



[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Parts 430 and 431

[EERE-2020-BT-STD-0004]

Energy Conservation Program: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment; Prioritization Process

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for comment concerning prioritization of rulemakings.

SUMMARY: The U.S. Department of Energy (DOE) is initiating an effort to elicit information from stakeholders and the interested public concerning the prioritization of rulemakings pursuant to the Department's updated and modernized rulemaking methodology titled, "Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment" (Process Rule). This rule expands early opportunities for public input on the Appliance Program's priority setting of its rulemaking activities. The Department notes that this notice represents DOE's inaugural effort to implement its revised priority-setting process. DOE welcomes written comments as well as the submission of data and other relevant information from the public relevant to priority setting for all DOE energy conservation standard and test procedure rulemakings.

DATES: Written comments and information are requested and will be accepted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–STD–0004, by any of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
2. *E-mail:* to PrioritySetting2020STD0004@ee.doe.gov. Include docket number EERE–2020–BT–STD–0004 in the subject line of the message.
3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 287-1445. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L’Enfant Plaza, SW., Suite 600, Washington, DC, 20024. Telephone: (202) 287-1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

Docket: The docket for this activity, which includes *Federal Register* notices, comments, and other supporting documents/materials, is available for review at <http://www.regulations.gov>. All documents in the docket are listed in the <http://www.regulations.gov> index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket webpage can be found at:

<http://www.regulations.gov/docket?D=EERE-2020-BT-STD-0004>. The docket webpage contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, 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.

Telephone: (202) 287-1692. E-mail: ApplianceStandardsQuestions@ee.doe.gov.

Ms. Francine Pinto, U.S. Department of Energy, Office of the General Counsel,
GC-33, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone:
(202) 586-7432. E-mail: *Francine.Pinto@hq.doe.gov*.

For further information on how to submit a comment or review other public
comments and the docket, contact the Appliance and Equipment Standards Program staff
at (202) 287-1445 or by e-mail: *ApplianceStandardsQuestions@ee.doe.gov*.

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I. Introduction

A. Authority

In overview, the Department of Energy's Process Rule was developed to guide
implementation of the Appliance Standards Program, which is conducted pursuant to
Title III, Part B¹ of the Energy Policy and Conservation Act, as amended (EPCA or the

¹ For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

Act)², Public Law 94-163 (42 U.S.C. 6291-6309, as codified), establishing the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. In addition, Part C³ of EPCA, Public Law 94-163 (42 U.S.C. 6311-6317, as codified), added by Public Law 95-619, Title IV, §441(a), established the Energy Conservation Program for Certain Industrial Equipment, which again sets forth a variety of provisions designed to improve energy efficiency.

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291; 42 U.S.C. 6311), test procedures (42 U.S.C. 6293; 42 U.S.C. 6314), labeling provisions (42 U.S.C. 6294; 42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6295; 42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6296; 42 U.S.C. 6316). The statute sets forth the criteria, procedures and timeframes DOE must follow when establishing new or amended energy conservation standards for covered products (and at least certain types of equipment). The statute also sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products.

² All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115-270 (Oct. 23, 2018).

³ For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A-1.

B. Background on the Process Rule

On July 15, 1996 DOE published a final rule titled, “Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products.” 61 FR 36974. This document was codified at 10 CFR part 430, subpart C, appendix A, and became known colloquially as the “Process Rule.” The Process Rule was designed to provide guidance to stakeholders as to how DOE would implement its rulemaking responsibilities under EPCA for the Appliance Program.

While there have been many positive results from the Process Rule over time, DOE came to understand through the intervening years that the Appliance Program might benefit from additional improvements to the Process Rule. Accordingly, DOE decided to undertake an effort to modernize that provision. To accomplish this end, the Department published its revised Process Rule in the *Federal Register* on February 14, 2020. 85 FR 8626. DOE expects that its modernized Process Rule will increase transparency, foster public engagement, and achieve meaningful burden reduction, while at the same time continuing to meet the Department’s statutory obligations under EPCA.

II. The Prioritization Process and Request for Comments

The modernized Process Rule provides that stakeholders will have the opportunity to provide input on the prioritization of rulemakings as DOE begins its preparation of the Spring Regulatory Agenda. Through the publication of a Request for Comment, as DOE is initiating here, stakeholders can offer input concerning which appliance rulemaking proceedings should be in particular action categories for the Spring Agenda --that is, active versus long-term --, as well as provide comment on the timing of such rulemakings relative to other competing priorities. If stakeholders believe that the Department is pursuing a rule that should not be prioritized as active, for example, the stakeholder comments should reflect such an opinion and inform the Department as to how such rule should be prioritized, if at all, with an explanation to explain its recommendation. At the same time, if stakeholders believe that DOE should act more quickly on a particular rulemaking, commenters should make such a point with as much specificity as possible to indicate a revised timeline with an explanation to explain its recommendation. In addition, if stakeholders believe a rulemaking should be initiated and prioritized that is not already underway, the Department would welcome that feedback.

In making its recommendations, stakeholders can utilize the regulatory text in the modernized Process Rule, section 4, entitled, Setting Priorities for Rulemaking Activity that sets forth the factors the Department considers in making its priority-setting decisions.⁴

⁴ Section 4 reads as follows:

Setting Priorities for Rulemaking Activity

(a) In establishing its priorities for undertaking energy conservation standards and test procedure rulemakings, DOE will consider the following factors, consistent with applicable legal obligations:

Consequently, this comment process concerning the prioritization of all consumer product and commercial/industrial equipment rulemakings will allow stakeholders and the interested public to weigh in on the schedule for all ongoing and planned DOE energy conservation standard and test procedure rulemakings. It will also provide a mechanism for interested parties to make suggestions to DOE for the initiation of new rulemakings.

A. Description of How to Access and Use the Fall 2019 Unified Agenda of Regulatory and Deregulatory Actions

In order for stakeholders to provide meaningful input on priority setting, there needs to be a base of information capable of serving as a common frame of reference upon which comments can be made. As noted in the modernized Process Rule, that database will be the previous year's Fall Unified Agenda of Regulatory and Deregulatory Actions (Fall Agenda). In this case, the 2019 Fall Agenda is the applicable database. The 2019 Fall Agenda shows the two basic categories of agency actions: (1) active rulemakings and (2) long-term actions.

How the rules are ultimately categorized (active versus long-term actions) depends upon the date DOE enters into the Office of Management and Budget (OMB)

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- (1) Potential energy savings;
 - (2) Potential social and private, including environmental or energy security, benefits;
 - (3) Applicable deadlines for rulemakings;
 - (4) Incremental DOE resources required to complete the rulemaking process;
 - (5) Other relevant regulatory actions affecting the products/equipment;
 - (6) Stakeholder recommendations;
 - (7) Evidence of energy efficiency gains in the market absent new or revised standards;
 - (8) Status of required changes to test procedures; and
 - (9) Other relevant factors.

RISC/Office of Information and Regulatory Affairs (OIRA) Consolidated Information System (ROCIS) for the next action in each timetable associated with a specific rule. Generally speaking, those rules with a “next action” that is scheduled more than a year away will be categorized as long-term actions; those rules having a “next action” within a year are generally categorized as active rules.

The steps to access the active rulemaking information are as follows:

- (1) Go to www.reginfo.gov.
- (2) To access the active rulemakings, go to the box titled, “Unified Agenda and Regulatory Plan,” and click on the line item that is titled, “The Fall Agenda was published on 11/20/2019.”
- (3) Go to “Fall 2019 Unified Agenda of Regulatory and Deregulatory Actions Active Regulatory Actions Listed by Agency.”
- (4) Go to “Select Agency” and in the drop down menu select “Department of Energy” and click “Submit.” What will appear is the Agency Rule list for DOE’s portion of the 2019 Fall Agenda. This is the list of all DOE active rulemakings. Rules of the Appliance Standards Program will be included with those DOE rules designated as “DOE/EERE.” This agency rule list shows the stage of each rulemaking (*i.e.*, pre-rule, notice of proposed rulemaking, or final rule), the title of the rule, and the regulatory identifier number (RIN). You will need to review the list for those rulemakings specific to the Appliance Program.

Once stakeholders have accessed the list of DOE active rulemakings, they can review the information about each rule, including the timetable that will be displayed. The timetable itself, which is most critical to this priority-setting review, will list all the actions already taken on that particular rule, as well as the “next action DOE is planning to take,” along with a projected date for that action. The “next action” is the last entry on the timetable. By reviewing the timetables, stakeholders should have enough information to be able to comment on how each particular rule should be prioritized.

The steps to access the long-term actions information are as follows:

- (1) Go to www.reginfo.gov.
- (2) To access the long-term actions, go to the box titled, “Unified Agenda and Regulatory Plan,” and click on the line item that is titled, “The Fall Agenda was published on 11/20/2019.”
- (3) Click on the line item, “Current Long Term Actions” for a list of such actions.
- (4) Under the title “Agenda Agency Regulatory Entries for Long-Term Actions,” go to “Select Agency” and in the drop down menu select “Department of Energy” and click “Submit.” What will appear is the Agency Rule list for DOE’s portion of the 2019 Fall Agenda. This is the list of all DOE long-term actions. You will need to review the list for those rulemakings specific to the Appliance Program.

Once stakeholders have accessed the list of long-term actions, as with the active rulemakings, stakeholders will find information describing each rule, as well as the

timetable for that rule. By looking at the timetable and reviewing the DOE projections on each specific rule – that is – the next action, stakeholders can provide comments on how the long-term actions should be prioritized and the timing of such actions.

B. Request for Comments

As noted previously, the Department is seeking information that will shed light on how it should best prioritize and sequence its rulemaking activities for the Department's Appliance Program. By this notice and consistent with its recently published final, modernized Process Rule, DOE requests that stakeholders and the interested public review the timetables for all active and long-term appliance rules and comment upon both the timing and categorization of these rules. The Department is also interested in any other rulemaking activities that DOE should initiate and prioritize in the upcoming Spring Agenda. Additionally, DOE welcomes comments on other issues relevant to the conduct of this process that may not specifically be identified elsewhere in this document.

III. Submission of Comments

DOE invites all interested parties to submit in writing by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of the priority-setting process for all upcoming energy conservation standards and test procedure rules. Such comments and information will aid

in the development of the rulemaking schedule that will next appear in DOE's Spring Regulatory Agenda.

Submitting comments via <http://www.regulations.gov>. The <http://www.regulations.gov> webpage requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to <http://www.regulations.gov> information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through <http://www.regulations.gov> cannot be claimed as CBI. Comments

received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through <http://www.regulations.gov> before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that <http://www.regulations.gov> provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to <http://www.regulations.gov>. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287-1445 or via e-mail at *ApplianceStandardsQuestions@ee.doe.gov*.

Signed in Washington, D.C., on February 14, 2020.

Alexander N. Fitzsimmons
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

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