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March 1, 2005

The Honorable David M. Walker
Comptroller
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Walker:

We are writing to request that the Government Accountability Office (GAO) undertake an immediate investigation into the Department of Energy's (DOE) administration of the appliance energy efficiency standards program.

Recent press accounts have indicated that the Department has missed statutory deadlines for issuing new or revised standards for 18 products (and may miss one more this year). We also note that the Department has failed to issue required standards for an additional four products triggered by the ASHRAE 90.1 model building code issued in 1999.

We understand that the Department, when issuing its "process improvement" rule (61 FR 36974), has emphasized that the entire process from identification as a priority to final rule setting the standard should take no more than three years. However, DOE has recently announced an additional delay of two years or more in setting standards for its three highest priority products, with final rules not expected until September 2007 (69 FR 72712). We note that these delays affect a residential furnaces and boilers revision that was due in January 1994, a final rule on distribution transformers that was due in October 1996, and a rulemaking on commercial unitary air conditioners and heat pumps that was initiated in October 1997.

We also note that the Department has not made a required determination on model building energy codes since the 2000 IECC residential code (in 2001) and the 1999 ASHRAE commercial code (in 2002). Since then there have been a 2003 IECC code, a 2004 supplement (which DOE does not plan to consider), a 2001 ASHRAE code, and a 2004 ASHRAE code.

We are concerned that the Department appears to be unable or unwilling to comply with the energy efficiency appliance standards deadlines established by the Congress or with its own timelines. We would like to understand why the Department has failed to meet these deadlines, which were intended to ensure that our Nation continues to make progress towards reducing energy consumption by making appliances increasingly energy efficient over time.

Energy efficiency advocates have estimated that standards in place through the year 2000 have reduced U.S. electricity use by 2.5 percent (88 billion kWh annually) and reduced peak power demand by approximately 21,000 MW (enough to avoid the need for 70 300-MW fossil fuel power plants). Each additional year of delay on just the three DOE highest priorities – residential furnaces and boilers, commercial air conditioners and distribution transformers – will cost consumers and businesses an estimated $7 billion in higher energy bills.

We therefore request that the GAO undertake an investigation into DOE's appliance efficiency standards setting program. We ask that this investigation provide answers to the following questions:

1. Identify which of the appliance and equipment efficiency standard rules DOE is required to issue under existing law have been delayed. Please specify when the rules were due and when DOE expects to issue them. Please identify rules that:

   - are legally overdue (or will be by the end of 2005);
   - are required based on ASHRAE 90.1 model code revisions; or
   - have been a DOE priority for more than three years (and thus do not comply with the internal DOE timelines established by the Department's Process Improvement Rule).

2. Please review the DOE's process of setting efficiency standards and issuing rules, and identify why the delays are occurring. Please also review the relevant experience of other U.S. government agencies in setting standards, as well as experience setting appliance and equipment efficiency standards in states and in other countries. Based on these reviews, please recommend steps DOE or Congress can take to bring the rulemaking schedule in line with the three-year target, as well as the deadlines established in Federal law.

3. Please estimate the resources DOE would need (including budget and staff) to complete all of the legally-mandated and priority rules cataloged for Question 1 in a timely fashion, and how long you would estimate each rulemaking should take. Please provide similar estimates for a subset of these rules that would include only the products for which DOE estimates a likely cumulative 30-year energy savings of at least 1 quadrillion BTUs.

4. For each overdue rule, please estimate the energy and financial savings in 2010 and 2020, as well as cumulative savings through 2035, assuming a new standard is set at the point of minimum life-cycle cost for the average consumer, if: (a) each rule had been completed on schedule pursuant to the Energy Policy and Conservation Act (EPCA) as amended; and (b) each rule is completed by January 1, 2010. In addition please estimate the energy and financial cost of each additional year of delay in setting the rule.

5. Please review the process for making required determinations on model building energy codes. How long has DOE taken in the past in determining new codes? Why has DOE failed so far to make a determination on the 2003 IECC model residential code and 2001 ASHRAE commercial code? How could the process be expedited so that DOE would make timely determinations?

Thank you for your assistance and cooperation in this matter. Should you have any questions about this request, please have your staff contact Mr. Jeffrey Duncan (Rep. Markey) at (202) 225-2836 or Ms. Sue Sheridan or Mr. Bruce Harris (Committee on Energy and Commerce Minority staff) at (202) 226-3400. We also request that GAO meet with our staff to discuss this request and a timetable for submission of a report detailing GAO's findings and recommendations.

Sincerely,

Edward J. Markey
Member
Committee on Energy and Commerce

John D. Dingell
Ranking Member
Committee on Energy and Commerce

Rick Boucher
Ranking Member
Subcommittee on Energy and Air Quality

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Ralph M. Hall, Chairman
Subcommittee on Energy and Air Quality