

## U.S. DEPARTMENT OF ENERGY

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APPLIANCE STANDARDS AND RULEMAKING  
FEDERAL ADVISORY COMMITTEE  
(ASRAC)

+ + + + +

## MEETING

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TUESDAY, FEBRUARY 26, 2013

The ASRAC convened in Room 8E-089,  
U.S. Department of Energy, 1000 Independence  
Avenue, SW, Washington, D.C., at 10:00 a.m.,  
Doug Brookman, moderator, presiding.

MEMBERS PRESENT

ANDREW deLASKI, Appliance Standards  
Awareness Project, Co-Chair  
JOHN MANDYCK, UTC Climate, Controls &  
Security, Co-Chair  
DOUG BROOKMAN, Public Solutions, Inc.,  
Moderator  
ASHLEY ARMSTRONG, Team Lead for Test  
Procedures and Certification and  
Enforcement, Department of Energy  
JOHN F. CASKEY, National Electrical  
Manufacturers Association  
TIMOTHY CASSIDY, Best Buy  
STEVEN COUSINS, Coca-Cola Company  
THOMAS COUGHLIN, National Grid  
TOM ECKMAN, Northwest Power and Conservation  
Council  
DAVID HUNGERFORD, California Energy  
Commission  
KELLEY KLINE, General Electric  
KENT PETERSON, P2S Engineering

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PRESENT FROM THE DEPARTMENT OF ENERGY

DANIEL COHEN, General Counsel  
JOHN CYMBALSKY, Designated Federal Official,  
Department of Energy  
ROLAND RISSER, Department of Energy

ALSO PRESENT

KARIM AMRANE, Air-Conditioning, Heating, and  
Refrigeration Institute  
NORMAN ASBJORNSON, AAON  
ROBERT ASDAL, Hydraulic Institute  
BILL BELT, Consumer Electronics Association  
ALEX BOSENBURG, NEMA  
DONALD BRUNDAGE, Southern Company  
DAVID CALABRESE, Air-Conditioning, Heating,  
and Refrigeration Institute  
KEITH DENNIS, National Rural Electric  
Cooperative Association  
JORDAN DORIA, Ingersoll Rand  
HOLLY EVANS, Strategic Counsel  
GARY FERNSTRAM, PG&E  
DEREK GREENAUER, Underwriters Laboratories  
MARK HANDZEL, Xylem  
CHARLES HON, True  
ALBERT HUBER, Patterson  
MICHAEL IVANOVICH, Air Movement and Control  
Association International  
GARY LANGILLE, Echostar  
KEVIN MESSNER, AHAM  
KAREN MEYERS, Rheem  
ANDREW MOORE, Mitsubishi Electric  
NATHAN MOUW, Whirlpool  
ELIZABETH NOLL, American Gas Association  
GREG ORLOFF, CSA Group  
TRAVIS PURKINS, Whirlpool  
JENNIFER REED, Illinois Tool Works, Inc.  
MICHAEL RIVEST, Navigant  
STEVE ROSENSTOCK, Edison Electric Institute  
STEPHEN SCHAEFER, Hoshizaki America, Inc.  
RON SHEBIK, Ingersoll Rand  
MARK STANGA, Daikin

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ALSO PRESENT: (cont.)

ELIZABETH TATE, American Public Gas  
Association

RUSTY THARP, Goodman Manufacturing Company,  
L.P.

GREG TOWSLEY, Grundfos

GARY VERDUN, Grundfos

KEVIN WASHINGTON, Illinois Tool Works, Inc.

KAY WINN, Kathleen Winn & Associates

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1 P-R-O-C-E-E-D-I-N-G-S

2 (9:59 a.m.)

3 MR. BROOKMAN: Good morning,  
4 everyone, and welcome. This is the first  
5 meeting of the Appliance Standards and  
6 Rulemaking Federal Advisory Committee here at  
7 the U.S. Department of Energy. Today is  
8 February 26, 2013.

9 So glad you could make it here  
10 this morning. We're going to start off with  
11 welcoming remarks from Roland Risser.

12 MR. RISSER: Good morning from me  
13 as well. My name is Roland Risser and I'm the  
14 Director of the Building Technologies Office  
15 here at the Department of Energy. My  
16 responsibility includes among other things the  
17 Appliance and Equipment Standards Program.

18 First, thanks for joining us  
19 today. This is a FACA. You're going to hear  
20 more about that. I think we probably are  
21 going to have an attorney that will make sure  
22 we stay on track.

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1           But for those of you who may not  
2 be as familiar with that, I looked it up on  
3 Wikipedia. So what popped up is Federation of  
4 Anglican Churches in the Americas, Military of  
5 the Central African Republic and the Figi  
6 Cycling Association. So if you're here for  
7 any of those, you're in the wrong room.

8           (Laughter.)

9           So ours is the Federal Advisory  
10 Committee Act meeting. And the particular one  
11 -- well, first on that, you'll probably get  
12 more about this. But the part I liked about  
13 this is this is administered by GSA. And the  
14 one sentence that I liked best was, these are  
15 provisional bodies that have the advantage of  
16 being able to circumvent bureaucracy and  
17 collect a range of opinions.

18           So if you look at how the FACA was  
19 set up, you would say we didn't circumvent  
20 bureaucracy. Hopefully, from now going  
21 forward we can do some of that. That's the  
22 intent of this.

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1                   Now the specific committee is the  
2           Appliance Standards and Rulemaking Federal  
3           Advisory Committee. I think John wisely left  
4           the F out of the acronym. And so it came out  
5           with ASRAC. That's what you're here for.  
6           You're in the right place at the right time.

7                   I'm excited about this  
8           opportunity. We've steadily been improving  
9           the development of our standards program for  
10          the last three years. And this is sort of the  
11          next step in that path of improving both the  
12          open transparent process and data-driven  
13          decisionmaking. And that's really the  
14          foundation for what we're trying to do here.

15                  We also believe that consensus  
16          agreement negotiated rulemakings are  
17          preferable. And the reason we set this ASRAC  
18          up is we believe this is the right way to set  
19          standards in this environment. We hope that  
20          you believe that as well.

21                  Now the alternative is we have our  
22          regular regulatory process that we use. And

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1 it actually also is public and transparent.  
2 The difference is in how the outcome gets  
3 decided.

4 In our regular process we take the  
5 data in. The interactions are a little  
6 different. We do have public meetings, but we  
7 don't interact on an iterative basis. Rather,  
8 we take in information and sort of provide  
9 information that's data-driven. And then the  
10 main communications take place in such a  
11 lovely forum as the Federal Register, where we  
12 file information and we get comments back.

13 That works. But I believe it's  
14 not as helpful, useful and communicative as  
15 this sort of process where you just get  
16 parties together, and you have communication  
17 in real time and it's iterative.

18 So I also believe that the other  
19 process that I described gets an outcome that  
20 we support based upon the data we have. But  
21 it might not be the outcome that this set of  
22 the participants would set on their own if

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1 they were able to negotiate an outcome. I  
2 think there's a possibility that the outcome  
3 could be better taking everything into  
4 account. We do the best we can, but we only  
5 have the data we have in front of us.

6 We also need to point out that  
7 while we are supporting this consensus,  
8 negotiated rulemaking process, we learned over  
9 the last year or so that it doesn't always  
10 result in an outcome that works. And so to  
11 avoid delays and other problems we are going  
12 to make sure we continue our regular, normal  
13 process in parallel with this process so that  
14 if the consensus, negotiated rulemaking breaks  
15 down, we don't lose time because we have  
16 certain requirements for delivering these  
17 rules. And we want to make sure we stay on  
18 those.

19 The advantage to that, to this  
20 process, is you all know that if there isn't a  
21 consensus that comes out of this process  
22 there's a fallback which you may or may not

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1 like. Hopefully, some of you will like it,  
2 but we do the best we can to get those rulings  
3 set with the data we have in front of us.

4 So we've had a lot of questions  
5 about ASRAC and who is on it. You probably  
6 know we have over 60 products that we have  
7 regulatory authority over. And there are now  
8 over two million basic models that have been  
9 certified under this program. We also have a  
10 variety of trade associations, non-profits,  
11 other parties who are interested in this  
12 holistically.

13 So you can imagine the breadth of  
14 who might want to participate. We had to make  
15 some decisions as to how to set up the  
16 steering committee. And we selected 11  
17 members of that steering committee.

18 One of the things we were looking  
19 for is a group that could be quick to get  
20 results and which also reflected the broad  
21 range of opinions that are out there in the  
22 market. And you're going to hear more about

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1 that in a few minutes.

2           The point I want to make here is,  
3 although the steering committee is very  
4 important to what we're doing, the real work  
5 takes place in the working group meetings.  
6 That's where the individual rules or test  
7 procedures of whatever gets brought forward  
8 gets discussed. That's where we want the  
9 heaviest technical input because that's where  
10 we have to get that data-driven information in  
11 front of everyone.

12           And so those of you who are  
13 interested in this committee, this is an  
14 important committee. It guides what everyone  
15 does. But the real heavy lifting is going to  
16 take place there.

17           The way we look at the program as  
18 a whole we typically build the test procedure.

19           That rolls into FTC labels or Energy Star  
20 ratings. And that rolls into where  
21 appropriate federal minimum energy efficiency  
22 standards.

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1 I'm going to give you a hint that  
2 I believe there's another area that we will  
3 want to look at and we're going to ask the  
4 ASRAC Committee to consider. We have  
5 authority over commercial product labeling  
6 that has never been implemented. The reason  
7 is commercial products are purchased  
8 differently than consumer products. So the  
9 whole process has to get thought of  
10 differently.

11 There's an opportunity there to  
12 drive market behaviors which could get results  
13 quicker and actually results that are good for  
14 consumers, for manufacturers, and others if we  
15 can do this right. So I throw that out as a  
16 topic. I think you're going to be discussing  
17 that as a possibility going forward.

18 I will also tell you that John and  
19 I were at the White House yesterday. And they  
20 were very interested in this topic. We were  
21 talking about multiple things that could  
22 happen in that space. And my experience with

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1 the White House in the three short years that  
2 I've been here is you hear nothing until  
3 you're asked, where is the answer? Where is  
4 it?

5 So we've had that before where  
6 there's interest. It's sort of brews. And  
7 then we get asked, okay. Where is your  
8 deliverable? So we expect something will come  
9 back out of that. And I look forward to  
10 hearing what the folks here have to say.

11 We have a lot of interested  
12 parties here in the room. It's fairly packed.

13 We welcome all of you. Keep in mind that  
14 this is an open meeting. We want to have  
15 anyone who wants to come in and listen to do  
16 so.

17 Thanks again for coming. I'm  
18 going to now turn this over to Doug Brookman  
19 who is going to facilitate the meeting today.

20 MR. BROOKMAN: Thank you. Thanks  
21 very much. And I thought it was appropriate  
22 to recognize our co-chairs for brief welcoming

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1 remark, Andrew deLaski and John Mandyck.

2 CO-CHAIR MANDYCK: Well, good  
3 morning. My name is John Mandyck. I'm with  
4 United Technologies. And I'm very pleased to  
5 co-chair this committee with my friend,  
6 Andrew.

7 Carrier Corporation is part of  
8 United Technologies. And through that, I've  
9 had about 20 years of experience working on  
10 energy efficiency issues primarily in the  
11 heating, ventilating and air conditioning  
12 business.

13 I think this is a great  
14 opportunity for us to make an impact on the  
15 appliance standards program. I think we're  
16 all here because we care about efficiency.  
17 And so I think it's with no irony that this  
18 group can help the Department actually act  
19 efficiently and more effectively through  
20 broader stakeholder participation, which is  
21 what our committee is all about.

22 So I look forward to everybody's

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1 participation. I think we'll get out of this  
2 what everybody wants to put into it. I would  
3 at least as a co-chair encourage everybody to  
4 be forthright and to participate as much as  
5 you can on the issues that we'll have before  
6 us.

7 CO-CHAIR deLASKI: I'm Andrew  
8 deLaski and I'm the Executive Director of the  
9 Appliance Standards Awareness Project. And  
10 for those you who don't know, ASAP is a  
11 coalition project of efficiency proponents  
12 including environmental groups and consumer  
13 groups, representatives from state government  
14 and from utilities, a major utility.

15 We are -- I'm based on Boston.  
16 And it's a pleasure to be a part of this  
17 committee and to help to help the Department  
18 to advance negotiation. We as a coalition  
19 have had -- we're very bullish on the  
20 prospects of negotiation as a way to develop  
21 new standards and to address the needs of the  
22 program.

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1           We've had great success with  
2 negotiations over the years. In my experience  
3 and time that I've been doing the work which  
4 is about 15 years now, roughly one-third of  
5 DOE rulemakings, all the rulemakings for all  
6 new standards, have been based on negotiated  
7 outcomes.

8           But this endeavor that we're  
9 starting on here is a new endeavor in the  
10 sense that it is now -- DOE has created this  
11 advisory committee to bring the task of  
12 negotiation within the scope of a federal  
13 advisory committee.

14           And several of us were involved in  
15 a process last year for transformers. John  
16 and I were on that committee and Tom and  
17 probably some others here in the room as well.

18           And as John Cymbalsky said, we batted one out  
19 of three. So .333 which is not bad if we got  
20 one out of three. We'd like to have done  
21 more. But we did get one out of three, John.

22           And it was a learning experience.

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1 I think that's one that does hold promise. I  
2 think this committee and the folks who will be  
3 involved in working groups potentially could  
4 make a big contribution to how we advance new  
5 standards for difficult topics that may  
6 otherwise be hard to advance.

7 I welcome the opportunity to be  
8 involved with the committee and to help as  
9 John said, the more we put into it the more  
10 we'll get out of it. Look forward to the  
11 work.

12 MR. BROOKMAN: Thank you. Thank  
13 you, Andrew. Thank you, John. And thank you,  
14 Roland.

15 The conduct of a federal advisory  
16 committee is different than normal rulemaking  
17 meetings. The discussion is confined to  
18 members of the committee, but though each  
19 meeting typically has a public comment  
20 segment. So there's an opportunity for  
21 anybody that wishes to do so to comment on the  
22 work of the committee.

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1           And also the Department has gone  
2 to lengths today and I think we'll continue,  
3 too, to make this an open meeting that is  
4 accessible via the web. So we welcome those  
5 individuals that have joined us via the web.  
6 And do we know about how many have joined us  
7 via the web? Twenty. So we welcome them.

8           All of you received a copy of the  
9 agenda as you walked in the room. I think  
10 immediately following this brief overview of  
11 the agenda we're going to ask each committee  
12 member to introduce him- or herself and take a  
13 couple of minutes to explain their connection  
14 to the Appliance Standards Program, discuss  
15 their expectations and what they might seek to  
16 be the achievements of the committee.

17           Following that, John Cymbalsky is  
18 going to provide a program overview. And then  
19 there's going to be a discussion period,  
20 overview of committee operations, framework  
21 and discussion with the members. We'll take a  
22 lunch right around noon today.

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1           And then following lunch we're  
2 going to be as a committee identifying initial  
3 committee efforts to best facilitate program  
4 activities. And this will be an opportunity  
5 for committee members to suggest possible  
6 ideas and to think about what the committee  
7 might be taking up looking ahead.

8           Around about 2:30 p.m. or 3:00  
9 p.m., next steps and then around about 3:00  
10 p.m. or so public comment period. We expect  
11 there will be closing and adjourning today  
12 right about 3:30 p.m. So that's the plan for  
13 today.

14           Questions and comments before we  
15 proceed?

16           (No response.)

17           So I would like to then commence  
18 and ask individual committee members to  
19 introduce themselves and say a couple of  
20 minutes about their expectations, their hopes,  
21 what they'd like to see accomplished.

22           And whoever would like to go

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1 first. You need to turn the microphone on and  
2 off, so you can get used to it.

3 Do you want to start, David?

4 DR. HUNGERFORD: That's fine. My  
5 name is David Hungerford. I currently am  
6 working for the California Energy Commission.

7 I've advised three commissioners in series on  
8 appliance standards rulemakings at the Energy  
9 Commission and have worked with our staff and  
10 folks at DOE to advance efficiency standards  
11 for a number of years now. In a previous  
12 incarnation of this body, the Appliance  
13 Standards Subcommittee of the ASRAC, I  
14 participated as well.

15 My interest today is for this  
16 committee in maximizing energy savings,  
17 opportunities, through creative regulatory  
18 approaches. But the flexibility that is  
19 inherent in such approaches that are fast  
20 evolving products and product markets.

21 Have to engender accountability  
22 through transparency and a commitment to

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1 measurable energy savings outcomes. And  
2 that's my major goal.

3 MR. BROOKMAN: Okay. We'll just  
4 go in sequence. But anybody can skip if they  
5 wish.

6 Tom.

7 MR. ECKMAN: I am Tom Eckman. I'm  
8 Conservation Manager with the Northwest Power  
9 and Conservation Council. It's an interstate  
10 compact formed by the states of Oregon,  
11 Washington, Idaho and Montana to represent the  
12 governors and the constituents in those states  
13 in the Northwest electric energy planning  
14 matters. Also to take care of the fish and  
15 wildlife that were damaged by the construction  
16 of the hydro projects along the Columbia and  
17 Snake Rivers which is another part of our  
18 work.

19 I've been involved in energy  
20 efficiency since 1975. So I've been around a  
21 while working particularly on state codes and  
22 standards and looking at energy efficiency as

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1 an opportunity for utility investments to meet  
2 load growth.

3 With respect to the standards  
4 process, I've been involved in several of the  
5 negotiated rulemakings that have been taking  
6 place over the years primarily informally, not  
7 necessarily headed up by DOE but involved with  
8 DOE. And found those to be a much more  
9 satisfactory way of getting to consensus on  
10 how to move the standards forward than the  
11 regulatory process itself. You can't get  
12 creative solutions very well out of that  
13 process.

14 I think that's what I'm looking  
15 for here is the way that we can get agreement  
16 on creative solutions that would advance  
17 sufficiency and maintain the product  
18 competitiveness that we'd all like.

19 MR. BROOKMAN: Thank you.

20 Steven.

21 MR. COUSINS: My name is Steve  
22 Cousins. I'm the Director of Immediate

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1 Consumption Equipment Governance with the  
2 Coca-Cola Company. When I say Immediate  
3 Consumption Equipment Governance, what I'm  
4 referring to is that Coca-Cola Company for the  
5 most part, we don't build appliances. We buy  
6 appliances. And my organization actually  
7 establishes and maintains the standards that  
8 the Coca-Cola Company has for its appliances  
9 and the approval programs and immediate  
10 consumption, because a majority of the  
11 beverages that we sell globally is for  
12 immediate consumption and to be consumed  
13 immediately. And we'd like our products to be  
14 consumed cold. So we're very much concerned  
15 about commercial refrigeration.

16 We have about 14 million  
17 commercial refrigeration items placed around  
18 the world. I mean vending machines,  
19 commercial refrigerators, merchandisers,  
20 fountain dispensers, things of that nature.  
21 Slightly more than three million here in the  
22 United States.

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1           And the Coca-Cola Company has been  
2 very concerned about responsible standards  
3 regarding energy, the equipment that we  
4 purchase.           Actually, the Coca-Cola  
5 contribution to global warming, our carbon  
6 footprint, the largest piece actually is our  
7 appliances. It's not our manufacturing sites,  
8 our bottling operations or our fleet. It's  
9 actually our refrigerators, our vending  
10 machines, our fountain dispensers that consume  
11 the most energy in our system. So we're very  
12 much concerned about purchasing and placing  
13 equipment that's going to be efficient.

14           What I'd like -- a role I'd like  
15 to play in this committee is to bring to the  
16 attention or advise on implications of  
17 standards as it impacts desires of other  
18 government agencies like the EPA, for example.

19           We've seen conflicts between what the DOE  
20 wants to do and what the EPA wants to do,  
21 particularly in the area of commercial  
22 refrigerants or refrigerants used in our

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1 equipment.

2 And at the same time since Coca-  
3 Cola is a global company, we're very much in  
4 tune to standards internationally. And we'd  
5 like to see responsible standards in the U.S.  
6 mesh or work in tandem with what's happening  
7 in Europe and Latin America and other  
8 geographies. I'm glad to be a part.

9 MR. BROOKMAN: Thank you.

10 John.

11 MR. CASKEY: I'm just glad when I  
12 have the choice in the vending machine that I  
13 pick the right product out of the vending  
14 machine which is a bottle of Coca-Cola. So  
15 thank you for that.

16 My name is John Caskey. I'm the  
17 Assistant Vice President of Industry  
18 Operations for the National Electrical  
19 Manufacturers Association. I've worked for  
20 them for seven years.

21 I've got overall probably about 35  
22 years of experience in the energy area. Prior

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1 to working for NEMA, I worked for two  
2 different utilities, both Pacific Gas &  
3 Electric Company and Dominion Virginia Power  
4 and Dominion Energy. So I have both utility  
5 as well as some product manufacturing  
6 experience.

7 Some of the things, I did  
8 participate in the negotiated rulemaking  
9 process for distribution transformers. And  
10 that was something that interests me very  
11 much. I think that approach is a very  
12 positive approach. So I am a wholehearted  
13 supporter of the negotiated rulemaking  
14 process.

15 I think one of the things that  
16 came out of that that I think is most valuable  
17 and that's sort of related to, if you will,  
18 one of my pet peeves which is it seems like  
19 some of the modeling that's done and the  
20 analysis that's done is very difficult to  
21 duplicate or to validate. So one of the  
22 things I want to bring to the table is more

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1 discussions dealing with how do you  
2 effectively validate some of the models that  
3 are used by Department of Energy. That's where  
4 negotiated rulemaking to me came in because we  
5 had manufacturers and utilities and others  
6 sitting around the table.

7           And they are actually very willing  
8 to share information to say, well, when I do  
9 my analysis to design a transformer I came in  
10 at X number of dollars and the modeling came  
11 in at Y number of dollars. And then we tried  
12 to figure out what caused those differences.  
13 So I think that's a very valuable outcome of  
14 the negotiated rulemaking process is that you  
15 have a face-to-face opportunity to sort of  
16 valid some of those models and make sure  
17 they're relatively in the right ball park.

18           The other things that interest me  
19 really deal with the cost-effectiveness of the  
20 final rules and to make sure that there's a  
21 balance between energy efficiency going  
22 forward and the cost to the manufacturers or

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1 the cost to the public in all of these things.

2 So I'm certainly looking forward  
3 to participating in this. And I'm ready to  
4 get started. Thank you.

5 MR. BROOKMAN: Thank you.

6 MR. CASSIDY: Hi, I'm Tim Cassidy.

7 I work for Best Buy. I work in their private  
8 label enterprise. My role at Best Buy is with  
9 compliance in general for products. We sell a  
10 lot of different kinds of products, various  
11 types of appliances, meaning things you plug  
12 in the wall.

13 I've been involved in a lot of  
14 different standards committees for things like  
15 quality standards, safety standards and energy  
16 standards. I worked with the Department of  
17 Energy before and the California Energy  
18 Commission on both plug-in-the-wall power  
19 supplies and battery chargers.

20 I hope to bring a little different  
21 perspective on supply chain especially being  
22 from a retailer than what you might see in one

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1 of these types of committees or that I have  
2 seen before. And also to achieve a better  
3 level of collaboration around how to  
4 accomplish standards that are useful for all  
5 the parties concerned and that are within what  
6 the state of the art can truly accomplish.

7 MR. BROOKMAN: Thank you.

8 MR. PETERSON: I am Kent  
9 Peterson, Vice President, P2S Engineering, a  
10 consulting engineering firm out of California.

11 Also very active in ASHRAE, the American  
12 Society of Heating, Refrigeration and Air  
13 Conditioning Engineers.

14 I think if there is one goal that  
15 I have it's probably what Roland said. And  
16 don't want to add any bureaucracy to what you  
17 already have.

18 This committee really should be  
19 able if I have an outlook on the committee,  
20 it's to be able to reach consensus and help  
21 assist in the rulemaking process, so we can  
22 get some of the I guess gridlock that's really

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1 plagued the Department maybe for the last 15  
2 years in this area on trying to get the rules  
3 updates and get some of the new rules out.

4 I am interested in flexibility. I  
5 do believe strongly in industry consensus  
6 standards. I have a lot of experience in  
7 industry consensus standards and how they  
8 might be able to help in the rulemaking.

9 Also I really believe that  
10 anything that we're doing really has to have  
11 good life-cycle cost-benefit analysis that  
12 really supports not only the manufacturers,  
13 but the endusers on where we're actually  
14 applying these standards. And certainly we  
15 have to look at it not only from a national  
16 but hopefully on an international level when  
17 it impacts manufacturers that are  
18 manufacturing internationally.

19 I look forward to working with  
20 everyone on the committee.

21 MR. BROOKMAN: Thank you.

22 CO-CHAIR deLASKI: So I gave my

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1 initial introduction. Now I'll just elaborate  
2 a little bit here on some thoughts. We've  
3 talked about the experience on transformers  
4 and I also referenced some remarks said about  
5 one-third of the standards that DOE have  
6 issued have been based on negotiation.

7 And those negotiations have been  
8 private negotiations meaning that stakeholders  
9 like my organization and John or folks around  
10 this table have gotten together to develop a  
11 recommendation and submitted that to the  
12 Department. And those private negotiations  
13 have really taken -- there have been two  
14 flavors in my experience.

15 One flavor has been when we just  
16 work it out amongst ourselves and then throw  
17 it over to the Department. And then the  
18 Department before we start our rulemaking  
19 process elicits comments from everybody else  
20 in the world who wants to comment and comes up  
21 with the final rule. And that's worked pretty  
22 well.

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1           The Department in general has been  
2           able to adopt those standards. But sometimes  
3           hasn't for one reason or another. That's one  
4           flavor.

5           Another flavor of these negotiated  
6           rulemakings historically has been one where  
7           the Department has been at the table to  
8           provide information and data to the  
9           negotiators. And that's also been a very  
10          constructive model. I'm thinking most  
11          recently of the discussions with AHAM that  
12          General Electric was involved with and I think  
13          Kevin from AHAM is here where the Department  
14          provided data to the process.

15          So the Department wasn't an actual  
16          negotiator, but was a support. We were able  
17          to say, would you run this iteration of the  
18          model and give us data to help inform the  
19          discussions. And the Department because it  
20          has to be public has posted that data to the  
21          website and made it available to anybody who  
22          wants to see it. That's been another model.

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1           And what we're talking about today  
2 is a new model, one where the Department is  
3 actually at the table. And I think John is  
4 going to describe this later. But what I want  
5 to emphasize is that I think that those two  
6 old models, they still work.

7           So we right now have before the  
8 Department a recommendation for motors that  
9 our organization has worked out with NEMA and  
10 the motor manufacturers and has been submitted  
11 as a joint recommendation without the  
12 Department having been part of that  
13 negotiation process.

14           But yet it's now before the  
15 Department. The Department is working on a  
16 proposed rule which we hope will reflect the  
17 consensus that was submitted to it. Those  
18 processes in my view still remain very good  
19 processes for developing standards and ones  
20 that we should continue to explore and to  
21 develop.

22           The other process is of course the

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1 typical rulemaking process which Roland  
2 described at the beginning, with notice and  
3 comment rulemaking, which if one-third were  
4 negotiated that means two-thirds weren't. And  
5 some of those have been contested. Some of  
6 those have been contentious. Some of them  
7 have not been contentious.

8 And that will also continue to be  
9 an important way for the development of rules.

10 That doesn't go away.

11 What I think of this process today  
12 is that it's a new tool in the toolkit. It's  
13 another way to develop standards that perhaps  
14 are better, can be better, for a lot of  
15 reasons that the folks who have already spoken  
16 have described. Better able to vet models as  
17 John discusses. A better way to get more  
18 stakeholders around the table who might have a  
19 view that we didn't consider those who were  
20 involved in a private negotiation. As a way  
21 to make sure that what we're developing is  
22 something the Department feels it can do.

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1 Sometimes we've done it. We've come up with a  
2 great idea only to have the Department say or  
3 to have legal counsel say, great idea, guys,  
4 but we can't do it. That I think is some of  
5 the benefits we get by getting altogether  
6 through a negotiated process where the  
7 Department is an active participant in the  
8 process.

9 When we've negotiated rulemakings  
10 on a private basis, we've often pursued a  
11 couple different paths for adopting them. One  
12 is to be able to ask the Department to do it.

13 But many of them have been enacted through  
14 Congress. So that's been an active way for  
15 doing private negotiations that we make at the  
16 same time as we're recommending them to the  
17 Department. Put it up as a consensus  
18 recommendation to Congress. When Congress is  
19 working on energy bills, that becomes the  
20 other way. So the 2005 and 2007 Energy Bills  
21 contain a bunch of consensus amendments that  
22 were negotiated by people in this room and

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1 others.

2           So I see a lot of pros in the  
3 Federal Advisory Committee process. I also  
4 see some cons. The main con I see is that  
5 it's time-consuming. I don't think it's going  
6 to be less time. I think it's going to more  
7 time than a typical rulemaking for the  
8 stakeholders, for all stakeholders.

9           That was certainly our experience  
10 with transformers. We spent a lot of time on  
11 transformers over a pretty intense period of  
12 time, a pretty compact period of time. So I  
13 think it's more demanding of those who are  
14 around the table, not less demanding.

15           So I think we're looking for  
16 expectations for the process. We should  
17 expect that it will be a process for those who  
18 are involved in the working groups of an  
19 intense level of involvement through the  
20 committees.

21           So I'm very optimistic that this  
22 is another way to get good standards done, to

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1 address nettlesome problems that are before  
2 the Department. But I think we need to keep  
3 our eyes wide open as to what the demands of  
4 it are and also keep in mind that these other  
5 mechanisms for getting standards done remain  
6 very important and continue to be advanced.

7 MR. BROOKMAN: Thank you.

8 John.

9 CO-CHAIR MANDYCK: John Mandyck  
10 again. Just to build on my earlier comments  
11 and also to support what Andrew just said, I  
12 think I want to thank the Department for  
13 creating the committee and creating another  
14 avenue for holding discussions on complex  
15 issues.

16 Let's face it. When it comes to  
17 appliance standards, all the easy stuff has  
18 been done. So we're moving into a more and  
19 more complex area. And we've seen the  
20 limitations of the traditional notice and  
21 comment process that doesn't facilitate  
22 dialogue and help create understanding and

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1 awareness to sort through the complexities.  
2 So I think this becomes another avenue to have  
3 that dialogue, to increase participation in  
4 the process and to break down some of the  
5 complexity to arrive at a sound outcome.  
6 That's what I look forward to with the work of  
7 this group.

8 MR. BROOKMAN: Thank you.

9 MR. COUGHLIN: Hi, my name is Tom  
10 Coughlin. I work for National Grid. We're a  
11 gas and electric utility serving three states,  
12 New York, Rhode Island, Massachusetts. I'm  
13 the Manager of Technical Strategy and Policy  
14 in our Energy Efficiency Group at the company.

15 And one thing that we do is we try  
16 to see where we can set our own program  
17 standards such that we're looking at devices,  
18 appliances, standard practices that are  
19 technically and economically feasible in the  
20 marketplace.

21 Our programs are not geared  
22 necessarily and entirely on energy savings,

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1 but also how those energy savings can be  
2 sustained, things like making sure that we're  
3 kind of accelerating the adoption of building  
4 codes and appliance standards.

5 For all the reasons stated here by  
6 the past speakers, I'm excited to be here  
7 myself. And I guess my wish is that this  
8 group is a really helpful committee for the  
9 Department and that we can maybe certainly  
10 help you effect some of these appliance  
11 standards more efficiently and effectively.

12 MR. BROOKMAN: Thank you.

13 Kelley.

14 MS. KLINE: Hi, Kelley Kline,  
15 General Electric. I'm the Product Stewardship  
16 Program Leader for GE Appliances based in  
17 Louisville, Kentucky focusing on things like  
18 the refrigeration products we make there,  
19 laundry, water heaters, the products like  
20 that.

21 A second part of my role is as  
22 counsel to GE Home and Business Solutions

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1 which consists of GE Appliances and Lighting.

2 So a second piece is giving advice on various  
3 regulatory requirements, energy and others.

4 I've been involved with the  
5 standards rulemaking process with many of the  
6 activities that other folks around the table  
7 have already noted. A big supporter of the  
8 negotiated rulemaking process. We think it  
9 gives a lot of certainty, gives the ability to  
10 really work things out at a creative level and  
11 look forward to being a part of the committee  
12 to lend our support to that.

13 I guess in terms of an additional  
14 contribution I would hope to be able to make  
15 the committee, that would be from the  
16 perspective of a product manufacturer, some of  
17 the implications of the rulemaking process for  
18 manufacturers, some of the implications for  
19 really post-rule implementation and the  
20 realities of complying one with the standards  
21 and laws once they're implemented. So I hope  
22 to be able to bring that perspective as well.

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1 MR. BROOKMAN: Thank you.

2 MS. KLINE: Thank you.

3 MS. ARMSTRONG: I am Ashley  
4 Armstrong. I'm the DOE Representative on the  
5 committee. I think Roland laid out the  
6 overall goals of the DOE for this committee,  
7 but I look forward to working with everyone.

8 Right now at the Department I work  
9 on a lot of the test procedure issues and some  
10 of the certification, compliance and testing  
11 issues facing the Department. But I'm hoping  
12 the committee will come to the table with open  
13 minds and try to come up with creative  
14 solutions to some of the more complex issues  
15 facing us in the next couple of years.

16 MR. BROOKMAN: Do you wish to --

17 MR. CYMBALSKY: Hi, I'm John  
18 Cymbalsky. I am the Designated Federal  
19 Officer for ASRAC. So I actually don't vote  
20 in the committee, which is probably a good  
21 thing for all of you here. I'm the Program  
22 Manager for Appliance Standards and Building

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1 Codes under Roland's leadership.

2 Just a few other things to add  
3 that we haven't talked about yet. The  
4 Department through its standards program and  
5 lots of other programs that we run, a big part  
6 of what we're interested in is U.S.  
7 manufacturing. So whatever we do here, rest  
8 assured that one of the key goals for the  
9 Department is to promote U.S. manufacturing.

10 And I'm glad we have GE here at  
11 the table. We've heard recently on GE  
12 bringing back manufacturing to the U.S. And I  
13 think that's something all of us should be  
14 supportive of and proud of. And I think this  
15 program in particular goes out of its way to  
16 make sure that U.S. manufacturing can prosper  
17 under our regulatory regime.

18 Again, I'll just echo what  
19 everyone has been saying. I think this  
20 committee was formed with a number of people  
21 in mind such that we can move nimbly; we can  
22 react quickly and get to solutions that

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1 everybody can be happy with in this program.

2 We talked a lot about standards.  
3 But as Roland said, there are other issues  
4 that relate to this program like commercial  
5 labeling is one. But there are others, just  
6 not negotiated rulemaking.

7 So I hope everyone here keeps an  
8 open mind on what different topics we might  
9 form working groups to address. And again  
10 they don't all have to be rulemaking-related.

11 They can be anything that impacts the  
12 program.

13 Again, I look forward to working  
14 with everybody. And I guess as DFO I get all  
15 the complaint letters and things. Keep them  
16 coming. I've got a file full of them. And  
17 we'll continue to read them. Thank you.

18 MR. BROOKMAN: Thank you.

19 Do you wish to add anything more?

20 (No response.)

21 No. Okay.

22 So thanks to all of you for

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1 introducing yourselves. And we all have great  
2 hopes for the Advisory Committee.

3 Next on the agenda, we're going to  
4 have a program overview from John Cymbalsky.

5 And you're going to drive those  
6 or, John, you're going to up there.

7 MR. CYMBALSKY: I'm going to break  
8 with regular tradition and sit at the table  
9 since there are just eleven of us here.

10 I think Doug said we're going to  
11 give an overview of the program. I think we  
12 switched the order. We're going to do an  
13 overview of ASRAC first. So lay out some  
14 ground rules as we see them. And then after  
15 this we'll then go into the Appliance  
16 Standards Program Overview.

17 With that, let's see. Hopefully, I  
18 hit the right button here. This is always a  
19 challenge. Okay. Got it right the first  
20 time.

21 As has been stated already, ASRAC  
22 is an advisory committee that the Department

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1 has chartered. All the committee members you  
2 see around the table were appointed by DOE and  
3 specifically by the Secretary of Energy. I  
4 know some of you have been chomping at the bit  
5 for this to actually kick off.

6 I know it's been a little bit of  
7 time since we've put out the Federal Register  
8 notice way back in March. But there still is  
9 a bureaucracy. We're going to try to cut  
10 through some red tape. But we do have to  
11 follow certain procedures.

12 But be that as it may, we have 11  
13 of us now at the table. Each of you have  
14 different term limits that are associated with  
15 your term here on ASRAC. Some have one. Some  
16 have two. Some have three years of term.  
17 They can be reappointed once.

18 For those of you in the audience  
19 or maybe on the webinar I know we've had over  
20 40 nominations to this. And again we picked  
21 11. So that leaves a bunch of people still  
22 out there I know who have big interest in

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1 joining this committee at some point.

2 And just rest assured that we will  
3 be chartering lots of working groups where  
4 your participation will be needed. And we  
5 also will have room. Again as appointments  
6 turn over here on the committee, we will seek  
7 nominations over time.

8 ASRAC is solely advisory in  
9 nature. So this is not a committee that says  
10 the Department shall do X and the Department  
11 shall do Y. It's an advisory committee.

12 The committee tasks will originate  
13 from those around this table and with DOE  
14 involvement. When we initiate working groups,  
15 there will be distinct time frames that we  
16 would hope the working groups can work under  
17 with distinct outcomes as we go forward.

18 Okay. More about the working  
19 groups. We had a call a couple of weeks ago,  
20 myself, Ashley and the two co-chairs, and we  
21 kicked around some ideas that we think sounded  
22 good. And we're going to share them all

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1 later. And, of course, everyone else at the  
2 table obviously will hopefully have some good  
3 ideas as well.

4 But we will vote on what working  
5 groups to commission. I think the first thing  
6 we're going to do is decide what we mean by  
7 consensus. And I spoke to John and Andrew  
8 before.

9 In our transformer working group,  
10 we voted on what consensus meant. And so we  
11 need to define that first before we do any  
12 voting of any kind. So we'll do that in a  
13 bit.

14 The thing to recognize here is  
15 that DOE may withdraw tasks from ASRAC at any  
16 time. Again, this is an advisory committee.  
17 It doesn't actually drive the boat. DOE still  
18 drives the boat. But again this committee  
19 advises us on that.

20 In the event that a consensus  
21 recommendation is not reached, ASRAC will then  
22 tell the Department that it could not reach a

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1 consensus. Then the task will be withdrawn  
2 and DOE will proceed with its normal operating  
3 procedure based on whatever the task was.

4 Scope of activities. We want to  
5 keep this as broad as possible. As I said  
6 before, let's think a little outside the box  
7 in terms of not just rulemakings but what any  
8 other types of things DOE has legal  
9 responsibility for under its statutory  
10 requirements.

11 Obviously, the efficiency  
12 standards are one of the biggest ones and most  
13 contentious as we would expect. So I think  
14 we'll focus there obviously.

15 But again test procedures, I know  
16 we talked about how complex things are  
17 becoming on the standards side. Well, the  
18 test procedures are for me, who I'm not an  
19 engineer and I don't pretend to know anything  
20 about physics or how things work, the test  
21 procedures are to me very, very confusing. I  
22 probably won't read one. But I know that

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1 they're very difficult and that could be  
2 another area to have discussion around, how  
3 test procedures work.

4 More and more we find that  
5 products become more complicated to test. And  
6 so we have a test procedure waiver process.  
7 So there are lots of areas there to look into.

8 New product coverage. This group  
9 could come up with different products that may  
10 or may not meet some of the statutory  
11 requirements to cover. But we can discuss  
12 that.

13 Certification, laboratory  
14 accreditation and testing programs. Roland  
15 mentioned labeling. Again, another big issue  
16 for us is the commercial labeling. We've yet  
17 to do one. But we do have a few active  
18 rulemakings in this base right now. We have  
19 CREs. We have WICFs. Commercial ice makers.

20 All these things that could potentially have  
21 a label behind them.

22 And then just any issues of

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1 concern. So again let's think broadly about  
2 this and hopefully we can reach consensus on a  
3 bunch of different items.

4 Here's the flow chart as we see  
5 things. And thanks to Jeremiah for putting  
6 this together for us. But you can see the  
7 different levels of interaction here.

8 But right at the beginning, so  
9 we're starting at the task discussion here  
10 today. And you can see there will be  
11 discussions between DOE and ASRAC. Out of  
12 that we hope to get today to step two.

13 My hope today is to have several  
14 working groups voted on and out of this  
15 committee for us to move forward informing  
16 those working groups, at which point, we will  
17 put out Federal Register notice to seek  
18 nominations for each of the working groups.  
19 And again that will take a little process to  
20 do that.

21 The working groups each could have  
22 up to 25 members. This committee will set the

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1 guidelines for the working groups. Again,  
2 time line, expected outcomes, that kind of  
3 thing.

4 As they go along, the working  
5 groups will brief this committee. We don't  
6 necessarily always have to meet in person like  
7 this. We can do it over the phone. We can  
8 have conference calls, cut down on travel.  
9 Webinars. Anything that works that's more  
10 efficient.

11 Then at the end of the day for the  
12 working groups, they will bring a  
13 recommendation, hopefully, to this committee.

14 And this committee votes whether or not to  
15 accept that working group's recommendation.  
16 If this committee does at which time they will  
17 present it to the Department.

18 So for transformers that's exactly  
19 how it worked. We got one out of three for  
20 the transformers. So the recommendation was  
21 brought to ERAC at the time and ERAC said,  
22 okay. We'll take your recommendation.

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1                   They presented it to the  
2 Department. And the Department adopted that  
3 into its proposed rule.

4                   Okay. Tasking Discussion. So  
5 today we're going to I think after lunch talk  
6 about this. And we'll as a group talk about  
7 different areas for us to have working groups  
8 formed. We will vote on each one. We will  
9 also give some time lines for completion of  
10 the tasks.

11                   An important part of the working  
12 group thing and I think Andrew hit the nail on  
13 the head here is that the working group, we're  
14 going to call it working group for a reason  
15 because you're going to work. It's not  
16 sitting around and thinking and talking.

17                   For transformers, it was a lot of  
18 work for everyone on that committee. Multi-  
19 day meetings where it was pretty intense. But  
20 again at the end of the day for us putting in  
21 more work, I think you get a better outcome at  
22 the end of the day.

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1           But I don't want to say that it  
2 will be easy. But what we're going to have to  
3 do is have at least one member from this  
4 committee on each working group as a  
5 requirement. So there are 11 of you. And I  
6 think we'll share the pain. And hopefully we  
7 can match up topics with backgrounds of us  
8 that are around the table.

9           And hopefully we don't have this.

10          But in an instance where there is no  
11 volunteer, we're going to vote one. And again  
12 there's 11 votes. So there's going to be an  
13 outcome, right. So hopefully we don't go  
14 there.

15          And then, of course, there will be  
16 a DOE member on each of the working groups as  
17 well. And it's not just Ashley or me. You  
18 know we have a big pool of both engineers and  
19 attorneys that could be on the working groups.

20          Okay. So once we form the working  
21 groups, again we will solicit nominations  
22 through Federal Register notices. We'll go

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1 through the time commitment in that notice.  
2 At which time, DOE in conjunction with ASRAC  
3 will select the members, again limited to 25  
4 members. At least one full committee  
5 representative and one DOE representative.

6 Once formed, the committee will  
7 select a chair. Each working group will  
8 select a chair. And with that, the chair will  
9 again run the meetings and that kind of thing.

10 But DOE will be there to support all these  
11 working groups through both any federal  
12 employees and contractor support. So we're  
13 going to try to make at least the  
14 administrative part of this easier for  
15 everybody.

16 Okay. So the working groups.  
17 Just like this meeting the working group  
18 meetings will be open to the public. I think  
19 the major difference you'll see about these  
20 two sets of meetings is that the working group  
21 meeting will be very technical, very in the  
22 weeds, very detailed.

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1                   What we saw with transformers and  
2 I hope to emulate with this process as well is  
3 that those that are selected for the working  
4 groups could also bring people with them that  
5 may be more technical or may be more legal or  
6 you know whatever it may be. But I guess the  
7 point here is that you could bring more people  
8 in the room and in real time you could have  
9 your really technical experts help out to get  
10 to a better solution set at the end of the  
11 day.

12                   Again, just reiterating, the  
13 expectations of the working group as part of a  
14 negotiated rulemaking will be outlined very  
15 clearly. DOE and the ASRAC representative  
16 will steer these working groups into what the  
17 expectations are at the end of the day.

18                   Some guidelines will have our  
19 general counsel in here to give ethics and all  
20 that. There are legal requirements to be on  
21 the working groups.

22                   And then again the time commitment

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1 is something that we realize we don't all have  
2 free time that's not infinite. So when we  
3 form these working groups, I think it's very  
4 important that we do lay out a finite amount  
5 of time for us to finish up our work. I think  
6 that's very important.

7 And for transformers we had court-  
8 ordered deadlines looming. So that was pretty  
9 easy to set the time limit there. But  
10 hopefully we won't have the gun to our head on  
11 the products that we talk about and form  
12 groups around.

13 The deliberations. So once we get  
14 a work plan, the working groups themselves  
15 will meet as often as they deem necessary to  
16 get the job done. All the meetings will be  
17 announced in the Federal Register. All the  
18 meetings are public. We'll put them on the  
19 webinar.

20 And the working groups will  
21 operate by consensus. And consensus again  
22 this committee will vote on what consensus is.

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1       The working groups themselves might have a  
2       different idea of what consensus is. So the  
3       first order of business is to actually define  
4       that and work from there.

5                Again, Roland mentioned in his  
6       opening remarks that if we do task working  
7       groups to do a negotiated rulemaking we should  
8       realize that the Department will continue its  
9       regular process in order to come to a Notice  
10      of Proposed Rulemaking at some point. Should  
11      the negotiations break down and no consensus  
12      is reached, DOE will go forward with its own  
13      proposal.

14               Transformers is a good example.  
15      We got one out of three. Well, we did propose  
16      rules for all three products. It's just that  
17      only one of them was the negotiated outcome.  
18      The other two were DOE's own proposals. And  
19      so that same thing holds true for anything we  
20      do here.

21               So the working group chair will  
22      present any updates on their final consensus

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1 determination to ASRAC. The chair does not  
2 necessarily have to be the ASRAC  
3 representative. I think you can vote it to be  
4 different if you want.

5 The working group chair will  
6 present what the majority and minority views  
7 are that the working group worked under when  
8 it presents its results to the full committee.

9 And then based on that update, ASRAC will  
10 deliberate and can decide to give additional  
11 time.

12 For example, if the working group  
13 said, hey. We were pretty close. We think we  
14 can get there. Please give us more time.  
15 That's an option that this group can decide  
16 upon.

17 They can vote to accept the  
18 working group's recommendation without change  
19 and then form that recommendation to DOE with  
20 the majority and minority views. Or they  
21 could notify DOE that no recommendation can be  
22 made on that particular task either because

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1 they didn't reach consensus or majority  
2 consensus. And so they would recommend  
3 nothing there.

4 How can you participate? And  
5 again the theme here is that I noticed this  
6 group, we have 11. There were 40 applicants.  
7 There's going to be lots of opportunity for  
8 those of you who are still interested to  
9 participate on the working groups.

10 When you see these Federal  
11 Register notices, you'll nominate yourself.  
12 You can nominate others. But anyway I think  
13 you'll have to put in a resume and we will  
14 select working groups based on the material  
15 that is provided to us.

16 And just again remember, if you  
17 want to participate, it's going to be hard  
18 work. And the time commitment will be a bit  
19 of a lift for some of us. But again we  
20 definitely want as broad a participation as  
21 possible in all of our working groups.

22 So here's some information about

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1 our website. There's my name with my generic  
2 email box. And the docket for this meeting.  
3 That's the overview for the ASRAC operations.

4 MR. BROOKMAN: Let's see if there  
5 are questions at this point.

6 MR. CYMBALSKY: Yes.

7 MR. BROOKMAN: John.

8 CO-CHAIR MANDYCK: I have a couple  
9 of questions, John, just to clarify. Any  
10 recommendations that may come from ASRAC, if  
11 DOE adopts, we'll adopt as a proposed rule,  
12 correct?

13 MR. CYMBALSKY: That's correct.

14 CO-CHAIR MANDYCK: And then is  
15 there any time benefit that's gained by going  
16 through an ASRAC process? In other words,  
17 does it allow DOE to move more expeditiously  
18 than otherwise would have been the case?

19 MR. CYMBALSKY: Yes, it can.  
20 Sure. And like Andrew said though, it's not  
21 necessarily that way. But yes.

22 MR. BROOKMAN: Andrew.

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1 CO-CHAIR deLASKI: I have a couple  
2 of questions, too. In terms of the ASRAC  
3 participants' involvement in the working  
4 groups, DOE will always -- DOE is on ASRAC and  
5 DOE will also have a seat on every working  
6 group. And then at least one of us has to be  
7 on every working group. Could it be more than  
8 one of us?

9 MR. CYMBALSKY: Yes, it could be.

10 CO-CHAIR deLASKI: Okay. Is there  
11 an upper limit on how many folks from this  
12 committee?

13 MR. CYMBALSKY: We didn't set an  
14 upper limit.

15 CO-CHAIR deLASKI: Okay. And then  
16 what would be the access to the consulting  
17 department for every rulemaking as a team of  
18 consultants who are doing the technical work.

19 What is the working group's typical access to  
20 the consultants? And what would be their  
21 involvement in a working group's  
22 deliberations?

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1           MR. CYMBALSKY:     I think we're  
2 going to try to use the same model we did for  
3 transformers. And so my expectation is that  
4 we would provide the resources necessary to  
5 get to a good outcome. So I think we'll have  
6 them in the room and some mode of transformers  
7 and hopefully do some real time analysis to  
8 get the job done.

9           CO-CHAIR deLASKI:   Just for those  
10 who weren't there, when we did the  
11 transformers, it was the same sort of team of  
12 consultants who were doing -- who had been  
13 working for DOE for some period of time for  
14 the normal rulemaking process were then  
15 essentially available to the negotiating  
16 committee in real time.

17          MR. CYMBALSKY:     Yes, that's our  
18 expectation is to provide the same level of  
19 support.     Hopefully, we'll have enough  
20 resources to spread them around depending on  
21 what the working group situation is.

22          MR. BROOKMAN:     John, presumably

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1 the work principally or almost totally gets  
2 done in the context of actual meetings of the  
3 working group.

4 MR. CYMBALSKY: Right. I think  
5 what we found with transformers is oftentimes  
6 the models take a while to run. So we would  
7 have multi-day meetings and part of the  
8 meeting would be discussing hey, what about  
9 this and what about that.

10 And then what we did is we ran  
11 some stuff overnight. And then the next day  
12 we had some answers for some of the more  
13 challenging questions.

14 But oftentimes everyone had their  
15 laptops and we had manufacturers looking up  
16 information in real time. We had our  
17 consultants doing analysis in real time. And  
18 we found a lot of good real time work being  
19 done at the meetings.

20 MR. BROOKMAN: Tom.

21 MR. COUGHLIN: Where there might  
22 be some work, John, required by some of the

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1 people behind the scenes and they may not be  
2 there, will we go through the DOE  
3 representative on the working group committee  
4 to make a request that we need somebody to  
5 take a look at this or to do some analyses?

6 MR. CYMBALSKY: Yes. I think  
7 that's fair. I think everything is on the  
8 table. So if someone on the working group  
9 says, I'd like you to analyze this, the  
10 working group themselves could vote.

11 I know with transformers there  
12 were some different levels that wanted to be  
13 analyzed that the group themselves voted not  
14 to look at for one reason or another. But I  
15 don't see why that wouldn't be the case.

16 MR. BROOKMAN: Additional  
17 questions? Final questions?

18 CO-CHAIR deLASKI: I had one more.

19 MR. BROOKMAN: Yes, Andrew.

20 CO-CHAIR deLASKI: Just time  
21 frame. Do you have a feel for what you think  
22 the typical time frame that a working group

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1 would be charged to act within?

2 MR. CYMBALSKY: That's a good  
3 question. I think it all depends upon the  
4 product and where DOE already sits in its  
5 process of doing analysis. I'd hate to pin a  
6 number on how long it would be, but we saw  
7 with transformers that was like a gun to the  
8 head was about six months' time, right. We  
9 did from July to February roughly, so six,  
10 seven, eight months for that one.

11 But I think a year is probably not  
12 a bad starting point for some things. We're  
13 going to find that there are others that we're  
14 going to want to do quicker. I think it's  
15 going to be very product specific.

16 MR. BROOKMAN: Kelley.

17 MS. KLINE: The examples we've  
18 talked about so far have been in the context  
19 of product-specific rulemakings. Do you  
20 envision any work groups ever taking on I  
21 guess more crosscutting questions or things  
22 that aren't -- things where the result is not

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1 a rulemaking recommendation?

2 MR. CYMBALSKY: Yes, I think  
3 commercial equipment labeling is one that  
4 would fit that category. But hopefully there  
5 are others. Yes, I hope there are some  
6 crosscutting ideas that come out of this.

7 Again, I'd hate to just say here's  
8 five rulemakings. Go do them. I hope there's  
9 a couple other more crosscutting issues that  
10 we bring up.

11 MR. BROOKMAN: Tom Eckman.

12 MR. ECKMAN: I have one, but we'll  
13 save it until later because it will take a  
14 longer discussion.

15 MR. BROOKMAN: Okay. Good  
16 overview. Additional questions? Final  
17 questions before we move on?

18 (No response.)

19 So then let's do that.

20 MR. CYMBALSKY: Okay. I thought I  
21 would provide a little bit of an overview of  
22 the program, where things are today so that it

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1 will help the committee maybe focus some of  
2 their thoughts. I'm not getting a response  
3 from my clicker.

4 (Off the record comments.)

5 There we go. Got it. Thanks.  
6 This slide just gives you kind of an overview  
7 of the different things we think about in the  
8 program.

9 Generally speaking, energy savings  
10 is our goal. How we get there can be lots of  
11 different paths. But as this funnel displays  
12 we start with our statutory authority and  
13 there are lots of things I wish we could do.  
14 But legally we can't do them. That's why my  
15 lawyer always has my back over here. We start  
16 with the statutory authority.

17 With that becomes product  
18 coverage. What you've seen recently out of  
19 the program is an expansion of coverage. So  
20 the statute sets some clear language on how we  
21 can expand authority to other products. We've  
22 done that with a few different things.

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1 Namely, set-top boxes, pumps and commercial  
2 fans are the three that come to mind.

3 And once we expand product  
4 coverage we need to develop a test procedure.

5 Once the test procedure is set, we can then  
6 establish efficiency levels for standards.  
7 Then you have the date of compliance.

8 And then, of course, at some point  
9 and what you've seen recently is a more of a  
10 focus on enforcing the standards. It's always  
11 good to have a standard out there. But I  
12 think we found in some cases that if you have  
13 lax enforcement you may not be getting the  
14 energy savings that you previously thought you  
15 were getting.

16 The program the last couple of  
17 years has been actively enforcing its  
18 standards. We just reached a settlement with  
19 a big Asian firm where the settlement was \$4.5  
20 million. We'll talk about that in a little  
21 bit.

22 As Roland mentioned this morning,

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1 we have about just over 60 products now that  
2 are covered by the program. And these are  
3 known as the covered products. These in total  
4 are responsible for about 90 percent of the  
5 energy use in homes, 60 percent in commercial  
6 buildings and almost 30 percent in industrial  
7 energy consumption.

8           You can see based on those  
9 percentages where the target of opportunity  
10 lies for increased energy savings. I think we  
11 as a group should focus in the areas where we  
12 think there's energy savings potential when we  
13 form these working groups.

14           In 2009, there were about 113  
15 million homes and 5.4 million commercial  
16 buildings which consumed about 40 quads of  
17 energy. Just over 40 percent of the total in  
18 the U.S. in any given year.

19           And then finally energy use in  
20 buildings, we spend almost a half of billion  
21 dollars in energy for our buildings. So it's  
22 a lot of money. And I think the work of this

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1 group can help cut our energy bills as we move  
2 forward.

3 What the program does, I mentioned  
4 it a little bit on the first slide. But we  
5 establish test procedures and then again the  
6 efficiency metric is very important. Without  
7 it, you can't set a standard.

8 They need to be carefully  
9 developed because you don't want to have  
10 situations where test procedures could be  
11 gamed or there are loopholes in test  
12 procedures. So it's very important to have  
13 these carefully laid out.

14 And then once you have the test  
15 procedure, you can establish a standard.  
16 Often times as you see at the bottom,  
17 standards are actually not hard numbers, but  
18 some form of an equation that could vary based  
19 on, say, volume is one. You can just see  
20 little cutouts of what test procedures and  
21 standards look like in the Federal Register.

22 I spoke a little bit about

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1 enforcement. Kind of new for the program. I  
2 think before say 2010, around that time, is  
3 when DOE has began enforcing its standards  
4 more rigorously. There's lots of different  
5 actions that a manufacturer must certify its  
6 product. That's one basic enforcement action  
7 is that you didn't certify your product.

8           And then one of the other actions  
9           which may be more serious is that your  
10          product does not conform to the minimum  
11          standards. So we're enforcing both of those  
12          aspects of the program. Again, there's a  
13          little clip about the 4.5 million for four  
14          models that failed to meet our energy  
15          efficiency standards. That was back in  
16          November.

17                 A few of us asked about what else  
18                 we could do besides just negotiate a  
19                 rulemaking. So the other thing to remember,  
20                 the program works with Energy Star to develop  
21                 the test procedures for Energy Star products.

22                 And we also work with EPA to develop Energy

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1 Star Most Efficient. Those are other areas  
2 that possibly there's some topics there.

3 Generally speaking, the same test  
4 procedures is used for Energy Star as the  
5 covered products. DOE also runs the Energy  
6 Star Verification Program for EPA. So we will  
7 test a bunch of products to see if they meet  
8 the Energy Star criteria.

9 Since 2010, we've tested over 400  
10 of these. And if we find issues with that, we  
11 refer the product to EPA for action. So DOE  
12 itself does not take the action. EPA does  
13 that.

14 I mentioned Energy Star Most  
15 Efficient. A fairly new program. Been around  
16 a couple of years. But roughly speaking, this  
17 program targets about five percent of the most  
18 efficient products in any product class and  
19 designates it as Energy Star Most Efficient.  
20 I think there's about seven to ten products  
21 now that have Most Efficient criteria.

22 Finally, we work with FTC. And I

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1 guess we've probably all seen these yellow  
2 labels by now. But the Energy Guide label,  
3 FTC requires these labels on several, most  
4 residential products. And you could see the  
5 annual energy operating cost that's on these  
6 labels. Again, the DOE test procedure is what  
7 drives the answer for that number.

8 And then manufacturers file data  
9 reports with FTC. And so a new thing here is  
10 that we're combining the FTC and DOE  
11 requirement to one submission.

12 What have we done so far? We  
13 believe that -- and these are estimates -- of  
14 all the standards that we've promulgated to  
15 date we think we can get almost 70 quads of  
16 energy savings by 2020. So that's about 70  
17 percent in any given year of national energy  
18 consumption. And by 2030 we think about 120  
19 quads.

20 It translates to huge dollar  
21 savings. So \$900 billion by 2020. And  
22 cumulatively \$1.6 trillion through 2030. Big

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1 numbers. And again the carbon dioxide savings  
2 will pretty much track the energy savings.  
3 You can see by 2030 we think about 6.5 billion  
4 metric tons.

5           Manufacturer benefits. Obviously,  
6 the one big plus for Federal standards is that  
7 the Federal standards preempt the state  
8 standards that might exist. This is something  
9 manufacturers would see as a benefit in that  
10 there's one standard to meet and not a  
11 patchwork of state standards that might be out  
12 there. So I think manufacturers see that as a  
13 benefit.

14           We think it also creates certainty  
15 in the market. And I think the test  
16 procedures in particular create a level  
17 playing field for all manufacturers to follow.

18 I think again another plus for this. We  
19 think the program could benefit all the  
20 different players here, the manufacturers and  
21 the consumers and the environment.

22           What are we working on? I'm not

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1 going to go through the whole list. But this  
2 is something to keep in front of us as we talk  
3 in the afternoon about potential areas of  
4 opportunity. Right here, you can see all the  
5 different standards, rulemakings that we're  
6 working on currently. A couple of them at the  
7 top we haven't officially kicked off, but we  
8 do have some statutory deadlines coming up in  
9 the future.

10 You can see all the different  
11 products. This definitely spans the whole  
12 gamut of all the way from commercial equipment  
13 down to say set top boxes. Just a long list.

14 And then here are the test  
15 procedures we're working on. Again, test  
16 procedures are something that we might think  
17 about as well as we move forward. And we have  
18 about 30 of each. They're not necessarily  
19 one-for-one. For the most part they are, but  
20 you could see the different stages of where  
21 things are. And I think that might help us  
22 guide some decisions as well.

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1           Typically, if you want to get  
2 something done, hopefully we're in a stage of  
3 development where we have enough analysis and  
4 information to push it forward.

5           That's my overview. At this time,  
6 I will take some questions about the program,  
7 if anybody has any.

8           MR. BROOKMAN: Yes. John.

9           MR. CASKEY: As you mentioned,  
10 these are the products that are under review  
11 of consideration. I see things like lighting  
12 and motors and things that are like one device  
13 in itself. Yet there are other components of  
14 the motor systems. And what is DOE doing  
15 these days relative to looking at the system's  
16 efficiency where you've got lights and having  
17 the most efficient light in the world doesn't  
18 matter that much if it's on 24/7 and I only  
19 need it on one hour a day?

20           MR. CYMBALSKY: Right. Of course,  
21 that would be product specific. And then  
22 there are some legal requirements for each

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1 product that are in the statute that tells us  
2 what the metric is. Unfortunately, for a lot  
3 of things, our hands are tied in terms of  
4 looking at systems' approach.

5 But we've heard loud and clear  
6 from a lot of folks that system efficiency is  
7 something we should consider. And I think is  
8 actually a good topic to bring up definitely.

9 We looked at it more with -- I  
10 know we've had a couple of public meetings  
11 last week about pumps and fans. And obviously  
12 the system there, pumps in particular, was a  
13 big part of the conversation. Yes, we did  
14 talk extensively about that.

15 MR. BROOKMAN: Yes, John. Please.

16 MR. CASKEY: This is a real  
17 curiosity question. But you periodically talk  
18 about the bureaucracy within DOE and your  
19 hands being tied and things like that. I  
20 mean, is it possible for this group? If we  
21 come up and say, "Oh my gosh. Systems is the  
22 biggest thing, the most important thing for

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1 energy efficiency for the next 20 years," I  
2 mean are we able to come up with a  
3 recommendation that would say we should  
4 collectively go to Congress and try and alter  
5 whether your hands are tied or aren't tied?

6 MR. COHEN: That brings a whole  
7 different set of bureaucracies. What we can  
8 do -- By the way, my name is Dan Cohen. I'm  
9 the Assistant General Counsel for DOE,  
10 responsible for the appliance programs. Oh,  
11 sorry. My name is Dan Cohen. I'm a lawyer  
12 here in the General Counsel's office at DOE.

13 We as a federal agency are  
14 somewhat constrained in terms of our making a  
15 proposal to Congress for any legislative  
16 change in the statute. We can't on our own do  
17 that. There's a whole process for developing  
18 legislative proposals and we need approval.  
19 It has to be an administration wide thing to  
20 do.

21 We can't also encourage anybody to  
22 go to Congress on our behalf. That would be

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1 lobbying which is actually a criminal  
2 violation. So no one here, no federal  
3 employee, is going to want to go down a  
4 potentially criminal route.

5 But this is certainly a  
6 recommendation the committee could make to the  
7 Department to seek a change in our legislative  
8 authority. And we would have to go through  
9 the process of getting that approval to submit  
10 that change to Congress.

11 And to the extent that anybody  
12 decides they think that's a good idea and they  
13 on their own decide they want to go to  
14 Congress individually or as part of some  
15 organized group, they can certainly do that.  
16 We won't take any position on it.

17 MR. BROOKMAN: Steve.

18 MR. COUSINS: A matter of  
19 clarification. I'm looking at this slide that  
20 is up there now and procedures under  
21 development, it says, "Procedures are  
22 ongoing." And I'm thinking about exactly do

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1 we mean by the term "ongoing."

2 What I mean is I know there are  
3 procedures that exist now for not all of these  
4 areas. But I see there are things in various  
5 stages. I look at luminaries, for example,  
6 the last one on the list. RFI, I'm not sure  
7 what that RFI means. So maybe some  
8 clarification around what we're saying here.

9 MR. CYMBALSKY: Okay. I know of  
10 glazed over that, didn't I? When I said  
11 "ongoing" it means we're actively working on  
12 it. It doesn't mean that there's not a test  
13 procedure in place already for a product  
14 that's not on this list. That's the  
15 difference between ongoing and something  
16 that's already existing. But we're just now  
17 working on an update or a new one.

18 The stages. A NOPR is a Notice of  
19 Proposed Rulemaking. So we're working on  
20 putting that out. An SNOPR is a Supplemental  
21 notice. So that generally means we've already  
22 put out a notice of proposed rulemaking. We

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1 took comment. We had enough comment where we  
2 think we can't go directly to a final rule on.

3 So that's what an SNOPR is.

4 A framework document precedes all  
5 of that work. So that just scopes out what  
6 the market, what the rule, what will be  
7 included in the rule.

8 An RFI is a request for  
9 information. So for luminaries for example we  
10 put out an RFI that just asks a whole bunch of  
11 questions. And this basically dealt with  
12 John's questions about systems efficiency for  
13 lighting. That is what that one was about.

14 I think that describes all of them  
15 up there. Yes. And then there's a  
16 preliminary analysis which comes out after the  
17 framework, but before the NOPR and that  
18 essentially lays out the first set of numbers  
19 you'll see would go into a potential proposal.

20 That would be the other.

21 I think we have some on the  
22 previous slide. Yes. And NOPR and

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1 determination. We can get to a point where we  
2 can make a determination that no standard will  
3 be proposed. So that's what that means.

4 MR. BROOKMAN: This is the general  
5 sequence.

6 MR. CYMBALSKY: Yes.

7 MR. BROOKMAN: Top to bottom.

8 MR. CYMBALSKY: No, no.

9 MR. BROOKMAN: No?

10 MR. CYMBALSKY: No, framework  
11 comes before that.

12 MR. COHEN: Right. The general  
13 sequence is framework followed by an  
14 opportunity for comment on the framework,  
15 preliminary analysis that takes the results of  
16 the framework and the comment, develops sort  
17 of our initial thought of analyses and where  
18 the efficiencies break down in terms of  
19 cutoffs. Again an opportunity for comment.  
20 Then a proposed rule. Opportunity for  
21 comment. Final rule.

22 To one of the other questions, I

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1 thought it was John Mandyck asked about speed  
2 potentially. At least in the transformer  
3 negotiation, what we saw was that essentially  
4 the work that we would do in the preliminary  
5 analysis and framework stages sort of occurred  
6 in the context of the negotiation.

7 We didn't go through those earlier  
8 processes. We just issued a proposed rule  
9 based on all the work that was done. That's  
10 why there could be some efficiencies gained in  
11 terms of timing.

12 MR. BROOKMAN: Other questions  
13 here? Yes, Andrew.

14 CO-CHAIR deLASKI: I just want to  
15 comment on the process and sort of how I have  
16 -- what my experience has been in terms of  
17 negotiating and where that's sort of worked in  
18 this schematic. I think one of the things  
19 that we have to keep in mind as anything  
20 advances at least not so much for the  
21 crosscutting topics but for something that is  
22 a standard rulemaking is that rules still have

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1 to meet legal muster. So whatever our working  
2 committee develops and then advises to ASRAC,  
3 these folks have to then take it and it has to  
4 meet legal muster. It has to be something  
5 that they can propose under the statute that  
6 meets their legal criteria.

7 One of the things that we've  
8 experienced is that from an efficiency  
9 advocate sitting where we sit is that the time  
10 that often is a good time to sit down and to  
11 discuss things is when the preliminary  
12 analysis has been published because it gives  
13 us who are advocates who aren't making these  
14 things and don't have the engineering data,  
15 what it costs to make these things more  
16 efficient. We don't have all the data that a  
17 manufacturer might have or a retailer might  
18 have to know how does this work in the  
19 marketplace.

20 When we see something that's been  
21 published by the Department, then we have data  
22 on which to make some judgments in addition to

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1 whatever bring to the table previously. So we  
2 found that the publication of the PTSD creates  
3 an opportunity for discussion on a private  
4 basis. And I would think in this context,  
5 too.

6 That said, what goes -- The  
7 quality of the PTSD analysis is critical,  
8 right. If people can't agree that that's a  
9 good analysis, then you'll have a hard time  
10 having a discussion. There probably is work  
11 to happen before there is so that what's  
12 coming out of the PTSD that the Department has  
13 published is something that stakeholders can  
14 have a good discussion around. "I don't  
15 believe it" or "I believe it." Then where are  
16 you could be quite a difficult process.

17 I think once, in my experience,  
18 the Department has published a NOPR it's  
19 pretty hard to have a fruitful discussion  
20 because positions tend to lock down. Either "I  
21 got what I wanted" or "I got most of what I  
22 wanted" or "Or I didn't." That's how I would

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1 think about this progressing is it's valuable  
2 to have discussion once there is a framework  
3 out there or pre-framework. Hard to kind of  
4 come to some sort of recommendation from an  
5 advocate's perspective.

6 And then coming to a  
7 recommendation once that PTSD has been  
8 published or that preliminary analysis that's  
9 labeled up there to me strikes me as being the  
10 time where the bulk of a working group's  
11 action would happen.

12 And then I also wanted to comment  
13 on the earlier discussion about legislative  
14 changes because I think that's also an  
15 important feature. When we've done private  
16 negotiations, often we've tried to put more  
17 moving parts on the table. In a negotiation  
18 if you get more moving parts going sometimes  
19 that could be a way to get to yes if we can  
20 find our ways to meet the party's needs,  
21 multiple objectives are on the table.

22 So we've included things in prior

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1 agreements that have been outside the  
2 Department's jurisdiction, things like  
3 recommendations for tax incentives,  
4 recommendations for utility programs. So  
5 things that are outside the jurisdiction of  
6 the Department directly.

7 And also things that may be  
8 somewhat in your jurisdiction, but not the  
9 standards program jurisdiction. For example,  
10 new Energy Star levels have been part of a  
11 prior private negotiations. We can move the  
12 standard to here, but we can move Energy Star  
13 to there and we think that by Energy Star to  
14 drive to somebody savings if the objective is  
15 energy savings, cost of energy savings. We can  
16 get part of that shifting Energy Star in  
17 concert with the standards.

18 So I guess the question to the  
19 Department is if a working group wanted to get  
20 into those kinds of discussions about things  
21 like tax incentives that clearly are not in  
22 your jurisdiction how would that work. Is

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1 that something that would be out of bounds?  
2 Or is that something that might be in bounds  
3 and a working group discussion or?

4 MR. COHEN: That gets back to what  
5 I think I said before, Andrew. Obviously,  
6 anything can be discussed. What we can do  
7 with it is a different question. So if the  
8 ASRAC -- Whatever the working group  
9 recommendation is up to the full ASRAC and the  
10 ASRAC wants to make a recommendation to the  
11 Department to seek a change in its legislative  
12 authority, that's a recommendation that can be  
13 made to us. We'd have to go through a process  
14 if we wanted to, in fact, do that to develop a  
15 proposal and get approval to submit that  
16 proposal to Congress. We couldn't just take  
17 that and seek to go to Congress and get it  
18 changed.

19 If the working group is going to  
20 have that discussion and you decide this is a  
21 really good idea and you want to go pursue it  
22 yourself, that's fine. You can go do that.

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1 We just wouldn't take any position on it. We  
2 couldn't.

3 CO-CHAIR deLASKI: I guess a  
4 scenario I could see imaging some tension  
5 would be the working group wanted one of your  
6 consultants to model something that was a  
7 modeling about -- Or if we change Energy Star  
8 to this level and assume that -- consumers by  
9 Energy Star, would that be hard for you to do  
10 because it's not sort of your -- He's shaking  
11 his head like you think you could.

12 MR. COHEN: Yes, I think we could  
13 probably do the modeling. I guess the  
14 question is whether the model was robust  
15 enough to do that kind of work.

16 MS. ARMSTRONG: It is. I could be  
17 done. We could definitely model it.  
18 Obviously, with the -- This is Ashley -- level  
19 setting we would have to engage EPA pretty  
20 early on to actually change the Energy Star  
21 level. We work with them pretty closely with  
22 Energy Star program. So I would say that's

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1 definitely something that could be considered  
2 here.

3 MR. BROOKMAN: John.

4 CO-CHAIR MANDYCK: Maybe just a  
5 follow-on question there. So in past private  
6 negotiations there will be a signatory  
7 document that we agree to do X, Y or Z. And  
8 under Andrew's scenario if the working group  
9 decided to pursue ancillary issues in tandem  
10 with appliance standards such as -- let's just  
11 pick tax credits and that wanted to be  
12 memorialized. Could that be done absent a DOE  
13 signature?

14 MR. COHEN: We would probably want  
15 to talk about it first before we created some  
16 document. My sense of it just off the top  
17 without particular facts is that we would  
18 probably ask you not to put that into a  
19 recommendation to the Department.

20 CO-CHAIR MANDYCK: Would it be  
21 okay separately for members of the working  
22 group to privately outside of DOE come to some

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1 consensus?

2 MR. COHEN: Yes. Just to draw  
3 that distinction, we wouldn't -- I think we  
4 would have a problem with a document that came  
5 to us that said that you all agree to do  
6 something that you know we can't do. And you  
7 put that in the recommendation to us.

8 But on the other hand if you all  
9 on the outside on own separately, you're free  
10 agents. You can do whatever you'd like to do.

11 We won't encourage you to do that. We can't  
12 encourage you to do that.

13 But you can make whatever choices  
14 you want to make. You don't give up your  
15 rights just by walking through the door.

16 MR. BROOKMAN: Tom.

17 MR. ECKMAN: In the rulemaking  
18 process, there is always a description of a  
19 non regulatory option. So how far can -- this  
20 is kind of what we're talking about here is  
21 non regulatory options to either Energy Star  
22 or some other approach to get there besides or

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1 getting all the way with the rulemaking that  
2 you get this far with the standard and then  
3 this far with something else.

4 Is that in keeping with what  
5 you're saying there? We could propose it  
6 there, but not to -- I mean I don't know where  
7 the boundary is.

8 MR. COHEN: Obviously, if it's  
9 something like Energy Star, we have statutory  
10 -- there's a whole statutory authority that  
11 exists for that. That's a different thing.  
12 For instance, there was some thought in the  
13 context of set top boxes, right. Andrew was  
14 working with the manufacturers and the cable  
15 companies. That was an entirely private  
16 negotiation that was going on there and they  
17 were trying to work out a non regulatory  
18 option to present to us.

19 And that was fine. They went  
20 through that process. It ultimately didn't  
21 come to fruition. And we would have taken a  
22 look at that.

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1 I took the question from both  
2 Andrew and John as being something about a  
3 change in our authority.

4 MR. ECKMAN: Right. I wasn't  
5 going there. There was a package deal that  
6 included a non regulatory component that may  
7 or may not involve what you can do directly.

8 MR. COHEN: Right. That's right.

9 MR. BROOKMAN: Additional  
10 questions here? Yes, John.

11 MR. CASKEY: John Caskey. So when  
12 we were doing the transformer negotiated  
13 rulemaking, I guess we were sort of under the  
14 guidance of I think it's ERAC. Is that group  
15 still in existence? So we're essentially  
16 taking over some of the things that they did  
17 in the past.

18 MR. CYMBALSKY: Yes, transformers  
19 killed ERAC.

20 (Laughter.)

21 That put them over the edge.

22 MR. CASKEY: Let's see. So my

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1 next question is that in the transformer stuff  
2 DOE informed us of what the rules were like I  
3 think it's your obligation to pick something  
4 to the effect of the highest technologically  
5 feasible efficiency that's proven to be cost  
6 effective or something like that.

7 Are you going to share? Does  
8 everybody here already know what those things  
9 are? Or are you going to share them with us  
10 as sort of a starting point for our work?

11 MR. CYMBALSKY: I think for the  
12 working groups that's when that level of  
13 detail will be necessary. And that will  
14 describe what the EPCA 7 factors are.

15 But the consensus agreement  
16 itself, the ones that were before us, wouldn't  
17 necessarily always be the point that the  
18 Department would pick. That's the whole point  
19 with the negotiated rulemaking. You don't  
20 have to get to the outcome that the Department  
21 would pick by itself.

22 MR. COHEN: Otherwise it has meet

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1 the statutory obligation.

2 MR. CYMBALSKY: Exactly.

3 MR. COHEN: Why don't I just  
4 describe just generally what John is asking  
5 about which is our basic statutory obligation  
6 is to come up with a standard. This is just  
7 in the standards world. We're not talking  
8 about labeling or the enforcement or  
9 certification

10 To develop a standard which  
11 maximizes the energy efficiency that the  
12 Secretary determines is economically justified  
13 and technologically feasible. And then there  
14 are seven criteria for economic justification  
15 which range from considering manufacturing  
16 impacts, life cycle costs, payback periods,  
17 environmental impacts.

18 We monetize all of those. The way  
19 we do our analysis, we monetize all those  
20 different factors. And we determine the  
21 maximum technologically feasible efficiency  
22 level and weigh those monetized factors for

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1 economic justification to calculate an overall  
2 net present value. And when we get to the  
3 place where we hit the first positive net  
4 present value, that's where we have determined  
5 that we have maximized the energy efficiency  
6 that is technologically feasible and  
7 economically justified.

8 That's the basic structure for how  
9 we set it up. The consensus would be looking  
10 at those seven factors, the payback periods,  
11 the life cycle costs and the analysis that we  
12 do and how we weigh out all those factors.

13 The seventh of the seven factors  
14 is other factors as considered by the  
15 Secretary which taken into account different  
16 types of issues. For instance, again using  
17 the transformer example we keep going back to,  
18 one of the main factors there which wasn't  
19 monetizable necessarily was the mix of steel  
20 that gets used in the core of a transformer  
21 and where the line is between using grain-  
22 oriented steels and going to amorphous steels.

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1 And John can give you chapter and verse on  
2 the engineering of all of that.

3 MR. CYMBALSKY: It's all behind  
4 us.

5 MR. COHEN: It's all behind us  
6 now. Yes.

7 MR. BROOKMAN: Other questions  
8 here? Yes, Tim.

9 MR. CASSIDY: Hi, Tim Cassidy.  
10 Looking at the list of test procedures, I was  
11 thinking about the working groups. I assume  
12 that each of these could have a working group.  
13 It could I guess. I don't know what the plan  
14 is.

15 But I'm looking at it like ceiling  
16 fans and ceiling fan lighting kits at the  
17 bottom of the list. And then I see motors on  
18 the list and I see luminaries and lighting  
19 systems.

20 Is there any thought about how  
21 these different working groups might work  
22 together? Or are they just completely

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1 independently making rules and standards  
2 because a ceiling fan obviously is a motor and  
3 a lighting kit?

4 MS. ARMSTRONG: This is Ashley for  
5 DOE. So what you see here is a list of  
6 products that we are required by statute at  
7 least for most of these. Or we have elected  
8 to do individual product test procedures.  
9 Yes, a motor is part of a ceiling fan, but we  
10 have a separate test procedure for the ceiling  
11 fan and for the motor.

12 Now that doesn't ever preclude a  
13 working group from taking up multiple ideas  
14 and discussing them, whether it be a test  
15 procedure or standards or whatever and working  
16 together. But the outcome for DOE would  
17 probably have to be separate tests procedures  
18 unless it's like a new product of a system or  
19 something like that. Does that make sense?

20 MR. CASSIDY: It does. It seems  
21 it could lead to some conflicts. I'm just  
22 again seeking that if this committee works

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1 really well that you would have a more  
2 holistic approach maybe.

3 MS. ARMSTRONG: That's one idea as  
4 to how we could tackle this definitely.

5 MR. BROOKMAN: Yes. Kelley.

6 MS. KLINE: The question about the  
7 holistic approach just made me think. Is  
8 there anything else that DOE has on its radar  
9 screen that would be more of a crosscutting  
10 rulemaking? I'm thinking like at one point  
11 there was discussion about maybe another  
12 certification rulemaking or something like  
13 that.

14 MS. ARMSTRONG: Absolutely. I  
15 think this afternoon when we go to brainstorm  
16 ideas. The Department has said on the record  
17 that they are going to do another  
18 certification and compliance and enforcement  
19 rulemaking for a variety of different  
20 provisions as part of that -- You can see the  
21 list in the beginning that John had as part of  
22 that whether it be laboratory accreditation or

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1 testing programs or commercial certification.

2 All of those would be on the table for us to  
3 discuss this afternoon which would be more  
4 crosscutting type issues. Yes, absolutely.

5 MR. BROOKMAN: Ken.

6 MR. PETERSON: More of a process  
7 question. Is this committee working simply  
8 off of when we get working group  
9 recommendations a simple majority?

10 MR. CYMBALSKY: Doug passed me  
11 this note. And he said, "Do you want to  
12 discuss how to define consensus now?"

13 MR. PETERSON: That was the second  
14 part of my question.

15 MR. CYMBALSKY: It was on the list  
16 of our things to do. That was our first real  
17 action item to tackle. But if there are no  
18 more questions on this content we can move  
19 right to that before lunch. That's fine by me.

20 MR. BROOKMAN: I was thinking that  
21 maybe it would be useful to describe -- Well,  
22 you tell me. Would it be useful to describe

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1 what happened in the transformers rule, the  
2 set of definitions? Or would you like to go  
3 in a different direction with that?

4 MR. CYMBALSKY: Yes, we definitely  
5 want to go in a somewhat different direction I  
6 think.

7 MR. BROOKMAN: Steve has a  
8 question.

9 MR. CYMBALSKY: We transformed  
10 from --

11 MR. BROOKMAN: Steve, go ahead.

12 MR. GORDON: Before we can even  
13 talk about consensus, do we first have to talk  
14 about quorum? I mean there are 11 of us. And  
15 how many of us constitutes a sufficient  
16 quantity to move forward even before we talk  
17 consensus? What is a quorum?

18 MR. CYMBALSKY: Right. I think we  
19 can define all that right here. For  
20 transformers, everyone was there all the time.

21 MR. BROOKMAN: Yes.

22 MR. CYMBALSKY: Obligation for the

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1 working group. For this group, I mean we kept  
2 the number small just for that reason that I  
3 think it's a lot easier to get 11 of us and  
4 I'm not one of the us thankfully. But 11 of  
5 you at the table or on the phone to make that  
6 quorum be all of us.

7 As for what consensus is, I think  
8 that's something we should discuss. But  
9 quorum we can talk about it, but my hope was  
10 that all of us would be there on the phone or  
11 at the table. And we would arrange our  
12 meetings such that that would happen.

13 MR. BROOKMAN: And even if a  
14 member were for example in absentia that that  
15 member could find a way to speak.

16 MR. CYMBALSKY: They could send a  
17 delegate.

18 MR. COHEN: Actually, I would have  
19 to check that. I don't think a delegate could  
20 vote. I think just the members. They can be  
21 there to represent the person, but I don't  
22 think they can vote.

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1 MR. BROOKMAN: Could a member be  
2 on the phone and say aye or nay?

3 MR. COHEN: Yes.

4 MR. BROOKMAN: Okay.

5 Yes, Dan.

6 MR. COHEN: I was going to --

7 MR. BROOKMAN: Okay.

8 CO-CHAIR deLASKI: It seems to me  
9 that you want to define quorum something short  
10 of having everybody there every time. It just  
11 seems to me that --

12 MR. BROOKMAN: Practically  
13 speaking.

14 CO-CHAIR deLASKI: From a  
15 practical point of view, if I'm gone for six  
16 months for some reason or another.

17 MR. ECKMAN: Or somebody is ill or  
18 --

19 CO-CHAIR deLASKI: Yes. I think  
20 from a practical point of view 100 percent you  
21 won't be able to make decisions without having  
22 to have everybody there.

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1 MR. BROOKMAN: Would you suggest  
2 something, Andrew, as a way of moving this  
3 forward?

4 CO-CHAIR deLASKI: Steve, you've  
5 been involved in committee. What do other  
6 people think? I mean I would think some sort  
7 of super majority as a quorum. But I don't  
8 know what that number is. Is it three-  
9 fourths? Is it --

10 MR. COUSINS: Steve Cousins.  
11 Since we know how many we have -- we have 11  
12 of us -- we could define that by a number like  
13 nine for example. Nine or more.

14 CO-CHAIR deLASKI: Although there  
15 is the possibility as this goes forward that  
16 we would have vacancies on the committee  
17 either because of a resignation or because  
18 someone is termed up and DOE hasn't filled the  
19 slot. So there may be -- You could do it  
20 either way, but there is a possibility of  
21 vacancies on the committee.

22 MR. BROOKMAN: John.

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1 MR. CASKEY: Just to throw a  
2 number out, I mean as far as I know 99 percent  
3 of the organizations I'm involved with they  
4 use something like 50 percent. A minimum of  
5 50 percent to establish a quorum. So that may  
6 be sort of weak for what we're trying to  
7 accomplish here.

8 MR. BROOKMAN: So if it were more  
9 like six or something like that, then that  
10 relates to what you would establish as  
11 consensus whether that's everybody in the room  
12 saying aye or whether it's a majority or a  
13 super majority, right. If you were going to  
14 go with some sort of a majority voting scheme,  
15 if you only had six persons and you split  
16 three by three that wouldn't work.

17 Ashley, go ahead. No.

18 MS. ARMSTRONG: You always need  
19 the plus one, right?

20 MR. BROOKMAN: Yes. It is to me  
21 compelling that you could have a member  
22 calling in, for example, to participate in

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1 that decision making process. So that gives  
2 you a little more degrees of freedom.

3 John.

4 CO-CHAIR MANDYCK: We could  
5 consider 75 percent quorum which would be  
6 eight. And then a majority of the eight. And  
7 I guess if you get to four-four that means  
8 there's no consensus.

9 MR. BROOKMAN: Yes. And so how  
10 did the consensus rule work -- did you say  
11 that -- in the transformer rule?

12 MR. COHEN: In that case the  
13 committee decided that it was unanimity of  
14 those members who were at that meeting.

15 MR. BROOKMAN: The Federal  
16 Advisory Committees have evolved a lot since  
17 I've done work in them over the span of these  
18 20 years. And this seems to provide a lot of  
19 flexibility. Very typically the standard for  
20 negotiated rulemaking historically has been  
21 just that where every person that is a member  
22 needs to say aye. I can live with this to

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1 create a consensus recommendation. But you  
2 all have the opportunity to do it any way you  
3 want to do it.

4 John.

5 CO-CHAIR MANDYCK: Let's remember  
6 there are two levels. So it's the level of  
7 which this committee will determine consensus.  
8 And then each working group will have its  
9 authority to determine how they want to define  
10 consensus as well.

11 MR. BROOKMAN: Yes.

12 Andrew.

13 CO-CHAIR deLASKI: That strikes me  
14 as sort of a crucial point. It's the folks  
15 who are the stakeholders on a given topic who  
16 will have to work that through in the working  
17 group. And in a sense we're here to bless it,  
18 right.

19 To me I think the strawman that  
20 you opted for which is that 75 percent for  
21 quorum and then a majority of those who show  
22 up.

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1 I would add to that two thoughts.  
2 One is that there should be a commitment to  
3 make available participation by phone. That  
4 should be a rule so that's available to  
5 anybody who chooses to do it.

6 Then the second thing I would say  
7 is that whenever the vote is should be  
8 conveyed to the Department. So if it is a  
9 split vote, they know. Did you guys decided  
10 based on 4-3 or was it 7-0?

11 MR. BROOKMAN: Yes. And the  
12 committee is composed -- Go ahead. Ashley, go  
13 ahead.

14 MS. ARMSTRONG: I was just going  
15 to say that I think one of the requirements is  
16 from the working group that (a) the working  
17 group reports to ASRAC the vote and then (b)  
18 an explanation of the majority and the  
19 minority views as well as that's what we would  
20 do to DOE so you can see the vote and why,  
21 both sides.

22 MR. BROOKMAN: Okay.

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1 Yes, Ken.

2 MR. PETERSON: Just so we aren't  
3 confusing things, we're really talking about  
4 consensus at the working group level and a  
5 majority as ASRAC level, right? I mean in the  
6 presentation earlier that's the way it was  
7 given to us. I mean the working groups need  
8 to reach consensus and consensus is a lot more  
9 than a quorum and a vote.

10 MR. BROOKMAN: Yes.

11 CO-CHAIR MANDYCK: I think the  
12 working group can define that. The working  
13 group could define the consensus as 50 percent  
14 as well or some other number.

15 MS. ARMSTRONG: We are trying to  
16 define what quorum and consensus is for ASRAC,  
17 for us. How we're going to make  
18 recommendations to DOE.

19 MR. BROOKMAN: What I've heard so  
20 far is that John suggests that a quorum be 75  
21 percent or eight. And that the decision  
22 making rule for ASRAC would be a majority vote

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1 among those present. A quorum of eight being  
2 the minimum.

3 Tom? Others? David?

4 DR. HUNGERFORD: Majority vote  
5 isn't consensus. I mean I suppose we could  
6 define it as such, but it really violates the  
7 idea behind the word. The pure idea of  
8 consensus is obviously there's no  
9 disagreement.

10 But as a practical form of  
11 decision making, there's always some need to  
12 prevent a blocking vote from one person. So  
13 it seems more practical that if we're going to  
14 call it consensus or required to call it  
15 consensus, that it be something better than  
16 majority vote.

17 MR. BROOKMAN: Are you required to  
18 call it consensus?

19 DR. HUNGERFORD: It's unanimity  
20 minus one.

21 MR. BROOKMAN: It is defined as  
22 consensus. Okay.

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1 DR. HUNGERFORD: I'm just a person  
2 not torturing language too far.

3 MR. BROOKMAN: Yes.

4 Tom.

5 MR. ECKMAN: I'm just doing the  
6 quick math and if you had eight and five voted  
7 in favor that's less than half of the group  
8 voting in favor. So it seems like that's not  
9 quite consensus even though some are absent  
10 the vote.

11 That still doesn't get us anywhere  
12 near the majority. So some other super  
13 majority of that so we could at least get six  
14 people out of the -- You know, a fair number  
15 out of the eight. Then we're representing at  
16 least half of the constituents of the ASRAC  
17 committee itself is a little higher hurdle.

18 But given that we can vote by  
19 phone or some other way, maybe even by proxy  
20 with another member, so that we could fulfill  
21 the obligation of being around the table to  
22 discuss it.

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1 MR. BROOKMAN: Yes.

2 Dan.

3 MR. COHEN: One other thought to  
4 throw out and this came up in the transformer  
5 context as well was that some people thought  
6 that there was a potential for that they might  
7 not be able to vote yes, but they didn't want  
8 to vote no. There was the ability to abstain  
9 and that didn't prevent a unanimous vote. So  
10 that's an option you might want to think about  
11 as well.

12 DR. HUNGERFORD: That's typically  
13 called standing aside in consensus decision  
14 making.

15 MR. BROOKMAN: Yes, John.

16 MR. CASKEY: So far from what I've  
17 heard, certainly I'm happy to support the 75  
18 percent for the establishment of a quorum.  
19 Again, most of my groups are 50 percent. But  
20 75 percent is fine. And I can live with that,  
21 if you will.

22 To me, another group that I'm

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1 involved with actually did define consensus  
2 something to the effect that the goal of the  
3 group was to reach unanimity in their  
4 decisions. But if they could not do that,  
5 that they needed to achieve at least a super  
6 majority which was defined as a 75 percent of  
7 those people that were available and voting on  
8 that particular topic.

9 That seemed to work pretty well.  
10 Ninety percent of the time everybody is  
11 agreeing on it and then the case where you  
12 have one or two people that have difficulty,  
13 they get to express their point of view. And  
14 then you basically take a vote. As long as 75  
15 percent of the ones in attendance vote in  
16 favor of it, then it can be passed onto the  
17 next level.

18 MR. BROOKMAN: Additional comments  
19 on this? Tom, yes.

20 MR. COUGHLIN: Yes, Tom Coughlin.  
21 It looks like if we vote on this today we'll  
22 be earning our keep.

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1 MR. BROOKMAN: I don't think you  
2 need to do that today necessarily. Oh, you  
3 actually do.

4 MS. ARMSTRONG: This afternoon.

5 MR. BROOKMAN: Okay. I see.  
6 Okay.

7 MR. COUGHLIN: I asked that  
8 question because I wondered if that would  
9 happen today.

10 MR. BROOKMAN: Good. Glad we  
11 clarified that. Tom, go ahead.

12 MR. COUGHLIN: Do we get it in  
13 writing so we can view it before we vote on  
14 it?

15 MR. BROOKMAN: I'm sure we could  
16 write it up, yes.

17 MS. ARMSTRONG: Over lunch.

18 MR. BROOKMAN: Over lunch, yes.

19 MR. COUGHLIN: Okay.

20 MR. CYMBALSKY: Lunch is always a  
21 good -- When people get hungry, they --

22 MR. BROOKMAN: Kelley, go ahead

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1 please.

2 MS. KLINE: This is for -- These  
3 will be the ground rules for this group that  
4 we're not touching the work group.

5 MR. BROOKMAN: Correct.

6 MS. KLINE: Okay.

7 MR. BROOKMAN: So additional  
8 comments or thoughts? I'm about to restate  
9 what's on the table. Additional thoughts or  
10 comments?

11 (No verbal response.)

12 What's on the table is a quorum  
13 would be 75 percent of the members of the  
14 committee which would be eight. And that to  
15 establish consensus in this case, it would be  
16 75 percent of those in attendance. That's the  
17 way I guess John said it.

18 Yes, Kent.

19 MR. PETERSON: Just to be clear is  
20 it 75 percent of those in attendance or  
21 casting a vote?

22 CO-CHAIR MANDYCK: I think it

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1 would be casting a vote. I mean if you're on  
2 the phone or.

3 MR. PETERSON: It was just  
4 mentioned earlier someone may decide they want  
5 to abstain from the vote.

6 MR. BROOKMAN: Good point.

7 MR. CASKEY: For the official  
8 policy that we deal with, basically it's those  
9 that are voting. So the abstains are not  
10 counted basically.

11 MR. BROOKMAN: Okay. I think  
12 that's a good clarification. Seventy-five  
13 percent of those casting a vote. Okay.

14 Yes, Andrew.

15 CO-CHAIR deLASKI: Just to pause  
16 on that for a moment. That means if I'm there  
17 and I'm part of a quorum and we're just at  
18 quorum, I can't abstain without the whole  
19 meeting being off. That removes the  
20 possibility that if you're on the cusp you  
21 could lose the option of abstaining without  
22 scrubbing the whole meeting.

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1 MR. CASKEY: I don't think that's  
2 true. Once quorum is established, the meeting  
3 has a quorum.

4 CO-CHAIR deLASKI: Okay.

5 MR. CASKEY: And then when you  
6 take a vote after that and transact business,  
7 not all of those people that were needed to  
8 establish a quorum have to vote.

9 CO-CHAIR deLASKI: Okay.

10 MR. CASKEY: They can abstain. I  
11 mean that's an official response.

12 CO-CHAIR deLASKI: Yes.

13 MR. CASKEY: You participated.  
14 You just didn't vote yes or no.

15 CO-CHAIR deLASKI: Once a quorum  
16 is established, the meeting is called and it's  
17 in order until it's adjourned.

18 MR. CASKEY: Right.

19 MR. BROOKMAN: Okay. Additional  
20 thoughts on this?

21 (No verbal response.)

22 So we've also heard from Tom that

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1 we'd like to see it written up. I don't think  
2 we want to take final action on that right  
3 now. Maybe we do that immediately after  
4 lunch. Good. I guess you're moving towards  
5 making your first decision.

6 Are there other things that we  
7 should try and do before we go to lunch? It's  
8 almost time.

9 John.

10 MR. CASKEY: I'm not sure what's  
11 driving this, but for whatever reason my gut  
12 feeling is that if we are this advisory group  
13 that we should really provide guidance to the  
14 working groups. And I think it just for me  
15 personally feels a little bit weird letting  
16 the working group decide their own rules  
17 relative to quorum or consensus and things  
18 like that.

19 It seems like we would sort of  
20 adopt one for the steering group and then that  
21 would be utilized for the working groups.  
22 That's just one of my ideas.

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1 MR. BROOKMAN: Kelley.

2 MS. KLINE: Yes, I agree with  
3 that. And I guess I had one question in  
4 thinking through that. I'm wondering what the  
5 distribution for transformers. Was it  
6 basically all interested parties who wanted a  
7 seat at the table got a seat at the table?  
8 And I think that has some bearing on it  
9 whether it's all comers versus a selected  
10 committee in terms of what consensus would be.

11 MR. BROOKMAN: Dan.

12 MR. COHEN: With the committee on  
13 transformers, there's a limitation. We're  
14 also functioning on something called the  
15 Negotiated Rulemaking Act which has a  
16 limitation of 25 members for doing a  
17 negotiated rulemaking. So there's a  
18 limitation for the number of people on the  
19 committee.

20 That said, we tried to ensure that  
21 the committee was and I think we did achieve a  
22 committee that balanced by having a membership

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1 of all the various interests. So some  
2 interested parties were represented by other  
3 interested parties. The attempt was though to  
4 have every interest represented.

5 MR. BROOKMAN: Andrew.

6 CO-CHAIR deLASKI: I would say  
7 that this committee could provide some  
8 guidance, but I don't think we can set the  
9 rules. And in part that's because we don't  
10 know what the makeup of those working  
11 committees are going to be.

12 Department ultimately has the  
13 final say of what that makeup is. So it may  
14 turn out to be that everybody on the committee  
15 -- this isn't going to happen. But it could  
16 be all appliance manufacturers and no one from  
17 the communities that I work with.

18 MS. KLINE: Or visa versa.

19 CO-CHAIR deLASKI: Right. Or visa  
20 versa. I'm just saying we don't control that.  
21 And since we don't control that, I don't  
22 think we should set the decision rule.

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1 Because I might want a different decision rule  
2 if I'm one of 25 and I don't see anybody else  
3 who I consider to be in my caucus. Then I see  
4 if I'm half that's in my caucus.

5 MR. COHEN: Just to be clear, that  
6 shouldn't happen because we have an obligation  
7 to make sure that the committee is balanced.

8 CO-CHAIR deLASKI: Also don't know  
9 exactly how you're going to balance is. And  
10 the balance is going to -- I think in the case  
11 of transformers we had four or five different  
12 caucuses so to speak or interests that were  
13 represented who had varying interests. You  
14 had manufacturers. You had utility companies.  
15 You had suppliers of materials to  
16 manufacture. You had efficiency advocates.  
17 So you had quite a -- Not everybody would have  
18 been comfortable with the rules that we're  
19 going to invoke for this committee.

20 MR. BROOKMAN: John.

21 MR. CYMBALSKY: I was just going  
22 to note that remember at least one of you all

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1 will be on the working group committee. I'm  
2 not saying you can impose your will, but I  
3 think you could bring to the working group  
4 what ASRAC's preference is how they define  
5 consensus.

6 But I agree with what was just  
7 said. I don't think you want to have a rule  
8 hard and fast right now about what the working  
9 group should decide because I think it's  
10 important. Each product will have a different  
11 makeup of the group.

12 MR. BROOKMAN: John.

13 CO-CHAIR MANDYCK: I'm fine with  
14 that. I would just to find a way to  
15 memorialize it that each time a working group  
16 is chartered that part of the standard work be  
17 an explanation for how ASRAC has defined  
18 consensus at this level as a guidepost out  
19 there. And then obviously the working group  
20 is free to do what they think they can do.

21 MR. BROOKMAN: Yes, Tom.

22 MR. COUGHLIN: Tom Coughlin.

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1 Maybe that's our first working group not to  
2 labor it, but to provide a guideline to the  
3 chairs for these working groups.

4 MR. BROOKMAN: Okay. Other  
5 thoughts at this point?

6 MS. ARMSTRONG: I think that's  
7 what we're here for, right. I think that's  
8 our job, not a working group's job. But  
9 that's what we would do.

10 MR. BROOKMAN: Yes. Those are all  
11 good ideas and I'm making notes about those.  
12 Okay.

13 Yes, Kent.

14 MR. PETERSON: Doug, in my  
15 experience, consensus is not just about a vote  
16 at the end of the work. It's really about a  
17 process. And at a working group level the  
18 materially effected parties really have to  
19 have their say and to be given a chance that  
20 they give the input before the decision or the  
21 vote is actually made.

22 MR. BROOKMAN: Yes.

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1           MR. PETERSON:    So I think it's a  
2   lot more difficult than just saying this is  
3   what ASRAC's done.  Go and take it.  It really  
4   is more of a process that's laid out for the  
5   working groups so they're all following a  
6   similar process.  They may choose to have a  
7   difference in what their final vote is in  
8   reaching that consensus.

9           MR. BROOKMAN:  Yes.  To follow on  
10   what Andrew was saying about minority voices  
11   not being fully heard, that sort of thing,  
12   surely it's the obligation of the Department  
13   to try and compose any working group that's  
14   got a fair representation of major  
15   stakeholders the traditional justification for  
16   consensus that is everyone can live with it.  
17   The negotiators work very hard to accommodate  
18   a minority voice that could stop them from  
19   achieving that consensus.  You can sometimes  
20   get a more fully vetted outcome, a more robust  
21   sort of result if everybody knows that that  
22   one person who's negotiating hard might derail

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1 the entire consensus. I just offer that as a  
2 small reflection on the justification  
3 historically for every one in the room saying  
4 yes.

5 Did you want in here, David?

6 DR. HUNGERFORD: This is David  
7 Hungerford. I think you just articulated what  
8 I wanted to bring up. I would have said it a  
9 little differently. It's actually a tool to  
10 force the majority to consider the perspective  
11 of the minority in coming to a final decision  
12 by preventing them from being able to steam  
13 roll past minority opinion.

14 MR. BROOKMAN: This has been a  
15 good discussion. And we're just about to go  
16 to lunch. Before we go lunch, John and  
17 others.

18 CO-CHAIR MANDYCK: Yes. I guess I  
19 would just reflect on that and say I think the  
20 procedure we have has or we may have I think  
21 well accommodates that. I think the issue  
22 with unanimity which I would encourage you to

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1 working group to think about is does that lead  
2 to gridlock or not, recognizing that whether  
3 the working group comes to a decision or not  
4 DOE is going to act anyway.

5 So it's not like the working group  
6 is blocking DOE action. DOE is going to act.

7 So the question is can there be something  
8 productive that comes out of a working group  
9 that can help inform that decision.

10 MR. BROOKMAN: Final comments  
11 before we go to lunch?

12 (No verbal response.)

13 At lunch, we'll work to write up  
14 this. When we return from lunch, we'll have  
15 something printed off for you to look at and  
16 move toward making a decision on that. And  
17 also immediately following lunch, thoughts and  
18 discussion on the things that ASRAC would  
19 recommend be considered in the negotiated  
20 rulemaking context.

21 Did I say that sufficiently? Yes,  
22 I did. Okay.

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1           It just about takes an hour  
2 minimum for those of you -- I think all of you  
3 are familiar with the Forrestal Building  
4 pretty much. And a whole bunch of us will  
5 climb on the elevator and go down to the  
6 ground floor and go about 100 yards that-a-way  
7 to a big cafeteria. There is also a Subway  
8 shop on the ground floor just about underneath  
9 us on the far side of the hall. But I would  
10 recommend the big cafeteria.

11           And so let's try and resume at  
12 1:00 p.m. And we had a really good start on  
13 the morning. A pleasure to have you here with  
14 us and we'll see you back here at 1:00 p.m.

15           (Whereupon, the above-entitled  
16 matter went off the record at 11:58 a.m. and  
17 resumed at 1:11 p.m.)

18  
19  
20  
21  
22

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 (1:11 p.m.)

3 MR. BROOKMAN: Okay. Let's  
4 resume. Please take your seats.

5 Okay. We had a very productive  
6 discussion this morning, and I thought we'd  
7 start off the afternoon reviewing what you  
8 collectively created as draft decisionmaking  
9 rules.

10 Moving from there, as reflected in  
11 the agenda, wanted to have maybe a general  
12 conversation about identifying how the initial  
13 committee efforts might best facilitate  
14 program activities. And then going from there  
15 to perhaps some more specifics, possible  
16 ideas, opportunities for the committee  
17 consider for working group activity.

18 So, and then of course next steps,  
19 and then at the end of the day, around about  
20 3:00, there is a public comment period. So  
21 that looms ahead.

22 So what do you think about what we

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1 wrote up here, what we interpreted that you  
2 said this morning?

3 Kelley?

4 MS. KLINE: On the third bullet, I  
5 thought we had left it that we would really be  
6 tabling the working group consensus approach  
7 for them. And I wonder how it's worded if  
8 we're implying that we are recommending to  
9 them the 75 percent/75 percent in the first  
10 couple of bullets.

11 MR. BROOKMAN: Okay. Can you  
12 offer edits or --

13 MS. KLINE: Well, I guess it  
14 depends on if we think we are going to be  
15 developing guidance for the workgroups on  
16 consensus, I might say something like,  
17 "ASRAC's to be developed, suggested consensus  
18 approach," or something like that, just  
19 something to make clear we are not necessarily  
20 adopting the 75 percent/75 percent for the  
21 workgroups.

22 MR. BROOKMAN: This is consistent

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1 with your comment, John, I think. Isn't it?  
2 Weigh in here.

3 MR. CASKEY: Actually, what she is  
4 talking about is different than what I had  
5 mentioned earlier.

6 MR. BROOKMAN: Okay.

7 MR. CASKEY: And my -- well, I  
8 don't want to muddle what she is thinking  
9 about.

10 MR. BROOKMAN: So, Kelley, I lost  
11 track of where we --

12 MS. ARMSTRONG: One thing -- so  
13 the way I read that, Kelley, is just that  
14 whoever the ASRAC representative is on the  
15 working group would provide an explanation of  
16 our consensus approach to the working group.

17 We wouldn't necessarily impose it  
18 on them, but we would provide the full  
19 explanation of what we did and why we did it.

20 And then they can adopt it, they can change  
21 it as they see fit, within each working group.

22 But it would be the responsibility of whoever

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1 the ASRAC representative is to do that for  
2 each working group.

3 MR. BROOKMAN: Guidance for their  
4 consideration.

5 MS. ARMSTRONG: That's how I read  
6 that. I don't know if anybody else agrees.

7 MR. BROOKMAN: Any changes?

8 MR. CASKEY: So one way to  
9 wordsmith that, if you want to wordsmith it,  
10 would be, "ASRAC representative member would  
11 provide," and strike the word "explicit" -- I  
12 think that's a little bit sort of hard --  
13 "provide explanation of ASRAC's consensus  
14 approach, as a starting point for the working  
15 group to develop their own consensus  
16 definition" or rulemaking process, or whatever  
17 you want to call it.

18 MR. BROOKMAN: Definition. That  
19 sounds great.

20 MR. CASKEY: Okay. That's great.

21 MR. BROOKMAN: Yeah.

22 MR. CASKEY: Leave the

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1       parenthetical?

2                   MR. BROOKMAN:  Yeah.  Okay.  good.

3       Stay right there.  Good, good.  Okay.

4                   We will review all of these of  
5       course before we do anything with them.  And  
6       then, John, you had an additional point.

7                   MR. CASKEY:  Yeah.  It's not a big  
8       deal, but on the second bullet, for me  
9       personally, I would love if we could say that  
10      our objective is really to develop a consensus  
11      where everyone in the activity, you know,  
12      fully supports the recommendation or the  
13      division.

14                   And if that is not accomplished  
15      with a -- like the idea that everyone can live  
16      with it, if that's not accomplished, then our  
17      backup plan would have this 75 percent of  
18      members casting a vote constitutes a  
19      consensus.

20                   DR. HUNGERFORD:  I agree.  That  
21      should be the second bullet, is the goals, and  
22      then have this as a sub to that.  This is what

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1 we do if we can't do that.

2 CO-CHAIR MANDYCK: Well, you could  
3 say the objective is to seek consensus among  
4 all ASRAC members.

5 MR. CASKEY: Yes. Unanimity?

6 CO-CHAIR MANDYCK: I think -- no.  
7 I think the objective is to seek consensus  
8 among all ASRAC voting members.

9 MR. BROOKMAN: Okay.

10 MR. CASKEY: But we don't know  
11 what definition of consensus we are using in  
12 that first sentence is the problem.

13 DR. HUNGERFORD: The traditional  
14 one.

15 MR. BROOKMAN: Well, when you say  
16 --

17 MR. CASKEY: Yeah. So we're using  
18 consensus twice with two different definitions  
19 in the same --

20 MR. CYMBALSKY: Like you would  
21 argue for the unanimous --

22 MR. CASKEY: Yeah. So unanimity.

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1 I can't spell it, but I can say it.

2 MR. CYMBALSKY: I can't say it.

3 MR. CASKEY: Well, you spell it  
4 for them then.

5 MR. CYMBALSKY: I can't do either.

6 MR. CASKEY: I would say the  
7 consensus is to seek unanimity among all  
8 ASRAC's voting members.

9 MS. ARMSTRONG: That works. And  
10 then just what --

11 MR. CASKEY: Yes. The objective,  
12 and if we can't meet that, then we --

13 MS. ARMSTRONG: Put it as a  
14 separate bullet.

15 MR. CASKEY: -- we go to --

16 MS. ARMSTRONG: There you go.

17 MR. CASKEY: Yeah. Something like  
18 that. Absent that --

19 MS. ARMSTRONG: There you go.

20 MR. COUSINS: I would say if  
21 unachievable --

22 MR. BROOKMAN: Okay.

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1 MR. COUSINS: -- 75 percent.

2 MR. CASKEY: That's great.

3 MR. BROOKMAN: Okay. And we just  
4 wanted to confirm one other point here, which  
5 was call-in and remote voting allowed. And I  
6 believe Dan was saying this was Jeremiah's  
7 remembering, that no proxy votes were allowed,  
8 and so just wanted to clarify that as well.  
9 But wanting to make certain that every member  
10 had access, had a chance to weigh in when a  
11 vote was called.

12 CO-CHAIR deLASKI: This is Andrew.  
13 Do we need to capture the point about, you  
14 know, that the -- if there's not unanimity  
15 that we would convey the results of the vote,  
16 or is that already captured in the by-laws  
17 somehow?

18 Okay. It's already required, so  
19 we don't have to capture it here. Okay.

20 MR. PETERSON: The second bullet,  
21 sub-bullet, what's in parentheses, abstaining  
22 does not detract from the 75 percent achieved.

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1 Which 75 percent are we talking about?

2 MR. FREEMAN: If you abstain, it  
3 doesn't count against the 75 percent needed  
4 for --

5 MS. ARMSTRONG: For consensus.

6 MR. FREEMAN: -- for the  
7 consensus.

8 MS. ARMSTRONG: Not for quorum,  
9 for the vote.

10 MR. PETERSON: I mean, if they  
11 cast a vote, the votes -- if you abstain, you  
12 don't cast a vote. It's already said, right?

13 MR. BROOKMAN: We just wanted to  
14 be real clear.

15 MR. PETERSON: Okay.

16 MR. BROOKMAN: That was the point  
17 you made.

18 MR. PETERSON: Well, some -- the  
19 reason I'm asking the question is because  
20 someone else asked the question about whether  
21 if they abstained, does it hurt the quorum.

22 MR. BROOKMAN: Yeah. Right.

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1 MR. PETERSON: And that is also 75  
2 percent.

3 MR. BROOKMAN: Yeah. Yeah.

4 MS. ARMSTRONG: Okay.

5 MR. BROOKMAN: This could maybe be  
6 more elegantly worded, but is the content -- I  
7 think most of the content is there? Yes.  
8 John.

9 MR. CASKEY: We hadn't discussed  
10 it earlier, but this implies we either have a  
11 face-to-face or a teleconference. But do we  
12 want to specifically allow an electronic vote?  
13 You know, if we don't reach quorum on a  
14 particular issue, do we want to allow some  
15 sort of electronic vote?

16 MS. ARMSTRONG: Yes.

17 MR. BROOKMAN: Yeah. I think  
18 that's -- remote, to me, suggested something  
19 like that, but do you want to write, slash  
20 "electronic"? Right?

21 MR. CASKEY: For me, there are two  
22 different issues. You know, the call-

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1 in/remote means that if everybody is meeting  
2 in this room and I'm sick in a hospital bed, I  
3 can call in and vote yea or nay.

4 But in addition to that, there is  
5 a process where if you don't achieve a quorum  
6 or a consensus at that meeting, then two weeks  
7 from now we could send out an email for people  
8 to vote electronically. And every one of the  
9 members would vote electronically. You  
10 wouldn't have like 10 people here and one  
11 person sending an electronic note voting yea  
12 or nay.

13 MR. BROOKMAN: Would that work for  
14 you? Yeah. So let's add the word  
15 "electronic" slash --

16 MR. CASKEY: Again, for me I'm  
17 saying that's a whole separate bullet.

18 MS. ARMSTRONG: So put "and."  
19 Call-in/remote and electronic voting, so they  
20 are two separate things, or --

21 MR. CASKEY: Or just that if  
22 desired, we, you know, have the opportunity to

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1 do electronic vote or something.

2 MR. PETERSON: As opposed to  
3 having a meeting entirely, you're saying to  
4 send out an email to --

5 MR. CASKEY: Right.

6 MR. BROOKMAN: Okay.

7 MR. PETERSON: I just have a  
8 question relative to that. Does that have to  
9 be open to the public? I would think the vote  
10 would have to be public.

11 MR. CYMBALSKY: Yeah, I would  
12 think.

13 MS. ARMSTRONG: It would be  
14 webinar. Well, I don't know.

15 MR. CASSIDY: On the first bullet,  
16 I was wondering if it wouldn't be better to  
17 just say, "Eight members constitutes a  
18 quorum."

19 MS. ARMSTRONG: Well, the problem  
20 is, like what he said earlier, that if we have  
21 two spots vacant, because of whatever reason,  
22 then now you are at eight of nine. Is that

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1 really what you mean? Or can the 75 percent  
2 flux with your full percent of membership?

3 CO-CHAIR deLASKI: You know,  
4 letting it flux would be an attempt that would  
5 put pressure on the Department to keep the  
6 seats filled. So that could be good. The  
7 problem I see -- would be worried about -- a  
8 working group puts in all this hard word, and  
9 then we don't have -- we can't form a quorum  
10 to approve it, because John couldn't get some  
11 paperwork through the HR office. That would  
12 be what I would worry about.

13 MR. CASSIDY: Okay. Yeah, sure.  
14 But I wonder if -- you know, what's the  
15 minimum size you can have and still call this  
16 a committee. So not to make this into a big  
17 thing, but, you know, the reason that I  
18 brought it up was the 75 percent is used twice  
19 and it was confusing. And if you don't need  
20 to say 75 percent, and you can say eight  
21 members minimum is a quorum, then there is no  
22 confusion. It's very clear.

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1           MR. FREEMAN: We are required to  
2 fill the 12 seat -- "approximately 12," is how  
3 it's worded in the charter, and that according  
4 to Wayne Gordon -- he was here this morning  
5 with you guys -- that is plus or minus like  
6 one or two people. So we have to keep the  
7 seats at least to 10, as required, but we of  
8 course will do our best to keep the full 12  
9 seats full.

10           MR. BROOKMAN: So what do you --  
11 do you want to press your point or --

12           MR. CASSIDY: I'll leave it stand.  
13 It has been decided what we want to do.

14           MR. BROOKMAN: If this committee  
15 decides three months from now, six months from  
16 now, they want to change this as you're making  
17 rules, can they do that?

18           MR. CYMBALSKY: I think that's --  
19 as long -- now, there's two different changes  
20 you could be talking about. So one could be  
21 changing the charter at some point to add more  
22 members or reduce members, whatever. But I

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1 think this the group can decide to change its  
2 own rules. Sure.

3 MR. BROOKMAN: That would be my  
4 guess. Okay. John?

5 MR. CASKEY: One hopefully final  
6 thing. Do we want to explicitly state that we  
7 follow the Robert's Rules of Order? Or is  
8 that applied? Or is that already in a DOE  
9 statute somewhere that, you know, if push  
10 comes to shove we'd go back to the Robert's  
11 Rules of Order?

12 MR. FREEMAN: Rephrase the  
13 question.

14 MR. CASKEY: Should we -- well, I  
15 guess one question is, do we, as ASRAC, plan  
16 to follow the Robert's Rules of Order? And if  
17 we do, does that need to be stated here, or is  
18 that just implied in all U.S. organizations or  
19 something?

20 MR. FREEMAN: I'm not familiar  
21 with what the Robert's Rules of Orders.

22 MR. BROOKMAN: My experience with

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1 groups like this is that Robert's Rules aren't  
2 usually needed. It's a collegial back and  
3 forth, and everybody gets a chance to say what  
4 they need to say, and respect is given as  
5 needed to get those viewpoints said. And it's  
6 easy enough to call the motion or have a vote  
7 when the time has come.

8 So, okay? Yes, Andrew?

9 CO-CHAIR deLASKI: Back to the  
10 final point on this proxy or electronic  
11 voting. I would -- you know, I think that  
12 we'd benefit from the interaction, the  
13 discussion, before we bring it to a vote, in  
14 that we know sort of where people -- you know,  
15 what are the pros and cons that is going to be  
16 discussed as opposed to it has just been put  
17 out to an email, here's a proposal, you need  
18 to vote.

19 So in your formulation, John,  
20 would that discuss have already happened? Or  
21 could you envision a vote when there was never  
22 a discussion, it just was put out to a vote?

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1 Do you know what I mean? So how is that  
2 staged?

3 MR. CASKEY: I mean, I -- well,  
4 two things. One, I don't feel strongly about  
5 this. But, two, from my experience, sometimes  
6 we might get a recommendation from a group,  
7 and it's like we come up with a question and  
8 we just ask them do we want to go back and  
9 wordsmith their recommendation, and then we  
10 don't need to meet again to review it.

11 You know, if there was a concern  
12 and they fixed it, then it might come back and  
13 we could just send it out for electronic vote  
14 and say, "Oh, yeah, that's exactly the way we  
15 wanted them to fix it." Does that make sense?

16 It would keep us from having to have another  
17 meeting.

18 CO-CHAIR deLASKI: The way this is  
19 -- I guess the way this is phrased is --  
20 doesn't the site capture that? So that -- now  
21 ASRAC can perform electronic voting. You  
22 know, if we're just sending an email out to

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1 people, that's not really helping us to obtain  
2 objective number two. Right? If it's the  
3 major proposal that we haven't talked about  
4 previously. So, you know, we --

5 MR. CASKEY: Yeah. I only  
6 pictured doing that after we had like a face-  
7 to-face meeting or a teleconference on certain  
8 topics and we needed to clean up some wording  
9 or something like that just to get the  
10 progress made before the next meeting we could  
11 do an electronic --

12 CO-CHAIR deLASKI: Time-saving  
13 thing as opposed to --

14 MR. CASKEY: Yeah. That was my  
15 thought.

16 CO-CHAIR deLASKI: Right. So I  
17 guess I -- that's not captured in the way  
18 we've written this, so --

19 MR. CASKEY: Yeah. I mean, I  
20 would support something like that.

21 MR. BROOKMAN: ASRAC can perform  
22 electronic voting to conclude business that

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1 the committee had already discussed.

2 CO-CHAIR deLASKI: Okay. That  
3 works.

4 MR. BROOKMAN: Yeah?

5 CO-CHAIR deLASKI: For me.

6 MR. BROOKMAN: Okay. Yes?

7 DR. HUNGERFORD: Are we -- is  
8 there something in the charter that requires  
9 us to reach consensus? Is that why we're  
10 defining "consensus" as a majority? Because  
11 otherwise it says -- it still reads to me like  
12 we're saying yellow is green.

13 MR. BROOKMAN: It's close on the  
14 spectrum.

15 (Laughter.)

16 DR. HUNGERFORD: But it seems like  
17 the objective is to seek consensus. If  
18 consensus is not achievable, a majority of 75  
19 percent may act.

20 MR. BROOKMAN: Yeah. I thought I  
21 heard Dan say that this is called consensus,  
22 this decisionmaking rule. That's what I

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1 thought I heard him say.

2 MS. ARMSTRONG: The wording  
3 throughout much of the documentation has the  
4 word consensus in it. However you define  
5 that, which is what we are trying to do here.

6 So I think you're getting caught up on a  
7 word, right? I mean --

8 DR. HUNGERFORD: Well, I like  
9 words to mean what they mean in the  
10 dictionary.

11 MR. BROOKMAN: Let me give you  
12 another minute to just look at this and ponder  
13 it. Yes, Tom?

14 MR. COUGHLIN: Tom Coughlin.  
15 Although it is stated elsewhere, I'm just  
16 wondering if right here we might want to put  
17 another bullet that kind of closes this --  
18 what if we don't reach consensus, what happens  
19 there?

20 MR. BROOKMAN: Is that in your  
21 guidance?

22 MR. COUGHLIN: It is in the

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1 guidance, but I didn't know whether we wanted  
2 to restate it here. Kind of just closes this  
3 --

4 MR. BROOKMAN: The guidance says  
5 something like -- John, help me here,  
6 actually, if the -- yeah. Okay. I think in  
7 this discussion we are clear that this  
8 committee seeks unanimity, and you would hope  
9 to guide the working groups to seek unanimity.

10 And noting that occasionally one  
11 person or two persons can stop that, and  
12 they're dug in, that you don't want to be  
13 stopped entirely by that kind of an activity.

14 So this is a pragmatic way to have a super-  
15 majority of individuals that want to carry  
16 this forward and move the process ahead. So  
17 that's the logic.

18 So are we all -- are we  
19 comfortable with this? Yes? So the way I  
20 would do this as a mediator would be, do we  
21 have anyone who dissents from accepting this  
22 -- these bullet points, this -- these

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1 decisionmaking rules for ASRAC?

2                   Okay.                   Seeing                   none,  
3 congratulations.           You've made your first  
4 decision.

5                   (Appause.)

6                   I would like to shift, and it does  
7 seem -- where you work, what you do, there is  
8 a lot that you see in your participation of  
9 the appliance standards process, the normal  
10 process, the ongoing regulatory process.

11                   So the question is, as members of  
12 ASRAC, would you suggest ways that this  
13 committee can best facilitate those program  
14 activities? And we'll start with that as kind  
15 of a general discussion, and then move from  
16 there into possible ideas looking ahead  
17 perhaps for negotiated rulemaking or other  
18 forms.

19                   John?

20                   CO-CHAIR MANDYCK:    Can you just  
21 clarify what this first step is?

22                   MR. BROOKMAN:    If you look at the

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1 agenda, at the 1:00 time block in black, it  
2 says, "Committee Discussion: Identifying  
3 Initial Committee Efforts to Best Facilitate  
4 Program Activities."

5 CO-CHAIR MANDYCK: Okay.

6 MR. BROOKMAN: And to me that --  
7 Ashley? Yeah, but I was wanting to do more  
8 general before we do more specific.

9 MS. ARMSTRONG: I think they are  
10 kind of intertwined. I mean, I think what  
11 we're looking for and what we were thinking  
12 about is open up the floor to the initial  
13 committee first for ideas for either process-  
14 related type things or specific rulemaking-  
15 type things, or cross-cutting type things that  
16 we think would be right for potential forming  
17 of working groups at this point. So --

18 MR. BROOKMAN: Steve?

19 MR. COUSINS: Yeah. I have a  
20 comment, a question around process, and it  
21 really doesn't have anything directly to do  
22 with working groups. But when we were here --

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1 earlier this morning we had a discussion about  
2 the process, the NOPR process and what  
3 happens. And we talked about, you know,  
4 development of the standards and the charge  
5 that the DOE has with regard to where the  
6 thresholds we know need to be -- responsibly  
7 need to be set.

8 And when we talk about the  
9 economics of it, it was pointed out that if  
10 there is a positive net present value, you  
11 know, with regard to whether or not that  
12 particular threshold moves forward, so we had  
13 this discussion about process. But I would  
14 like for this committee to have the  
15 opportunity to discuss -- as a part of the  
16 negotiated rulemaking, discuss factors that  
17 may be outside of those boundaries. Now, I  
18 don't know if that's off-limits legally or  
19 not.

20 Now, to be specific about it, if  
21 there's a threshold that wants to be set, some  
22 efficiency threshold, and the process vets it

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1 out and there is a positive net present value  
2 that's associated with that threshold, but the  
3 members of this committee feel that it is  
4 still irresponsible, I wonder if this is a  
5 forum that we could have discussion beyond  
6 that. Is that something that can be  
7 considered?

8 MR. CYMBALSKY: I think I am going  
9 to try to capture what Steve is saying. So  
10 what this curve is is the net present value of  
11 benefit by efficiency level in a rulemaking,  
12 let's say. So generally speaking, you start  
13 at -- the baseline there is no -- there is  
14 nothing. Nothing happens.

15 You go up, this would be the point  
16 where you would have maximum net present  
17 value. Generally speaking -- and it's not  
18 always the case, but, you know, the max tech  
19 solution would be so -- could be so expensive  
20 that you get negative net present value. So  
21 that's this point here.

22 What Dan was describing was the

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1 legal sort of point, you know, would be this  
2 -- maximizing the energy efficiency at a point  
3 of positive net present value. So that --  
4 this is the point that Dan described.

5 Now, what you can negotiate in the  
6 working groups is any of these solution sets,  
7 right? Even if you wanted that one, you could  
8 negotiate that.

9 MR. COUSINS: Right. Right.

10 MR. CYMBALSKY: But, you know, the  
11 negotiated outcome would be that seventh  
12 factor that Dan described. It's other factors  
13 that the Secretary deems important to the  
14 rulemaking.

15 And so when you guys are  
16 negotiating in working groups, it's not just  
17 this, but you are talking about what happens  
18 to small businesses. There could be a whole  
19 host of other ideas that you are negotiating  
20 against.

21 MR. COUSINS: Right. And so  
22 whatever recommendations come out of that

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1 working group, which may represent something  
2 that is, say, on the lower edge of this curve,  
3 is something that could potentially be pushed  
4 forward in the rulemaking.

5 MR. CYMBALSKY: Yeah. I mean, I  
6 think that was true for transformers, that we  
7 didn't get -- we didn't get a point over here  
8 for medium voltage, right?

9 MR. BROOKMAN: Andrew?

10 CO-CHAIR deLASKI: Yeah. I guess  
11 I would say -- and just to elaborate on what I  
12 -- my experience is that even in the contested  
13 rulemakings DOE has selected levels any -- all  
14 over that curve that John has drawn, except  
15 for to the right, except for below the origin.  
16 Okay? In my experience. And they've been  
17 all over that curve.

18 And I think the point that they  
19 have actually -- if I had to go over 30 years  
20 of experience in looking at the rulemakings,  
21 the point most commonly chosen has been the  
22 apex of that curve. Okay? Most commonly

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1 chosen.

2 So the -- you know, it is a --  
3 even in a contested rulemaking, it's those  
4 seven factors, it's not just this one factor  
5 -- this factor kind of just -- as I heard it  
6 described this morning is the starting point,  
7 but it's not the ending point.

8 MR. COUSINS: Okay. That's good.

9 And the reason why I asked is I said outside  
10 of the financial/economic factors. My  
11 thinking is that it may very well be that  
12 where you are along that curve may change the  
13 landscape of commerce, where -- okay, whereas  
14 a small business factors in on this side, but  
15 if you're on that side then small business can  
16 no longer be involved in dealing with that  
17 commodity.

18 CO-CHAIR deLASKI: Right.

19 MR. COUSINS: Or, you know, it's  
20 things of that nature that I was --

21 CO-CHAIR deLASKI: And the other  
22 piece of this is -- there's the small business

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1 piece of it, and then there also are the  
2 external benefits, right, that aren't showing  
3 up in that curve, too.

4 The way it's drawn doesn't take  
5 into account external benefits in terms of  
6 environmental benefits. They aren't on that  
7 curve. So they're -- it goes -- it does cut  
8 both ways in terms of where you would end. So  
9 those environmental benefits are in that other  
10 factor as well. Peak demand on utility grids,  
11 that's on that curve. All of those factors  
12 need to be part of what the working group  
13 would consider.

14 MR. BROOKMAN: So what are your  
15 ideas? What are you thinking that the  
16 Advisory Committee should suggest that working  
17 groups consider, for example? Kelley?

18 MS. KLINE: As we are talking  
19 about really cross-cutting ideas, right?

20 MR. BROOKMAN: Yes.

21 MS. KLINE: I had one. Thinking  
22 that we talked a little earlier today about

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1 test procedure complexity and how, you know,  
2 there's a lot of test procedure development, a  
3 lot of questions I think around interpretation  
4 of current test procedures.

5 And I think DOE has done some  
6 really good things over the past couple of  
7 years. I'm thinking about like a correlation  
8 summit that we did once on like clothes  
9 dryers, and I forget -- several other  
10 products. Some of the ways that DOE is  
11 communicating guidance is very good I think.

12 But I think there might be an  
13 opportunity there to think about how there is  
14 a uniform or consistent way to make sure test  
15 procedures are getting interpreted the same  
16 way and for questions to be kind of vetted and  
17 raised, because I think there is a lot of  
18 examples these days about test procedure  
19 interpretation questions.

20 So that's the thought. It's not  
21 really fully formed. But if there's something  
22 that this committee could work on to make some

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1 recommendations around that, I think that  
2 might be beneficial.

3 MR. BROOKMAN: Okay. Other ideas?  
4 Areas that this committee or working group  
5 might pursue? Tom Eckman?

6 MR. ECKMAN: Yeah. This is along  
7 the lines of test procedures as well. I think  
8 it's cross-cutting. One of the stumbling  
9 blocks we have in many of the rulemakings is  
10 the lack of what I'll call duty cycle  
11 information on the product, that either is  
12 current or field-based or what have you.

13 So the test procedure development-  
14 laced example which Charlie Stevens brought  
15 in, the number of cycles of dryer use in the  
16 northwest in 50 homes compared to the current  
17 test procedure, it was two-to-one  
18 differential.

19 Well, that's a big air band to  
20 negotiate around. And we have the same thing  
21 on icemakers. We don't know what the duty  
22 cycle is. How much ice do they make? They

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1 have a capacity, but how much ice do they  
2 really make?

3           And every time we stumble, because  
4 that information isn't readily available, not  
5 current, and I think some workgroup that can  
6 put together a scope of work that says, "These  
7 are the ones that are coming down the pike.  
8 How are we going to get that information in  
9 front of the freight train before we have to  
10 make a decision about either the test  
11 procedure or use of that information for life-  
12 cycle costing?" Because it also involves the  
13 life-cycle cost analysis.

14           This is the duty cycle with  
15 produces the kilowatt hours, not the kW.

16           MR. BROOKMAN: So the task is  
17 something like scope or anticipate these in  
18 advance.

19           MR. ECKMAN: Yeah. And figure  
20 out, you know, how is that research going to  
21 get done? Where is it? If it's not being  
22 done now, where is it going to be done? So

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1 that it doesn't hold up a testing procedure,  
2 and it doesn't hold up a life-cycle.

3 MR. BROOKMAN: Okay.

4 MR. ECKMAN: You know, we had the  
5 same thing on refrigerators. What's the  
6 icemaker cycle?

7 MR. BROOKMAN: Yeah. Scope or  
8 anticipate the research that's needed. Okay.  
9 Good.

10 Other thoughts? John, yes.

11 CO-CHAIR MANDYCK: There is a more  
12 specific one that is real-time before the  
13 Department now, and that is on the HVAC and  
14 commercial refrigeration world, a potential  
15 negotiated rulemaking on certification and  
16 enforcement.

17 MS. KLINE: But that wouldn't be  
18 unique to HVAC or --

19 CO-CHAIR MANDYCK: The one that's  
20 on the table is.

21 MR. BROOKMAN: Do you want to --  
22 is that sufficient? Do you want to say a

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1 little more about that?

2 CO-CHAIR MANDYCK: Well, this has  
3 been -- there has been at least one proposed  
4 rule on this and several discussions and  
5 consideration by the Department through a  
6 process last year to evaluate whether they  
7 should move forward with a consensus  
8 rulemaking or not. So there has been a lot of  
9 -- I mean, I'm sorry, negotiated rulemaking or  
10 not.

11 So there has been Department time  
12 invested in reaching to this point, and it  
13 really -- we now have the ASRAC, which is kind  
14 of being inserted into the process. So I  
15 think we have to formally decide whether it's  
16 a topic ripe for proceeding or not. I happen  
17 to think it is.

18 MR. BROOKMAN: So maybe we just  
19 use that as a test case. How would -- not  
20 getting into specifics, if a member pushed  
21 forward an idea like this, how would you  
22 imagine that it then proceeds? Ashley?

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1 MS. ARMSTRONG: Well, I think we  
2 would discuss it first, but the idea would be  
3 that ultimately if this committee thinks that  
4 that is a good idea, we would vote to form a  
5 working group. And as part of that, we would  
6 discuss the initial scope of that working  
7 group as well as timeframe. And then, from  
8 there we would formally recommend DOE would  
9 act on that working group formation.

10 MR. BROOKMAN: Okay.

11 MS. ARMSTRONG: So, I mean, that  
12 is one that, as John said, has been out for a  
13 while. There is an impending deadline with  
14 that one, so that's one that would go quick,  
15 if we were to form a working group.

16 MR. BROOKMAN: Okay. Other  
17 thoughts?

18 MS. ARMSTRONG: To answer Kelley's  
19 question, just for a second, so this one  
20 probably -- well, this one probably would be  
21 -- because commercial HVAC and CRE equipment  
22 currently right now does not have to certify

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1 -- their certification has been delayed until  
2 December 31st of this year -- I think this one  
3 should be narrower in scope in addressing that  
4 impending deadline.

5           If we wanted to open up a broader  
6 topic of certification issues for different  
7 products, I think you would do that in a  
8 separate working group just so that the  
9 potential list of issues doesn't hold up  
10 progress with this one in meeting any such  
11 deadline. At least that would be my  
12 recommendation. That's open to, obviously,  
13 any discussion.

14           MR. BROOKMAN: Okay. So did I  
15 capture that? Also, plus the broader --

16           MS. ARMSTRONG: I'm not  
17 recommending that. I just --

18           MR. BROOKMAN: Okay. Well,  
19 someone else raised it.

20           MS. ARMSTRONG: -- wanted to  
21 clarify.

22           MR. BROOKMAN: These are

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1 possibles, right? Certification.

2 Yes, John.

3 MR. CASKEY: This is sort of  
4 related to the first one, but it's a cross-  
5 cutting issue, and it really deals with  
6 interpretation of test procedures and possibly  
7 other things. But, you know, the fact that we  
8 work with a wide variety of manufacturers,  
9 they interpret the test procedures and other  
10 things inconsistently.

11 But to get an answer from DOE  
12 often takes long -- no offense, often takes a  
13 long period of time. Is there some guidance  
14 that we can give to DOE that a month is the  
15 right amount of time, or two months, or some  
16 minimum -- some maximum period of time by  
17 which DOE will respond to questions associated  
18 with test procedures and other issues?

19 MS. KLINE: I think that's part of  
20 what I was trying to get at.

21 MR. CASKEY: Okay. So maybe --

22 MS. KLINE: At like whether it's

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1 --

2 MR. CASKEY: Just sort of like an  
3 upper limit on the schedule or the turnaround  
4 time or something like that.

5 MS. KLINE: I guess I was thinking  
6 about it more in terms of what's the most  
7 expeditious way for clearing up test procedure  
8 questions.

9 MR. CASKEY: Okay.

10 MS. KLINE: I wasn't thinking  
11 about it in terms of like a time limit. I was  
12 thinking about, are there better ways to get  
13 at reconciling test procedure questions when  
14 they arise?

15 MR. CASKEY: I think it's all part  
16 of that.

17 MS. ARMSTRONG: Great. So I'm  
18 going to say from my perspective, because a  
19 lot of them come to me -- you know, it's  
20 easier when I -- you guys asked some very  
21 open-ended questions. Sometimes they come in  
22 and say, "Manufacturer A is doing this, and

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1 Manufacturer B is doing this."

2 Other times it's, "DOE has tested.

3 We have done it one way, and our results are  
4 showing one thing and your results are showing  
5 other things." And in some cases that is a  
6 test procedure interpretation issue.

7 It's a lot easier when we have all  
8 of the details of the processes. So maybe the  
9 best thing to do this would be to figure out a  
10 process. Some of them -- we could definitely  
11 put a timeline on it. I can tell you that not  
12 all of them can be answered through guidance  
13 or feedback right on the cusp, so there will  
14 have to be some caveat.

15 But some of them have to go  
16 through notice of rule and comment. So that's  
17 the caveat there. That's why some take longer  
18 than others, as you have seen for some of the  
19 AHAM issues.

20 But I definitely think it's worth  
21 doing now, because I probably get over a dozen  
22 test procedure questions a week for a variety

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1 of different -- so there is no lack of them.  
2 That's for sure. Especially the more we test.

3 MR. BROOKMAN: So this is a good  
4 start.

5 MS. KLINE: I think there may be  
6 an opportunity here where the test procedure  
7 questions may -- there may be some interplay  
8 here with the certification questions. I'm  
9 thinking about, you know, as you see upcoming  
10 certification deadlines, that's probably when  
11 you are getting a lot of test procedure  
12 questions on a particular topic. So there may  
13 be a way to kind of dovetail the two.

14 MR. BROOKMAN: Other thoughts?  
15 Other ideas? Areas? Yes, Andrew.

16 CO-CHAIR deLASKI: So I think I'm  
17 just going to -- I'll put out a couple of  
18 areas where I think are possible, and these  
19 are technology-specific ideas.

20 I guess I will just start with  
21 sort of an obvious point, which is that, you  
22 know, a negotiation is not going to work

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1 unless we have active participation by the key  
2 stakeholders. Right? So sort of a -- if we  
3 don't have enough -- if we do a Federal  
4 Register notice and no one applies, throw a  
5 party, no one comes. You know, it's not going  
6 to work.

7           So I think, you know, a threshold  
8 point is, you know, do we have buy-in from,  
9 call them the key parties, to do a negotiated  
10 rulemaking. And at this point, I don't think  
11 we do for any of the technologies that I have  
12 been involved in in discussions on a private  
13 basis thus far.

14           So there are two areas that are  
15 public that we have told the Department that  
16 we are in private discussions with, and those  
17 are with regard to fans and pumps. And I had  
18 lunch discussions or just in the hallway here  
19 just with HI and with AMCA -- Michael and Bob  
20 are both here -- and there is interest in  
21 pursuing those potentially.

22           But they haven't yet gone to their

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1 boards to see whether they've got the buy-in  
2 from their boards to do a negotiation, and I  
3 haven't consulted with the folks who are on  
4 our side of the table in those private  
5 negotiations to say, "Do we want to take those  
6 private negotiations and put them into the  
7 FACA process?"

8           There is interest, but there is  
9 not a recommendation yet from these parties  
10 that it should go there.

11           So what I would suggest for both  
12 of those is that if there are good candidates,  
13 and that I would hope that this committee  
14 could reconvene in the not-too-distant future,  
15 say two months or so, once -- these guys just  
16 had their framework meeting last week, and to  
17 be able to reconvene in two months and say yea  
18 or nay based on having consulted DOE and the  
19 parties having consulted to say, "Do we want  
20 to put it out there into that process?"

21           There are a couple others that are  
22 out there that are in private negotiations

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1 that may make sense. But they are all in a --  
2 none of them are in a position today where we  
3 could say, "Yes, let's put it over to the --  
4 into the FACA process."

5 MR. BROOKMAN: Okay. Steve?

6 MR. COUSINS: So we had discussion  
7 just a moment ago about the working groups and  
8 providing them guidance with regard to quorum  
9 and consensus, and so forth.

10 And we said that those working  
11 groups can set up their own rules of -- that  
12 causes me to think if there is any reason for  
13 us as a committee to lay out ground rules, not  
14 just around, you know, what constitutes a  
15 decision, but is there a need for us to create  
16 ground rules for the working groups, or is  
17 that something that has already been done just  
18 from negotiated rulemakings that have been  
19 done -- is there already some kind of guidance  
20 that can be formulated from that? Or is it a  
21 situation that anything goes and we don't have  
22 to create anything?

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1           But I'm thinking that maybe it  
2 might be good for us to create something as a  
3 starting point for altogether new working  
4 groups on things that are in the very early  
5 process.

6           MS. ARMSTRONG: I mean, I'm not  
7 quite sure I know what context you're speaking  
8 of -- like guidelines. But we would establish  
9 their scope, you know, how narrow or how wide,  
10 right? We would give them a timeframe, at  
11 least an initial timeframe, to report back.

12           And then, you know, the day-to-day  
13 activities are covered by the charter, and  
14 more or less, you know, the explanation of how  
15 things are supposed to go.

16           Now, as far as their technical  
17 discussions and that kind of stuff, I think we  
18 leave that to them, because it's going to be  
19 very different by product, or could be very  
20 different by product, but I don't know what  
21 else you are seeking other than that.

22           MR. COUSINS: Well, that's a good

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1 point, Ashley. What I was referring to is if  
2 there is some commodity here that, you know,  
3 it's early in the process and a working group  
4 is put together and it consists of people who  
5 are new to the process -- you know, they  
6 haven't been involved in pre-bid rulemakings  
7 -- and they want to talk technology issues,  
8 like they want to talk about technologies that  
9 don't exist right now, they want to bring that  
10 into, you know, how it's going to impact the  
11 rule or technologies that are dying, and how  
12 that is going to -- I mean, is there -- does  
13 it make sense to say there are some things  
14 that are off limits? There are some things  
15 that are on limits?

16 I mean, or should we just back  
17 away and say they can talk about anything they  
18 want to talk about. And they want to adopt a  
19 threshold or a process or a procedure around  
20 technologies that don't exist, but they want  
21 to do that -- that's -- I mean, is there any  
22 -- do we draw any boundaries? Do we don't

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1 draw any boundaries? You know, that's kind of  
2 what I'm thinking about with regard to giving  
3 them guidance as to how they work.

4 MS. ARMSTRONG: I mean, I guess --  
5 well, you -- somebody else can talk, but my  
6 opinion of this would be that for -- if you're  
7 talking about a specific standards rule, I  
8 mean, just pick one off the list.

9 If we decided tomorrow to start  
10 something for automatic commercial icemakers,  
11 the preliminary analysis has been out. We  
12 were in the process of revising stuff. If we  
13 decided that that one was right for  
14 consideration, I think we let them negotiate.

15 I mean, if you have a well-balanced  
16 committee, I don't think the outcome is going  
17 to be adopting something that is not yet  
18 commercially available, although yet, if they  
19 wanted to, they could make that recommendation  
20 to us.

21 Ultimately, we would still have  
22 our discussions, subsequent to the working

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1 groups. I don't think we need to put specific  
2 boundaries on them like that. I have a  
3 feeling a lot of those issues will come up,  
4 you know, in the context of their own  
5 discussions.

6 MR. BROOKMAN: So these are the  
7 words that I wrote up here. The DOE will --  
8 they will be scoping it, and they will be  
9 populating that working group. They will  
10 essentially be convening them, and they will  
11 orient those individuals as needed based on  
12 whatever is there. Right?

13 And then, you will establish the  
14 timeline. You will provide technical support.  
15 And if that committee -- that working group,  
16 pardon me, decided to go outside the bounds of  
17 that, then they could consider that. And  
18 though the stakeholder is present, you know,  
19 they would tend to -- right? Something like  
20 that.

21 Kelley?

22 MS. KLINE: A different topic, if

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1 that's okay. Back under the general heading  
2 of Test Procedures, but just another thought.

3 MR. BROOKMAN: Yeah.

4 MS. KLINE: I'm thinking about  
5 several examples where we have test procedure  
6 changes and standards changes coming.

7 MR. BROOKMAN: Okay.

8 MS. KLINE: And some of the timing  
9 issues around those, around, you know, test  
10 procedure changes leading into standard  
11 changes, what -- you know, what happens when  
12 -- test procedure changes that may impact the  
13 measured energy, and then how that gets  
14 translated to standards.

15 I think that there may be a cross-  
16 cutting topic there, given the number of test  
17 procedure changes we are seeing and new  
18 standards that are becoming effective.

19 MR. BROOKMAN: You are thinking  
20 that perhaps there could be a schedule  
21 established that was more logical or coherent  
22 or something like that?

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1 MS. KLINE: Well, I think it's --  
2 I think that's part of it, and then there  
3 could be more than that. Like what happens if  
4 a test procedure changes in advance of a new  
5 standard, and the test procedure changes the  
6 measured energy in some way. You know, what  
7 do you do with that? How does that translate  
8 into the standard? What kind of timing issues  
9 may be presented by things like that?

10 MR. BROOKMAN: It's the linkage  
11 between the two.

12 MS. KLINE: I think that's right.

13 CO-CHAIR MANDYCK: I'll pick up on  
14 that. I think that's a good idea, because we  
15 have seen instances in different product  
16 categories where a standard may be set and  
17 then a test procedure is either revised or set  
18 following a standard being set, but before the  
19 standard goes into effect.

20 And the change in -- potentially a  
21 change in the test procedure could in essence  
22 change the standard. And so it's the cadence

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1 of those that becomes important.

2 MR. BROOKMAN: Ashley? Let me  
3 remind you, as a member of this committee, you  
4 can suggest things, too.

5 MS. ARMSTRONG: Thanks, Doug. I  
6 was trying to let everybody else talk first.

7 So I think that's fine, as much as  
8 it can be generalized. But I think to take it  
9 a step further is you see what we are  
10 currently working on with this list. And even  
11 though some of the test procedures say NOPR, I  
12 mean, it's really early in some of these  
13 stages.

14 This would be the time to convene  
15 working groups for specific products to deal  
16 with, not only test procedures, some of which  
17 may be overhaul-type test procedures, and then  
18 characterizing that potential impact to feed  
19 into standards rulemakings that either are  
20 really early as well or not yet started.

21 So if there are certain issues  
22 that we know, either our major test procedure

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1 issues that we haven't addressed yet or other  
2 ones, this would be the time to make specific  
3 product recommendations, because  
4 characterizing those changes on an aggregated  
5 basis is going to be very difficult.

6 MS. KLINE: I think that's exactly  
7 right. I mean, it really does get to be  
8 product-specific pretty quick, and I think  
9 there is probably a few examples that are ripe  
10 right now, and then there's maybe the longer  
11 term question.

12 MR. BROOKMAN: My experience with  
13 negotiations like this is frequently they get  
14 -- they grind to a halt based on a few -- a  
15 couple of really thorny issues. And so if you  
16 could anticipate what those issues were,  
17 either in the test procedure kind -- put a  
18 little working group on it, you know, kind of  
19 sort through that and at least begin to gather  
20 the data, consistent with Tom's comment, then  
21 that would be a big advance. You wouldn't  
22 grind to a halt when you get to that point.

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1 Yes, John.

2 MR. CASKEY: Yes. I would like to  
3 see us develop some sort of process or  
4 procedures for validating the models used by  
5 the consultants and the DOE, you know, just  
6 some simple way to make sure it's in the right  
7 ballpark.

8 MR. BROOKMAN: Okay. Other  
9 thoughts? This is a good starting point.

10 Yes, Andrew.

11 CO-CHAIR deLASKI: So this is a  
12 cross-cutting issue, and I'm not sure how this  
13 committee can address it. But it's a big --  
14 our major concern with the program right now,  
15 which is the delays in finishing standards.

16 So the timing of standards has  
17 gotten to be a problem. I think it was  
18 referenced earlier that, you know, someone --  
19 the Department, between 2006 or '07 and 2011,  
20 did a great job of sticking to its schedules  
21 for completing the new standards.

22 And over the last, say, 18 months

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1 to two years, things have slowed down to the  
2 point now where I think there is eight  
3 standards for which there are -- DOE has  
4 missed deadlines, several of which are legal  
5 deadlines.

6 We published an analysis last  
7 month showing that that -- those have real  
8 costs. We calculated \$3.7 billion in lost net  
9 present value benefits to date, and an  
10 additional loss of \$300 million a month  
11 because of the delay. So these have real  
12 implications in terms of lost savings for  
13 consumers, and in terms of environmental  
14 impacts.

15 And also, it is having real  
16 impacts on manufacturers, because folks don't  
17 know what the compliance dates are. So we had  
18 -- we negotiated privately an agreement with  
19 AHAM for new standards for dishwashers and  
20 clothes washers that were adopted last year.

21 But had a little kerfuffle at the  
22 end because it had taken the Department so

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1 long to get the standards done that the lead  
2 time that was anticipated by the agreement  
3 wasn't there. So the manufacturers weren't  
4 going to have as much lead time as they had  
5 thought they were going to have that they had  
6 negotiated.

7 So as a result, we had to adjust  
8 -- we had to negotiate a new effective date,  
9 and that was solved. Same thing happened with  
10 some of the HVAC products where the lead times  
11 that were anticipated by agreements weren't  
12 achieved. And this is -- so we have -- so you  
13 bought a consensus, and then the consensus  
14 starts to break down because it is not being  
15 implemented by the agency.

16 So what do we do with this? Is  
17 there anything this committee can do to  
18 address this problem, which is sort of  
19 fundamental to the program, which is that, you  
20 know, the ability to set a schedule that the  
21 government then adheres to, at least within  
22 some striking distance. Certainly cross-

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1 cutting.

2 MR. BROOKMAN: Yeah. So that  
3 would be kind of an active, ongoing thought  
4 process.

5 CO-CHAIR deLASKI: Yeah.

6 MR. BROOKMAN: Go ahead, Steve.

7 MR. COUSINS: Typically, in  
8 industry or in business when you go out into  
9 and you launch a new venture, and whether  
10 successful or whether it fails, afterwards you  
11 have this opportunity to examine your  
12 learnings. You know, what was good, what was  
13 bad, what should we adopt, you know, going  
14 forward in the future. How can we change our  
15 project management processes, and so forth.

16 And I know there has been a lot of  
17 work with regard to, you know, standards that  
18 has been established around these appliances.

19 I don't know if DOE has taken a few paces  
20 back and said, "What have we learned from all  
21 of these collective efforts that might help us  
22 going forward?"

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1           Perhaps this committee would be --  
2           is a mechanism to have discussion around  
3           learnings from all of these individual efforts  
4           with standards that have been established, to  
5           help the process in the future, you know, to  
6           kind of come up with a tactical approach to  
7           probably get around some of the scheduling  
8           delays that we've had.

9           CO-CHAIR deLASKI:     And just to  
10          follow on to Steve's point, it's seems to me  
11          that the Department has the model, right? The  
12          model has been laid out. It is supposed to  
13          take three years. There was an effort to  
14          compress it I think to make it maybe a little  
15          shorter than that in some cases.

16          It would be interesting to go  
17          back, as you suggest, and say, "Well, okay, so  
18          how has it worked?" We've got a bunch of data  
19          now. What and why -- and to have information  
20          and discussion about what has worked, what  
21          hasn't, where have you missed the targets, and  
22          why, and to have that dealt with in an open

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1 forum I think would be helpful to all of the  
2 parties.

3 And that might lead to some  
4 recommendations for program improvements.  
5 Right? How do you do it differently?

6 MR. BROOKMAN: Okay. Good. Those  
7 are good thoughts. Additional thoughts?

8 MR. CASKEY: Sure. I've always  
9 got one more idea.

10 MR. BROOKMAN: Good.

11 MR. CASKEY: One of the areas I  
12 deal with is smart grid and demand response.  
13 So at some point in the future, should some of  
14 these products have inherent in them some  
15 smart grid capability or some demand response  
16 capability? Because certainly in terms of,  
17 you know, Mom and apple pie and overall  
18 efficiency, being able to respond to some of  
19 those programs are pretty important, or is  
20 pretty important.

21 MR. BROOKMAN: Okay. That's good.

22 I thought I spotted one. So we've got quite

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1 a few ideas already. I don't think the list  
2 is complete yet. Give you a chance to  
3 evaluate what's up here.

4 As you look at this list here,  
5 just for example, or we can -- we can put the  
6 test procedure list up as well. Are there any  
7 of these that strike you that they should get  
8 a boost from a working group? If it's too  
9 small to read, then it's also in your handout.

10 MR. CASSIDY: If they're at the  
11 point of like a final rule, then it's pretty  
12 late in the game, right? Is that --

13 MS. ARMSTRONG: Yes.

14 MR. CASSIDY: So it should be  
15 focused maybe on earlier ones, which would be  
16 framework maybe and preliminary analysis. Is  
17 that right?

18 MS. ARMSTRONG: That would be  
19 ideal.

20 MR. BROOKMAN: Yeah. That was  
21 Andrew's comment earlier, that at this point  
22 there is a bunch of fact-based stuff to

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1 consider, or at least interpreted fact-based  
2 stuff.

3 Yes, Kelley.

4 MS. KLINE: I'm just wondering if  
5 there is some sort of set of criteria we could  
6 discuss and come up with that would kind of  
7 identify rulemakings that would be best suited  
8 for a negotiated rulemaking.

9 And I'm not familiar enough with  
10 the ones in the preliminary analysis section  
11 to tell you which ones I think should be in  
12 and out, but it might be something that we  
13 could discuss as a group and come up with some  
14 guidelines for when it would be most  
15 appropriate.

16 MR. BROOKMAN: Andrew already  
17 listed one, and all of primary stakeholders  
18 wish to participate. Wouldn't that be one?

19 MS. ARMSTRONG: I don't think we  
20 are going to know that, though. I mean, it is  
21 going to be hard for us to gauge that. At  
22 some point, you know, even with this idea

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1 generation, we are going to need to open it up  
2 to the floor.

3 MR. BROOKMAN: Yeah.

4 MS. ARMSTRONG: Just to -- I mean,  
5 that's the whole -- and to the webinar, just  
6 to see what other people in the room --  
7 because not all of us are going to be the  
8 interested parties in, you know, each of these  
9 things.

10 MR. BROOKMAN: Kelley, did you  
11 have criteria in mind?

12 MS. KLINE: No. I was just  
13 thinking that might be a good exercise for the  
14 group, to come up with some --

15 CO-CHAIR deLASKI: Just a friendly  
16 amendment, Doug, because I think to what you  
17 are putting what I think is -- all is a high  
18 threshold.

19 MR. BROOKMAN: Yeah, yeah, yeah.

20 MR. deLASKI: Okay. So critical  
21 mass is more --

22 MR. BROOKMAN: Yeah.

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1 MR. deLASKI: -- it's more of --

2 MR. BROOKMAN: And the other thing  
3 you said, Andrew, was about the -- having work  
4 underway, having something to work with.  
5 Right? I mean, that was -- you're looking  
6 skeptical about that also.

7 CO-CHAIR deLASKI: From where I  
8 sit, that's helpful. I mean, it's not -- I  
9 mean, some folks have more data than I have,  
10 so --

11 MR. BROOKMAN: Critical mass among  
12 stakeholders and preliminary analysis or some  
13 basis for discussion.

14 MR. COUSINS: These are things  
15 that we may not know until the preliminary  
16 analysis is done. But when I think about that  
17 suggestion, I think about commodities that  
18 have very low commercial volume, very small  
19 manufacturing sector, you know, very -- I  
20 mean, very small purchase community. I mean,  
21 if it's -- they might lend itself to -- for  
22 example, to negotiate a level. So that -- a

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1 working group that is going to negotiate.

2           And I think you were talking  
3 about, well, what would be the criteria? And  
4 I think it's possible to come up with criteria  
5 that would -- that might make things easier in  
6 the future to at least point something in that  
7 direction. I think it's a good idea. I know  
8 it -- you know, it may be difficult to do  
9 unless you have some detail from a preliminary  
10 analysis. But I think there could be some  
11 criteria there.

12           MR. BROOKMAN:     So maybe in the  
13 future.

14           MS. ARMSTRONG:    So, Doug, one of  
15 your criteria there is preliminary analysis.  
16 And I think that's probably a great indication  
17 if you're -- or helpful information if you are  
18 working on a standards rule. However, for  
19 some of these products, like compressors or  
20 pumps or fans or blowers, we are starting from  
21 ground zero.

22           We need to establish some type of

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1 test procedure and metric before we can even  
2 run a preliminary analysis to give you any  
3 type of indication. I think it would be very  
4 valuable for people to come to the table prior  
5 to the preliminary analysis stage to help  
6 influence the test procedure and the measure  
7 discussion.

8 And you may not come to consensus  
9 by any means, but at least you would have  
10 discussions about what is currently being  
11 done, testing burden, that type of thing,  
12 before the Department just goes off on its own  
13 doing that type of work, putting out  
14 potentially a proposed rule and a preliminary  
15 analysis, establishing a metric and then  
16 forming a committee.

17 CO-CHAIR deLASKI: Yeah. I agree.

18 And I think I said earlier a framework or  
19 PTSD.

20 MS. ARMSTRONG: Yeah.

21 CO-CHAIR deLASKI: And, you know,  
22 so we have been engaged in private discussions

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1 with pumps and fans guys since before the  
2 frameworks were published.

3 MS. ARMSTRONG: Absolutely.

4 CO-CHAIR deLASKI: So I think  
5 that's -- I think you do -- for new  
6 technologies that are being part of the  
7 process for the first time, absolutely that is  
8 true. And even for products that are subject  
9 to existing standards, you can often make good  
10 progress. You need to.

11 MS. ARMSTRONG: Sure.

12 CO-CHAIR deLASKI: Otherwise, you  
13 have the risk of getting a PTSD that yields  
14 results or data that no one has confidence in,  
15 and, therefore, you haven't formed a basis for  
16 good discussions.

17 MR. BROOKMAN: Right. As you look  
18 at this list -- and, actually, you should --  
19 as a member of this committee, you should feel  
20 free to weigh in. Do some of these stand out  
21 as being candidates for a working group? Or  
22 it would be a working group with a narrow

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1 scope perhaps.

2 MS. ARMSTRONG: Can we open it to  
3 the floor, Doug?

4 MR. BROOKMAN: Sure.

5 MS. ARMSTRONG: And then we'll  
6 come back to the group to discuss?

7 MR. BROOKMAN: Yeah. Certainly.  
8 The floor is open.

9 MS. ARMSTRONG: No. I mean, like  
10 --

11 MR. BROOKMAN: Oh. Oh, yeah.  
12 Okay. So we are departing from the standard  
13 practice, and we have two microphones, and  
14 invite -- you can -- this can also serve as  
15 the public comment period I guess, perhaps, at  
16 least in part. And let's hear what  
17 individuals have to say about where ASRAC  
18 might best use this mechanism perhaps to  
19 create a working group.

20 Please. Say your name for the  
21 record.

22 MR. MESSNER: Thank you. It's

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1 Kevin Messner. I'm with the Association of  
2 Home Appliance Manufacturers. I just wanted  
3 to build off of the point that Kelley talked  
4 about on test procedures and standard changes.

5 And I don't know if this is right for a  
6 working group because of the timing.

7 We have an issue. I will go into  
8 a little detail here on how we would like to  
9 resolve, but we have seen three examples now  
10 where DOE is going through a process which is  
11 really undercutting the confidence in the  
12 standards program, which we all think is a  
13 very good program that has a lot of robust  
14 analysis that needs to be -- have confidence  
15 in.

16 So what is happening is there is  
17 test procedure changes that are happening that  
18 impact energy. And then they use a de minimis  
19 rationale to then not adjust the standard. So  
20 that is something that needs to be thought of  
21 and understood in an open and transparent way,  
22 how the use of de minimis is being applied.

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1           But then, to even go further, what  
2           is happening is we have as manufacturers this  
3           very key principle of the three-year lead-in  
4           time.    So when there is a standard being  
5           finalized, the manufacturers have three years  
6           to invest, retool, redesign in their product,  
7           to ensure that when there is a federal  
8           standard becomes -- the compliance date for  
9           the standard happens, they have three years to  
10          make sure they can sell products in the U.S.

11           And when a standard change -- a  
12          test procedure happens in the middle of that  
13          three-year lead-in period, it changes energy  
14          and uses de minimis so there is no crosswalk.

15          It completely undercuts a core process of the  
16          three-year lead-in, which --

17                   MR.    BROOKMAN:        The adjustment  
18                   period.

19                   MR.    MESSNER:        Exactly.        That  
20                   three-year -- it's a three-year lead-in period  
21                   to -- yes, to redesign and -- redesign your  
22                   product.    And not only to even add insult to

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1 injury, it then also prevents the  
2 grandfathering provisions and the safe harbor  
3 provisions, that if you do do a test procedure  
4 in a normal situation where there isn't a  
5 standard change happening, then there is a  
6 grandfathering provision where if you  
7 redesigned a product there is not just a test  
8 procedure that happens every year or every  
9 day, an extreme case, and then your product is  
10 out of compliance because of this -- this  
11 impacts energy.

12 So it is a larger issue. AHAM is  
13 working on a proposal to try to talk through.

14 And we want to -- we will want to talk to  
15 others to try to gain increased support for  
16 that and ultimately hopefully have DOE  
17 implement it.

18 I don't know if it's right for a  
19 sub-group, because we are operating on an  
20 immediate issue with a clothes dryer test  
21 procedure. That is the third time that they  
22 have done this for our products that we need

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1 to address in a more timely fashion than maybe  
2 what a working group would allow.

3 But I just wanted to raise that to  
4 the ASRAC as a potential something to think  
5 about, and maybe in the next meeting we might  
6 have something more of substance to bring to  
7 the table for consideration.

8 But it is a process that doesn't  
9 just impact AHAM products. It impacts the  
10 whole standards process overall. So any  
11 solution we come up with it would not be just  
12 home appliance specific.

13 MR. BROOKMAN: Okay. Thanks,  
14 Kevin. And that's another pathway, isn't it,  
15 for any association or any interested party to  
16 bring a proposal or something to ASRAC, right?

17 Rather than ASRAC doing the initiating. So  
18 this is for them to consider. Okay. Thank  
19 you.

20 Please, sir. Your name for the  
21 record.

22 MR. ASDAL: Certainly. Bob Asdal,

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1 Executive Director of the Hydraulic Institute.

2 I'd like to address this issue of the working  
3 group and the criteria for establishing  
4 working groups.

5 As Andrew mentioned before, I  
6 think the pump industry -- and we represent --  
7 Hydraulic Institute represents the pump  
8 industry -- would certainly need to consider  
9 how a working group gets established, how  
10 balance is achieved, the extent to which the  
11 industry will be represented. And I think  
12 those are issues that clearly this committee  
13 has, I would think, authority to establish.

14 And to the extent that that  
15 authority can permeate across all working  
16 groups, so that there are some consistent  
17 protocols, consistent protocols, so that every  
18 industry affected, every interested party  
19 affected, would know how a working group is  
20 established, would be a very valuable thing  
21 for this group to establish.

22 Number two, we have had some

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1 ongoing negotiations, if you will, private  
2 negotiations with the energy efficiency  
3 advocates for some period of time. The pump  
4 industry has drawn from its limited resources  
5 a number of experts, and those experts we  
6 would consider as ongoing candidates to be  
7 involved in a -- if you will, a reg neg  
8 process like this.

9 So the other question -- and,  
10 again, an issue for this committee -- is the  
11 issue of the extent to which an association, a  
12 trade association in this case, can nominate  
13 individuals to the U.S. Department of Energy,  
14 and the extent to which those nominations will  
15 be considered because there is a limited  
16 number of experts in the country on some of  
17 these complex technologies.

18 MR. BROOKMAN: Ashley can respond  
19 to that.

20 MS. ARMSTRONG: I'm going to  
21 attempt to at least. So the way the working  
22 groups get established, ASRAC will vote on

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1 whether we think a working group should be  
2 established or not. Assuming the answer is  
3 yes, go forward, the recommendation will get  
4 sent to DOE.

5 Assuming DOE agrees, it would  
6 publish a Federal Register notice asking for  
7 nominations from everyone, the public. Up to  
8 25 members can be appointed to the working  
9 group for any given specific working group.  
10 One of those must be a DOE representative.  
11 One of those must be an ASRAC representative.

12 It can be more ASRAC representatives if there  
13 is interest, but those are the minimums.

14 We will take nominations from  
15 everyone. You may nominate yourself. You may  
16 nominate an expert, anyone -- you know,  
17 manufacturers, efficiency organizations,  
18 utilities, states, whomever, can go through  
19 the process.

20 The first cut at the working group  
21 recommendations, who is going to be on it,  
22 will be done by this committee. This

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1 committee will look through it. They will  
2 say, "These people is who -- this is who we  
3 think should be on the working group," and  
4 they will make that recommendation to DOE.

5 It does have to be balanced. It  
6 follows the rules of something -- that require  
7 balance --

8 MR. BROOKMAN: Representation.

9 MS. ARMSTRONG: -- representation,  
10 a variety of different things from different  
11 interested parties, but there is some  
12 assurance there that it would be. But this  
13 group around the table would get the first cut  
14 at taking the -- you know, everyone that  
15 applied and making the recommendations to DOE  
16 for nominations.

17 MR. ASDAL: Well, just in follow  
18 up, I think it would be very helpful to get  
19 clarity around that issue of balance. Some of  
20 us in the room are -- some of us in the room  
21 are standard-setting organizations, standards-  
22 developing organizations. And we operate

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1 under ANSI, American National Standards  
2 Institute, protocols if you will for  
3 developing standards.

4 And they define balance very  
5 clearly of manufacturers, other interested  
6 parties, and users. In this case, it could be  
7 just manufacturers and other interested  
8 parties. But I think for us to consider as an  
9 industry group and as a trade association, as  
10 individual members, to consider engaging in  
11 this process, we would really need to know the  
12 definitions of balance and how the process  
13 will work in terms of bringing experts from  
14 our community to the table.

15 MR. BROOKMAN: Okay.

16 MR. ASDAL: Thank you. Thank you.

17 MR. BROOKMAN: Please, John. And  
18 then I'm going --

19 MR. CASKEY: A real quick  
20 question. So when you say, "Take it to DOE,"  
21 what does that really mean? And who says yea  
22 or nay or whatever?

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1 MR. BROOKMAN: You can talk. Yes.  
2 John?

3 MS. ARMSTRONG: I mean,  
4 ultimately, this committee is supposed to  
5 advise, right? And I don't think -- so the  
6 recommendations would go to him, and then his  
7 management from there, right, ultimately, if  
8 it was like a standard level or something like  
9 that. So --

10 MR. BROOKMAN: So I have worked  
11 with DOE for 20-plus years, and it's  
12 convoluted. That's the short answer. It  
13 first goes -- go ahead.

14 MR. CYMBALSKY: Yes. So we'll  
15 just talk about the transformer thing again.  
16 So, you know, we got a pile of applications,  
17 and you could -- there was a stack, and so we  
18 could say, "This guy is a manufacturer. This  
19 guy is a steelmaker. This person is a  
20 utility. This person is an environmental  
21 advocate, efficiency advocate. This one is  
22 consumer interest."

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1           So we have the different piles  
2 based on the applicants. And so I think the  
3 word "balance" to me means you have  
4 representation from all of the different piles  
5 you collected, and you balance the committee.

6       So --

7           MR. CASKEY:       Yes.     I -- my  
8 question wasn't related to balance per se. It  
9 was that Ashley mentioned several times that  
10 something goes to DOE. You know, like a  
11 recommendation for a working group or some  
12 other issue.

13           But what, does that mean you look  
14 at it and you say yea or nay? Or it has to go  
15 to the council or who else does it go to?

16           MR. CYMBALSKY:    Sure.    I mean,  
17 there's lots of different parts of DOE that  
18 looks at the makeup of the committee. I would  
19 certainly be the first level.

20           MR. BROOKMAN:    And then it would  
21 go other places.

22           MR. CYMBALSKY:    Yes.    It would go

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1 up.

2 MS. ARMSTRONG: I mean, for  
3 proposed standards it is going up. Right? I  
4 mean, something like that for test procedures,  
5 it would probably go to him and/or one level  
6 above him.

7 MR. CYMBALSKY: And our counsel  
8 looks at it, too, obviously, and --

9 MS. ARMSTRONG: Counsel.

10 MR. BROOKMAN: Dan?

11 MR. COHEN: The other thing I  
12 would point out -- this is Dan Cohen from  
13 General Counsel's office. As you may recall,  
14 John, one of the requirements in the  
15 Negotiated Rulemaking Act, which also governs  
16 when we do a negotiated rulemaking for  
17 standards, or whatever it may be -- and it's  
18 not just applying to us, that's a government-  
19 wide statute -- is that we have a third party  
20 neutral like Doug who advises the Department  
21 on the establishment -- first of all, whether  
22 the issue could even be negotiated.

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1           One question that you have to ask  
2 is, is this an issue that parties could get  
3 together and potentially reach a consensus on?

4           However "consensus" might be defined. You  
5 know, certain issues that's just not possible,  
6 right? There is just some things you are just  
7 -- there is people of good faith who are never  
8 going to get together on it. So you don't  
9 even bother with those. And that's the first  
10 cut that we actually ask a third party neutral  
11 to look at.

12           You'll recall in the transformer  
13 situation we hired a law professor from the  
14 University of Connecticut. And he went around  
15 and he first did an assessment. He called all  
16 of the various parties who were interested and  
17 asked a bunch of questions and said, you know,  
18 "Gee, I'm going to gather information. You  
19 know, I'm neutral to all of this. I don't  
20 really know anything about it at all. Please  
21 tell me your views."

22           We have actually -- there is a

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1 report similar to what we did for  
2 transformers. We had someone this past summer  
3 do an issue dealing with certification and  
4 enforcement. And I know -- I saw Dave  
5 Calabresi earlier. That was an issue that  
6 applies to commercial HVAC equipment.

7 And we had someone go out, a third  
8 party neutral go out and just talk to people  
9 and say, "Could this even be negotiated?"  
10 Once that decision is made, that it's even  
11 possible to have a negotiation, then it is  
12 figuring out who can actually negotiate.

13 And, again, we have that -- the  
14 law professor from the University of  
15 Connecticut advise us on who the appropriate  
16 balanced people were. And we would, I'm sure,  
17 do the same thing, right? So that we would  
18 have -- it wouldn't just be us sitting around;  
19 we would have some neutral party advising on  
20 that process, too. So we didn't -- you know,  
21 we're not stacking the deck in one way or the  
22 other.

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1 MR. BROOKMAN: Tim?

2 MR. CASSIDY: What I think I heard  
3 the commenter saying was that balance in a  
4 social context is fine. But you need experts  
5 in order to make progress, and there is a  
6 limited number of those experts, so that  
7 should be taken into consideration in the  
8 selection of the working group. You know,  
9 that's what I think I heard.

10 MR. BROOKMAN: Yes. As someone  
11 who has written these convening reports,  
12 saying yea or nay and who should participate,  
13 and typically it's organizations that you  
14 would list, then there is always the potential  
15 to list an organization and for that person to  
16 bring an actual entourage, to have his experts  
17 or her experts sitting right behind him or her  
18 at the table, and for that -- for information  
19 to flow back and forth, especially in this  
20 kind of a process, readily.

21 So there ought not to be an  
22 expertise deficit, almost regardless of the

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1 composition. You know what I'm saying? This  
2 is an opportunity for this information to get  
3 in there.

4 You're next.

5 MS. MEYERS: Thank you. Karen  
6 Meyers with Rain Manufacturing. Just I want  
7 to echo the comments really about the  
8 sequencing of events on how this all happens.  
9 If you look at that first one on the list,  
10 the AEDM, if you go back to the list on the  
11 previous page, there is also a rulemaking on  
12 looking at commercial efficiency standards and  
13 maybe staying with EER or IEER.

14 But, really, before manufacturers  
15 can have a position on that, we need to know,  
16 you know, what the AEDM is going to be like.  
17 If you were back on that other list, and you  
18 went down a couple more, there is test  
19 procedures for central air conditioners and  
20 furnaces -- central air conditioners and heat  
21 pumps. But we have a new standard that is  
22 already set to go into effect in January.

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1                   So       from       a       manufacturer's  
2       perspective,   once   you   know   what   that  
3       efficiency   standard   is   and   you   start   your  
4       product   development   cycle,   it   is   based   upon,  
5       you   know,   conducting   the   test   to   certify   your  
6       new   products.   And   if   the   test   standard   comes  
7       in,   you   know,   within   that   --   in   this   instance,  
8       within   that   five-year   timeframe,   it   can   affect  
9       when   you   might   be   able   to   get   your   products  
10      out   and   to   meet   those   deadlines.

11                   We   have   the   same   thing   happening.

12       We've   got   a   test   procedure   on   furnace   fans,  
13      and   then   we   also   have   one   on   residential  
14      furnaces   and   boilers,   and   those   are   kind   of  
15      tied   together.   And   then   a   couple   more,   and  
16      one   that   I'd   really   like   to   recommend   for   a  
17      working   group,   is   the   test   procedure   on  
18      residential   water   heaters,   because   the   NECA  
19      III   standards   for   that   are   set   to   go   into  
20      effect   in   April   of   2015,   and   the   test  
21      procedure   is   a   ways   out.

22                   So,   you   know,   really,   we've   got   25

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1 months to get a whole new -- to design a whole  
2 new platform of water heaters that meet a new  
3 standard, but we don't know what that test  
4 procedure is going to be and how it could  
5 affect that. Yet we are trying to design new  
6 products and be ready for that date, but we  
7 don't really know what the test procedure is  
8 going to be.

9           So it is very important for the  
10 sequencing to -- you know, to keep this, you  
11 know, rolling in line so that we can all, you  
12 know, get to where we want to be. But it does  
13 make it challenging from a manufacturer's  
14 perspective if these things are disjointed,  
15 which it -- in some cases they really are.

16           MR. BROOKMAN: Okay. And this, of  
17 course, is complicated because sometimes DOE  
18 is handed their schedule.

19           MS. MEYERS: Right. And we all  
20 understand --

21           MR. BROOKMAN: For example.

22           MS. MEYERS: -- that, but, you

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1 know, where possible, and as the ASRAC  
2 Committee meets to define, you know, and maybe  
3 even, you know, set priorities or make  
4 recommendations to DOE on, you know, areas  
5 where, you know, we might could do things to  
6 make things a little bit more efficient as,  
7 you know, has been commented on today, that  
8 would be some areas that, as a product  
9 manufacturer, I would really like to see the  
10 committee help to focus their efforts.

11 MR. BROOKMAN: Just stay right  
12 there. Given the known constraints -- you are  
13 familiar with this process --

14 MS. MEYERS: Right.

15 MR. BROOKMAN: --- are you  
16 suggesting that there is some tweaking that  
17 could be done? Or are you suggesting it's  
18 more wholesale and broader?

19 MS. MEYERS: Well, I probably  
20 don't understand --

21 MR. BROOKMAN: On schedules.

22 MS. MEYERS: Well, you know, one

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1 of the things I think I would like this  
2 committee to do is to look at all of the  
3 current activities that are on DOE's plate for  
4 2013 and, you know, see, are there some  
5 parallels that we can be running, are there  
6 some ways that we can combine some activities  
7 or at least move it up and down on the  
8 priority list to get some more -- some of  
9 these just follow a little bit more common  
10 sense trail.

11 MR. BROOKMAN: Yep.

12 MS. MEYERS: So that we could --  
13 so, you know, I think it's really focusing the  
14 priorities and moving things up and down on  
15 the list, and making sure that they are done  
16 in a coordinated fashion.

17 MR. BROOKMAN: Okay. Thanks very  
18 much. So that's an example of a non-member  
19 suggesting a possible activity for the  
20 committee to consider.

21 Steve Rosenstock.

22 MR. ROSENSTOCK: Doug, thank you

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1 very much. Steve Rosenstock, Edison Electric  
2 Institute. If you could, could you go back to  
3 the previous slide that showed all of the  
4 standards rulemakings? Because that would  
5 help kind of illustrate my comments.

6 MR. BROOKMAN: There we go.

7 MR. ROSENSTOCK: There you go.  
8 Thank you very much. I have two ideas for  
9 your consideration. I believe they are both  
10 cross-cutting.

11 The first one is, if you look on  
12 this chart there is -- on the bottom line it  
13 says microwave oven standby final rule. As I  
14 recall, the final rule for ovens for the whole  
15 products were done in 2009. They went into  
16 effect April of 2012.

17 But here is this other standard  
18 out there that is going to affect those ovens  
19 that could be happening, you know, final rule,  
20 which could go into effect -- I don't know  
21 what year. And, obviously, I know DOE has the  
22 authority to set both I'll say a global

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1 appliance standard as well as a -- I'll call  
2 it a standby standard for lack of better  
3 words.

4 So what we have for many of these  
5 appliances is, going in the future, two test  
6 procedures, two standards, two rulemakings,  
7 and it's the same appliance. Cross-cutting  
8 issue -- is there a way to figure out how to  
9 streamline that?

10 Right now you have doubling of the  
11 process, doubling of the work, doubling of  
12 the, you know, records, et cetera. Is there a  
13 way to -- because if you have coverage, that  
14 standby covers all products I think from now  
15 on basically, that standby provision of EISA  
16 2007.

17 The second issue I wanted to talk  
18 about was looking at this list especially you  
19 will see products that do compete with other  
20 in the marketplace or are kind of components  
21 of each other. For example, HID lamps --  
22 that's the lamps up there. Where it says high

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1 density discharge, that's the lamps alone,  
2 right? Not the lamps in the ballast.

3 But I know in EISA 2007 there were  
4 standards set for metal halide ballasts for  
5 certain fixtures. And then there is metal  
6 halide, and then there is the HID -- adjusted  
7 metal halide lamp fixtures.

8 Well, they are kind of -- one  
9 product is a component of the other product.  
10 So one standard could affect the other  
11 product. It doesn't make sense to have  
12 different timing of different things, because  
13 then you might have to redesign a product for  
14 one standard versus the other standard.

15 And also, for space heating, I  
16 know you have -- up there right now is  
17 residential boilers. Well, right now there is  
18 a new standard going into effect for furnaces  
19 in May, but just for oil furnaces. And then  
20 you had the residential boilers last year, and  
21 then you got heat pumps in 2015. But, well,  
22 what about gas furnaces?

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1           So I think there has been some  
2 market implications of the fact of different  
3 timings for different products that compete  
4 against each other in the marketplace, and is  
5 there a way, again, in terms of DOE process to  
6 look at that issue, again, as a cross-cutting  
7 issue because it will have an impact on the  
8 marketplace and will have marketplace  
9 implications.

10           MR. BROOKMAN: Okay.

11           MR. ROSENSTOCK: Thank you very  
12 much.

13           MR. BROOKMAN: Thank you. So here  
14 is what I have written. Figure out how to  
15 streamline perhaps duplicative processes --  
16 example, microwave standby -- and evaluate  
17 effective sequencing.

18           MR. ROSENSTOCK: Yes. But they  
19 are kind of -- they are separate.

20           MR. BROOKMAN: I know.

21           MR. ROSENSTOCK: They are -- yes.

22           MR. BROOKMAN: Okay.

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1                   MR. ROSENSTOCK:       Sequencing of  
2 competitive products, yes.

3                   MR. BROOKMAN:    Yes.  You're next.

4                   MR. IVANOVICH:     I'm Michael  
5 Ivanovich with AMCA International.  And I'd  
6 like to express that -- support for what Bob  
7 Asdal said from Hydraulics Institute about a  
8 concern for the consistency of the working  
9 groups and how those memberships are actually  
10 developed.

11                   You know, I think a primary  
12 concern is that as an industry association it  
13 represents roughly 125 fan manufacturers  
14 selling fans in the United States, you know,  
15 to have only one vote on a committee like that  
16 it could be something diluting, so to speak,  
17 our voice in that regard compared to, for  
18 example, the other avenues that we might have  
19 available for the consensus agreement that we  
20 -- for example, negotiating with the  
21 environmental advocates.  Number one.

22                   Number two is I'd like to -- one

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1 of the members of ASRAC commented that it  
2 would be good to validate the models that are  
3 being used for the cost-benefit analyses. I'm  
4 curious if there has been any widespread  
5 studies on the costs and impacts on  
6 regulation, not just the energy savings,  
7 because I think that would be a very important  
8 part of validating those models.

9 MR. BROOKMAN: Okay.

10 MR. IVANOVICH: And the other  
11 thing is, given the fact that only -- if you  
12 can't vote by proxy in a consensus process,  
13 that might be a single point of failure. So  
14 if you are a member of the working group and  
15 you can't make that meeting for a very strong  
16 reason, you know, could you send somebody else  
17 to represent your institution for one of these  
18 meetings. I think that's really important.

19 Given the fact that these are  
20 going to be intense meetings that might be  
21 frequent, if there is a problem with that  
22 person attending a particular meeting, could

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1 they send a proxy.

2 Thank you.

3 MR. BROOKMAN: Ashley, you -- Dan,  
4 do you want to respond to that? Okay. Dan,  
5 please.

6 MR. COHEN: I'm sorry. The last  
7 question about voting by proxy, we just have  
8 to look into the rules under the Federal  
9 Advisory Committee Act and just see if -- how  
10 we can set that up.

11 The way it worked in the  
12 transformer negotiation, you had to -- it was  
13 actually the member who had to vote. I  
14 believe that is just a requirement of the  
15 statute, but I just want to look into it.

16 MR. IVANOVICH: So it's an  
17 individual member, not an institutional  
18 member.

19 MR. COHEN: Correct. Yes. But  
20 that individual member is there in a  
21 representative capacity of their interest.

22 MR. BROOKMAN: Correct. You're

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1 next.

2 MS. REED: My name is Jennifer  
3 Reed, and I represent Illinois Tool Works.  
4 ITW owns Traulsen. We make commercial  
5 refrigeration equipment.

6 So I just wanted to weigh in on  
7 the -- our hope that there will in fact be a  
8 working group that is tasked with a negotiated  
9 rulemaking on the HVAC commercial  
10 refrigeration equipment process. We think a  
11 lot of work has been done.

12 There are a lot of outstanding  
13 issues, as the convening report pointed out,  
14 and I think the only way to get there quickly,  
15 because the agency does have some deadlines  
16 they have to adhere to, which have already  
17 been extended in some cases, is through a  
18 negotiated rulemaking.

19 So we just wanted to voice our  
20 support for -- from the commercial  
21 refrigeration equipment industry, from our  
22 perspective that that would be the way to do

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1 that.

2 MR. BROOKMAN: And do you have  
3 support from -- describe just in 30 seconds  
4 your level of support.

5 MS. REED: Traulsen support is 100  
6 percent. I will make the point that I --  
7 there are people here from AHRI who can speak  
8 for themselves. Traulsen is not a member of  
9 AHRI. So we do have a trade association, and  
10 -- but it is -- it is not a very technical  
11 one. It is rarely as involved in these kinds  
12 of issues.

13 We certainly -- if, for example, a  
14 call for nominations went out, we would do all  
15 of that homework in the background, so that  
16 when you got appropriate nominations you knew  
17 how broad that representation was.

18 But it should be pointed out that  
19 one of the reasons we make a point of being  
20 here is because we don't feel like we have an  
21 association, but we make a very -- we are one  
22 of the largest makers of a certain kind of

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1 commercial refrigeration equipment. So we are  
2 affected a lot.

3 MR. BROOKMAN: Got you, thank you.

4 MS. REED: Sure.

5 MR. BROOKMAN: Please. Your name.

6 MR. THARP: Rusty Tharp with  
7 DYCON/Goodman, now a part of Goodman, DYCON  
8 family.

9 We would suggest that one of the  
10 primary drivers for what ASRAC should be using  
11 to determine which projects to address would  
12 be which ones would be saving the most  
13 potential energy. Examples would be the 13  
14 SEER rulemaking of 2006, if my calculations  
15 are correct, saved about 0.2 quads per year.

16 The regional standards that go  
17 into effect in '13 and '15 saved about 75  
18 percent of that, about 0.14 quads per year.  
19 The standby off-mode power for furnaces and  
20 air conditioners saved about three percent of  
21 the total, about 0.005 quads per year.

22 The PTAC rulemaking went into

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1 effect last year in 2012, saved about just a  
2 little over a thousandth of a quad, or one  
3 percent of the 13 SEER. So I guess my  
4 suggestion would be that what the committee  
5 should look at is, which ones can save the  
6 most amount of energy? And that is where the  
7 primary emphasis should be.

8 We also want to reiterate the  
9 comments made by Karen and Steve about  
10 reducing the overall burden on manufacturers.

11 And to the point of maybe combining some of  
12 the modes potentially, the standby modes, as  
13 well as the normal operating modes, and  
14 looking at combining the test procedures, it  
15 seems that there are several times where the  
16 Department -- DOE test procedure, industry  
17 test procedure, and the DOE industry  
18 conservation standards are not in tune.

19 And since a lot of industry  
20 participates in all of those, it would be --  
21 seem prudent to go ahead and put those  
22 together, and maybe even potential of adopting

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1 some international standards, some ISO  
2 standards for domestic use.

3 And as far as the schedules  
4 comment that was made, as far as, you know,  
5 there are some things that you may have to  
6 address this year or early next year. If  
7 those are a small amount of energy that might  
8 be saved, it may be in the best interest to --  
9 for a consensus to say -- we'll say that we'll  
10 keep it as is for now and move on to the next  
11 big thing.

12 So that -- I would suggest that  
13 may be another alternate, too.

14 MR. BROOKMAN: Okay. Thank you.  
15 Karim.

16 DR. AMRANE: Karim Amrane, AHRI.  
17 You have heard John Mandyck and also the lady  
18 from Traulsen talking about this certification  
19 of commercial products as being an important  
20 rulemaking. And I think we would support that  
21 as well, support this committee putting this  
22 on a high priority, because there is a

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1 deadline by the end of the year and I think  
2 it's a very important issue for the industry.

3 As far as process, I think this  
4 committee should consider stakeholders  
5 petitioning this group and asking, you know,  
6 what should be -- what this committee should  
7 decide as far as moving forward with the  
8 negotiated rulemaking. I think you should  
9 establish a process by which everybody or a  
10 group of people could together petition DOE to  
11 do something.

12 Having these ideas, cross-cutting  
13 ideas, I think there is one area where I  
14 believe the Department should start thinking  
15 about is with respect to the sampling plan,  
16 the tolerances with respect to testing. And  
17 those issues are not really properly addressed  
18 by DOE in our opinion, and I think it is  
19 something that this committee should look at  
20 and maybe establish a working group.

21 Thank you.

22 MR. BROOKMAN: Okay. Thank you.

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1 Gary?

2 MR. FERNSTROM: Hi. I'm Gary  
3 Fernstrom representing the California  
4 Investor-Owned Utilities. And I would really  
5 like to thank the Department and all of you on  
6 this committee for taking what I think is a  
7 major step forward to improving the quality of  
8 these rulemakings.

9 We have about a dozen  
10 recommendations for you, which I'm not going  
11 to take the time to elaborate on now. We will  
12 send them in in writing, and we would like to  
13 ask you to consider them.

14 Thank you.

15 MR. BROOKMAN: Okay.

16 MR. DORIA: Jordan Doria with  
17 Ingersoll Rand. I just want to cast Ingersoll  
18 Rand's support for negotiated rulemaking for  
19 compliance and enforcement for commercial HVAC  
20 and refrigeration. Don't want to belabor  
21 that. A number of people have already pointed  
22 that out.

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1           One other thing I wanted to just  
2 mention as a concept, when we're considering  
3 sort of broader thematic elements for the  
4 committee to think about, would be that this  
5 is to focus on sort of regulatory activities  
6 writ large. And most of the discussion has  
7 rightfully been on minimum energy performance  
8 standards, but those are, of course, only one  
9 form that regulation can take to drive energy  
10 efficiency.

11           I think we are starting to see a  
12 lot more come out on what certain drivers and  
13 behavioral change do for sort of real-world  
14 energy savings, seeing a lot through Energy  
15 Star portfolio manager and what benchmarking  
16 of buildings is doing for reducing energy  
17 consumption.

18           I think we'd have some analogs to  
19 draw upon actually from the food and beverage  
20 industry in terms of what conveying calorie  
21 information is doing to change consumer  
22 behavior. And I think there is a role for

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1 regulation to promote all of that, but it  
2 might be outside of the traditional minimum  
3 energy performance standard framework. But  
4 there is still, again, a role for regulation.

5 And just as a general point, it  
6 would be worth I think this committee to think  
7 about that a little bit in the future.

8 MR. BROOKMAN: Okay. Additional  
9 comments from the floor?

10 MS. ARMSTRONG: So I think that's  
11 a pretty good segue into just reiterating that  
12 point that Roland mentioned at the outset,  
13 since Jordan was nice enough to mention  
14 calorie counting.

15 Commercial labeling I think is  
16 something that the Department would like this  
17 committee to consider forming a working group  
18 on establishing, you know, or generating ideas  
19 of how the Department should deal with its  
20 commercial labeling authority.

21 And since Jordan introduced it,  
22 whether he meant to or not, I thought I'd

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1 follow up with that.

2 MR. BROOKMAN: Okay. Thank you.

3 You're next, please.

4 MR. LANGILLE: Hi. My name is  
5 Gary Langille. I'm with Dish Network. We're  
6 the third largest video provider in the U.S.

7 I just wanted to make a comment  
8 that I think that there are -- just looking at  
9 the list of products and sort of where things  
10 are headed, that there is a big area that I've  
11 been educated about from advocates in terms of  
12 plug loads in homes and businesses that is  
13 growing very rapidly.

14 And, unfortunately, those devices  
15 aren't very clearly categorized as a product,  
16 you know, Product A, Product B, Product C.  
17 Their features change by day, by software, by  
18 usage, and the power consumption changes over  
19 time as products become combined and computing  
20 gets more advanced.

21 So I would like to see, at some  
22 point in time, perhaps this committee start

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1 looking at what are the options, both legally  
2 for DOE, to start looking at possible other  
3 ways of promoting efficiency other than by  
4 some particular product level specification,  
5 you know, whether that be an allocation per  
6 home, per size of home, per size of building,  
7 per function, you know, so many watts to  
8 deliver high definition TV to each TV in the  
9 home, something to that effect that is not  
10 related specifically to a product.

11 I think it's a very complicated  
12 area, but I think that that's where life is  
13 headed in a lot of product categories.

14 Thank you.

15 MR. BROOKMAN: Thank you.

16 Yes, sir.

17 MR. ASBJORNSON: Norman  
18 Asbjornson, President and founder of AAON, a  
19 manufacturer of commercial heating and air  
20 conditioning equipment.

21 We have had a business plan of  
22 promoting higher efficiencies, and I look

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1 forward to the announcement of the EPAC and  
2 DOE, Title 10, Sections 429, 430, and 431.  
3 When they came out I was sadly disappointed by  
4 the lack of clarity and the lack of good  
5 understanding of how to test heating and air  
6 conditioning equipment.

7 The net result is that was to go  
8 into effect originally on July 1, 2011, and it  
9 was set back to January 1, 2013. It has now  
10 been set back to January 1, 2014, because of  
11 the utter confusion in model numbers and  
12 rating percentages.

13 We heard earlier from our industry  
14 gentleman, Karim, who spoke for AHRI, the Air  
15 Conditioning Refrigeration -- or Heating and  
16 Air Conditioning Refrigeration Institute.  
17 That group has been, for over 60 years,  
18 involved as a trade association with some of  
19 the best minds of our industry setting forth  
20 all of this. And it appears that the  
21 regulations totally ignored what has been done  
22 by the industry.

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1 I urge you to take advantage of  
2 the existing knowledge and abilities that  
3 already are available and not ignore them and  
4 cause utter confusion.

5 What has this done to me? I built  
6 a company around high energy efficiency. I  
7 have utter confusion as to where you are going  
8 right now, and all of my competitors -- some  
9 on the panel here -- I share -- I am sure  
10 share somewhat this situation.

11 The net result is you have set  
12 back the energy efficiencies of our industry  
13 because of this confusion factor. It costs a  
14 lot of money to develop a product. When we  
15 don't know where we're going, and we have the  
16 issue going on for years on end, do you know  
17 what that does to anyone trying to advance  
18 energy efficiency?

19 It pretty much stymies you or  
20 makes you have to decide you might develop  
21 something at great cost and then have to junk  
22 it before you even bring it on the market.

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1 Not an acceptable way to run anything.

2 MR. BROOKMAN: Okay. Thank you.

3 So having heard in this open  
4 comment segment, let's close that now and go  
5 back to the committee, having heard what was  
6 said from the floor. Additional thoughts?  
7 There are a lot of ideas up here in these  
8 charts. Additional thoughts on points of  
9 emphasis? Pathway forward? Next steps  
10 perhaps before long?

11 Do you want to take restroom  
12 break?

13 MS. ARMSTRONG: Well, it might be  
14 worthwhile -- I don't know what you guys think  
15 -- but to take a break, think about which ones  
16 -- ASRAC is going to have to whittle them down  
17 to a couple that they may or may not want to  
18 vote on.

19 Obviously, forming all of these  
20 working groups would take -- you know, so  
21 which ones we find most important, but maybe a  
22 couple of minutes to think about that?

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1 MR. BROOKMAN: Yes. So we --

2 CO-CHAIR deLASKI: One framing  
3 question is I think some of these, you know,  
4 may be ripe very soon, but aren't ripe here  
5 today. So --

6 MS. ARMSTRONG: Okay.

7 CO-CHAIR deLASKI: -- I think one  
8 thing we should think about is when -- how  
9 soon we want to reconvene to --

10 MS. ARMSTRONG: Absolutely.

11 CO-CHAIR deLASKI: -- you know,  
12 can we take this list, can we refine it, can  
13 we make these a little bit more structured and  
14 then come back in the not-too-distant future  
15 and charter additional working groups. I  
16 think we can probably charter at least one  
17 today with what I'm hearing, and maybe two.

18 MR. BROOKMAN: Okay.

19 CO-CHAIR deLASKI: And then, can  
20 we move on from that and come back and --

21 MS. ARMSTRONG: Absolutely.

22 MR. BROOKMAN: So let's do take a

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1 short break, just for 15 minutes. That means  
2 we will convene at five minutes -- reconvene  
3 at five minutes after three. And when we come  
4 back -- and several of you can confer during  
5 the break. And when we come back we'll see if  
6 we can identify an issue or two or see how  
7 that evolves for a working group to be  
8 performed.

9 John?

10 CO-CHAIR MANDYCK: Yes. I would  
11 just say before we break it would be helpful  
12 to know when we come back which one of these  
13 may have pending deadlines associated with  
14 them.

15 MS. ARMSTRONG: I think I can get  
16 you that.

17 MR. BROOKMAN: I can write them up  
18 on the -- in red on the side here or  
19 something.

20 MS. ARMSTRONG: Yes. That's a  
21 good -

22 MR. BROOKMAN: Okay. Okay. Let's

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1 take a break. The restrooms are at both ends  
2 of the hall. And if you are going to make --  
3 there is a Coke machine on the ground floor on  
4 the way to the coffee shop on the left. It is  
5 kind of hidden in a nook.

6 (Whereupon, the above-entitled matter went off  
7 the record at 2:48 p.m. and  
8 resumed at 3:11 p.m.)

9 MR. BROOKMAN: The goal for the  
10 remainder of the day is to see if the  
11 committee can figure out something that it  
12 wants to set in motion today, and also to  
13 establish some next steps.

14 I just had a brief conversation  
15 with Ashley, and she was thinking it might be  
16 useful as we look at this list, and it's a  
17 lengthy list, to separate out the product-  
18 specific things first, and your rationale  
19 actually was -- use the microphone.

20 MS. ARMSTRONG: Well, so for the  
21 couple that we have that are product-specific,  
22 or at least rulemaking-specific, even if they

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1 are cost-cutting, that aren't process-type  
2 working group issues, I can tell you discrete  
3 deadlines for those that have it, because  
4 that's something John had asked for  
5 previously.

6 And then, for the ones that are  
7 process-oriented, you know, the committee can  
8 decide after some discussion which ones they  
9 may or may not wish to tackle.

10 Open here. Let's --

11 MR. BROOKMAN: So do you want to  
12 -- can you just identify the ones that are  
13 product-specific?

14 MS. ARMSTRONG: So let's go with  
15 -- the first one, the HVAC commercial cert.

16 MR. BROOKMAN: This one here.

17 MS. ARMSTRONG: December 31st of  
18 this year.

19 MR. BROOKMAN: 12/31/13.

20 MS. ARMSTRONG: And that is for  
21 Department action. So any working group  
22 established, and its recommendations to ASRAC

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1 and ASRAC's recommendations to the Department  
2 would have to be well before that date.

3 MR. BROOKMAN: Okay.

4 MS. ARMSTRONG: Yes.

5 CO-CHAIR deLASKI: One clarifying  
6 question on that. That's final action by end  
7 of the year.

8 MS. ARMSTRONG: Yes.

9 CO-CHAIR deLASKI: So that means  
10 you'd have to issue -- when would you want to  
11 issue a proposed rule by?

12 MS. ARMSTRONG: You know, I think  
13 if we could get -- if we could -- that's one  
14 that we would need to vote today, vote out  
15 today, if that's something we want to do. The  
16 Department would then have to react pretty  
17 quickly in starting to form that working  
18 group.

19 But, you know, we would probably  
20 like the working group and/or ASRAC's  
21 recommendations by the end of summer/beginning  
22 of fall, to be able to push the proposed rule

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1 comment period for final rule by the end of  
2 the year.

3 MR. BROOKMAN: Yes, John.

4 MR. CASKEY: And what's a  
5 realistic timeframe for getting a working  
6 group set up and approved and notice in the --

7 MS. ARMSTRONG: Thirty days,  
8 right?

9 MR. CASKEY: -- Federal Register  
10 and all of that?

11 MS. ARMSTRONG: Thirty days.

12 MR. BROOKMAN: That's impressive.

13 (Laughter.)

14 MS. ARMSTRONG: We aim to succeed  
15 here.

16 MR. BROOKMAN: Yes, okay.

17 MR. CASKEY: Like 30 calendar  
18 days?

19 (Laughter.)

20 MS. ARMSTRONG: We are going to  
21 attempt to do it as quick as possible. I  
22 think the nomination period is going to be

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1 open for roughly 10 to 14 days. So you would  
2 want to keep your eyes out. And if you wanted  
3 to nominate someone, have their bio ready to  
4 go, get that in as quick as possible, and so  
5 we can move on it.

6 MR. BROOKMAN: Use the microphone,  
7 please. Thank you.

8 MS. ARMSTRONG: We could talk  
9 about process, why -- yes. The idea was that  
10 some part of ASRAC would have a first cut at  
11 recommendations to the committee. Now, I  
12 don't know that that means we need to convene  
13 in person, right? We could probably do that  
14 over the phone and/or distribute a --

15 MR. PETERSON: It could be a  
16 webinar.

17 MS. ARMSTRONG: Yes.

18 MR. BROOKMAN: Good, good.  
19 Others? Ashley? Fans and pumps?

20 MS. ARMSTRONG: Yes. So those  
21 just started, so roughly three years from now.  
22 Same thing -- yes, those are both the same.

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1 A little less for the test procedure, but --

2 MR. BROOKMAN: Okay. High energy  
3 -- standards, that's cross-cutting, that's  
4 process.

5 MS. ARMSTRONG: So test procedure  
6 on water heaters is also -- it's on the right,  
7 the next one.

8 So this one is complicated,  
9 because the energy bill in December of this  
10 past year requires the Department to come up  
11 with some type of uniform descriptor. So this  
12 one is also end of the year, December 31st.

13 However, there is a second part of  
14 it that requires, once a test procedure and  
15 metric is established, there is some  
16 consideration given to conversion of the old  
17 metric to the new metric. That is on a little  
18 bit longer timeframe, and that is where I  
19 think the Department could really use some  
20 input, because that is going to require  
21 testing to be run, product-specific type  
22 things.

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1           And so actually working on the  
2 test procedure, because, you know, a lot of  
3 people have been working on that test  
4 procedure for about eight years with ASRAC  
5 now.     If actually working on that test  
6 procedure isn't feasible in that timeframe, I  
7 think that conversion is really important for  
8 maybe this committee to consider.

9           MR. BROOKMAN:    Okay.    Thank you.  
10          Are there other -- does HVAC, commercial  
11          refrigeration --

12          MS. ARMSTRONG:    I think that's  
13          most of the ones that have deadlines up there.  
14          Most of the other ones are process-oriented  
15          or potential explorations for the Department  
16          on new territory, whether it be commercial  
17          labeling or I'm going to call plug loads, how  
18          we kind of handle consumer electronics.  The  
19          rest to me are mostly process at least.

20          MR. BROOKMAN:    Okay.

21          MS. ARMSTRONG:    Which ones?    In  
22          terms of standard levels or test procedure

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1 issues? Both. Okay. So we just had a  
2 question about -- so CRE, it's supposed to be  
3 done by now, but the NOPR is at OMB. So I  
4 would say that we could form a committee to --  
5 or we could consider forming a subcommittee to  
6 look at that, but the proposed levels are at  
7 OMB right now. Yes.

8 MR. BROOKMAN: Okay. So --

9 MS. ARMSTRONG: One other thing,  
10 Kelley, to your point earlier about potential  
11 test procedure correlations on it, if there  
12 are certain test procedures where we know  
13 there are issues, I would propose that you ask  
14 that those test procedures form working  
15 groups.

16 We can do more of a cross-cutting  
17 thing with process, as you and John kind of  
18 asked for, in terms of guidance and timing and  
19 how the Department does that. But if we know  
20 there are certain test procedures that have  
21 issues, I would say let's go ahead and try to  
22 form a working group for those, whether it be

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1 at this or subsequent meetings. Yes.

2 MR. BROOKMAN: John.

3 MR. CASKEY: So far, we have this  
4 HVAC commercial certification and enforcement,  
5 and then we also have behind you commercial  
6 and industrial pumps and commercial and  
7 industrial fans and blowers. Are those in any  
8 way related or not?

9 MS. ARMSTRONG: No.

10 MR. CASKEY: Okay.

11 MS. ARMSTRONG: They will be one  
12 day, but not until -

13 MR. CASKEY: So is this HVAC more  
14 like packaged units?

15 MS. ARMSTRONG: Yes. It's like  
16 rooftop air conditions, commercial furnaces,  
17 those types of things.

18 MR. CASKEY: All right.

19 MS. ARMSTRONG: And then  
20 refrigeration equipment.

21 MR. CASKEY: Okay.

22 MS. ARMSTRONG: Yes.

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1 MR. BROOKMAN: Kelley.

2 MS. KLINE: Actually, just a  
3 question on the water heater. I'm trying to  
4 keep the different threads straight here.  
5 There is the uniform descriptor.

6 MS. ARMSTRONG: Yes.

7 MS. KLINE: There is the test  
8 procedure, and then there is also the  
9 conversion piece, right? So it would be -- I  
10 guess we would just have to frame up what the  
11 workgroup would be -- what is the scope of the  
12 workgroup effort, right?

13 MS. ARMSTRONG: Yes. So the  
14 Department's efforts right now, we have  
15 consolidated the uniform descriptor  
16 requirements and the test procedure in one.  
17 We will be addressing that as one. Subsequent  
18 to that, we will be dealing with the  
19 conversion factor.

20 MR. BROOKMAN: And what is the  
21 timeframe for that? Are you pressed?

22 MS. ARMSTRONG: One year for the

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1 test procedure and what falls under this  
2 uniform descriptor, and then there is a little  
3 longer -- I don't know the date off the top of  
4 my head, but a little longer for the  
5 conversion factor.

6 MR. COHEN: By the way, that was  
7 one year from the date in December, right?

8 MS. ARMSTRONG: Right. So end of  
9 the year.

10 MS. KLINE: So when you were  
11 saying a minute ago what the Department could  
12 really use some help on, were you talking  
13 about the first part or the converted --

14 MS. ARMSTRONG: The conversion.

15 MS. KLINE: -- this conversion  
16 factor, okay.

17 MS. ARMSTRONG: In my opinion. I  
18 mean, it's definitely open, but -- and then  
19 you mentioned something earlier which kind of  
20 went under the radar. I was surprised that  
21 Kevin didn't bring it up, but -- so dryer test  
22 procedure.

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1           Right now we have a dryer test  
2 procedure open for automatic terminations.  
3 And we've had a lot of data and a lot of  
4 comments about how that dryer test procedure  
5 may should be changed over time.

6           The Department has left some of  
7 those issues on the table. I don't know that  
8 it's reasonable to think that we could form a  
9 subcommittee to finish the open rule right now  
10 because it's on a pretty quick timeline, but  
11 some of the larger issues, whether it be load  
12 size, low composition, real use factors, other  
13 things that we might leave on the table,  
14 potentially could be ripe for a separate  
15 working group with more of a long-term  
16 overhaul of a dryer test procedure in mind.

17           MR. BROOKMAN: Go ahead.

18           MR. MESSNER: What I was talking  
19 about on the larger test procedure changes  
20 impact standard --

21           MS. ARMSTRONG: I know what you  
22 are going to --

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1 MS. MESSNER: -- dryers is the --  
2 kind of the tip of the spear. You did two  
3 other test procedures before that, so I don't  
4 -- working through that is something that we  
5 negotiated as part of our agreement to deal  
6 with auto termination.

7 But having that happen in the  
8 middle of a three-year lead-in period, and  
9 trying to cram it in, to us it's kind of  
10 putting a square peg in a round hole. So  
11 there is a larger issue on the whole auto  
12 termination, but the way the DOE is going down  
13 it right now it goes into all the problems  
14 with the test procedure change --

15 MS. ARMSTRONG: Right.

16 MR. MESSNER: -- and the de  
17 minimis and all of that.

18 MS. ARMSTRONG: So I'm separating  
19 those two issues, right? I get your point.

20 MR. MESSNER: Yes. They're  
21 together for us, so it causes problems for a  
22 working group to get into that.

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1 MS. ARMSTRONG: Yes. So, I mean,  
2 but to your point of wanting DOE to take a  
3 look -- I think we would -- the idea would be  
4 to form a working group to long haul take a  
5 look at that.

6 MR. ECKMAN: Yes. I think it's  
7 just inherent in the testing process, that  
8 dryers is just iconic at the moment. But it  
9 is true for all of the white goods and all of  
10 the equipment where we don't have really solid  
11 duty cycle information or load profile  
12 information to do the costing, the pricing of  
13 the kilowatt hours or the gas purchases.

14 And, you know, that's just basic  
15 information that feeds any of the models. And  
16 you make it up as you go when you find a data  
17 source, but you don't have any idea whether  
18 it's statistically representative or not.

19 We bring you something from  
20 Northwest. We eat a lot of granola. It may  
21 not be --

22 (Laughter.)

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1                   -- with the rest of the places in  
2 the world. So, you know --

3                   MR. BROOKMAN: Most of you in this  
4 room have a lot of experience in these plant  
5 standards and processes and test procedures,  
6 and this committee has taken a while to get  
7 underway. So there has been some discussion  
8 leading up 'til today thinking about what  
9 might be launched soon, today perhaps.

10                   So as you look at this list, what  
11 bubbles forward? What are the items that you  
12 think -- that you might wish to put to a vote  
13 today to establish a working group?

14                   Kelley?

15                   MS. KLINE: It seems like we might  
16 need a process for a fairly quick follow on  
17 some of these, because I think a lot of them  
18 could benefit from a little better framing and  
19 maybe further definition, so --

20                   MR. BROOKMAN: I was thinking that  
21 DOE would take the initiative. If you  
22 selected one of these or several of these,

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1 then that would -- they would go back and  
2 they'd write something up. They would scope  
3 it a little bit, they would describe it a  
4 little bit, they would talk about the  
5 deadline, you know -- I'm just guessing -- a  
6 variety of things like this.

7 Ashley, help me here.

8 MS. ARMSTRONG: I hear DOE, and  
9 I'm a DOE rep, so I'm --

10 (Laughter.)

11 -- Ashley, right? No, I think we  
12 could -- to Doug's point, or to Kelley's  
13 point, the committee could do it. We could do  
14 it. I think there's a couple we could  
15 probably -- so there's one obvious one, right?

16 I mean, the commercial cert is  
17 something I think the Department or this  
18 committee should decide whether it wants to  
19 act on today, because that one, really, today  
20 is our opportunity to start that process if we  
21 want to make that -- if anyone wants to make  
22 that deadline in a realistic manner.

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1 MR. BROOKMAN: The HVAC commercial  
2 certification and enforcement. Done. Okay.

3 John?

4 CO-CHAIR deLASKI: Concur with  
5 that.

6 MR. BROOKMAN: Andrew?

7 CO-CHAIR deLASKI: That's one that  
8 we should --

9 MR. BROOKMAN: Okay.

10 CO-CHAIR deLASKI: I think we  
11 should go ahead and charter that one today.

12 MR. BROOKMAN: Yes. John?

13 MR. CASKEY: I mean, I'm neutral  
14 on that particular issue. But just when I try  
15 and think through the pragmatic sort of time  
16 schedule, I mean, I think if we are going to  
17 spend all of March basically to set up the  
18 working group, maybe, you know, April to try  
19 and get a meeting set -- a face-to-face  
20 meeting, and then maybe May to try and get a  
21 chairperson selected for the working group and  
22 to start making progress and to tell them --

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1 you know, to give them what their options are,  
2 for them to develop a scope, for them to  
3 develop like how they are going to operate,  
4 and all that sort of stuff, it just seems like  
5 between, you know, May and July to have an  
6 answer back to you, or August, that has come  
7 through us -- this group seems like it's  
8 really pushing it.

9 I mean, I don't want to undermine  
10 the possibility for success. I mean, if you  
11 guys that are experts really think you can  
12 have success in that abbreviated time, then  
13 I'm -- you know, I'm happy for you, but it's  
14 like -- it just seems like in the case --  
15 well, you know, just for us to get in this  
16 room took quite a bit of while. So I'm trying  
17 to put in a little bit of anticipation of  
18 delays along the way.

19 So is it realistic to get any  
20 meaningful results by, you know, July time  
21 period?

22 CO-CHAIR MANDYCK: I think it is

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1 if we prescribe some check-in points. So, in  
2 other words, we could ask the working group to  
3 file status reports with us, which provides  
4 gates by which they have to operate. So  
5 that's one way to try to keep a schedule on  
6 track.

7 MR. BROOKMAN: Tom.

8 MR. ECKMAN: Yes. It seems to me  
9 even if they don't reach consensus, because  
10 they don't have enough time to drive there,  
11 you can probably move the marble a little  
12 further down the floor, just by getting  
13 together to talk about it, to find out what  
14 the real issues are and queue them up gives  
15 DOE a better chance to get the closure in a  
16 reasonable way at the end of the year, if you  
17 have already thrashed through some of the  
18 issues and said, "We can resolve these, but we  
19 can't resolve these. You're going to have to  
20 make a call." Even that would help the  
21 process along I think.

22 CO-CHAIR MANDYCK: I agree. And

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1 this isn't a new issue, so there has been --  
2 this has been around for three years.

3 MR. BROOKMAN: So if the committee  
4 today decides that they would like to vote to  
5 create a working group on that issue, then,  
6 say, by end of February, end of March, you've  
7 got your committee composed, and in that same  
8 timeframe hopefully you can find a chair.

9 And so, then, beginning in April  
10 -- analysis is already underway, right?

11 MS. ARMSTRONG: So, unlike  
12 standards, there is no -- I mean, there is not  
13 going to be analysis. It is going to be the  
14 Department sitting at the table with  
15 manufacturers and advocates and other  
16 interested parties, just discussing what  
17 viable ways for commercial certification, what  
18 --

19 MR. BROOKMAN: I see.

20 MS. ARMSTRONG: -- all the  
21 variations in products, what could work.

22 MR. BROOKMAN: I see. So this

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1 could commence in April or May, and you would  
2 do periodic meetings, once a month say,  
3 something like that, and, John, you and Tom  
4 were saying progress probably.

5 CO-CHAIR MANDYCK: Right. Well, I  
6 would think it would be, you know, mid to late  
7 June should be the first progress report to  
8 the ASRAC. And then, you know, I think we  
9 should require or shoot for a recommendation  
10 by September 1.

11 MR. BROOKMAN: Okay. So we have  
12 several individuals who have spoken on behalf  
13 of creating the working group, and that is the  
14 one HVAC commercial certification and  
15 enforcement. We have laid out a timeline  
16 here. We know it is going to require some  
17 additional scoping.

18 Other thoughts on that before we  
19 see if the committee wishes to make a  
20 decision?

21 CO-CHAIR deLASKI: Follow on to  
22 John's question, John Caskey's question, is

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1 that, you know, can it be done in the  
2 timeframe - if we're starting -- we're not  
3 starting from a standstill on this.

4 There was a convening report  
5 written last summer by DOE's consultant, or  
6 actually by a DOE staff -- by someone -- a  
7 government staff person, so there is a whole  
8 -- there is a body of work. And you guys have  
9 been going back and forth for some period of  
10 time.

11 So at some level this is not a  
12 brand-new activity. We are just moving into a  
13 forum in which it can be addressed I think  
14 more effectively.

15 MS. ARMSTRONG: We just need a new  
16 -- potentially a new solution.

17 CO-CHAIR deLASKI: Yes. So --

18 MS. ARMSTRONG: If that's the best  
19 way to state it.

20 MR. BROOKMAN: Okay.

21 CO-CHAIR deLASKI: So I think the  
22 odds of success are -- I think you can do more

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1 -- at a minimum, we will get -- we will move  
2 the ball. We may very well be able to reach  
3 consensus. I think it's a distinct  
4 possibility. I hope it is.

5 MR. BROOKMAN: Okay. So are you  
6 ready to decide whether you wish to create  
7 this working group? Okay. Let's -- then  
8 let's take a vote. All those who wish to  
9 create this working group and -- anybody that  
10 -- that's the way -- I could do it either way.

11 MR. ECKMAN: You're trying to  
12 bully them into --

13 (Laughter.)

14 Let's see if there's not consensus  
15 first.

16 MR. BROOKMAN: Anybody that wishes  
17 to dissent, anybody that does not agree with  
18 working -- creating this working group, please  
19 say so now. No one is speaking, so this  
20 working group has now been decided upon. We  
21 have a consensus; we have unanimity.

22 And, congratulations, you have

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1 made your first substantive discussion --  
2 decision.

3 (Applause.)

4 And I think it's fairly obvious --  
5 we don't need to repeat what DOE is going to  
6 do in response to this. Okay. We've got a  
7 convening report. We've got -- you've got  
8 next steps, and we'll follow on from it.

9 Okay. So that's good, and that's  
10 --

11 MR. PETERSON: Can we get a  
12 confirmed deadline for that, so we --

13 MR. BROOKMAN: So, John, do you  
14 want to start? You already said a report by  
15 September 1. Progress reports on some  
16 interval, every month or every other month.

17 CO-CHAIR MANDYCK: I would think a  
18 substantive progress report mid to late June.  
19 Should we pick a date or --

20 MS. ARMSTRONG: I would pick a  
21 date.

22 CO-CHAIR MANDYCK: -- just say by

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1 June 26th?

2 MS. ARMSTRONG: I think your  
3 timeline is fine. As long as it's not a  
4 weekend.

5 CO-CHAIR MANDYCK: School's out.

6 MR. BROOKMAN: I've got a  
7 calendar.

8 MS. ARMSTRONG: There you go.  
9 It's a Wednesday, according to John. So while  
10 -- I think it's a Wednesday, but I think we're  
11 okay.

12 MR. BROOKMAN: June 26th is a  
13 Wednesday.

14 MS. ARMSTRONG: So something for  
15 you to consider is whether we want to pick the  
16 -- or at least gauge interest on the people in  
17 ASRAC that want to be part of that committee  
18 here, just to get that one out of the way,  
19 too.

20 MR. BROOKMAN: Yes. That's a good  
21 point. So thank you for -- I should have done  
22 that.

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1           Is there anyone -- who on this  
2 committee would like to serve as a member on  
3 that working group? We would like to have at  
4 least one. John will, and also Kent. Okay.  
5 So you've got that, Jeremiah? Yes, John and  
6 Kent will both serve. Excellent. Thank you.

7           MR. BROOKMAN: Is that enough --  
8 enough of deadlines for now, timelines? Yes.

9           MR. PETERSON: When is the final  
10 report due?

11           MR. BROOKMAN: September 1.

12           MS. ARMSTRONG: September 1.

13           MR. BROOKMAN: Yes. Okay. From  
14 the working group, and then presumably ASRAC  
15 will turn that around rather quickly. Okay.

16           So good. Is there another issue  
17 up there that you would like to consider  
18 creating a working group for? The two -- the  
19 other two that are circled, fans and pumps,  
20 but it's a three-year cycle. And this one --  
21 test procedure on residential water heaters,  
22 and, as Ashley said, perhaps the conversion of

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1 the old metric, that second activity, might be  
2 the one that would bear the most fruit.

3 CO-CHAIR deLASKI: It seems to me  
4 -- you know, I'm not an expert in the  
5 commercial -- or in the water heater test  
6 method issues, but it -- can you address that  
7 topic until you address the first topic?

8 MS. ARMSTRONG: You need to  
9 address -- you would need to probably have a  
10 proposed rule out first, right? So at least  
11 you are seeing what the Department is thinking  
12 for its new test procedure and/or metric,  
13 scope of coverage type issues. So --

14 CO-CHAIR deLASKI: It just strikes  
15 me as something that we should table for the  
16 moment.

17 MS. ARMSTRONG: Table for the next  
18 one with fans and pumps.

19 CO-CHAIR deLASKI: Right.

20 MS. ARMSTRONG: Near-term issues  
21 --

22 CO-CHAIR deLASKI: Right.

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1 MS. ARMSTRONG: -- not like a year  
2 from now, but near-term potentials. But, yes,  
3 that's probably a good idea.

4 MR. BROOKMAN: Okay. Table fans  
5 and pumps, and table test procedure on  
6 residential water heaters.

7 Other thoughts on what is up here?

8 CO-CHAIR deLASKI: Well, the one  
9 that you just made, in addition, is the one  
10 where commercial labeling has been raised a  
11 couple of times. You know, I hear some  
12 enthusiasm from the Department in getting  
13 guidance on this topic.

14 I don't know how it's defined. So  
15 what the precise work task is of the committee  
16 to me is not fully formed in my mind. But it  
17 strikes me as being potentially quite a  
18 valuable area for discussion.

19 MR. BROOKMAN: Can you describe  
20 what is underway with this, or the thought  
21 process?

22 MS. ARMSTRONG: We put an RFI out,

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1 so the working group could look at the  
2 comments from the RFI. I think the Department  
3 is looking for input as to what it should do  
4 next into this space.

5 As Roland mentioned in his like  
6 outset comments, you know, this is something  
7 seemingly, he said, the White House is  
8 interested in. And what we don't want to  
9 happen is them to ask for an answer.

10 We would like to have input from  
11 you guys and/or a working group about what the  
12 Department -- how should the Department handle  
13 its authority with respect to commercial  
14 labeling, some problems for which it clearly  
15 spells out that we have to come up with a  
16 labeling rule for, so I think those would be  
17 the issues. It is more open-ended definitely  
18 than coming out with a number, but equally as  
19 valuable.

20 MR. BROOKMAN: John.

21 CO-CHAIR MANDYCK: Are you talking  
22 about equipment labeling or building labeling?

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1 MS. ARMSTRONG: Equipment.

2 CO-CHAIR MANDYCK: Can you -- do  
3 you have the authority to do building  
4 labeling?

5 MS. ARMSTRONG: Just equipment.

6 CO-CHAIR MANDYCK: Without  
7 building labeling it becomes I think an  
8 imperfect exercise.

9 MS. ARMSTRONG: Can we get part of  
10 the way there? I mean, I guess that's the  
11 question. I mean, could there be a working  
12 group to kind of flesh out these types of  
13 issues, pros and cons, as the Department tries  
14 to understand where it's going on in this  
15 space?

16 Could you help us? Could the  
17 working group and ASRAC help inform that  
18 decision?

19 MR. COHEN: Or you could tell us  
20 it's meaningless.

21 MS. ARMSTRONG: Right. I mean,  
22 that's another option. The costs are X and

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1 the value is Y and --

2 MR. BROOKMAN: Kent, go ahead.

3 MR. PETERSON: Actually, I'm just  
4 trying to understand this better, but you  
5 currently oversee residential equipment  
6 rating, right? Labeling.

7 MS. ARMSTRONG: The Federal Trade  
8 Commission does.

9 MR. PETERSON: The Federal Trade  
10 Commission. Are you thinking that this kind  
11 of does the same thing on the commercial side?  
12 Is that --

13 MS. ARMSTRONG: I don't think we  
14 know. I think the question is open-ended. We  
15 just -- we are -- for residential, the  
16 authority goes to FTC for the most part. And  
17 then, for commercial, the authority lies with  
18 us. And we haven't really ventured into this  
19 space, with the exception of a limited label  
20 for motors and like CC numbers and nameplates  
21 and that kind of stuff.

22 But other than that, it's, well,

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1 what should we do? It's an open issue.

2 MR. PETERSON: So we are in the  
3 conceptualization phase.

4 MS. ARMSTRONG: We are. You think  
5 that's fair, right?

6 MR. PETERSON: And that could be  
7 cool.

8 MS. ARMSTRONG: And that's pretty  
9 much what the RFI laid out.

10 CO-CHAIR deLASKI: I think none of  
11 us are thinking FTC.

12 (Laughter.)

13 No one has that in mind.

14 MR. BROOKMAN: Well, let me ask a  
15 question before we vote. Does anybody on the  
16 committee wish to participate in a working  
17 group on that, just so we have a -- Tom does  
18 and -- okay, and also Timothy. So we have two  
19 volunteers already for that. So should we  
20 take a vote on this, see whether we want to  
21 launch this? Tell me yes or no.

22 Go ahead, John.

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1                   MR. CASKEY:     Another idea.     Are  
2     there things that we could effectively work on  
3     as a -- the ASRAC and respond to and work with  
4     DOE on without necessarily setting up a  
5     working group?     Particularly if there is a  
6     variety of good members here that want to  
7     participate with something like this.

8                   MR. BROOKMAN:    Yeah.     Dave?

9                   DR. HUNGERFORD:     I was just  
10    following on that -- yeah, it seems like that  
11    would be an appropriate function of this  
12    committee, to at least go down that initial  
13    road of scoping what that working group might  
14    look at, because we are -- this commercial  
15    labeling is an obvious example of -- we could  
16    think through things like, well, who is  
17    intended -- whose behavior is intended to be  
18    affected by this label, as a sort of starting  
19    question, those sorts of issues, and then  
20    decide whether it then should go to -- go  
21    through the trouble of developing a working  
22    group, if we can't resolve it.

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1 MR. BROOKMAN: Okay.

2 DR. HUNGERFORD: And what kind of  
3 -- sorts of issues should be considered.

4 MR. BROOKMAN: Yes. Steven.

5 MR. COUSINS: No. I just want to  
6 echo what David said. To me, that makes a  
7 great deal of sense, to put some framework  
8 around this before making a decision, you  
9 know, of chartering a working group.

10 MR. BROOKMAN: Okay. Okay. And,  
11 ASRAC, if you were to take this up, would you  
12 expect everyone around the table to  
13 participate or select members or in and out?  
14 What would be your expectation? Would there  
15 be one?

16 MR. COUSINS: I would have the  
17 expectation that all of us would -- because we  
18 all have sensitivities and representation at  
19 different areas, you know, within --

20 MR. BROOKMAN: Right.

21 MR. COUSINS: -- you know, the  
22 appliance sector. I think input from everyone

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1 would be critical.

2 MR. BROOKMAN: Could you say what  
3 you would expect as kind of the workflow or  
4 timetable would be for a thing like this, off  
5 the top of your head?

6 MS. ARMSTRONG: I don't know that  
7 I have one in mind, but I think if ASRAC --  
8 you know, by the time we meet in person next,  
9 it would seem reasonable that we would at  
10 least have some ideas of what we think the  
11 scope could be and whether we want to actually  
12 form a technical working group to deal with  
13 some of the more detailed type issues.  
14 Otherwise, it would seem it would linger on  
15 forever.

16 MR. BROOKMAN: Are you thinking  
17 that in the interim you would exchange some  
18 paper and there would be a webinar or two, and  
19 then you'd meet face to face, and what kind of  
20 a timeframe?

21 MS. ARMSTRONG: Well, I think we  
22 are required to meet twice a year in person.

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1 That doesn't preclude us from meeting more in  
2 person if we wanted to, but at least we would  
3 meet twice a year.

4 So I think at least in the six-  
5 month timeframe we would do idea generating,  
6 scope narrowing, whether it be fleshing out  
7 this or some other ideas of the list, and then  
8 at the next group we could actually vote on  
9 more working groups that we would potentially  
10 charter. Does that seem reasonable?

11 MR. BROOKMAN: Okay.

12 MS. ARMSTRONG: I mean, the RFI  
13 one is hard because we have already gotten a  
14 lot of comments, right? And the issues were  
15 pretty wide across the board, so I don't know  
16 if this committee wants to take on the task of  
17 looking at all of those and kind of weeding  
18 those and seeing or if we actually want to  
19 charter a working group to do that.

20 It is kind of how you see, you  
21 know -- whether you see yourself as trying to  
22 flesh out some of these more overarching type

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1 issues, or getting into the details quite a  
2 bit of some of the --

3 MR. BROOKMAN: John?

4 MR. CYMBALSKY: So -- right. So  
5 the comment period is ending March 20th, I  
6 believe is the date. And as Ashley said, we  
7 have a lot of comments already. So I guess  
8 what you all should be considering is, do you  
9 want to charter a group of people to digest  
10 the comments and plan a path forward? Or do  
11 you want me to do that?

12 So I think that's the question.  
13 By "me," I don't mean me personally.

14 CO-CHAIR MANDYCK: What product  
15 categories are you talking about?

16 MR. CYMBALSKY: The commercial  
17 labeling.

18 CO-CHAIR MANDYCK: Oh, the  
19 commercial labeling.

20 MR. CYMBALSKY: Yeah. So, you  
21 know, like Ashley pointed out, a good -- you  
22 know, I understand you guys made really good

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1 points, but I think that shouldn't preclude  
2 you from maybe chartering a subcommittee to  
3 form, and that you form one now in the  
4 anticipation of digesting the comments come  
5 March 20th. You've got the people that are  
6 formed to do that.

7 Just a thought. Because otherwise  
8 we are going to do it anyway here at the  
9 Department, so --

10 MR. BROOKMAN: You are going to  
11 receive all of the comments, you are going to  
12 sift and sort, and you are going to write  
13 something akin to a --

14 MS. ARMSTRONG: We are just going  
15 to decide what to do.

16 MR. CYMBALSKY: Right. We are  
17 just going to go forward and say, well, based  
18 on these comments, this is what we think is a  
19 good commercial labeling strategy.

20 MR. BROOKMAN: And you are going  
21 to do that in what timeframe?

22 MR. CYMBALSKY: Sometime after

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1 March 20th, so --

2 MR. BROOKMAN: And so that would  
3 provide time for ASRAC to consider what you  
4 have come up with potentially?

5 MS. ARMSTRONG: I don't think we  
6 would -- we would present our proposal prior  
7 to issuing a proposal, to the extent we decide  
8 to do something, to ASRAC first.

9 MR. BROOKMAN: Uh-huh.

10 MS. ARMSTRONG: It would be more  
11 that I think it was cued up as an issue for  
12 the committee to decide whether a working  
13 group could be formed to inform that position  
14 of whether to move forward and/or not in light  
15 of the RFI comments and a variety of other  
16 opinions that need to be --

17 MR. BROOKMAN: They could consider  
18 the RFI comments. They could add to the RFI  
19 comments. And you wouldn't feel compelled to  
20 address it immediately, if you had a working  
21 group working on it.

22 MR. BROOKMAN: Right. I mean, to

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1 me, that seems like a lot of -- this committee  
2 could definitely commit to doing that. It's  
3 just that's a lot of details for just labeling  
4 when we have -- it seems we have a lot of  
5 open-ended issues to deal with as well, or  
6 potentially consider.

7 CO-CHAIR deLASKI: So just my two  
8 cents on this is that it does strike me as  
9 being a workgroup activity as opposed to us  
10 delegating ourselves as that workgroup. I'm  
11 not going to read all of those comments, for  
12 one.

13 And it strikes me that the  
14 Department then put out the RFI, and then the  
15 thought then is that then leads to some sort  
16 of plan, right? And they are going to develop  
17 a plan, so the question is, they are asking  
18 for a workgroup to help them figure out what  
19 that plan should look like.

20 And I don't think that this group  
21 was conceived of as the folks who would -- we  
22 weren't selected to be that -- have that

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1 expertise. So it strikes me that we should  
2 put it out to a comment, put it out in a  
3 Federal Register notice, and they can -- we  
4 should form up a group that has expertise in  
5 this area to -- that would consist of a couple  
6 of us and also folks who have expertise.

7 The products that are affected are  
8 all of the commercial products potentially, or  
9 it's the whole scope in Section B or C,  
10 however you want to letter it.

11 MR. CYMBALSKY: That's right. So,  
12 and I think -- we don't have to stop at just  
13 two ASRAC members on this. So if -- you know,  
14 we named two, but we can have five. This is  
15 not like a contentious rulemaking where -- you  
16 know, so don't feel compelled to stop at two  
17 if there is more interest.

18 CO-CHAIR deLASKI: But I want to  
19 be clear that that's a plan, so then the plan  
20 that the Department would come up with, I  
21 mean, you ultimately may decide to address  
22 different products differently, of course,

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1 because they are going to have to be addressed  
2 given their own circumstances.

3 But you're looking for some basic  
4 framework to think about this responsibility  
5 you have for commercial labeling.

6 MR. CYMBALSKY: The basic, like  
7 what should be on the label. I mean,  
8 questions like that, you know.

9 MS. ARMSTRONG: Right. And for  
10 different products, does it provide different  
11 values? So is there no value for certain  
12 products? Is there a lot of value for other  
13 products? Does it provide a means of tracking  
14 things that may go into large type equipment,  
15 like components of other types of equipment?  
16 I mean, just types of things to think about.

17 CO-CHAIR deLASKI: Well, given the  
18 concerns over the FTC label over the years, I  
19 think the chance to get in on the ground floor  
20 to try to influence the plan seems like one  
21 that many people would jump at. So it seems  
22 like a good opportunity to me.

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1 MR. BROOKMAN: So at least half of  
2 this group has spoken on behalf of considering  
3 creating a working group for commercial  
4 labeling. Shall we put that to the test?  
5 Shall I move the question and see whether you  
6 wish to create a working group?

7 John?

8 CO-CHAIR MANDYCK: I kind of feel  
9 like I need to learn more, because I don't  
10 know what we are really chartering.

11 MR. BROOKMAN: Okay.

12 CO-CHAIR MANDYCK: So --

13 MR. BROOKMAN: John, describe what  
14 it would be useful for you to obtain.

15 CO-CHAIR MANDYCK: Well, it is  
16 kind of like, do you want to boil the ocean?  
17 And so I think there needs to be some -- some  
18 definitive ideas on what type of -- you know,  
19 what are we -- who are we trying to -- a  
20 simple question like, who is the label trying  
21 to influence --

22 MR. BROOKMAN: Right.

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1 CO-CHAIR MANDYCK: -- I think  
2 would be good to know before we try to chart a  
3 working group.

4 MR. BROOKMAN: So I'm looking --  
5 John and Ashley, if the Department provided  
6 more information to ASRAC, to the members, and  
7 in some short span of time, say a month or so,  
8 they decided that, yes, indeed, this made  
9 sense to -- based on what you came forward  
10 with, to create a working group, they could do  
11 that via some electronic means or some sort of  
12 a survey mechanism, right? But that -- your  
13 timetable is you want to move quickly on this.

14 No?

15 MR. CYMBALSKY: I mean, to  
16 Andrew's point, I think, again, the comment  
17 period ends March 20th. And it's a chance to  
18 get thinking at the beginning, not in the  
19 middle. So it is up to you all. I mean,  
20 again, I'm not a voting member here, but I --  
21 you know, I -- it tells -- and, you know, to  
22 John's question, what are we trying -- who are

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1 we trying to influence, I think, you know, you  
2 design a label based on who you are trying to  
3 influence.

4 So maybe the first question to the  
5 group to consider is, you know, so who are we  
6 trying to influence and what should the -- I  
7 mean, all of those questions are on the table.

8 CO-CHAIR deLASKI: But even a more  
9 basic question -- and I'm not a labeling  
10 expert -- but labels could have multiple  
11 purposes. Right? You can show that it's  
12 compliant, you could try to provide  
13 information to the end user, you can try to  
14 provide information to the purchaser, to a  
15 specifier.

16 You've got lots of different  
17 potential purposes here, and I'm sure I  
18 haven't even begun to list them. So the first  
19 question is, what are the potential benefits  
20 of a label? And how would you -- and then,  
21 given those potential benefits, how would you  
22 structure it?

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1                   So, again, you have to pull  
2 together some labeling experts to --

3                   CO-CHAIR MANDYCK: Right. And to  
4 go along with that, what are the burdens and  
5 costs of labeling?

6                   MR. CYMBALSKY: Absolutely.

7                   MR. BROOKMAN: I saw John first,  
8 then Steve. Go ahead.

9                   MR. CASKEY: I think I'm on the  
10 fence a little bit. I mean, I wholeheartedly  
11 support a working group being established to  
12 basically support what John and Ashley would  
13 need to do with regard to reviewing all of the  
14 responses they have gotten from the RFP.

15                   But I'd like to see those results  
16 back summarized in some way or consolidated or  
17 maybe with some recommendations, but I guess  
18 at that point then I'd like to be able to see  
19 what the preliminary result is, and then start  
20 to develop a strategy going forward.

21                   You know, so I would hate -- for  
22 me personally, I'd hate to not be on the

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1 working group and then miss out on any  
2 opportunity for input, but then I agree that I  
3 don't think we need the whole ASRAC group to  
4 review, you know, 2,000 comments or something  
5 like that.

6 MR. BROOKMAN: Yeah. Okay.  
7 Steve.

8 MR. COUSINS: Yeah. I'm somewhat  
9 on the fence here, too, because -- and I know  
10 the RFP that is out there now, you've got a  
11 number of comments that have come in. The  
12 comments are around the -- just a general idea  
13 of labeling.

14 I would expect those comments to  
15 be all over the place. And if we form a  
16 working group, the working group is going to  
17 end up trying to figure out, as you pointed  
18 out, John, you know, what part of the ocean do  
19 we boil.

20 One of the things -- and since  
21 there are so many commodities here that are  
22 being represented, I would question for some

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1 of those commodities whether or not the  
2 information even exists to put onto a label to  
3 influence a certain behavior.

4 And the working group may go into  
5 this with the mind-set that they are going to  
6 force a solution, that they are being mandated  
7 to force some kind of solution for everything.

8 I just think that we, as a committee, need to  
9 create some kind of clarity, framework, or a  
10 definition around what our intention is or  
11 what we intend for them to do, than just  
12 saying, hey, go out there and figure out  
13 something for us.

14 Just my point of view.

15 MR. BROOKMAN: I am mindful of the  
16 timetable, and I am thinking about how we  
17 split the difference between those that are on  
18 the fence and those that seem inclined to join  
19 and jump in. Is there an intermediary step  
20 here? Is there a --

21 MS. ARMSTRONG: I mean, the only  
22 thing I can think of as something kind of in

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1 the middle is, you know, vote whether we think  
2 this is a valuable exercise to form a working  
3 group today, hold nominations, though, until  
4 the comment period has ended.

5 Therefore, people have a chance to  
6 read the comments as they may wish and decide  
7 if they want to apply for the committee and/or  
8 ASRAC members could decide if they want to  
9 also be on the committee -- working group, and  
10 then go from there.

11 MR. BROOKMAN: Do you think the  
12 convening report gives a pretty --

13 MS. ARMSTRONG: There is no  
14 convening report for this one? This one is  
15 just an RFI. I mean, I don't think you are  
16 going to see like, you know, a comment summary  
17 and the Department's responses and pros and  
18 cons or potential options for the Department  
19 from DOE.

20 That is what we are really looking  
21 for the committee to give us, not necessarily  
22 comment responses, but, I mean, options as to

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1 what we could do or what the right thing may  
2 be to do. And it may very well be nothing.  
3 You know, you shouldn't enter this space.

4 But at the same time, I think we  
5 would like some due diligence consideration  
6 given to help inform us before we make our  
7 decision whether to jump full fledge into this  
8 space.

9 MR. BROOKMAN: John.

10 CO-CHAIR MANDYCK: What would be  
11 the scope that we would recommend to the  
12 working group?

13 MS. ARMSTRONG: I mean, I think a  
14 good starting point, right, could be the RFI  
15 questions that we teed up. We wanted feedback  
16 on those specific questions, so that could be  
17 a good starting point for the committee at  
18 least, you know, what are your opinions on  
19 these questions for the working -- or working  
20 group. I keep calling it a committee. Sorry.

21 MR. BROOKMAN: Okay. how many  
22 questions were there on --

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1 MS. ARMSTRONG: I'm sure it could  
2 be broader than that, but at least, as a first  
3 step, that's not a bad idea.

4 MR. CASKEY: So one potential  
5 charter, you know, at least for this first  
6 phase would be to review all of the comments,  
7 try and categorize the comments maybe just by  
8 your questions, or maybe there is some other  
9 category that naturally falls out, and then  
10 come up with some sort of summary document  
11 that helps to communicate that to all of the  
12 ASRAC members.

13 MS. ARMSTRONG: And potentially a  
14 recommendation, right? Yeah.

15 MR. BROOKMAN: Yeah. So that --  
16 and then that would be a task for a working  
17 group that you would convene, or you would  
18 empower, create. Yeah.

19 So what do you think? Do you want  
20 to move the question on whether to create this  
21 working group or not? Does anyone object to  
22 creating -- moving the question?

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1           We are almost back to Robert's  
2 Rules here, and I'm going to move the  
3 question. Does anyone dissent, anyone not  
4 wish to create a working group to consider  
5 commercial labeling? Especially I would note  
6 that two or three individuals have noted they  
7 would like to participate in doing this.  
8 Anybody wish to dissent?

9           MR. COUSINS: All right. Now,  
10 without answering that question, if the  
11 question is, do we dissent on creating the  
12 working group, speaking for myself, I don't  
13 dissent on creating a working group. What I'm  
14 suggesting is that this committee give  
15 consideration to the creation of that as a  
16 first step. I mean, I think that's a  
17 different question than whether or not we  
18 dissent at this moment.

19           MR. BROOKMAN: What Ashley said a  
20 moment ago, which I kind of bought, was that  
21 if we create a working group any member of the  
22 committee that wishes to participate in the

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1 working group could do so as a member of the  
2 working group.

3 So, and then the committee as a  
4 whole would not need to participate. That's  
5 what -- if I followed your logic, that's what  
6 was being said.

7 MR. COUSINS: All right. We had a  
8 discussion about whether or not this committee  
9 could derive some clarity to this exercise --

10 MR. BROOKMAN: Right.

11 MR. COUSINS: -- by defining the  
12 scope -- the framework and the scope.

13 MR. BROOKMAN: Right.

14 MR. COUSINS: Not right now but  
15 maybe in a conference call, let's say.

16 MR. BROOKMAN: Uh-huh.

17 MR. COUSINS: That was I think  
18 some of the comments that were made, and what  
19 I'm trying to understand is, okay, does that  
20 comment -- is that still a valid comment, or  
21 are we at a point now where we are saying that  
22 is not a valid comment, let's go and create

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1 the working group?

2 MR. BROOKMAN: I don't know  
3 whether it's valid. It seemed like the  
4 conversation moved toward, especially it being  
5 late in the day, towards whether the committee  
6 wanted to create this working group, noting  
7 that any member that wanted to participate in  
8 the working group could do so.

9 And then it seems like a separate  
10 question about whether ASRAC wants to provide  
11 some scoping activity.

12 CO-CHAIR MANDYCK: I think part of  
13 the concern that you may be hearing is that,  
14 if I understand the process correctly, once we  
15 empanel the working group, we're out unless  
16 we're on the working group.

17 And then, the only guidance or  
18 input we can provide is to accept or reject  
19 the recommendation to go to DOE, because the  
20 document says you have to either forward it  
21 without changes, and so I think this is an  
22 issue that is cross-cutting enough that there

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1 are members who are -- kind of want to  
2 understand it a little better to help scope  
3 what the exercise is before we let go of it.

4 MR. BROOKMAN: Gotcha. I  
5 understand. Thanks for that clarity.

6 John.

7 MR. CASKEY: Yeah. And sort of  
8 building on that -- and, again, I -- this is  
9 sort of a selfish response, if you will, but  
10 what I think would be ideal is a two-phased  
11 approach. The first phase approach is to do  
12 exactly what your staff would do, would be to  
13 go through and what I had said earlier, review  
14 all of the comments, try and categorize them,  
15 try and summarize them wherever possible and  
16 come up with some summary.

17 And then, at that point that sort  
18 of concludes Phase 1. Then, to bring that  
19 back to us for us to be able to provide the  
20 guidance that you are thinking of and then  
21 help to modify the scope and give this working  
22 group better guidance on what we want them to

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1 accomplish, and then set them off to go do  
2 Phase 2, and then come back with the final  
3 recommendation.

4 MR. BROOKMAN: Yes? So that had  
5 -- that was a clear proposal right there.  
6 What do you think? Could DOE work its  
7 timetable to effect that? Yes? Yeah? Okay.

8 So, then, we have -- maybe we will  
9 put that to a decision, a vote of the  
10 committee. Does anyone dissent from the  
11 following proposal as put out there by John,  
12 that Phase 1 would be for DOE to review a  
13 catalogue and summarize the comments and make  
14 those available and send them to ASRAC; and  
15 then, as Phase 2, ASRAC would review --

16 MR. CASKEY: I intended the  
17 working group be established and do what  
18 normally DOE would have done as to --

19 MR. BROOKMAN: Oh.

20 MR. CASKEY: -- evaluate the RFI  
21 for --

22 MR. BROOKMAN: I apologize. I

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1 missed that.

2 MR. CYMBALSKY: So DOE can help in  
3 the comment summary. So instead of doing the  
4 responses, it would be up to this working  
5 group to create those responses, at which time  
6 Phase 2 would kick in, which is your -- the  
7 guidance of this group.

8 MR. CASKEY: Yes. So specifically  
9 I would say the working group would review the  
10 responses to the RFI. They would try and  
11 categorize them and group them together and,  
12 you know, maybe organize them by how they  
13 entered the particular questions, come up with  
14 some sort of summary.

15 And then, at that point, that  
16 would be the end of Phase 1, and then come  
17 back to ASRAC for evaluation of that summary  
18 and for guidance on doing Phase 2, which would  
19 be to come up with some more of a  
20 recommendation.

21 MR. BROOKMAN: So that didn't fit  
22 with John's concern about turning loose --

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1 CO-CHAIR MANDYCK: Well, Phase 1  
2 sounds like the job of DOE. So I don't know  
3 if you want to take Federal Register time to  
4 empanel a group of people to do that.

5 MR. BROOKMAN: I missed it, but  
6 that's where I thought you were going. I  
7 thought you were saying DOE should do Phase 1.

8 MS. ARMSTRONG: I'm going to do a  
9 modified version of Phase 1, because I really  
10 like to summarize and respond to comments.

11 I don't think DOE would have an  
12 issue assisting with summarizing all of the  
13 comments and providing them to a working  
14 group. I think, really, what we are looking  
15 for a working group to do would be to review  
16 all of the responses to the RFI and almost  
17 come up with either pros and cons and/or  
18 recommendations to each of the questions posed  
19 in the RFI for ASRAC to consider as to whether  
20 we even proceed with commercial labeling  
21 generally.

22 So I'm going to take it a step

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1 further. I don't really see them -- the  
2 summary as the value coming out of the working  
3 group. I see it more as, okay, we asked each  
4 of these questions, and there may be other  
5 considerations we didn't consider.

6 What is the consensus approach to  
7 those questions, basically?

8 MR. BROOKMAN: And that would be a  
9 working group that would take the summary that  
10 was created based on the comments by DOE and  
11 they would do a pro and con and  
12 recommendations in response to the RFI  
13 questions at a minimum.

14 MR. PETERSON: Just another  
15 process question, and this is -- if that first  
16 phase happens, it comes back to ASRAC, ASRAC  
17 approves it, it doesn't necessarily have to go  
18 to DOE, right? We can --

19 MS. ARMSTRONG: It can go back to  
20 the working group, too.

21 MR. PETERSON: -- go out with the  
22 second working group.

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1 MS. ARMSTRONG: Yep.

2 MR. BROOKMAN: Go ahead, Steve.

3 MR. COUSINS: A concern I've got  
4 here is any working group doing conclusive  
5 work, without ASRAC having the opportunity to  
6 frame this up in any way, shape, or form --  
7 and here is why I say that. Hey, there are a  
8 lot of commodities that are represented there.

9 We only have 25 people on the  
10 working group. Are they going to represent  
11 all of those -- I don't think so. I think we  
12 have -- we have got a broader, overarching  
13 oversight with regard to -- if I understand  
14 why this group has even been formed, I think  
15 this is a classic advisory task that we have  
16 that it seems that we want to try to say,  
17 well, not in this case.

18 I would hate to take this to a  
19 working group and ask them to draw conclusions  
20 without us having the opportunity to put some  
21 framework around this. That's just my point  
22 of view.

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1 CO-CHAIR MANDYCK: Well, I thought  
2 what I heard was that you would summarize the  
3 comments for us, and then we would digest that  
4 and then determine what the working group  
5 should do. I don't think -- to me it is not a  
6 question of should we have a working group or  
7 not. It's just what is the charter of that  
8 working group going to be?

9 MR. BROOKMAN: And the sequence.

10 CO-CHAIR MANDYCK: And the  
11 sequence. And so maybe we take baby steps  
12 here, and the first step is, you know, you  
13 have to do the summary anyway. You know, do  
14 the summary and provide it to us, so we have  
15 the benefit of it, and then we have -- then we  
16 understand where the four corners are to  
17 empanel a working group.

18 MR. BROOKMAN: So the sequence --  
19 so it would be as follows. The proposal would  
20 be for DOE to take the responses to the RFI,  
21 review, categorize, and summarize those  
22 comments. They would send that back to ASRAC,

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1 and ASRAC would look at them, and, as John  
2 says, consider it and maybe define boundary  
3 conditions, the four corners, and the like.

4 That would result in guidance  
5 being sent to the working group itself, and  
6 then the working group would get on with the  
7 business of doing a more complete review,  
8 pros, cons, and recommendations based on the  
9 RFI questions at a minimum and perhaps more.

10 That's the proposal that is  
11 emerging. Are you comfortable with that,  
12 Steve? You're comfortable with that.

13 MS. ARMSTRONG: I think -- so the  
14 last part about it, I mean, if we are going to  
15 do summaries, then ASRAC wants to be the one  
16 to review those summaries and look at the  
17 questions in the RFI and then define the scope  
18 for the working committee.

19 I don't think the working  
20 committee at that point is coming up with  
21 recommendations for the five questions in the  
22 RFI.

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1 MR. BROOKMAN: There are only five  
2 questions?

3 MS. ARMSTRONG: Oh, no. There may  
4 be more. I'm just -- whatever it is.

5 MR. BROOKMAN: Oh.

6 MS. ARMSTRONG: I mean, at that  
7 point I think the working group is coming up  
8 with a commercial labeling strategy.

9 MR. BROOKMAN: That is, ASRAC is  
10 the working group that is going to come up  
11 with the labeling --

12 MS. ARMSTRONG: No. We would  
13 vote. We would vote to determine whether we  
14 wanted to form a working group. We would have  
15 the response -- you know, we would have the  
16 summaries for the RFI. We would take our  
17 positions and say based on the summaries, this  
18 is what we think.

19 We need to vote as to whether  
20 commercial labeling RFI -- I mean, this could  
21 go on forever. It's just a matter of, do we  
22 want to do it ourselves, which is going to

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1 push it out a couple months? Or do we want to  
2 just form a working group to deal with coming  
3 up with recommendations from the RFI?

4 MR. BROOKMAN: Tom?

5 MS. ARMSTRONG: Or ASRAC. I mean,  
6 ASRAC is never out of the process, to your  
7 point. I mean, the working group is going to  
8 come back to ASRAC, so --

9 MR. COUSINS: My concern is having  
10 any group -- DOE, working group, whatever --  
11 come to ASRAC having already filtered out a  
12 lot of things, a lot of findings, a lot of --  
13 done the filtering and done the making  
14 conclusions, basically leaving us with the  
15 position of a yea or a nay without providing  
16 any kind of framework. That's my comment.

17 CO-CHAIR deLASKI: How about you  
18 should be on the working group, Steve?

19 (Laughter.)

20 I mean, that sounds like what --

21 MS. ARMSTRONG: This is going to  
22 happen.

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1 CO-CHAIR deLASKI: I can't be on  
2 every working group, so I think we need to be  
3 able to delegate to working groups and --

4 MR. BROOKMAN: Two or three  
5 individuals have said they want to be on the  
6 working group. So we know that.

7 Tom Eckman.

8 MR. ECKMAN: Yeah. Maybe it's my  
9 schedule, but I don't see a working group  
10 reading through comments and summarizing them.

11 That seems to me to be a staff function.

12 And then, bringing those comments  
13 back to us so we could determine what the  
14 scope of work is after that, whether there is  
15 a scope of work after that, is something we  
16 can make a recommendation to DOE on and judge  
17 it in that sequence.

18 So we see the comments and see  
19 where the -- you know, if there is a lot of  
20 contention or if there is a lot of consensus  
21 about this on some of those questions that you  
22 queued up, then we have a way to scope -- go

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1 work on this, we need a workgroup to bring  
2 that to closure, there seems to be consensus  
3 on that.

4 But until I see the comments and  
5 the responses, a summary of those, I don't  
6 have any way to scope what the next phase  
7 looks like. Whether I'd vote up or down on  
8 labeling, I don't know what the questions are  
9 or what the comments are.

10 So I -- you know, staff could  
11 bring back a summary, and then I've got  
12 something to work with. But right now I don't  
13 have anything to work with in terms of even a  
14 context.

15 MR. BROOKMAN: So the proposal on  
16 the table -- and I'm glad we are not doing  
17 this via Robert's Rules -- would be for DOE to  
18 take the responses from the RFI, categorize  
19 them, summarize them, and then send them back  
20 to ASRAC. ASRAC would, in a very short amount  
21 -- rather short amount of time, figure out  
22 what to do with them, provide guidance

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1 perhaps.

2 ASRAC would be the body that would  
3 provide more detailed comments and guidance or  
4 maybe at that point they would create a  
5 working group to decide what to do with and to  
6 create the kind of product that Ashley  
7 described -- pros, cons, and recs on the RFI  
8 questions. That's the proposal on the table.

9 DR. HUNGERFORD: I guess I want to  
10 ask a -- there's an assumption in that that a  
11 normal part of the process for DOE is to  
12 create a formal summary of comments. And the  
13 question I have is, would this add significant  
14 workload to you guys to have this part of the  
15 process where that summary were provided to  
16 this group?

17 MS. ARMSTRONG: We are going to do  
18 it anyway, so we can provide it.

19 MR. CYMBALSKY: Whether you want  
20 to delegate the -- looking at the summary to a  
21 subcommittee or to you, well, that --

22 MS. ARMSTRONG: That's the way I

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1 see it. Do we want to -- I mean, this is  
2 going to require us to meet webinar or by  
3 phone multiple times over the next couple of  
4 months to make the decision and to review the  
5 -- and discuss these comments and --

6 MR. ECKMAN: I think my -- I  
7 envisioned that we would see an executive  
8 summary of the comments by topic area,  
9 whatever the questions were. That we are not  
10 reading and reinterpreting what you -- that  
11 staff look at. It is just, this is what was  
12 said, so many lined up this way, so many lined  
13 up this way, and these look to be multiple  
14 opinions about this issue. There is consensus  
15 around that.

16 It's an analytical judgment about  
17 who weighs in on what side, but it's not a  
18 conclusion and I don't think we're -- I wasn't  
19 envisioning reading a 70-page summary of  
20 comments. It was pretty high level, these are  
21 the big issues, these are the big comments,  
22 there is consensus here, there is not

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1 consensus there. Something like that that has  
2 got some context to it, because the --

3 MS. ARMSTRONG: So typically the  
4 way our process works is we will summarize  
5 each of the individual comments by commenters.

6 Now, whether or not we take it up further and  
7 provide an executive summary is on the table.

8 The question becomes, do we delegate to a  
9 working group rather than ourselves, to come  
10 up -- you know, weigh those issues? It's just  
11 a matter of, how much do you want to take on  
12 yourself?

13 MR. BROOKMAN: Steve.

14 MR. COUSINS: All right. This  
15 committee advises and provides guidance. I  
16 think that's what we said. So you have your  
17 -- you summarize your findings, you  
18 consolidate and summarize your findings. You  
19 say, "Committee, advise and guide." And we  
20 may say, "Okay. Working group is next to do  
21 A, B, C, and D."

22 MR. BROOKMAN: Okay. David?

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1 DR. HUNGERFORD: Yeah. It seems  
2 like the threshold question in -- if we were  
3 provided the comments when they are available,  
4 the summarized comments, that we could --  
5 there are only a couple of things that ASRAC  
6 would need to answer, and that is the  
7 threshold question of whether we -- whether a  
8 working group should be formed.

9 And the second would be what that  
10 -- some scope definition for the task of that  
11 working group, and that that would be all that  
12 would be required. It wouldn't be a series of  
13 meetings. It wouldn't be endless discussion.

14 It would merely -- it would be something that  
15 could be taken care of in one webinar.

16 MR. BROOKMAN: Okay. Andrew?

17 CO-CHAIR deLASKI: I concur to  
18 proceed as you describe. And, I mean, just --  
19 I think just as a reminder, you know, this is  
20 going to go forward whether we commission a  
21 working group or not. So the question is, the  
22 Department basically inviting a working group

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1 to help them shape how they are going to do  
2 this.

3 So we decided not to commission a  
4 working group. That means that we are saying  
5 you all go figure it out.

6 MR. BROOKMAN: Yes.

7 CO-CHAIR deLASKI: So I guess  
8 that's where I'm coming from on this and I --  
9 this is not a --

10 MR. BROOKMAN: So it seems as  
11 though we have the kernel of an agreement  
12 emerging here. And it -- and as I understand  
13 it, it is that DOE will receive its comments  
14 on the RFI by March 21. In some sort span of  
15 time, you will summarize/categorize those  
16 comments, and you will send those to ASRAC.

17 ASRAC will consider what is there,  
18 and you will decide whether a working group  
19 needs to be formed, and what the scope and  
20 definitions surrounding that working group  
21 might be if you were to form it.

22 And also, ASRAC might decide

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1       itself to create some additional contour or  
2       boundaries, that sort of stuff, whether it  
3       creates a working group or not. I think those  
4       are the options.

5                       So I am going to -- John, Ashley,  
6       comments in by March 31, a summary produced  
7       by --

8                       MS. ARMSTRONG: Sometime in April.

9                       MR. BROOKMAN: Mid-April. Tax  
10       day, April 15 or so. So we are going to be in  
11       abeyance for a good long while.

12                      Okay. So I'm going to move the  
13       question on that last proposal. Should I  
14       repeat it? No. Okay. Does anyone dissent  
15       from proceeding as I just described -- DOE do  
16       a bunch of work, push it to ASRAC, ASRAC  
17       considers what it's got via probably a webinar  
18       in the short timeframe turnaround, consider  
19       whether a working group needs to be formed,  
20       and, if that is the case, provide scope and  
21       definition or perhaps ASRAC will take the  
22       initiative to provide additional contour

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1 boundaries, and the like.

2 That's the proposal. Does anyone  
3 dissent? So once again we have a unanimous  
4 agreement. Thanks to all of you for that.

5 So we have agreed to create a  
6 working group for HVAC. We have established a  
7 process for the commercial labeling. And we  
8 have tabled, for the moment, fans and pumps  
9 and test procedures on residential water  
10 heaters. And that's what we have decided to  
11 do at this first stage of endeavor.

12 Does anybody -- we are over time  
13 at this point. Anybody want to raise  
14 additional issues before we move to additional  
15 next steps?

16 Yes, John.

17 MR. CASKEY: I don't know what  
18 your definition of "additional issues" is, but  
19 I think it would be good to be able to scope  
20 out some of these other ideas that we've got  
21 on the board. And I don't know whether that  
22 is for you to do or DOE or whether you want

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1 help from volunteers here to do some of that,  
2 but I think that's an action item that needs  
3 to be done I would say within the next month  
4 or so.

5 MR. BROOKMAN: I was thinking that  
6 we would cover that in next steps. And I was  
7 going to lean heavily on Ashley and John to  
8 help describe, among these items that have  
9 been listed here, and perhaps others, how we  
10 can inform the committee about what is  
11 involved with each one of those items.

12 MS. ARMSTRONG: So I think the  
13 Department could take the first step, unless  
14 there is any like process-related ones that  
15 anyone wanted to vote on today. But I think  
16 the Department could take the first step at  
17 fleshing some of these out, and then the  
18 committee could -- we could circulate it, and  
19 the committee could add, edit, ask questions  
20 from there. I could circulate it, if that's  
21 okay.

22 MR. BROOKMAN: John.

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1 CO-CHAIR MANDYCK: Agree. And  
2 then, what about the idea that was raised in  
3 the public comment period about the ability  
4 for the general public to suggest ideas for  
5 ASRAC?

6 MS. ARMSTRONG: I think you can  
7 just send an email to the ASRAC email address  
8 at any time. I know Gary mentioned he had a  
9 dozen or so ideas. I'm sure plenty of others  
10 do. I think you should just send the email to  
11 ASRAC and that can get disseminated to the  
12 committee, or, you know, handled -- or put on  
13 the next agenda for discussion kind of thing.

14 Would that work for everyone?

15 MR. BROOKMAN: You're the  
16 Designated Federal Official. Is Jeremiah or  
17 someone the Secretariat here? Does it all go  
18 in one big pot or --

19 MR. CYMBALSKY: I am the  
20 figurehead and he is the one who actually does  
21 the work. Is that what you just said?

22 (Laughter.)

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1                   Sounds right.

2                   MR. BROOKMAN: Okay.

3                   MR. CYMBALSKY: No. But, yeah, so  
4 there's a docket and there's also the email  
5 box. So --

6                   MR. BROOKMAN: Great.

7                   MR. CYMBALSKY: -- either way.

8                   MR. BROOKMAN: Okay. So that is a  
9 next step, as just described.

10                  Other next steps? Well, one would  
11 be the mechanics of creating the working  
12 group, the HVAC working group, and we laid out  
13 how that would get done.

14                  There will be a complete  
15 transcript of this meeting made available.  
16 James has been over here diligently taking  
17 care of things.

18                  Jeremiah, are you going to do sort  
19 of a more -- a summary, executive summary?  
20 More than an executive summary; a summary of  
21 this meeting contents. So that will be  
22 available in what kind of a timeframe?

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1 MR. FREEMAN: Probably a week or  
2 so.

3 MR. BROOKMAN: A week or so.  
4 Okay.

5 And then, any other next steps  
6 that --

7 MS. ARMSTRONG: Next meeting?

8 MR. BROOKMAN: Next meeting. Next  
9 meeting. I've got a calendar here in front of  
10 me. What kind of a timeframe are you  
11 thinking?

12 MS. ARMSTRONG: So the next  
13 meeting could be by phone. And I don't know,  
14 somewhere between -- it would seem somewhere  
15 between 30 days and 45 days when we have those  
16 nominations in for the commercial -- or we  
17 have the applications in for the commercial  
18 cert, so we can go ahead and act on that  
19 pretty quickly.

20 And then, maybe by then the  
21 Department will have some fleshing out of some  
22 of this stuff.

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1 MR. BROOKMAN: Forty-five days  
2 from the end of February would be the middle  
3 of April.

4 MS. ARMSTRONG: So I would say  
5 shoot for the beginning of April in the hopes  
6 that we can actually get that stuff done in 30  
7 days.

8 MR. BROOKMAN: Okay.

9 MS. ARMSTRONG: Because that's  
10 what we are going to shoot for.

11 MR. BROOKMAN: Uh-huh.

12 MS. ARMSTRONG: If possible.

13 MR. BROOKMAN: The other thing was  
14 that by -- you were saying by around about  
15 April 15 that would be when the -- you would  
16 have the comments for the RFI compiled.

17 MS. ARMSTRONG: Yeah. Yeah.  
18 We'll have -- people won't be able to digest  
19 them. So that will have to be at the followup  
20 meeting.

21 MR. BROOKMAN: Gotcha. Okay.

22 MS. ARMSTRONG: But at least for

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1 this one I don't think we want to hold up the  
2 commercial cert working group, and we will  
3 need the committee's input for the actual  
4 nominations.

5 MR. BROOKMAN: Scheduling is  
6 always a difficult thing. Sometimes it is  
7 easier for people to do things perhaps at the  
8 beginning of the week or the end of the week  
9 rather than the middle of the week.

10 John?

11 CO-CHAIR MANDYCK: What I  
12 recommend is we have the general timeframe as  
13 we did for this meeting. Jeremiah sent out a  
14 poll for us to --

15 MR. BROOKMAN: Okay.

16 CO-CHAIR MANDYCK: -- with some  
17 options that we could --

18 MR. BROOKMAN: Okay.

19 CO-CHAIR MANDYCK: -- react to and  
20 --

21 MR. BROOKMAN: So we're talking  
22 around about April 1, and perhaps that first

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1 week or no later than two. Okay? Jeremiah,  
2 yes? April 1st? Yeah.

3 CO-CHAIR deLASKI: And I would add  
4 the potential agenda item for that meeting  
5 that we would at that point perhaps be able to  
6 take up some additional topics that may be  
7 appropriate, and we may be able to --

8 MR. BROOKMAN: Yeah.

9 MS. ARMSTRONG: I will try to  
10 circulate some of the more fleshed-out ideas  
11 from this in a document, so we can start  
12 thinking about them.

13 CO-CHAIR MANDYCK: Right. And  
14 then the two technologies.

15 MS. ARMSTRONG: Yeah. That's --

16 CO-CHAIR MANDYCK: Pumps -- or  
17 fans and pumps.

18 MS. ARMSTRONG: Absolutely.

19 CO-CHAIR MANDYCK: Hear people out  
20 on that.

21 MR. BROOKMAN: And then, as a  
22 practice, we also have already said that ideas

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1 that come in from outside the committee, those  
2 will be gathered and sent to committee members  
3 to consider as well.

4 So for my part, I think we're done  
5 here, and I would just turn it back to John  
6 and Ashley.

7 Thank you all. Very, very  
8 productive meeting. Congratulations on being  
9 composed as an Advisory Committee. It is no  
10 small matter for the Department of Energy to  
11 create an Advisory Committee, and there is  
12 really, we hope, a tremendous amount of  
13 potential here. So congratulations to you  
14 all.

15 Back to John.

16 MR. CYMBALSKY: I would echo that.

17 And I think all of you just took on a lot of  
18 work, which I'm very impressed. I tried to  
19 get you to delegate, but you wouldn't do it.

20 (Laughter.)

21 And now you will learn the lesson.

22 No, but honestly, I think everything we said

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1 today I think just supports what we said in  
2 the beginning of the meeting, that I think we  
3 can get a lot accomplished with this group.  
4 And so I appreciate that we formed the  
5 committee -- the working group, and let's go  
6 from there and see how it goes.

7 So thanks. Thanks again.

8 MR. BROOKMAN: Thanks. Safe  
9 travels.

10 (Whereupon, the above-entitled  
11 matter went off the record at 4:19 p.m.)  
12  
13  
14  
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C E R T I F I C A T E

This is to certify that the foregoing transcript


In the matter of: Appliance Standards and Rulemaking  
Federal Advisory Committee

Before: US DOE

Date: 02-26-13

Place: Washington, DC

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