



Comments of the Natural Resource Defense Council on

The Department of Energy's
Executive Order 13563 Preliminary Plan
Submitted on August 1, 2011

On behalf of the Natural Resources Defense Council and our more than 1.3 million members and online activists, we submit the following comments in response to the July 11th request for comment on the April 29th, 2011 Draft of the Department of Energy's (DOE) *Preliminary Plan for Retrospective Analysis of Existing Rules* ("Preliminary Plan"). (76 Federal Register 40646, July 11, 2011) NRDC has spent decades working to build and improve the Department of Energy's ("DOE") federal appliance standards programs because of the important energy, environmental, and consumer benefits of appliance efficiency standards. NRDC participated in the enactment of the first federal legislation establishing efficiency standards and has been active in all significant rulemakings since then.

We appreciate the opportunity to comment on the *Preliminary Plan*. We also support the comments submitted by the Appliance Standards Awareness Project on March 21, 2011 in response to DOE's Request for Information on the notice regarding regulatory burden published in the Federal Register on February 3, 2011.

http://www.gc.energy.gov/documents/RFIRegReview_ApplianceStandardsAwareness_03212011.pdf. In general, we are supportive of DOE's efforts to conduct retrospective analyses of rules to ensure that they achieve the maximum energy savings that are economically feasible and technologically justified without being unduly burdensome. NRDC provides the following comments on specific aspects of the *Preliminary Plan*:

DOE should not let retrospective review further delay the schedule for new and updated energy conservation standards

While we are supportive of DOE's efforts to conduct retrospective analysis, this review should not interfere with or come before DOE's obligation to meet legal deadlines for new rules. We note specifically that DOE has yet to publish a final rule on energy conservation standard for refrigerators, refrigerator-freezers, and freezers which was due on December 31, 2010. We also note that DOE has yet to submit a Proposed Rule to the Office of Management and Budget for Distribution Transformers which is due October 1, 2011. Retrospective analysis of past rules should not interfere with DOE's work on these two rules, specifically, or cause DOE to miss any statutory or court ordered deadlines for other rules.

DOE is obligated under EPCA to review energy conservation standards every 6 years

As DOE notes in the *Preliminary Plan*, the Energy Policy and Conservation Act (EPCA) requires DOE to review energy conservation standards every 6 years and test procedures every 7 years. (*Preliminary Plan*, page 8, April 11, 2011). NRDC submitted a memorandum to DOE on April 11, 2011 and attached as Appendix A, explaining DOE's obligations under the 6 year review provision. In particular, Table 1

denotes the products which are currently overdue for review under this provision, as explained in Appendix A. We urge DOE to revisit these rules as soon as possible.

Table 1. Products due for 6-year reviews

Product	Last final rule issued
Water closets	1998
Urinals	1998
Faucets	1998
Showerheads	1998
Commercial warm air furnaces	2001
Commercial water heaters	2001
Commercial packaged air conditioning and heating equipment (water-source and evaporatively-cooled) ⁵	2001
Commercial packaged air conditioning and heating equipment (air source)	2005
Ceiling fans and ceiling fan light kits	2005
Low voltage dry-type distribution transformers	2005
Unit heaters	2005
Commercial prerinse spray valves	2005
Torchieres (light fixtures)	2005
Medium-base compact fluorescent lamps	2005
Illuminated exit signs	2005
Traffic signal and pedestrian modules	2005

DOE should compare actual prices to predicted prices in retrospective analysis of appliance standards

When conducting retrospective analyses of existing rules, DOE should compare predicted prices and costs to actual values. In particular there is evidence that DOE has historically overestimated the cost of complying with energy conservation standards, as discussed in NRDC’s March 24, 2011 comments to the Notice of Data Availability on Equipment Price Forecasting in Energy Conservation Standards Analysis.¹ DOE has traditionally assumed zero learning in the analysis of future product prices, which has likely led to inaccurately high projected costs. DOE should use its retrospective analysis of these learning trends to inform its analysis of future rules, when appropriate.

DOE must not violate EPCA’s “anti-backsliding” provision in any revisions of past rules

In the *Preliminary Plan*, DOE notes that “while EPCA prohibits DOE from establishing energy conservation standards less stringent than existing standards, DOE weighs the economic and other burdens imposed by a standard against the benefits, such as energy savings and decreased life cycle costs, in establishing its energy conservation standards.” (*Preliminary Plan*, page 10, April 11, 2011). We agree

¹ <http://www.synapse-energy.com/Downloads/SynapseReport.2011-03.ASAP+NRDC.Equipment-Price-Forecasting.11-023.pdf>

that EPCA does not allow DOE to adopt less efficient standards. *See Natural Resources Defense Council v. Abraham*, 355 F.3d 179, 196 (2d Cir. 2004). As a factual matter, we also doubt that DOE's review will show that it has set standards that turned out to not satisfy the standard contained in EPCA, namely that standards be set at the maximum levels that are technologically feasible and economically justified.

DOE should not use consumer credit rates to determine energy conservation standards

DOE states in the *Preliminary Plan*, that several comments suggested using consumer credit rates instead of the current 3 and 7 percent discount rates in its analysis of energy conservation standards. (*Preliminary Plan*, page 10, April 11, 2011). NRDC has been submitting comments to DOE on the issue of discount rates for over a decade and firmly asserts that DOE should use a discount rate of no more than 5 percent in its analysis of energy conservation standards. Consumer credit rates are absolutely inappropriate for this type of analysis. Lower discount rates should be used when analyzing investments with societal benefits because they reduce the risk of society's investment portfolio while providing non-monetary benefits.

Consumer credit rates are inappropriate for several reasons. Consumers frequently borrow money on credit cards because it is a convenient way of raising cash in the short-term. Often these consumers pay the money off each billing cycle, meaning that the bank is actually lending the consumer the money at a 0 percent nominal rate for a month and a half. For those who do not pay their balance in full and therefore do pay credit card interest rates, a not insubstantial number of them default on the payment. The effective borrowing rate for these consumers is deeply negative – minus 100% in the limit. If DOE is using the “actual” rate of interest on credit cards, it must also use the actual rate of failure to repay. Finally, many credit cards have added benefits such as frequent flyer miles or in store discounts, which can be worth anywhere from 1 to more than 10 percent of the purchase price, effectively lowering the discount rates.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meg Waltner', with a long horizontal flourish extending to the right.

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