

**BEFORE THE UNITED STATES  
DEPARTMENT OF ENERGY**

IN THE MATTER OF ENERGY  
CONSERVATION PROGRAM:  
PROCEDURES, INTERPRETATIONS, AND  
POLICIES FOR CONSIDERATION OF NEW  
OR REVISED ENERGY CONSERVATION  
STANDARDS FOR CONSUMER PRODUCTS

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Docket No. EERE-2014-BT-STD-0049  
RIN No. 1904-AD38

**COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION  
REGARDING ENERGY CONSERVATION PROGRAM: PROCEDURES,  
INTERPRETATIONS, AND POLICIES FOR CONSIDERATION OF NEW OR  
REVISED ENERGY CONSERVATION STANDARDS FOR CONSUMER PRODUCTS**

**I. INTRODUCTION**

The Telecommunications Industry Association (TIA) appreciates the opportunity to provide comments in response to the Request for Information (RFI) to consider amending the Process Improvement Rule in an effort to clarify the process related to the promulgation of direct final rules (DFRs).<sup>1</sup> TIA represents hundreds of information and communications technology (ICT) manufacturer, vendor, and supplier companies in standards, government affairs and market intelligence. TIA's member companies' products and services empower communications in every industry and market, including healthcare, education, security, public safety, transportation, energy, government, the military, and entertainment. TIA and our members actively participate in DOE rulemakings of significant interest to the ICT industry including: set-top boxes, battery charger systems, external power supplies, and "computer systems."

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<sup>1</sup> See Department of Energy, Energy Conservation Program: Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products, 79 Fed. Reg. 64705-64711 (Oct. 31, 2014) available at: [www.gpo.gov/fdsys/pkg/FR-2014-10-31/pdf/2014-25922.pdf](http://www.gpo.gov/fdsys/pkg/FR-2014-10-31/pdf/2014-25922.pdf).

A major function of TIA is the writing and maintenance of voluntary industry standards and specifications, as well as the formulation of technical positions for presentation on behalf of the United States in certain international standards fora. TIA is accredited by the American National Standards Institute (ANSI) to develop voluntary industry standards for a wide variety of telecommunications products and sponsors more than 70 standards formulating committees. These committees are made up of over 1,000 volunteer participants, including representatives from manufacturers of telecommunications equipment, service providers and end-users, including the government. The member companies and other stakeholders participating in the efforts of these committees and sub-groups have produced more than 3,000 standards and technical papers that are used by companies and governments to produce interoperable products around the world. TIA's members produce the equipment and solutions that make up our Nation's rapidly evolving communications networks and are highly interested in ensuring proper use of the DFR mechanism. TIA offers the following input regarding questions raised in the RFI.

TIA believes the DFR mechanism is an important statutory vehicle that allows the promulgation of a noncontroversial, consensus-based energy efficiency standard through an accelerated, collaborative process between manufacturers, States, efficiency advocates, and other interested stakeholders. Simultaneously, if misused, the DFR mechanism has the potential to mandate an energy conservation standard without proper vetting and consideration from relevant stakeholders, which could result in significant negative consequences for both industry and consumers. A poorly developed standard is of particular concern to the ICT industry as ICT products and services remain immature and continually innovate and integrate functionalities in unanticipated ways. TIA offers the following recommendations to the DOE regarding the use of the DFR mechanism with respect to the ICT industry.

## II. DISCUSSION

### 1. MANUFACTURERS OF COVERED PRODUCTS ARE ESSENTIAL PARTIES TO ANY JOINT STATEMENT FROM INTERESTED PERSONS THAT ARE FAIRLY REPRESENTATIVE OF RELEVANT POINTS OF VIEW.

EPCA provides for use of the DFR mechanism following the “receipt of a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary, and contains recommendations with respect to an energy or water conservation standard.”<sup>2</sup> While the provided list of interested persons may not be exhaustive or exclusive of potential stakeholders that could submit a joint statement requesting the issuance of a DFR, manufacturers of covered products are essential parties to a qualifying joint statement to meet the requirement for representativeness. Any joint statement that is submitted absent representation of the manufacturers of products subject to the proposed energy conservation standard should be rejected by the Secretary as failing to meet the threshold requiring the joint statement represent “interested persons that are fairly representative of relevant points of view.”<sup>3</sup>

One of the benefits of the DFR process is that it enables industry, efficiency advocates, and others to work collaboratively to craft a proposal that satisfies the needs of affected stakeholders. As an ANSI-accredited Standards Development Organization, TIA and our member companies have witnessed first-hand the benefits of a collaborative, consensus-driven standards development process as opposed to a regulatory approach that has the potential to negatively impact both competition and innovation with constantly changing ICT products and services. In most cases, a joint statement containing recommendations with respect to the

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<sup>2</sup> See 42 U.S.C. 6295(p)(4)(A)).

<sup>3</sup> See *Id.*

promulgation of an energy conservation standard with the DFR mechanism for ICT products should include reference to and rely significantly on an existing industry consensus standard.

## **2. THE NATURE AND EXTENT OF “ADVERSE COMMENTS” THAT MAY PROVIDE THE SECRETARY A REASONABLE BASIS FOR WITHDRAWING THE DFR.**

EPCA provides that the DOE may withdraw a DFR if (1) the Secretary receives 1 or more adverse public comments relating to the direct final rule:” and (2) “based on the rulemaking record...the Secretary determines that such adverse public comments or alternative joint recommendation may provide a reasonable basis for withdrawing the direct final rule.”<sup>4</sup> In making a determination as to whether adverse public comments provide a reasonable basis for withdrawing the DFR, the Secretary needs to appropriately balance the plain language intent of the statute that allows for withdrawal with the need to avoid a noncontroversial, consensus-based DFR being derailed by an unsubstantiated or frivolous comment. Adverse comments should be considered cumulatively throughout the DFR process and should be considered based on substance including technical, legal, marketplace, competition, energy usage and other relevant concerns rather than on quantity.

## **3. WHAT CONSTITUTES THE “RECOMMENDED STANDARD CONTAINED IN THE STATEMENT” AND THE SCOPE OF ANY RESULTING DFR.**

EPCA requires a determination by the DOE that a recommended standard contained in the statement proposing a DFR satisfy the statutory requirements for an energy conservation standard as typically mandated by the DOE.<sup>5</sup> EPCA does not provide the DOE with line-item review authority of to add, delete or edit a proposed DFR. Rules promulgated through a DFR

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<sup>4</sup> See 42 U.S.C. 6295(p)(4)(c)(i).

<sup>5</sup> See 42 U.S.C. 6295(o).

mechanism should only include items consented to through the DFR process. Following the review process, the DOE must either accept or withdraw the proposed DFR in its entirety.

### **III. CONCLUSION**

TIA appreciates the opportunity to provide input and looks forward to working with the Department of Energy and other stakeholders on these issues in the future.

Respectfully signed and submitted on December 30, 2014.

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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