their Members Actively Invest in and Promote Energy Efficiency

Joint Commenters support energy efficiency and conservation efforts, including the efficient use of natural gas and propane in homes and businesses. For example, over the past two decades, millions of additional homes and businesses have connected to the U.S. natural gas delivery system. Even as the number of consumers has grown, natural gas use in the residential, commercial, and industrial natural gas sectors has been virtually unchanged, and on a per-customer basis, residential natural gas use has declined by more than 50% since 1970. This steady improvement in residential natural gas use per customer is a direct result of energy efficiency improvements, including tighter building envelopes, more efficient appliances and equipment, behavioral changes in energy consumption, and the effectiveness of natural gas utility efficiency programs. Furthermore, this continual improvement in energy efficiency has helped lead to a decline in overall carbon dioxide emissions as consumers use natural gas more efficiently and substitute away from more carbon-intensive energy sources.

[4] Joint Commenters represent various elements of the natural gas and propane industries. These comments address DOE processes related to the setting overall energy efficiency requirements for fuel gas appliances.

Industry efficiency efforts predate the creation of the Department. For decades, the energy industry has played a positive and active role in supporting efficiency requirements for natural gas appliances. For example:

- Decades before the Department was formed and its predecessor, the Federal Energy Administration, came into being in the 1970s, AGA and its members supported and promoted minimum efficiency requirements for most natural gas appliances through voluntary standards developed through the consensus process accredited by the American National Standards Institute ("ANSI").

- The ANSI-accredited standards committees that developed and maintained the voluntary standards for gas appliances comprised a broad cross-section of representatives from various private and public identities, including consumers, manufacturers, utilities, installers, governmental, testing laboratories, *etc*. AGA was the Secretariat of the ANSI-accredited standards that oversaw the standards development process and complied with the stringent standards development procedures required by ANSI, including provisions that required an open and transparent standards development process.

- Most ANSI-accredited safety and performance standards for natural gas appliances historically included a minimum efficiency requirement that the appliances had to meet to comply. For example, the minimum efficiency requirement for natural gas furnaces was a 75 percent thermal minimum efficiency-based level (referred to as a flue loss) based on an energy output over energy input measurement. In addition, there was a requirement for consumer furnaces, that heat loss transmitted from the unit's cabinet, referred to as a "jacket loss," not exceed 5 percent.

- Detailed test methods for measuring and confirming these efficiency requirements were included in the ANSI-accredited standards. In the case of natural gas furnaces, products could not be listed as being designed certified to meet these efficiency requirements until the furnaces were tested by an independent third-party testing agency verifying compliance by actual tests.

- Gas appliances that met the ANSI-accredited standards requirements were permitted to include a seal of design certification approval and a listing in the third-party certification testing laboratories directory identifying that the model has met the ANSI-accredited standards provisions. The third-party testing laboratories, including at that time the AGA Laboratory, included an annual follow-up testing program that randomly tested models from manufacturers' inventories or in the market to verify compliance with the applicable ANSI standard.

- Many states, local jurisdictions, military specifications, *etc.*, required that gas appliances bought or installed be in compliance with the ANSI-accredited standards with verification by label or listing from an independent third-party testing agency.

- With the passage of EPCA[5] at the federal level, the efficiency requirements were phased out of the ANSI-accredited standards for natural gas appliances because of the legislation. The federal regulations preempted the efficiency requirements in the ANSI-accredited standards. However, the support for energy efficiency by the natural gas industry did not end there. Efficiency test methods developed by the National Bureau of Standards ("NBS") now known as the National Institute of Standards and Technology ("NIST") took the test methods from the ANSI-accredited standards for natural gas appliances and incorporated and expanded the efficiency measurement to an annual efficiency measurement that is still incorporated in most DOE federal test methods in place today.

It is also important to note that the efficiency requirements and certification programs outlined above were all voluntary. The costs to conduct the programs were borne by the natural gas industry and appliance manufacturers and absorbed by the industries involved. No federal funds were used in support of the programs. History demonstrates that Joint Commenters and the natural gas industry support appliance efficiency requirements.

B. Natural Gas Utilities Across the Country Have Energy Efficiency Programs

In 2022, natural gas utilities in North America spent $1.51 billion on energy efficiency programs which was a 37% increase from 2021.[6] Most efficiency programs are well-established, with 93% operational for more than a decade and 27% for at least 20 years.[7] The acceleration of energy efficiency deployment in the residential, multi-family, commercial, and industrial sectors, and programs targeted at low-income consumers, reflects the commitment of the natural gas utility industry toward improvements in energy efficiency, consumer energy affordability, access to reliable energy, and greenhouse gas emissions reductions. In 2022, natural gas efficiency programs saved 336 million therms of energy, roughly 1.7 million metric tons of avoided CO2 emissions

[5] Energy Policy and Conservation Act, 94 P.L. 163, 89 Stat. 871 (December 22, 1975).
[6] AGA, "Natural Gas Efficiency Programs Report 2021 & 2022 Program Year," October 2024, https://www.aga.org/research-policy/resource-library/natural-gas-utility-efficiency-programs/ (last visited June 1, 2025).
[7] *Id*. at p. 10.

and 424,000 cars removed from the road for one year.[8] During 2021, enrollments in natural gas efficiency programs reached more than 8.2 million residential customers, more than 300,000 low-income customers, about 24,000 multifamily customers and more than 13,000 commercial and industrial customers.[9] For 2022, natural gas efficiency programs saw increased enrollments with more than 9.4 million residential customers, more than 400,000 low-income customers, more than 26,000 multi-family customers and more than 124,000 commercial and industrial customers.[10]

The 83 North American gas utility ratepayer-funded energy efficiency programs offered span every region in the U.S., providing guidance and funding around weatherization, technical assessments, training, and existing and new building programs for equipment replacement and upgrades, *e.g.*, appliances, doors, windows, and thermostats, building retrofits, commercial foodservice, process equipment, energy management systems, and custom process improvements.[11] The industry is educating and doing outreach as one of its most adopted programs across each sector. The industry will continue to leverage these established gas energy efficiency programs to accelerate its contribution to the economy-wide efficiency efforts and goals.

Natural gas and its direct use in homes and businesses has been a cornerstone of America's energy economy for more than a century and will be needed in the future. Today, hundreds of millions of Americans rely on natural gas to heat their homes, power their businesses, and manufacture goods.

All this is to say that the natural gas industry is ready, willing, and able to support cost-effective, consumer-friendly measures to increase efficiency standards. Joint Commenters and their members have no aversion to the energy conservation standards program or economically

[8] *Id.* at p. 18.
[9] *Id.* at p. 11.
[10] *Id.* at p. 11.
[11] *Id.* at p. 9.

justified and technically feasible measures to improve appliance efficiency rates. Unfortunately, as described below, energy efficiency standards have been utilized to phase out efficient natural gas appliances, negatively affecting millions of Americans and businesses. Therefore, DOE's Process Rule should be revised to ensure protection of consumer choice, promote market competition and innovation, maintain fuel neutrality, and reduce regulatory burdens. Additionally, the Process Rule, currently a guidance document, should be binding on the Department to ensure consistency, accountability, and transparency in DOE's rulemaking process.

III. Background

The Department's Process Rule was developed to guide implementation of the Appliance Standards Program, which is conducted pursuant to the Energy Policy and Conservation Act ("EPCA") for consumer products, and for certain industrial equipment.[12] Under EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) testing; (2) certification and enforcement procedures; (3) establishment of Federal energy conservation standards; and (4) labeling.[13] Subject to certain criteria and conditions, the Department is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating costs of each covered product and covered equipment.[14] Manufacturers of covered products and covered equipment must use the prescribed DOE test procedure as the basis for certifying to DOE that products and equipment comply with the applicable energy conservation standards and when making representations to the public regarding the energy use or efficiency of products.[15] DOE must use these test procedures to determine whether the products comply with

[12] *See* Energy Policy and Conservation Act of 1975, Public Law 94–163 (42 U.S.C. §§ 6291–6309, as codified), for consumer products, and for certain industrial equipment (42 U.S.C. §§ 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a).
[13] RFI at 16094.
[14] *See* 42 U.S.C. §§ 6293 and 6314.
[15] *See* 42 U.S.C. §§ 6293(c), 6295(s) 6314(a), and 6316(a).

energy conservation standards adopted pursuant to EPCA.[16] Moreover, any new or amended energy conservation standards must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified,[17] and new or amended standards must result in a significant conservation of energy.[18]

Following the Department's efforts in the mid-1990's to improve its process,[19] the Department published a final rule in July of 1996 and codified it into its regulations.[20] In December 2017, the Department issued an RFI seeking comments on potential improvements to the Process Rule to reduce burdens while still meeting statutory obligations.[21] On January 9, 2018, AGA and APGA filed joint comments in response to the RFI.[22] On February 13, 2019, the Department issued a Notice of Proposed Rulemaking ("NOPR") seeking comment on the proposed revisions.[23] Both AGA and APGA filed separate detailed comments on May 6, 2019[24] and May 8, 2019, [25] respectively, in response to the NOPR. Subsequently, a final rule was published on February 14,

[16] RFI at 16094.
[17] 42 U.S.C. §§6295(o)(2)(A) and 6316(a).
[18] 42 U.S.C. §§ 6295(o)(3)(B), 6313(a)(6), and 6316(a).
[19] *Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products*,' 61 Fed. Reg. 36974 (July 15, 1996).
[20] 10 CFR Part 430, subpart C, Appendix A (2019).
[21] *Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products*, 82 Fed. Reg. 59992 (Dec. 18, 2017).
[22] *See* APGA-AGA Joint Comments and Statement of American Gas Association DOE Public Hearing: Process Rule RFI, dated January 9, 2018, available at https://www.regulations.gov/comment/EERE-2017-BT-STD-0062-0013 (last visited June 1, 2025).
[23] *Energy Conservation Program for Appliance Standards: Proposed Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment*, 84 Fed. Reg. 3910 (February 13, 2019) ("NOPR"). *See also, Energy Conservation Program for Appliance Standards: Proposed Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment*, 84 Fed. Reg. 1257 (April 2, 2019) (extending the end of the comment period for the NOPR from April 15, 2019 to May 6, 2019).
[24] *See* AGA Comments in response to the NOPR, dated May 6, 2019, available at https://www.regulations.gov/comment/EERE-2017-BT-STD-0062-0114 (last visited June 1, 2025).
[25] *See* APGA Comments in response to the NOPR, dated May 8, 2019, available at https://www.regulations.gov/comment/EERE-2017-BT-STD-0062-0114 (last visited June 1, 2025).

2020 that updated the Process Rule.[26] The Department also published a companion final rule on August 19, 2020, to clarify how it would conduct a comparative analysis across all trial standard levels when determining whether a particular trial standard level was economically justified.[27]

Following the change in administration in 2021, the Department again sought to revise the Process Rule. On April 12, 2021, the Department issued another notice of proposed rulemaking proposing revisions to the Process Rule.[28] On July 7, 2021, the Department published another notice ("July Notice")[29] proposing further revisions. On September 13, 2021, AGA, APGA, Spire Inc., and Spire Missouri, Inc. jointly filed comments in response to the July Notice.[30] Subsequently, on December 13, 2021, DOE published a final rule and[31] on April 8, 2024 another final rule was published, further revising the Process Rule.[32] Some of these later amendments reversed or modified changes made in the February and August 2020 final rules, such as reverting the Process Rule back to the non-binding status of the 1996 final rule and removing the significant energy savings threshold. On April 17, 2025, the Department published an RFI seeking public comment on potential enhancements to the Process Rule to best achieve the federal government's

[26] *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 (Feb. 14, 2020) ("Final Rule").
[27] *Energy Conservation Program for Appliance Standards: Procedures for Evaluating Statutory Factors for Use in New or Revised Energy Conservation Standards*, 85 Fed. Reg. 50937 (August 19, 2020) ("Final Rule").
[28] *Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment*, 86 Fed. Reg. 18901 (April 12, 2021).
[29] *Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment*, 86 Fed. Reg. 35668 (July 7, 2021).
[30] *See* AGA, APGA, and Spire Inc., Joint Comments (Sept 13, 2021) available at https://www.regulations.gov/comment/EERE-2021-BT-STD-0003-0057 (last visited June 1, 2025).
[31] *Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment*, 86 Fed. Reg. 70892 (Dec. 13, 2021) *("*Final Rule*").*
[32] *Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment*, 89 Fed. Reg. 24340 (April 8, 2024) ("Final Rule").

objectives in Executive Order No. 14154, "Unleashing American Energy,"[33] while still meeting statutory obligations.[34]

IV. Comments

A. Joint Commenters Support DOE's Request for Information

Joint Commenters commend the Department's efforts to revise the current Process Rule. Joint Commenters support an administrative process that is transparent and aids the Department in pursuing reasonable, fact-based efficiency standards and a process that evolves to reflect today's economy and consumer preferences. Joint Commenters believe that the issues discussed in these comments are consistent with the administration's priorities to safeguard consumer's freedom to choose from a variety of goods and appliances, promote market competition and innovation, and reduce regulatory burdens. The comments herein provide an overview of the matters that should be included in or addressed in an updated Process Rule.

B. The Process Rule Should be Binding on the Department

In the February 2020 Final Rule, DOE had amended the Process Rule to specifically make its provisions binding on DOE, reasoning that this would increase public confidence in the fairness and predictability of the rulemaking process.[35] This was later changed in 2021.[36] Any updated Process Rule should revert to the bedrock principle in the February 2020 final rule making its provisions binding on the Department.

Joint Commenters support making the Process Rule mandatory on the agency. It is important for the Department to be held accountable to its own procedures; moreover, it will

[33] Exec. Order No. 14154, 3 C.F.R. § 8353 (2025).
[34] *See Id.*
[35] RFI at 16100.
[36] *See Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment*, 86 Fed. Reg. 70892 (Dec. 13, 2021).

promote a rulemaking environment that is both predictable and consistent. Furthermore, it is an important tenet of administrative law that a federal agency adheres to its own policies, rules and regulations.[37] Ad hoc departures are not proper, for such activities disrupt orderly processes and harm predictability which are the hallmarks of lawful administrative action.[38] To ensure accountability, the Department's "Process Rule" must be a binding regulation, not merely guidance that DOE can freely ignore or depart from. Therefore, consistent with our past position, Joint Commenters maintain that any rule that relates to DOE's process for establishing energy efficiency standards and test procedures, *inter alia*, should be binding and enforceable on the Department.

C. The Process Rule Should Protect Consumer Choice and Fuel Neutrality

EPCA protects consumer choice by ensuring energy conservation standards are not likely to result in the unavailability of any covered product type (or class) of performance characteristics currently available to consumers. Despite this, in the past DOE used the appliance efficiency standards process to eliminate consumer access to efficient natural gas appliances. For example, Joint Commenters would like to draw your attention to several DOE proceedings, programs, and funding opportunities that threatened consumer choice:

[37] *See* AGA Comments in response to the NOPR, dated May 6, 2019, available at https://www.regulations.gov/comment/EERE-2017-BT-STD-0062-0114 (last visited June 1, 2025).

[38] *See, e.g.*, *Reuters Ltd. v. FCC*, 781 F.2d 946, 950-51 (D.C. Cir. 1986) ("[I]t is elementary that an agency must adhere to its own rules and regulations. *Ad hoc* departures from those rules, even to achieve laudable aims, cannot be sanctioned . . . for therein lie the seeds of destruction of the orderliness and predictability which are the hallmarks of lawful administrative action. Simply stated, rules are rules, and fidelity to the rules which have been properly promulgated, consistent with applicable statutory requirements, is required of those to whom Congress has entrusted the regulatory missions of modern life."); *Brock v. Cathedral Bluffs Shale Oil Co.*, 796 F.2d 533, 536 (D.C. Cir. 1986) ("It is axiomatic that an agency must adhere to its own regulations."); *Mine Reclamation Corp. v. FERC*, 30 F.3d 1519, 1524 (D.C. Cir. 1994) (on its way to decision an agency must follow its own regulations).

- **Consumer Furnaces** – A final rule illegally eliminating efficient fuel gas-fired non-condensing furnaces from the market.[39] This matter is currently under court review. [40]

- **Commercial Water Heating Equipment** – A final rule illegally eliminating efficient fuel gas-fired non-condensing commercial water heaters from the market.[41] This matter is currently under court review.[42]

- **Interpretive Rule on Furnaces and Water Heaters** – A final interpretive rule issued by DOE detailing, *inter alia*, the rationale for the agency's ability to eliminate fuel gas-fired natural gas products from the market.[43] This matter is currently under court review.[44]

- **Consumer Water Heaters** – A final rule was issued in December 2024 that illegally eliminated certain efficient fuel gas-fired instantaneous water heaters from the market.[45] This rule was ultimately rescinded via a Congressional Review Act resolution,[46] and, as such, was recently withdrawn by the Department.[47]

- **Cooking Products** – A direct final rule was issued in August 2024 that would remove a limited number of gas and propane cooktops from the market but would only result in *de minimis* energy savings.[48] DOE has recently issued a proposed rule to revise the aforementioned issuance.[49]

- **Consumer Boilers** – DOE issued a notice of proposed rulemaking in 2023 that would have eliminated efficient fuel gas-fired boilers from the market.[50] A withdrawal of this proposal was published on January 17, 2025.[51] Nevertheless,

[39] *Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces*, 88 Fed. Reg. 87502 (Dec. 18, 2023).
[40] *AGA v. DOE*, D.C. Cir. Nos. 22-1030, 23-1285, and 23-1337.
[41] *Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment*, 88 Fed. Reg. 69686 (Oct. 6, 2023).
[42] *AGA v. DOE*, D.C. Cir. Nos. 22-1030, 23-1285, and 23-1337.
[43] *Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters*, 86 Fed. Reg. 73947 (Dec. 29, 2021).
[44] *AGA v. DOE*, D.C. Cir. Nos. 22-1030, 23-1285, and 23-1337.
[45] *Energy Conservation Program: Energy Conservation Standards for Consumer Gas-fired Instantaneous Water Heaters*, 89 Fed. Reg. 105188 (Dec. 26, 2024).
[46] *See* H.J. Res. 20, 119th Cong., 1st Sess. (2025) (signed by President May 9, 2025).
[47] *Energy Conservation Program: Energy Conservation Standards for Consumer Gas-Fired Instantaneous Water Heaters*, 90 Fed. Reg. 21390 (May 20, 2024).
[48] *Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products*, 89 Fed. Reg. 65520 (Aug. 12, 2024).
[49] *Energy Conservation Program: Energy Conservation Standards for Conventional Cooking*, EERE-2025-BT-STD-0011, RIN 1904-AF81, 90 Fed. Reg. 20881 (May 16, 2025).
[50] *Energy Conservation Program: Energy Conservation Standards for Consumer Boilers*, EERE-2019-BT-STD-0036, RIN 1904-AE82, 88 Fed. Reg. 55128 (August 14, 2023).
[51] *Energy Conservation Program: Energy Conservation Standards for Consumer Boilers*, EERE–2019–BT–STD–0036, RIN 1904–AE82, 90 Fed. Reg. 5746 (Jan. 17, 2025).

the proposal to remove boilers from the market in violation of EPCA was concerning.

- **Miscellaneous Gas Products** – In 2022, DOE issued a determination that would have inappropriately expanded DOE's control over various fuel gas-fired products, such as, vented gas log sets, indoor vented decorative hearth products, outdoor decorative hearth products, and outdoor patio heaters, in violation of EPCA.[52] In May 2025, DOE rightfully withdrew its prior determination.[53]

- **Commercial Packaged Boilers** – The court vacated DOE's illegal rule related to commercial packaged boilers and the matter is now pending at DOE.[54]

- **Consumer Pool Heaters** – DOE issued a final rule that eliminates certain fuel gas-fired pool heaters from the market.[55]

- **National Definition of a Zero Emissions Building** – This guidance issuance would prohibit onsite combustion of fuels in future building construction.[56] The definition, intended to provide industry guidance to support new buildings moving toward zero emissions, rules out the use of natural gas or propane with carbon capture and other low or zero-carbon fuels, including renewable natural gas, hydrogen, and other biofuels in any building codes that adopt DOE's definition of zero-emissions.

- **National Blueprint for Building Decarbonization** – The emissions reduction pathways do not contemplate the role the direct use of natural gas and other fuels can play in decarbonization, focusing only on electrifying space and water heating.

- **Technical Assistance for the Adoption of Building Energy Codes** – Funds awarded to promote the adoption of new building energy codes are based on a methodology that unfairly biases against the direct use of natural gas.[57]

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[52] *See Energy Conservation Program: Final Determination of Miscellaneous Gas Products as a Covered Consumer Product*, EERE–2021–BT–DET–0034, RIN 1904–AF30, 87 Fed. Reg. 54330 (Sept. 6, 2022).
[53] *Energy Conservation Program: Final Withdrawal of Determination of Miscellaneous Gas Products as a Covered Consumer Product*, EERE–2025–BT–DET–0002, RIN 1904–AF70 (May 7, 2025).
[54] *See APGA v. DOE*, 72 F.4th 1324 (D.C. Cir. 2023).
[55] *Energy Conservation Program: Energy Conservation Standards for Consumer Pool Heaters*, 88 Fed. Reg. 34624 (May 30, 2023).
[56] *See* National Definition for a Zero Emissions Building, available at *https://www.energy.gov/sites/default/files/2024-06/bto-national-definition-060524.pdf* (last visited June 1, 2025).
[57] *See* Inflation Reduction Act of 2022 (IRA): Assistance for the Adoption of the Latest and Zero Building Energy Codes Funding Opportunity Announcement (FOA) - Equivalency Methodology Supporting Funding Eligibility for Section 50131 of the IRA, available at https://infrastructure-exchange.energy.gov/FileContent.aspx?FileID=0dcab580-0055-478d-aad2-d639f551a195 (last visited June 1, 2025).

Joint Commenters acknowledge and applaud DOE for its recent actions in reviewing some of the matters mentioned above. Unfortunately, the past proceedings demonstrate that rather than maintaining a fuel neutral approach that respects consumer choice, DOE has disfavored natural gas and propane appliances, a move that harms consumer choice and violates the plain meaning of EPCA. In the past, the Department appears to have overlooked the vital role natural gas and propane play in promoting affordable, reliable, and resilient energy services while advancing national goals. Previously, DOE has utilized various methods to shift the purpose of the energy efficiency rulemaking process away from the plain meaning of EPCA and the statute's overall intent in a way that harms consumers. DOE should create policies, including through the Process Rule, that respect consumer choice and are fuel neutral.

Joint Commenters have raised various issues related to consumer choice in prior comments, such as, with regard to DOE's furnace rule, which is one of the most harmful rules issued by the Department.[58] On December 18, 2023, DOE published a final rule that will, beginning in winter 2028, eliminate from the market a common type of natural gas or propane furnace that is currently in millions of homes and accounts for a large percentage of the furnaces that consumers choose to purchase. The final rule would cause homeowners to shift from efficient non-condensing natural gas and propane furnaces to electric heat sources. This clearly demonstrates how DOE's rulemaking process is not fuel neutral and incentivizes fuel switching. The final rule renders illegal a type of furnace that equates to approximately 40-60% of the furnaces shipped to consumers annually. Joint Commenters believe that DOE acted in violation of EPCA and, along with others, challenged the rule and two other related issuances in federal court. The court case is currently pending, and a decision is forthcoming.

[58] *Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces*, 88 Fed. Reg. 87502 (Dec. 18, 2023).

A similar issue occurred concerning instantaneous natural gas and propane water heaters when, on December 26, 2024, the Department issued a rule that eliminated efficient non-condensing natural gas instantaneous water heaters from the market.[59] This rule was later rescinded via a bipartisan Congressional Review Act resolution.[60]

Joint Commenters filed comments on the Department's furnace and water heater proposals, as well as others, during the rulemaking phase, addressing several issues, including consumer choice, and specifically provided DOE solutions to maintain appliances in the market that have different types of features or performance characteristics to safeguard consumer choice. In the end, the Department chose a different path. Therefore, in order to ensure consumer choice and fuel neutrality, DOE should include and reinforce such matters in a revised Process Rule. To that end, below are a few issues that DOE could address in the Process Rule to support consumer choice and fuel neutrality.

1. Separate Product Classes

The Process Rule should include, consistent with EPCA, mechanisms to establish separate product classes. For example, in the furnace rule proceeding and others, DOE should have established separate product classes for condensing and non-condensing natural gas and propane products.[61] For several years, the Department has failed to recognize that it must treat condensing and non-condensing appliances as separate product classes for the purpose of setting energy

[59] *Energy Conservation Program: Energy Conservation Standards for Consumer Gas-fired Instantaneous Water Heaters*, 89 Fed. Reg. 105188 (Dec. 26, 2024).
[60] Such an action by Congress highlights the need for process changes at the Department.
[61] The issue of separate product classes spans various proceedings, such as those related to furnaces, consumer and commercial water heaters, and boilers. While these comments provide examples from the furnace proceeding on various matters, for instance, the same issues arise in multiple dockets. *See, e.g.*, Comments of AGA, APGA, NPGA, Spire Inc., Spire Missouri Inc., and Spire Alabama Inc., filed in *Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters*, EERE-2017-BT-STD-0019, RIN 1904-AD91, on September 26, 2023, available at https://www.regulations.gov/comment/EERE-2017-BT-STD-0019-1181 (last visited June 1, 2025) which discussed separate product classes for instantaneous water heaters, consumer cost and economic matters, and random assignment, along with other topics.

conservation standards. As mentioned above, EPCA protects consumer choice by ensuring energy conservation standards are not likely to result in the unavailability of any covered product type (or class) of performance characteristics currently available to consumers.

2. Recognition of Unique Performance-Related Characteristics and Consumer Utility

Certain appliances provide unique performance characteristics and utility to consumers and the Process Rule should recognize this reality.[62] For example, many conventional natural gas and propane heating products, such as furnaces, water heaters, and boilers, in American homes and businesses are designed for use with atmospheric venting systems. Atmospheric venting systems allow the exhaust gases produced in combustion, which are under negative pressure, to exit a building through a vertical or nearly vertical chimney or conduit using the heat and buoyancy of the gases to carry them outside. Atmospheric venting has been used in the United States for generations and remains the primary exhaust gas venting system in millions of homes, apartments, and businesses. Replacing conventional natural gas and propane furnaces that do not use condensing technology with those that do would require the renovation of millions of homes and would often be infeasible.

Condensing products are a viable option for many consumers, but they are also incompatible with millions of homes and workplaces. Millions of homes, townhomes, apartment buildings, offices, and other commercial buildings were built with utility closets, chimneys, and conduits designed for this technology. Non-condensing furnaces have the unique ability to share a common atmospheric vent with other non-condensing products, like non-condensing water

[62] Additionally, performance related characteristics or features are explicitly called out in EPCA particularly under 42 U.S.C. § 6295(q) which relates to special rules for certain types or classes of products. It is important for DOE to be consistent when addressing performance related features and consumer utility when establishing product classes. This issue should be addressed in the revised Process Rule.

heaters. Many of these structures also lack existing plumbing systems to dispose of the condensate. As a result, installing condensing products can be problematic, requiring major modifications to these buildings. The bottom line is that non-condensing atmospherically-vented consumer furnaces provide an important performance-related feature to millions of homes and businesses: they work with the homeowner or business's existing utility structure venting system. Thus, important performance-related features, such as those mentioned above, should be recognized in the Process Rule.

3. Fuel Switching

As noted above, DOE's approach, including the Process Rule, should be fuel neutral. Joint Commenters believe that DOE has in the past unlawfully promoted fuel switching. Congress designed the energy conservation standards to be fuel neutral and not favor one energy source over another.[63] By considering fuel switching as a benefit in some contexts and ignoring it in others, DOE has improperly favored a single energy source, contrary to its authority and against consumers' interests. The Process Rule should include mechanisms that ensure fuel neutrality and prohibit DOE from incentivizing fuel switching.

4. Low-Income and Senior Households

DOE's rules should not harm any customers, in particular, they should not increase costs for low-income and senior households. The Process Rule should include requirements related to DOE's analysis of a rule's impact on all customers, but particularly the cost implications on low-income and senior households. Joint Commenters calculate that DOE's furnace rule, for example,

[63] This issue is also addressed in 42 U.S.C. § 6295(q), which specifically notes establishing separate product classes for appliances that consume different kinds of energy. The practical effect of this provision, read in concert with the unavailability prohibition, is that EPCA does not allow DOE to issue rules or regulations that remove natural gas appliances from the market or regulated such products out of existence.

would have increased costs on 41% of low-income households affected by the rule and 33% of senior households affected by the rule. Such high negative impacts on those affected by the rule should have warranted a change in course. Therefore, the Process Rule should include some criteria for fully evaluating and recognizing the cost impacts on all customers, including low-income and senior households, before any final rule is allowed to take effect.

The aforementioned are just a few examples of ways DOE could include mechanisms in the Process Rule that support consumer choice and fuel neutrality. Joint Commenters look forward to working with DOE to address matters related to consumer choice and fuel neutrality as it updates the Process Rule.

D. The Process Rule Should Include Transparent and Robust Analytical Methods for DOE to Follow as it Evaluates New or Revised Standards

The Department should use updated qualitative and quantitative analytical methods that fully document for the public that its decisions are sound. Moreover, any results should be fully explained and capable of being reproduced by stakeholders. In prior comments, Joint Commenters have raised various matters about DOE's processes and policies (both pro and con). Below are several topics that DOE should consider including in an updated Process Rule that would improve DOE's analytical process and aid in ensuring sound outcomes.

1. Full Fuel Cycle

DOE's policies and the Process Rule should fully implement the recommendations of the National Academies of Sciences, Engineering, and Medicine regarding the use of full fuel cycle measures into the establishment of energy conservation standards.[64] Full fuel cycle metrics would enable a more comprehensive analysis of the total energy usage and environmental impacts of

[64] *Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Statement of Policy for Adopting Full-Fuel-Cycle Analyses Into Energy Conservation Standards Program*, 76 Fed. Reg. 51281 (August 18, 2011).

appliance energy efficiency standards. Full-fuel cycle analysis and metrics provide a more comprehensive and accurate approach. This method examines all impacts associated with energy use, including those from extraction/production, conversion/generation, transmission, distribution, and ultimate energy consumption. Site energy analysis only takes into consideration the ultimate consumption stage. Significant energy is consumed, with resulting emissions, during all stages of energy use.

This view is supported by the National Academies report to the Department, "Review of Site (Point-of-Use) and Full-Fuel Cycle Measurement Approaches to DOE/EERE Building Appliance Energy Efficiency Standards."[65] The report found that DOE should consider changing its measurement of appliance energy efficiency to one based on the full fuel cycle. This more accurate measurement would give consumers more complete information on energy use and environmental impacts. Therefore, DOE should adopt the National Academie's recommendation to use full fuel cycle.

2. Proper Accounting of Source Energy Values is Essential to Determining Regulatory Costs and Benefits

An essential component of the cost-benefit analysis is a proper accounting of the relative efficiencies of various energy sources. Energy efficiency must be viewed through the lens of a full fuel cycle analyses to ensure that regulators and consumers are accurately informed about the real consequences of the direct use of natural gas versus other sources of energy. The Department and other agencies should not send inaccurate signals to the public or the marketplace.

[65] National Academies of Sciences, Engineering, and Medicine, "Review of Site (Point-of-Use) and Full-Fuel-Cycle Measurement Approaches to DOE/EERE Building Appliance Energy-Efficiency Standards," 2009, available at https://nap.nationalacademies.org/catalog/12670/review-of-site-point-of-use-and-full-fuel-cycle-measurement-approaches-to-doeeere-building-appliance-energy-efficiency-standards (last visited June 1, 2025).

In measuring the impact of energy efficiency measures on total energy savings, the Department commonly converts site energy into source energy (primary energy), using a site-to-source ratio, which accounts for the useful energy lost in converting, transmitting, and distributing. This approach results in a more equitable "apples-to-apples" comparison of energy use than viewing only site energy. Specifically, DOE uses a multiplicative factor called "site-to-source conversion factor" to convert site energy consumption, at the home or building, into primary or source energy consumption, the energy input at the energy generation station required to convert and deliver the energy required at the site of consumption.[66] These site-to-source conversion factors account for the energy used at power plants to generate electricity and for the losses in transmission and distribution, among other things.[67] Because of this effort, DOE should be commended for recognizing the benefits of utilizing source energy. However, there are various methods that can be used to determine energy values, *e.g.*, thermodynamic, fossil fuel equivalency, marginal, captured energy, and "free" renewable energy, and each can produce very different outcomes. For example, the marginal approach values energy efficiency based on the marginal impact of end-use energy on the electric generation mix. Marginal efficiency is likely to be the most useful approach for design and investment decisions, including determining the value of direct use of gas for new and existing buildings.[68] By contrast, the captured-energy approach treats certain renewable resources as 100% efficient. This is useful because renewable generation is generally not considered marginal, which means end-use efficiency measures are more likely to displace fossil-fuel generation than renewables. On the other hand, captured energy and other

[66] *Energy Conservation Program: Energy Conservation Standards for Automatic Commercial Ice Makers*, 80 Fed. Reg. 4646, 4705 (2015).
[67] *Id*.
[68] American Gas Association, *Furnace Standard Analysis Discussion Document*, (Feb. 19, 2015).

average energy approaches may make sense for determining carbon footprint or greenhouse gas inventory or for benchmarking purposes.

It is important to link the method used to the purpose for which the analysis is undertaken so that there is not a mismatch and, therefore, skewed and unreliable outcomes. In other words, a one-size-fits-all approach to measuring source energy does not work. Therefore, Joint Commenters recommend that the Process Rule state that the Department will utilize source energy as it contemplates critical energy policy decisions and that it will seek comment on the best method to use when evaluating energy efficiency measures.

3. Economic Justification

DOE and the Process Rule should pay greater attention to the justification for the standards, as mandated by EPCA's requirement that standards be economically justified. DOE should be required in the Process Rule to find significant failures of private markets or irrational behavior by consumers in the no-standards case and should consider such a finding as being necessary to conclude that standards are economically justified. Furthermore, in the past, DOE has relied on cost savings associated with fuel switching to justify standards for gas appliances. The use of any savings in operating costs resulting from the elimination of a covered product and the substitution for a different energy source and appliance should not be used to justify the standard for that product. The Process Rule should prevent the efficiency standards process from relying on fuel switching "savings" to justify standardization, especially if it leads to eliminating a certain type of product entirely.

4. Cost Analysis

In the Process Rule, DOE should expand the cost analysis segment of the engineering analysis to include ranges of costs, patterns of consumption, diversity factors, energy peak demand, and variance regarding environmental factors.

5. Market-Based Evidence

DOE should put greater weight on ex post and market-based evidence of markups to project a more realistic range of the likely effects of a standard on prices, including the possibility of price decreases. This approach would improve the accuracy of future analyses.

6. Market Failure

The Process Rule should ensure that DOE places greater emphasis on providing an argument for the plausibility and magnitude of any market failure related to the energy efficiency gap in its analyses. For some commercial goods in particular, there should be a presumption that the market actors behave rationally unless DOE can provide evidence or argument to the contrary.

7. Supply Side

DOE should also be required to give greater attention to a broader set of potential market failures on the supply side, including not just how standards might reduce the number of competing firms, but also how they might impact price discrimination, technological diffusion, and collusion.

8. Energy Prices

The Process Rule should require DOE to update its approach to energy prices in the rulemaking process. DOE routinely uses energy price projections that overestimate the cost of natural gas.

9. Random Assignment

DOE should revise its utilization of random assignment in rulemakings. The manner in which DOE uses random assignment in its analysis is technically flawed and it results in a meaningful impact on DOE results. The Department's use of random assignment, which assumes that consumers purchasing decisions are never influenced by the economic consequences of potential investments regardless of the economic stakes, significantly overstates the potential for standards to produce good economic outcomes, significantly understates the potential to impose bad economic outcomes, and thus systematically skews the results of the economic analyses DOE relies upon to justify new standards. Therefore, DOE's current random assignment methodology is unreasonable and should be revised.

10. DOE Should Update its Analytical Methodologies

In prior comments Joint Commenters provided[69] several enhancements that focused on analytical methods used for accounting for consumer cost and benefits from minimum efficiency standards, analytical errors in rulemakings covering gas and propane-fired appliances and equipment, and recommendations for corrective actions. Specifically, Joint Commenters and others highlighted four general issues that should be considered in this proceeding:

- DOE's use of Monte Carlo modeling methods fails to consider correlated variables and, consequently, produces infeasible modeling outcomes. The recommendation is that before any modeling is performed, the Monte Carlo variables and their functional relationships should be reviewed with stakeholders in a workshop format to address correlation issues, and DOE staff should demonstrate knowledge and credentials in using the Monte Carlo modeling platform to avoid infeasible modeling alternatives produced by variable correlations.

- Because stakeholders historically only see Monte Carlo modeling designs after results are presented, the approaches used are unnecessarily opaque and in conflict with DOE guidance for "robust and transparent" modeling methods. The recommendation is that a workshop approach be used for reviewing model design, selection of distributional

[69] *See* AGA, APGA, and Spire Inc., Joint Comments (Sept 13, 2021) available at https://www.regulations.gov/comment/EERE-2021-BT-STD-0003-0057 (last visited June 1, 2025).

variable characteristics and use of data, presentation of model design using standard tools such as precedence graphics, and presentation of intermediate calculation results to help improve model validity, all of which are basic elements of good modeling practices.

- In designing models for gas and propane-fired appliances and equipment, DOE has historically used overly simplistic characterizations of the markets and installation configurations for the "covered products," thereby introducing biases in the results that do not represent overall potential market impacts and unintended consequences. The recommendation is that development of the affected markets and installation environments should be undertaken before any calculations are performed, again using a workshop format to engage stakeholders.

- DOE mixes efforts to represent current market distributions for covered products (for which it admits are not based purely upon rational consumer behavior) in its "base cases" with rational consumer decision making in choosing among higher minimum efficiency proposals. This causes inconsistency and distorted benefit calculations for consumers since forcing modeling of uneconomic "decisions" for an individual consumer in the base case and then presenting economically justified alternatives among the proposed standards levels invariably produces positive economic outcomes for all higher levels of efficiency. The recommendation is that DOE abandon efforts to represent actual markets in its base cases and use rational economic decision making across its Monte Carlo models in simulating consumer decision making. Along with other stakeholders, Joint Commenters understand that it is not within DOE's role of assessing "technical justification and economic feasibility" to attempt to reproduce markets or predict future markets. Current non-economic consumer behavior and "market failures" can be addressed by DOE through other efforts and policy options.[70]

E. The Process Rule Should Increase the Minimum Opportunities for Public Comment

In view of the complexity of the issues involved, the minimum statutorily specified opportunities for public input in standards rulemaking are generally inadequate to permit robust stakeholder input. Similarly, the specified minimum comment periods for such rulemaking proceedings are manifestly insufficient to permit adequate review of notices and background documents that routinely run into hundreds of pages. DOE's practice of specifying the shortest permissible deadlines for comment and considering extension requests "as necessary" needlessly imposes the burden of submitting requests for extension and the difficulties imposed by uncertainty

[70] *Id.*

as to what the comment period will ultimately be. To facilitate public comment, it would be better to have longer comment periods specified as the norm and such longer timelines should be in the Process Rule.

DOE should recognize that early opportunities for public comment and robust stakeholder input have the potential to narrow or clarify the relevant issues in ways that reduce the overall time and level of effort required to complete a rulemaking proceeding. A formal "early assessment" process is a means to increase the efficiency of DOE's rulemaking process, and it could lead to prompt early decision making to promote more productive use of rulemaking resources. Similarly, better opportunities for stakeholder input does not necessarily lengthen the overall rulemaking process.

F. Joint Commenters Support Early Stakeholder Participation and Throughout the Rulemaking Process

Joint Commenters support early stakeholder input via the notice and comment process. This is consistent with the general notice and comment provisions of the Administrative Procedure Act ("APA"),[71] and it is imperative that notice to the stakeholders sufficiently apprise interested parties of issues pending before DOE, thereby affording interested persons reasonable and meaningful opportunity to participate in the process.[72] The notice process and the opportunity to comment serve to educate the agency and provide fair treatment to persons and entities affected by a proposed rule. Early engagement with stakeholders can assist the Department's efforts and may also reduce the time it takes to finalize any new or revised standards. In addition to allowing DOE to meet its statutory obligations, the process could also be an effective screen for the Department to use so that it can effectively focus efforts on standards that would provide the most

[71] *See* 5 U.S.C. § 553(b)(B).
[72] *See e.g., Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983).

energy savings and are of most interest to stakeholders. Further, the proposed early stakeholder process would provide ample opportunity for parties to provide input and data on whether any new or amended standard is economically justified, technologically feasible, or would result in significant savings of energy.

Joint Commenters support overall efforts to ensure early stakeholder input. This could encompass a Process Rule that includes avenues for stakeholder participation such as Advanced Notice of Proposed Rulemakings, Notice of Proposed Rulemakings, Supplemental Notice of Proposed Rulemakings, Notices of Data Availability, and Requests for Information. Joint Commenters encourage the Department to explain in any such issuance why it determined that a particular type of publication and process was appropriate. For example, the Department should explain why it believed a Notice of Data Availability was more appropriate in a particular situation compared to an Advanced or Supplemental Notice of Proposed Rulemaking. DOE's explanation of the factors that it considers when making the determination will increase transparency and permit stakeholders to better understand why a particular process was utilized over another. If the Department does not provide an explanation of why a particular method was determined to be appropriate, DOE's methodology may cause confusion and undermine the transparency of the rulemaking process.

Joint Commenters generally support a process whereby the Department evaluates the cost-effectiveness of a standard versus its possible level of enhanced efficiency. Any process of evaluation must include a balancing of the potential energy saving with the cost of implementation. Furthermore, DOE should not commence a new efficiency standard proceeding until the existing standards have been reviewed. Routine retrospective reviews of prior standards is an effective common-sense starting point in the rulemaking process, as noted below.

G. DOE Should Utilize and Establish Significant Savings of Energy Thresholds

Joint Commenters support a revised Process Rule that establishes thresholds for significant conservation of energy in its rulemaking process. A significant conservation of energy threshold should be non-trivial, and each candidate standard considered results in significant energy savings. There must be thresholds set that illustrate if a problem is large enough to justify a regulation or rule. Joint Commenters recommend that any final methodology in a revised Process Rule consider a combination of the anticipated percentage reduction of source energy consumption for the covered product compared to the existing standard, along with the impact of overall source energy consumption in the market sector. Reviewing the source energy impact of a standard proposal utilizing both approaches would more accurately indicate the impact of modifying and justifying a standard or not doing so due to the lack of economic savings and/or the needed source energy savings.

H. The Process Rule Should Include a Minimum Payback Period

Under a revised Process Rule, DOE should have to meet a minimum 3-year payback period before the Department can propose a minimum efficiency requirement for the covered product. The payback period relates to the time it would take for a new or revised energy efficiency measures to pay for itself through energy savings. Unfortunately, recent rules and proposals issued by the Department have average payback periods that exceed a reasonable period and could exceed the lifespan of a product. Therefore, an updated Process Rule should set a minimum 3-year payback period threshold for DOE to propose a new or revised minimum efficiency requirement.

I. DOE Should Conduct Retrospective Reviews of the Energy Savings and Costs of Energy Conservation Standards

Joint Commenters believe that DOE should not commence a new minimum energy efficiency standard process until the existing standard has been reviewed. The Process Rule should

formalize this type of review, which is already a requirement under EPCA when DOE assesses whether to proceed with amended standards or issue a determination that no new standards are required. [73]

An effective retrospective review would include objective, verifiable quantification. If done right, this sort of retrospective review should enhance DOE's modeling and analyses and should avoid any material flaws in DOE's current modeling. If a retrospective review demonstrates that a substantial percentage of high efficiency appliances exceeding the current standard within the type (or class) already exists, no new minimum standard is needed.

Joint Commenters understand that DOE has limited resources to conduct a retrospective review, but the retrospective reviews can occur during the comment period of the applicable early stakeholder process. Parties can and should provide data demonstrating changes since the issuance of the last standard or test procedure, and the impact and effectiveness of its most recent regulatory action for the product at issue. The Department, however, as part of the Process Rule should commit to such retrospective reviews when data is submitted as part of the stakeholder process.

J. Joint Commenters Support Finalization of Test Procedures Prior to Issuance of a Notice Proposing New or Amended Standards

It is critical that test procedures be finalized prior to the Department proposing any new or amended efficiency standard. DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product prior to the adoption of a new or amended energy conservation standard.[74] In previous years, it appeared to have been common practice for DOE to commence new minimum efficiency standards rulemakings before the test procedures for the product were developed and finalized.

[73] *See* 42 U.S.C. § 6295(m).
[74] *See* 42 U.S.C.§ 6295(o)(3)(A) and (r).

Disappointingly, this practice had occurred despite the clear prohibition of it by an existing Process Rule.

Joint commenters believe that finalizing the test procedures at least 180 days prior to publication of a notice is the minimum amount of time needed for stakeholders (manufacturers) to evaluate new or amended test procedures. This will ensure that the Department complies with the statutory requirements to develop test procedures prior to the adoption of a new or amended standard. Furthermore, adopting this proposal will ensure that the test procedures are technically correct, can be repeated, and that the new or amended standards can be meaningfully reviewed.

Finalizing test procedures prior to proceeding with standards is vitally important for many reasons. First and foremost is the fact that if stakeholders do not know the exact procedure for testing equipment to determine compliance with a proposed efficiency standard, they cannot meaningfully analyze and comment on the impact of the proposed standards. Finalizing test procedures with sufficient time prior to issuance of a new proposed minimum standard will help ensure that: (i) the test procedures are technically correct and the results demonstrate the impact on the current energy efficiency rating; (ii) the results from the test procedures are repeatable and can be performed with minimal burdens; and (iii) stakeholders have the opportunity to review and comment on the new or amended standards. If the test procedures are not final before a new or amended standard is proposed, there is no way for stakeholders to meaningfully comment on the proposal.

Moreover, there have been past instances where the Department used unfinalized procedures for appliance testing, for example in the case of consumer conventional cooking products. In that instance, DOE conducted appliance testing after issuing the proposed rule for

public comment but prior to finalization of the test procedure.[75] This approach implies the Department had predetermined the outcome, disregarding public input. This practice is problematic as it lacks transparency and can lead to a flawed analysis. DOE should exclusively use finalized test procedures for data substantiation when proposing new energy conservation standards. The Process Rule should ensure that test procedures used to evaluate proposed standards be finalized prior to the publication of a NOPR proposing new or amended standards.

K. Any Updated Process Rule Should be Applied Equally to Consumer Products and Industrial and Commercial Equipment for Energy Conservation Standards and Test Procedures

A revised Process Rule should apply to both consumer products and industrial and commercial equipment. Joint Commenters support a Process Rule that applies equally to consumer products and industrial and commercial equipment for energy conservation standards and test procedures, except for ASHRAE equipment, as discussed herein. In the past, the Department has stated that it has historically applied the Process Rule to both consumer and industrial and commercial rules.[76] Joint commenters support a Process Rule that would make clear that this practice continues. Equal application would also promote a consistent process, in that the procedures will apply to both consumer products and industrial and commercial equipment rulemakings.[77]

[75] *Energy Conservation Program: Test Procedure for Cooking Products*, 87 Fed. Reg. 51294 (Aug. 22, 2022); *Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products*, 88 Fed. Reg. 50810 (Aug. 2, 2023).

[76] *Energy Conservation Program for Appliance Standards: Proposed Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment*, 84 Fed. Reg. 3910 (February 13, 2019) at 3914.

[77] An updated Process Rule could clarify how the provisions of 42 U.S.C. § 6316 can be consistently applied across rulemakings.

L. A Revised Process Rule Should Apply to ASHRAE Equipment

The Department should ensure that a modernized Process Rule provides separate procedural requirements and timelines for DOE to evaluate amendments to ASHRAE Standard 90.1 equipment. A revised Process Rule should define the process used to adopt ASHRAE 90.1 equipment standards and define a mechanism when a more-stringent equipment efficiency standard over the ASHRAE level can be pursued. DOE should adopt revised ASHRAE levels for standards, as contemplated by EPCA, except in limited circumstances.[78] The Department should continue to follow the statutory timelines and procedural requirements in EPCA for ASHRAE equipment when adopting the ASHRAE Standard 90.1 levels, rather than those set forth in any Process Rule. Similarly, when considering new test procedures or amending existing test procedures for ASHRAE equipment, DOE should adopt, without modification, industry standards as DOE test procedures as required by EPCA, except in limited circumstances.[79] DOE's review in adopting amendments based on action by ASHRAE is strictly limited to the specific standards for the specific equipment for which ASHRAE has made a change. For consideration of more-stringent standards than the ASHRAE levels, DOE should be required to meet a very high bar to meet the "clear and convincing evidence" threshold and should seek public comment to assist it in making that determination. To meet the "clear and convincing evidence" threshold, the Department should be required to determine that there is no substantial doubt that the more-stringent standard would result in significant additional conservation of energy, is technologically feasible and economically justified, or that the industry test procedures do not meet EPCA

[78] *See* 42 U.S.C. § 6313(a)(6)(A)(ii)(II)).
[79] *See* 42 U.S.C. § 6313(a)(4)).

requirements.[80] In the event that DOE conducts a rulemaking to establish more-stringent standards for covered ASHRAE equipment, DOE should follow the procedures established in a revised Process Rule, while still complying with EPCA's ASHRAE-specific deadlines.

M. Industry Standards Should be Considered and Adopted by DOE When Appropriate

While there are statutory requirements for the Department to adopt industry standards in certain cases,[81] Joint Commenters are wary of a revised Process Rule mandating that industry standards must be used in test procedures in instances not already addressed in the statute. Joint Commenters generally support the adoption of industry standards as test procedures because, where reasonable, the use of industry standards can minimize regulatory burdens and improve transparency. However, there may be circumstances where adopting industry standards may not be supported by clear and convincing evidence. For example, there may be circumstances where, for certain appliances, the facts warrant the use of a non-industry standard procedure. Therefore, a revised Process Rule should allow the Department to *consider* industry standards, and permit comments on particular proposals, instead of mandating their use. In other words, when making a determination on test procedures, the Department should give consideration to the applicable industry standard and work with stakeholders before automatically mandating the use of a particular industry standard.

N. The Process Rule Should Limit Any Expansion of Covered Products

In addition to specifying a list of covered residential and commercial products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products and industrial/commercial equipment as ''covered'' within the meaning of EPCA.[82] This

[80] *See* 42 U.S.C. § 6314(a)(2) and (3).
[81] *See* 42 U.S.C. § 6314(a)(4)(A)).
[82] *See* 42 U.S.C. §§ 6292(b), 6295(l), and 6312.

authority allows DOE to consider regulating additional products/equipment that further the goals of EPCA.

Joint Commenters support a Process Rule that limits any expansion of coverage to those narrow circumstances that satisfy the statutory requirements and purpose of EPCA. A regulatory agency's authority is limited to those granted to it by statute;[83] therefore, in this case, EPCA must be the guardrail for any Department effort to have new "covered products." Administrative agencies are free to give reasonable scope in terms of conferring their authority; however, agencies are not free to ignore the plain limitations of that authority.[84] The Department, when looking to expand the coverage of what is "covered" pursuant to EPCA, should do so in only a limited and targeted fashion consistent with the statutory parameters. The statutory provisions require that the Department expand the classification of covered products only when two criteria are met. The first condition is when it is "necessary or appropriate" in accordance with EPCA's purpose, which includes the conservation of energy supplies and the improvement of energy efficiency of major appliances and other consumer products.[85] The second condition is when the products consume at least enough energy to satisfy a stated minimum energy consumption criterion.[86] The Department should not stray from these requirements when proposing to expand the definition of covered products.

O. Joint Commenters Support the Proper Use of Direct Final Rules When Appropriate

A Direct Final Rule ("DFR") is a rulemaking process used when an agency deems a rule to be routine or noncontroversial. The rule is published with a public comment period, and absent

[83] *See e.g., Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) ("It is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress.").
[84] *See Peters v. Hobby*, 349 U.S. 331, 345 (1955).
[85] *See* 42 U.S.C. § 6201.
[86] *See* 42 U.S.C. § 6292(b)(1).

adverse comments, takes effect without further agency action. The legislative history of the DFR amendment indicates that the DFR process was intended to be used only in circumstances in which representatives of all relevant interests jointly submit a proposed energy conservation standard for a product, *i.e.*, when there is a clear consensus.[87] Joint Commenters believe that the rulemaking process should be as inclusive as possible and the DFR process should include interested persons that are fairly representative of relevant points of view. EPCA identifies relevant persons as including "representatives of manufacturers of covered products, States, and efficiency advocates."[88] Currently, DOE has discretion to determine which other points of view are relevant with respect to proposed efficiency standards. At a minimum, the DFR process should include larger concerns and small businesses in the regulated industry/manufacturer community, energy advocates, energy utilities, consumers, and States. From the Joint Commenters perspective, a representative group, with respect to all proposed standards applicable to appliances that use natural gas, must include gas distribution utilities and their customers. Furthermore, Joint Commenters believe that any rules established through a DFR or a negotiated rulemaking process must still adhere to the other principles in EPCA, such as being economically justified, technologically feasible, and demonstrate significant conservation of energy. A revised Process Rule should reflect and formalize this inclusive approach.

[87] *See Energy Conservation Program: Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products*, 79 Fed. Reg. 64,705, 64,708 (Oct. 31, 2014) ("DOE's testimony before Congress on the scope of its requested DFR authority provides another important touchstone for regulations clarifying DOE's DFR process. For example, Assistant Secretary Alexander Karsner told Congress that DOE's DFR 'legislative proposal would allow the Department to move directly to a final rule for certain products when a clear consensus for standards exist among the manufacturers, efficiency advocates and other stakeholders.'''), *citing* Achieving-At Long Last-Appliance Efficiency Standards, Hearing Before H. Subcomm. On Energy and Air Quality, 110th Cong., 8, 16 (2007) (Alexander Karsner, Asst. Sec., DOE).

[88] *See* 42 U.S.C. § 6295(p)(4)(A).

P. Negotiated Rulemaking Provisions Should be Included in the Revised Process Rule

Joint Commenters support DOE including negotiated rulemakings in the Process Rule that provides for a convener and promotes full stakeholder participation throughout the rulemaking process. If used appropriately, negotiated rulemakings can be an effective and efficient means of promulgating new energy conservation standards. A revised Process Rule should make clear that, prior to initiating a negotiated rulemaking, DOE will, pursuant to the APA,[89] appoint a convener to: (i) identify persons who will be significantly affected by a proposed rule; and (ii) conduct discussions with such persons to identify their issues of concern and to ascertain whether the establishment of a negotiated rulemaking committee is feasible and appropriate in the particular rulemaking. Joint Commenters also support DOE incorporating provisions to ensure there is opportunity for public comment before the negotiated rulemaking committee. The use of a facilitator and the opportunity for comprehensive public input will ensure the participation of all relevant interests in the process.

Q. Prioritization in an Updated Process Rule Should Focus on Potential Energy Savings and Economic Benefits

Any priority setting elements in a revised Process Rule should prioritize potential energy savings and the potential economic benefits. Mainly, the Department should focus on the potential energy savings and the potential economic benefits as an initial screen for determining its priorities. The focus on these standards is important because if the Department determines the proposed regulatory activity does not provide sufficient energy savings or is cost not effective, there is no need to review the other factors. Joint Commenters also support stakeholder input in

[89] *See* 5 U.S.C. § 563(b).

the rulemaking process and with regard to setting priorities. For example, commenting on the Regulatory Agenda would provide stakeholders with a chance to weigh in on the priorities.

R. DOE Should Only Have Limited Participation in National Codes and Standards Activities

National codes and standards activities conducted by organizations such as ASHRAE and the International Code Council, among others, are very important to the natural gas industry. In recent history DOE has become more involved in these non-governmental organizations, such as participating in standards and code body proceedings as advocates of requirements and generally becoming more active in these types of organization. While DOE's governing statute permits the Department to be involved in such organizations,[90] such participation, however, should be limited to the presentation of peer reviewed research and analysis, and review of codes. For example, it is appropriate for DOE to evaluate and analyze codes, such as when the International Code Council issues codes or standards to improve energy efficiency in buildings.[91] Such evaluations and related determinations, however, may appear less than arm's length if the Department has a role in creating the codes. In other words, to maintain the independent nature of DOE's reviews of non-governmental codes and standards, it is prudent for the Department not to be intimately involved in the development of those codes and standards it may later be called upon to evaluate.

[90] 42 U.S.C. § 6836(b) ("The Secretary shall periodically review the technical and economic basis of voluntary building energy codes and, based upon ongoing research activities - … otherwise participate in any industry process for review and modification of such codes.").
[91] Determination Regarding Energy Efficiency Improvements in the 2015 International Energy Conservation Code (IECC), EERE–2014–BT–DET–0030, 80 Fed. Reg. 33250 (June 11, 2015).

S. DOE Should Implement Various Recommendations from the NASEM Report into All of its Appliance Rulemakings

It is important DOE implement the recommendations from the National Academies of Sciences, Engineering, and Medicine ("NASEM report")[92] into all its appliance rulemakings, whether for test procedures or energy conservation standards. The NASEM report comprehensively evaluated the agency's appliance rulemaking process and identified several key areas in which DOE can improve its rulemaking process. Several of these recommendations even align with suggestions the Joint Commenters have made over the years regarding economic modeling and data availability that would greatly help all stakeholders better understand the agency's process and ensure that DOE is making its decisions on the most appropriate data and models. Some of the most pertinent recommendations include:

- Recommendation 2-2: DOE should pay greater attention to the justification for the standards, as required by executive orders and the EPCA requirement that standards be economically justified. DOE should attempt to find significant failures of private markets or irrational behavior by consumers in the no-standards case and should consider such a finding as being necessary to conclude that standards are economically justified.

- Recommendation 3-5: DOE should expand the Cost Analysis segment of the Engineering Analysis to include ranges of costs, patterns of consumption, diversity factors, energy peak demand, and variance regarding environmental factors.

- Recommendation 4-1: DOE should put greater weight on ex post and market-based evidence of markups to project a more realistic range of likely effects of a standard on prices, including the possibility that prices may fall. This would improve future analyses.

- Recommendation 4-13: DOE should place greater emphasis on providing an argument for the plausibility and magnitude of any market failure related to the energy efficiency gap in its analyses. For some commercial goods in particular, there should be a presumption that the market actors behave rationally, unless DOE can provide evidence or argument to the contrary.

[92] *Review of Methods Used by the U.S. Department of Energy in Setting Appliance and Equipment Standards*, NASEM (2021), available at https://www.nap.edu/read/25992/chapter/1 (last visited June 1, 2025).

- Recommendation 4-14: DOE should give greater attention to a broader set of potential market failures on the supply side, including not just how standards might reduce the number of competing firms, but also how they might impact price discrimination, technological diffusion, and collusion.

V. Conclusion

For the reasons stated above, Joint Commenters respectfully request that the Department consider these comments in this proceeding. If you have any questions regarding this submission, please do not hesitate to contact the undersigned.

Respectfully submitted,

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