



December 11, 2023

*Submitted electronically via Regulations.gov*

Appliance and Equipment Standards Program  
U.S. Department of Energy, Building Technologies Office  
Mailstop EE-5B, 1000 Independence Avenue SW  
Washington, DC 20585-012

**Re: Energy Conservation Program: Energy Conservation Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers; Notice of proposed rulemaking and announcement of public meeting; Docket ID EERE-2017-BT-STD-0007**

Dear Sir or Madam:

Thank you for the opportunity to comment on the U.S. Department of Energy's ("DOE's") proposed rulemaking on Energy Conservation Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers. Our organizations represent the food, grocery, convenience and fuel retailing industries, including retailers, wholesalers, producers, and suppliers.

As the food industry association, FMI works with and on behalf of the entire industry to advance a safer, healthier, and more efficient consumer food supply chain. FMI brings together a wide range of members across the value chain — from retailers that sell to consumers, to producers that supply food and other products, as well as the wide variety of companies providing critical services — to amplify the collective work of the industry. More information about our organization is available at [www.FMI.org](http://www.FMI.org). NACS is an international trade association representing the convenience store industry with more than 1,300 retail and 1,600 supplier companies as members, the majority of whom are based in the United States. More information about NACS is available at [www.convenience.org](http://www.convenience.org).

### **Background**

On October 10, 2023, the Department of Energy ("DOE") published in the *Federal Register*, at 88 Fed. Reg. 70,196, a proposed rule to establish and amend the energy conservation standards for commercial refrigerators, freezers, and refrigerator-freezers ("CRE"). DOE has tentatively determined that new and more stringent standards are technologically feasible and economically justified. DOE proposes that the standards would apply to all covered CRE either 3 years after publication of final standards or no later than 5 years after publication of final



standards if DOE determines that 3 years is inadequate.<sup>1</sup> A number of our members have raised concerns with the proposed rule and have asked that our organizations weigh in on a few select areas below.

**The proposed energy conservations standards are neither required by nor justified under the Energy Policy and Conservation Act.**

The Energy Policy and Conservation Act (“EPCA”) requires that “[n]ot later than 6 years after issuance of any final rule establishing or amending a standard,” DOE shall publish either a notice of a determination that amended standards are not needed or a proposed rule amending the standards. 42 U.S.C. § 6295(m)(1). A determination that amended standards are not needed must be based on consideration of whether amended standards will result in significant conservation of energy, are technologically feasible, and are cost-effective. 42 U.S.C. § 6295(n)(2). Many of our members do not feel that DOE has adequately demonstrated that amended standards would result in significant conservation of energy, would be technologically feasible, and are cost effective. Additionally, they have indicated that in many cases the proposed standards would require design elements and/or technology that is not economically justifiable or technically feasible.

**DOE should delay amending energy conservation standards until industry has fully implemented EPA’s regulations under the American Innovation and Manufacturing.**

Our industries are currently in significant flux due to the regulations implementing the American Innovation and Manufacturing Act (“AIM Act”), and the cost effectiveness or technical feasibility of any design changes or technologies evaluated in the Proposed Rule may change because of EPA’s regulations. DOE included the assumption that the market will have transitioned to the new AIM requirements in its baseline;<sup>2</sup> however, many of our members find this to be over-speculative. In particular, there are challenges related to technical feasibility, availability of installers and service technicians, local codes and more that will make it impossible for industry to comply with AIM Act regulations within the allotted compliance timeframe.<sup>3</sup>

As such, DOE should delay any future action on these proposed standards until industry has completed its technology transition to lower GWP materials, and DOE has fully evaluated the impact of the new regulations on affected industries. It is costly, burdensome, and unreasonable to require new energy conservation standards for products that are currently in a state of regulatory flux. Until affected companies determine how to meet the new AIM Act

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<sup>1</sup> 88 Fed. Reg. at 70,197-98.

<sup>2</sup> Transcript of Proceedings, *In the Matter of: Energy Conservation Standards Notice of Proposed Rulemaking for Commercial Refrigerators, Freezers, and Refrigerator-Freezers*, Docket No. EERE-2017-BT-STD-0007, at 98-99 (Nov. 7, 2023) (“Public Meeting Transcript”).

<sup>3</sup> Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under the American Innovation and Manufacturing Act of 2020, 88 Fed. Reg. 73,098 (Oct. 23, 2023). The rule was finalized on October 24, 2023, and requirements for supermarket systems will go into effect on January 1, 2027.

requirements, it is unrealistic for DOE to accurately evaluate the potential energy conservation, technological feasibility, or cost of any proposed standards.

**The proposed compliance deadlines are unreasonable.**

As noted above, DOE is anticipating that the proposed standards would go into effect 3 years after publication of final standards in the *Federal Register*. Such a timeline is infeasible, particularly in light of other significant regulatory developments affecting the refrigeration sector. Meeting DOE's proposed energy conservation standards would require substantial investment, resources, and innovation by manufacturers. Many resources, however, are currently dedicated to meeting the AIM Act regulatory requirements and will not be available for at least two years (depending on the sector or subsector) as companies complete the required technology transition. If DOE does not delay future action on this rulemaking to evaluate the impact of the AIM Act regulations and nonetheless proceeds with the proposed energy conservation standards, the Department should, at a minimum, extend the proposed compliance deadlines to allow manufacturers and consumers sufficient time to evaluate and meet both requirements.

**The proposed energy conservation standards inadequately weigh consumer impacts.**

DOE must consider the economic impact of the standard on manufacturers and consumers, the total projected energy savings, any lessening of utility or performance of the product, among other factors.<sup>4</sup> Many of our members feel that the Proposed Rule fails to evaluate the potential impact of the standards on food safety. As commentors noted at DOE's public meeting regarding the Proposed Rule, CRE meeting the proposed standards may be unable to consistently meet the refrigeration necessary to meet food safety standards.<sup>5</sup> Food safety is critically important to public health and cannot be sacrificed for potential efficiency gains.

The Proposed Rule would increase costs for end-users of these covered commercial refrigeration products, including supermarkets and other food retailers, and ultimately their customers. In addition to potentially increasing the overall cost of the product, the Proposed Rule may require end users to reconfigure their stores to utilize higher efficiency technologies. As several commentors noted on DOE's preliminary analysis, increasing energy efficiency "would lead to increased installation costs due to additional programming time and floor space rearrangement needs."<sup>6</sup> End users are already facing significantly increased costs and equipment installation to comply with EPA's AIM Act regulations.<sup>7</sup> These costs and store disruptions, particularly when combined with the costs that would result from this Proposed Rule, would have serious unintended consequences for consumers. The grocery industry, along with the convenience

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<sup>4</sup> 42 U.S.C. § 6295(o)(2)(B)(i).

<sup>5</sup> See, e.g., Public Meeting Transcript at 28.

<sup>6</sup> 88 Fed. Reg. at 70,238.

<sup>7</sup> See also Joint Industry Group Comments; Mark Berkman & Charles Gibbons, Brattle, HFC Transition in the Grocery Industry: A Review of the Anticipated Impact of the EPA Rule (July 27, 2023).

industry, operates on very narrow margins (generally 1-2%); therefore, the industry has little room to bear the costs of new technology. These costs are likely to be passed on to customers, further increasing prices consumers must pay due to inflation.

Additionally, older stores may be unable to update, and new stores may be unable to move as rapidly into new communities due to the increased cost of refrigeration products. This consequence may be particularly hard felt in rural and disadvantaged communities that may only have limited food options. The Proposed Rule will have far-reaching consequences beyond just manufacturers. DOE should thoroughly evaluate the impacts of the Proposed Rule on end users of covered products and their customers and must consider these impacts to meet its obligations under EPCA.

**The proposed energy conservation standards are not economically justified due to significant underestimation of compliance costs.**

DOE has significantly underestimated the costs of compliance with the Proposed Rule while simultaneously overestimating the energy efficiency benefits.<sup>8</sup> EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for an equipment that meets the standard is less than three times the value of the first-year energy savings resulting from the standard.<sup>9</sup> With more accurate cost and benefit information, the results of DOE's rebuttable payback period analysis would likely result in much longer payback periods. Regardless, the significant costs and uncertain benefits of the Proposed Rule, along with consideration of food safety concerns, show that the Proposed Rule is not economically justified and cannot be finalized in its current form and timeframe.<sup>10</sup>

If you have any questions or wish to discuss our comments further, please contact Jennifer Hatcher ([jhatcher@fmi.org](mailto:jhatcher@fmi.org)) or Paige Anderson ([panderson@convenience.org](mailto:panderson@convenience.org)).

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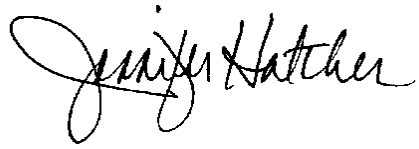
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<sup>8</sup> One FMI member's analysis showed an increased case cost of 20-25% to comply with the proposed rule and more difficult and costly servicing. Our members also flagged the potential for case manufacturers to stop offering certain cases in order to comply, further straining supply and cost of equipment.

<sup>9</sup> 42 U.S.C. § 6295(o)(2)(B)(iii).

<sup>10</sup> 42 U.S.C. § 6295(o)(2)(A).

Sincerely,

A handwritten signature in black ink that reads "Jennifer Hatcher". The signature is written in a cursive style with a large, looped initial "J".

Jennifer Hatcher  
Chief Public Policy Officer & Senior Vice President

A handwritten signature in black ink that reads "Paige Anderson". The signature is written in a cursive style with a large, looped initial "P".

Paige Anderson  
Director, Government Relations