



August 9, 2019

**Attn:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy

**Re:** Notice of Data Availability for Energy Conservation Program Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products (“Process Rule NODA”)

**Docket No.:** EERE-2019-BT-STD-0062

The Institute for Policy Integrity (“Policy Integrity”) at New York University School of Law<sup>1</sup> respectfully submits comments on the Department of Energy (“DOE”)’s Notice of Data Availability (NODA) with respect to its proposed changes to the Process Rule.<sup>2</sup> Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Policy Integrity previously commented on the proposed changes to the Process Rule, and these supplemental comments on the NODA incorporate those earlier comments.<sup>3</sup>

In the draft changes to the Process Rule, DOE proposed adopting thresholds for when energy conservation standards would be pursued: specifically, at least either 0.5 quad in energy savings or a 10% reduction in energy consumption over a 30-year analysis period.<sup>4</sup> In the NODA, DOE now further proposes to focus solely on “site energy” as the “metric for evaluating energy savings.”<sup>5</sup> The NODA claims that, using these metrics, only 34 of 57 energy conservation standards set since the 1985 *NRDC v. Herrington* decision would meet the newly proposed threshold, but the agency claims that those 34 rules account for the bulk of total energy savings.<sup>6</sup> In other words, 23 previous standards would not have met the newly proposed thresholds, and the energy savings and emissions reductions attributable to those 23 standards would not have been achieved if such thresholds had been in place at the time of those original rulemakings.

As explained in Policy Integrity’s initial comments on the proposed changes to the Process Rule, attempting to define the significance of energy savings according to arbitrary thresholds violates both DOE’s statutory mandate and the principles of rational rulemaking. Nor is it appropriate to use a percent comparison to dismiss the 23 previous standards that would have fallen below the newly proposed thresholds as somehow insignificant. DOE seems to imply that, because those 23 previous standards constitute only about 6% of total energy savings from all past standards, they must all be insignificant. However, as the U.S. Court of Appeals for the Fifth Circuit recently observed, even a seemingly “very small portion” of a “gargantuan” total effect may nevertheless “constitute [ ] a gargantuan [effect] on its own terms.”<sup>7</sup> In other words, percent comparisons can be misleading and

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<sup>1</sup> This document does not purport to present New York University School of Law’s view, if any.

<sup>2</sup> 84 Fed. Reg. 36,037 (July 26, 2019).

<sup>3</sup> Docket No. EERE-2017-BT-STD-0062-0119 (submitted May 6, 2019), *also available at* [https://policyintegrity.org/documents/DOE\\_Process\\_Rule\\_Comments\\_2019.5.6\\_final.pdf](https://policyintegrity.org/documents/DOE_Process_Rule_Comments_2019.5.6_final.pdf).

<sup>4</sup> 84 Fed. Reg. at 36,038.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* (claiming that the 34 rules account for 93.87% of energy savings).

<sup>7</sup> *Southwestern Electric Power Co. v. EPA*, 2019 WL 1577740 at \*22 (5th Cir., Apr. 12, 2019). Note that DOE routinely touts the gargantuan successes of the appliance and equipment standards program: its fact sheet on the program claims it has collectively saved “more energy than the entire nation consumes in one year,” along with over \$2 trillion in consumer savings. See (cont’d)

can be manipulated by the choice of the denominator; what matters is the numerator's actual contribution to real effects, to social costs and benefits. As Policy Integrity's initial comments argued, the significance of energy savings must be weighed by considering all important costs and benefits.

Using DOE's list of the 57 past standard, Policy Integrity has identified the 23 standards that would have fallen below the proposed thresholds. Using the original rulemakings and technical support documents for the 18 of those 23 standards for which DOE originally calculated monetized climate benefits using an estimate of the social cost of carbon,<sup>8</sup> Policy Integrity has catalogued the tons of emissions that DOE originally estimated would be reduced, the monetized climate benefits of those emissions reductions using the social cost of carbon metrics that DOE adopted at the time, and the net consumer benefits that DOE calculated at the time.

To summarize the findings,<sup>9</sup> the past standards that would have fallen below DOE's proposed threshold for significance collectively reduced over 225 million metric tons of carbon dioxide, as well as nearly 900,000 tons of methane, and over two thousand tons of the highly potent nitrous oxide, plus tens of thousands of tons each of sulfur dioxide and nitrous oxides.<sup>10</sup> According to DOE's original calculations of monetized climate benefits, these past standards that DOE now seeks to retroactively label as "insignificant" collectively are expected to generate over \$7 billion total in monetized climate benefits. Note that the \$7 billion figure is based on DOE's original calculations, using a central estimate of the social cost of carbon at a 3% discount rate.<sup>11</sup> In the past, DOE has used a social cost of carbon as low as \$15 per ton; more recent updates put the figure considerably higher. A recalculation of monetized climate benefits using updated estimates of the social cost of carbon and adjusting past estimates into current U.S. dollars to account for inflation would only further increase this already highly significant sum. Importantly, these highly significant environmental benefits come on top of tens of billions of dollars more in cumulative net consumer benefits. In all of the past standards reviewed, consumer benefits alone always vastly exceeded costs.

In short, had DOE's proposed thresholds for significance existed in the past, tremendously significant net benefits to the environment and to consumers would have been sacrificed. Adopting the thresholds going forward would similarly sacrifice significant environmental and consumer benefits in the future.

Respectfully submitted,  
Christine Pries & Jason A. Schwartz  
Institute for Policy Integrity at NYU School of Law  
[jason.schwartz@nyu.edu](mailto:jason.schwartz@nyu.edu)

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[https://www.energy.gov/sites/prod/files/2017/01/f34/Appliance%20and%20Equipment%20Standards%20Fact%20Sheet-011917\\_0.pdf](https://www.energy.gov/sites/prod/files/2017/01/f34/Appliance%20and%20Equipment%20Standards%20Fact%20Sheet-011917_0.pdf). Even a small portion of such benefits is still significant.

<sup>8</sup> In other words, the 18 standards issued between 2008 and 2017 that would have fallen below the proposed thresholds. The 5 additional standards that would have fallen below the proposed thresholds were finalized between 1989 and 2007, and DOE did not use a social cost of carbon metric during that period. However, those 5 additional standards surely would have further reduced greenhouse gas emissions and delivered important monetized climate benefits on top of net energy savings for consumers.

<sup>9</sup> The spreadsheet cataloguing the net benefits of the rules is available at:  
<https://docs.google.com/spreadsheets/d/1fMLI6mdl1AQpZP6PwD5XihnpfwVyTj8Hs3R8vbcI0Y/edit#gid=0>

<sup>10</sup> Note that for several standards, emissions reductions of certain pollutants were not reported. This is especially true for methane and nitrous oxide, both of which are highly potent greenhouse gases. Had such emissions reductions been reported, the total climate benefits of these standards would be even higher.

<sup>11</sup> To the extent not all of DOE's original calculations included benefits from reductions of methane and nitrous oxide, either converted to carbon dioxide-equivalent units or weighed on their own, the actual total climate benefits of the standards would be even higher.