

Advocacy Comments on DOE's Proposed Rule To Update Process for Test Procedures and Energy Conservation Standards

On April 12, 2021, DOE published a proposed a rule to revise its 2020 final rule that set forth processes for determining test procedures and finalizing energy conservation standards for industrial and consumer products. On May 25, 2021 the Office of Advocacy (Advocacy) filed a comment letter encouraging DOE to reconsider eliminating large portions of the 2020 final Process Rule stating that as proposed, the new rule would create regulatory uncertainty and burdens for small business.

- The proposed rule eliminates the binding nature of the 2020 final rule including the requirement to conduct early engagement through a request for information (RFI) or advance notice of proposed rulemaking (ANPRM). Rather than being the default procedure for proposed rulemakings, the agency would return to discretionary use of these tools. Advocacy's letter said that the Process Rule, including the early engagement requirement, should remain binding on DOE while allowing for exceptions in certain instances.
- The proposed rule removes the significant energy savings threshold set forth in the 2020 final rule. This portion of the rule creates a numerical threshold requiring that an energy conservation standard result in a specified reduction in energy use. Advocacy encouraged DOE to retain the significant energy savings threshold as it provides certainty to small businesses and meets the agency's statutory objectives.
- The proposed rule eliminates a requirement that DOE establish and finalize test procedures for a particular product at least 180 days prior to publication of a proposed energy conservation standard. Advocacy strongly recommended that this requirement not be eliminated as small businesses need time to test the feasibility of new procedures.
- The proposal eliminates the requirement to conduct a comparative analysis when determining whether a specific conservation threshold is economically justified. Advocacy requested that DOE not remove the comparative analysis requirement from the rulemaking and that DOE use the comparative analysis to ensure compliance with the RFA.

For more information visit Advocacy's web page at advocacy.sba.gov, or contact Prianka Sharma at (202) 205-6938.

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