



Information Technology Industry Council

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VIA EMAIL TO: Regulatory.Review@hq.doe.gov

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Office of General Counsel
1000 Independence Avenue SW., Room 6A245
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RE: DOE Regulatory Burden RFI

INTRODUCTION

The Information Technology Industry Council (ITI) appreciates the opportunity to submit comments in response to the Regulatory Burden RFI.¹ ITI represents the leading global innovators of information and communications technology (ICT), an industry committed to developing energy-efficient solutions both for our own products and to help enable energy efficiency in other more energy intensive sectors.

ITI has engaged with the Department of Energy (DOE) on a number of rulemakings relevant to our member companies.² The only existing rule that is applicable to our membership at this time is the rule for External Power Supplies (EPS).³ We are also active stakeholders in representing the ICT industry on the development of ENERGY STAR specifications with both the EPA and DOE. In general, the global ICT industry supports voluntary programs, like ENERGY STAR, to improve the energy efficiency of ICT products. ITI appreciates the challenges and difficulties that the DOE and other regulatory bodies have faced in their efforts to mandate efficiency standards for ICT products as the rapidly evolving, multi-function and often highly configurable nature of ICT products often make them unsuitable for traditional minimum energy performance standards. In an effort to reduce the regulatory burden from both the rulemaking process and the existing rule relevant to ICT products, ITI offers the following recommendations.

¹ See DOE Reducing Regulatory Burden RFI, 80 Fed. Reg. 38019 (July 2, 2015), available at www.federalregister.gov/articles/2015/07/02/2015-16383/reducing-regulatory-burden.

² ITI has provided comments in a number of rulemakings relevant to the ICT industry: Battery Chargers, External Power Supplies, Set-top Boxes, Computers, Servers and Battery Back-up Systems.

³ See DOE External Power Supply Final Rule, 10 CFR Part 430 (Feb. 10, 2014), available at www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/23.

DISCUSSION

1. Improved DOE/EPA Coordination

Executive Order 13563 encourages greater coordination between agencies in order to reduce regulatory burden.⁴ DOE, EPA and stakeholders would benefit significantly from greater coordination and planning between DOE's energy efficiency regulatory activities and the ENERGY STAR program. While both have a common goal to help achieve the Administration's Climate Action Plan⁵, increased coordination between the two regarding the development of minimum energy performance standards would help inform the DOE rulemaking process providing a better preliminary technical understanding of products for which DOE is contemplating regulation as well as a better understanding of past and future product efficiency gains possible through incentives versus minimum performance standards. Improved coordination between the two would better equip the DOE to focus minimum energy performance standards on products where they could have the greatest energy efficiency impact as opposed to competing with and cannibalizing ENERGY STAR product specifications that have been successful in improving product efficiency in the past and would continue to do so in the future absent regulatory action. Industry commits significant time and resources to the ENERGY STAR specification development process, and a DOE regulatory process that does not fully leverage this work is requiring unnecessary duplication from industry stakeholders.

2. DOE Stakeholder Collaboration and Rulemaking Timelines

Executive Order 13563 requires that regulations allow for public participation and promote predictability and reduce uncertainty.⁶ ITI appreciates the transparency of DOE's public comment review process and the opportunity to provide industry input in an open manner. In all DOE rulemakings, there is at least one or two opportunities to comment. However, even on the final opportunity to comment, there is not clarity on whether the DOE took into account feedback on specific concerns. This results in publication of a final rule with outstanding concerns and issues that need to be resolved after publication of the final rule. In terms of process, between publication of the Framework and the Notice of Proposed Rule (NOPR), DOE has the option to release a Preliminary Analysis to vet models and tools that DOE intends to use in the rulemaking and make a preliminary determination for candidate standard levels. For rulemakings contemplating minimum energy performance standards for ICT products, ITI recommends that DOE consider issuing a preliminary analysis as part of the rulemaking process to insure adequate stakeholder review prior to issuing a NOPR.

The rulemakings undertaken for products in the ICT sector have sometimes resulted in significant uncertainty for ICT manufacturers. Specifically, starting in June 2009 industry spent significant time over a multi-year period providing input to the DOE in development of a proposed battery charger rule.⁷ Both DOE and the California Energy Commission (CEC) simultaneously worked on a rulemaking for battery

⁴ See Executive Order 13563, Sec. 3, 76 Fed. Reg 3821 (Jan. 21, 2011), available at www.federalregister.gov/articles/2011/01/21/2011-1385/improving-regulation-and-regulatory-review.

⁵ See The President's Climate Action Plan, (June 2013), available at www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf

⁶ See E.O. 13563, Sec. 1.

⁷ See DOE Rulemaking for Battery Chargers and External Power Supplies Energy Conservation Standard, available at www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/28.

charger systems (BCS). While the CEC implemented their regulation two years ago, DOE is still deliberating with no indication to industry or other stakeholders of when or if DOE will finalize the rulemaking. Delays in the rulemaking process result in several issues. Given the amount of time elapsed between start of rulemaking and implementation of the regulation, the proposed standard may no longer be relevant due to technology changes and product form factor innovation. Absence of a timely rulemaking process leads to a patchwork of similar regulations adopted by the states. In the case of BCS, while some states are following CEC, there is no guarantee of a harmonized approach. Industry looks to DOE to drive harmonization across the United States with appropriate federal regulations and standards, which has not been the case so far with the battery charger rulemaking. ITI recommends that DOE retool its processes and approach to ICT equipment to reduce uncertainty and make them more efficient, in order to successfully preempt state actions.

3. Cybersecurity vs. Energy Efficiency Limits

ITI emphasizes to the DOE the importance of not setting limits so stringent that industry is unable to appropriately add necessary functionality in the future. Specifically ITI is concerned with the issue of efficiency versus cyber security. With increasing network connectivity across a greater number of devices, smaller devices are required to provide additional cyber security, encryption and privacy where the additional energy consumed can be in both active and idle mode, not in sleep or off. This means the "intended use" energy measurements made and the efficiency required will leave insufficient energy available for communications and encryption for smaller devices if limits are too stringent and do not appropriately account for cyber security feature requirements.

4. EPS Rule

ITI has several outstanding concerns relevant to the regulatory burden of the DOE EPS rule.

Spare/Service Parts

ITI recommended during the EPS rulemaking process that an exemption be provided for spare/service parts. In February 2014, citing statutory inflexibility, the DOE issued its Final Rule without including an exemption for service and spare parts. In consultation with other stakeholders, ITI developed a joint proposal to Congress on a statutory amendment providing an exemption for spare and service parts from the current EPS rule and also providing DOE with the authority to grant such exemptions in any subsequent rulemaking. The proposal, supported by a coalition of industries and energy/environmental groups, was introduced as the "EPS Service Parts Act of 2014," passed both the House and the Senate by voice vote and was signed into law by President Obama on December 18, 2014. While the law is in effect, seven months later, DOE has still not published a notice updating the CFR to reflect the change. ITI recommends that DOE publish a notice in the Federal Register updating the CFR and that in future rulemakings DOE maintain exemptions for spare and service parts where appropriate.

Test Procedure

ITI has made recent recommendations to DOE on necessary updates to the test procedure for the EPS rule. As standard practice, the ICT industry prefers a minimum of 12 months between the publication and effective date of changes to the test procedure to allow sufficient time to change testing processes in advance of the effective date. DOE stated in the NOPR that amendments to the test

procedure would be minor, but the effective date of the rule is February 2016.⁸ Given the brief amount of time prior to the effective date, ITI recommends that DOE publish the rule, so that industry has certainty on which test procedures should be utilized.

Clarification of Scope Regarding Industrial Products

Executive Order 13563 stresses that regulations should be easy to understand.⁹ ITI and our member companies have provided input to DOE regarding the need for a more clear distinction between consumer and non-consumer EPS. In an effort to clarify the scope of the rulemaking, DOE issued a guidance document with additional detail.¹⁰ There remains uncertainty as to which industrial products are and are not included in the scope of the rule. ITI recommends that DOE release an updated guidance document making explicit which products are in the scope of the rule.

Lot 7 Harmonization

The EU is also currently in the process of developing EPS energy efficiency standards under the Lot 7 process. The timing of the EU and the US DOE working on energy regulation for the same products at the same time presents a perfect opportunity for the US DOE and the EU to coordinate and harmonize requirements. ITI strongly recommends that the DOE coordinate closely with the EU in order to harmonize EPS requirements.

5. Proposed Determination for Computer Systems

The DOE has issued a Notice of Proposed Determination (NOPD) of Computer and Battery Backup Systems as a Covered Consumer Product. ITI has already provided extensive input to DOE on concerns with the Notice of Proposed Determination but would like to emphasize concerns relevant to the Regulatory Burden RFI.¹¹ For purposes of creating a single covered product under EPCA, the NOPD proposes consolidating computers, computer servers, and battery back-up systems into a single product it is calling a “computer system.” Grouping these separate and distinct products for the purpose of justifying federal energy conservation standards for these types of products is not supported by EPCA and is contrary to the statutory intent of the law, which was to provide DOE with the authority to regulate discrete consumer products—not systems of discrete consumer products. The result of this proposal would be a product class too inexact for effective regulation. ITI is not aware of any precedent

⁸ See DOE EPS Test Procedure Notice of Proposed Rulemaking, Sec. L, 79 Fed. Reg. 60996 (Oct. 9, 2014), available at www.regulations.gov/#!documentDetail;D=EERE-2014-BT-TP-0043-0001. The NOPR states, “The proposed amendments would not alter the measured efficiency of EPSs. DOE expects that the rated values of EPSs tested under the current test method codified in Appendix Z would still be obtained when tested using today’s proposed method because the proposal is not modifying the methods used to measure or calculate the rated values of an EPS that are used to determine whether that EPS would satisfy the regulatory conservation standards for average active-mode efficiency and no-load power. In other words, there should be no change in the measured results under the proposal.”

⁹ See E.O. 13563, Sec. 1.

¹⁰ See DOE EPR Test Procedure Draft Guidance Document (Nov. 14, 2014), available at www1.eere.energy.gov/guidance/detail_search.aspx?IDQuestion=660&pid=2&spid=1.

¹¹ See ITI Computer and Battery Backup Systems Comments (Apr. 15, 2014), available at www.regulations.gov/#!documentDetail;D=EERE-2013-BT-DET-0035-0026.

where products without similar functions or intended uses have been grouped together for regulatory purposes. While ITI objects strongly to the Proposed Determination on Computer Systems as unworkable, ITI welcomes the opportunity to explore opportunities with the DOE for viable national energy efficiency solutions.

6. Global Harmonization

Section 3 of Executive Order 13563 states,

Integration and Innovation. Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.¹²

The ICT industry is a sector facing a significant number of energy regulatory requirements on the state, federal, and international level. As companies design products for a world-wide market, alignment between regulatory bodies around international standards avoids duplicative efforts, decreases cost and provides industry with greater regulatory clarity. ITI strongly recommends that DOE make harmonization with other jurisdictions a priority moving forward. Specifically, as mentioned above, alignment between the EU and DOE on the EPS rule would benefit all stakeholders.

CONCLUSION

ITI appreciates the opportunity to provide input in response to the Regulatory Burden RFI and looks forward to continued work with DOE and other stakeholders in the future.

Sincerely,

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About ITI. The Information Technology Industry Council (ITI) is the global voice of the tech sector. As the premier advocacy and policy organization for the world's leading innovation [companies](#), ITI navigates the relationships between policymakers, companies, and non-governmental organizations, providing creative solutions that advance the development and use of technology around the world. Visit www.itic.org to learn more. Follow us on Twitter for the latest ITI news [@ITI_TechTweets](#).

¹² See E.O. 13563, Sec. 3.