



KYLE PITSOR

Vice President, Government Relations

July 14, 2017

VIA EMAIL TO: Regulatory.Review@hq.doe.gov

Mr. Dan Cohen
U.S. Department of Energy
Office of the General Counsel
1000 Independence Avenue SW.
Room 6A245
Washington, DC 20585

NEMA Comments on DOE Regulatory Burden Reduction RFI

Dear Mr. Cohen,

As the leading trade association representing the manufacturers of electrical and medical imaging equipment, the National Electrical Manufacturers Association (NEMA) provides the attached comments on the DOE's Request for Information on Regulatory Burden Reduction. These comments are submitted on behalf of NEMA Member companies.

We are also signatory to a set of joint comments filed by AHAM, AHRI, HPBA, and NEMA regarding this RFI.

NEMA, founded in 1926 and headquartered in Arlington, Virginia, represents nearly 400 electrical and medical imaging manufacturers. Our combined industries account for more than 350,000 American jobs and more than 6,500 facilities across the U.S. Domestic production exceeds \$117 billion per year.

We appreciate the opportunity to submit the comments below for your consideration. If you have any questions on these comments, please contact Alex Boesenberg of NEMA at 703-841-3268 or alex.boesenberg@nema.org.

Sincerely,

A handwritten signature in black ink that reads "Kyle Pitsor".

Kyle Pitsor
Vice President, Government Relations

NEMA Comments on DOE Regulatory Burden Reduction RFI

As an introductory comment, NEMA welcomes the Department's request for comment on reducing regulatory burden and notes that we have responded to previous DOE RFI notices¹. While this recent RFI contains the same caveat that public submittals might not be responded to, we hope that the Administration will seriously consider measures to reduce regulatory burden. NEMA and its members look forward to working with DOE to discuss and determine solutions to reduce regulatory burden which are practical, actionable, and understandable to all stakeholders.

Our comments below reiterate some of our past recommendations, as well as new areas for the DOE to review and consider. We present them as responses to the list of questions in the DOE RFI of May 30, 2017. In some cases multiple issues are provided under a single question. We hope that our responses organized in this way will be easier to catalog and assign to an action officer.

1. How can DOE best promote meaningful regulatory cost reduction while achieving its regulatory objectives, and how can it best identify those rules that might be modified, streamlined, or repealed?

NEMA Comment:

a) One good way to identify rules that might be modified, streamlined or repealed is to review one or more representative rules from the various categories (e.g., standards, test procedures, others) and examine the effectiveness of the modeling and other analytical tools employed, as well as an assessment of the energy saved versus estimates. We are not aware if DOE has never publicly validated its rulemaking process and analytical tools. We hope that this RFI will offer the opportunity for a change in that practice. Rules that have failed to achieve the estimated impact should be reviewed in more detail to ascertain whether the rulemaking analysis was flawed, such as in the forecasting assumptions, or whether less predictable causes were influential to the real-world differences.

b) In addition to gauging estimated effects versus post-implementation effects of a regulation, the DOE should examine energy conservation standards with different breadth of product scope to compare their results and whether a broadly scoped rule really saves more energy than a more focused one. Our recent experiences with the DOE rulemaking process suggests a tendency of late to scope a rulemaking as broadly as possible, but this greatly complicates analysis, grows data sets beyond reasonable size, and adds months if not years to process time. Logically, simpler rules can be put in place sooner and more readily measured.

2. What factors should DOE consider in selecting and prioritizing rules and reporting requirements for reform?

NEMA Comment:

a) Public requests for input like this RFI are a good tool. If a stakeholder raises a rule as too burdensome, it should be prioritized for review.

b) In many cases the rulemaking process may be the real culprit, and so process should be reviewed as well.

¹ <https://www.energy.gov/gc/services/open-government/restrospective-regulatory-review>

c) The DOE should examine a rule's impact on manufacturing jobs more carefully and with greater weight during rulemakings. Too often, the rulemaking process notes how many manufacturing jobs are likely to be eliminated, and then notes that through the "black box" GRIM model that some number of other jobs might be created. We recommend that the Department give greater weight to impacts on U.S. manufacturing jobs.

3. How can DOE best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations? Are there existing sources of data DOE can use to evaluate the post-promulgation effects of regulations over time? We invite interested parties to provide data that may be in their possession that documents the costs, burdens, and benefits of existing requirements.

NEMA Comment:

a) The DOE's data gathering practices and associated analytical process result in proposals with as broad a scope of covered products as possible, resulting in extensive gathering of product data all in the name of larger energy savings estimates. This causes data sets to grow beyond reasonable size, and results in poor analysis due to the cumbersome datasets involved. Where the DOE has the authority to adjust rulemaking product scopes, the DOE should establish a policy that rulemakings be narrowly scoped which will speed up the rulemaking review and decision-making.

b) Complex data sets contribute to greater confusion among stakeholder experts trying to comment effectively to rulemaking milestone documents. The confusion leads to lower quality public comments which can have important impacts in making final rule decisions. Cumbersome analytical records and overly large data sets not only complicate the analysis but also may result in errors when it comes to determining what is technologically feasible or financially justifiable.

4. Are there regulations that simply make no sense or have become unnecessary, ineffective, or ill-advised and if so what are they? Are there rules that can simply be repealed without impairing DOE's statutory obligations and, if so, what are they?

NEMA Comment:

a) Enforcement regulations are largely ineffective and should be revisited. The current practice of the DOE CCE office appears to be one of policing the CCMS database for errors and acting on public tips. Policing the database, while somewhat important, does nothing to address unreported products. Non-compliant imports are a significant cause of lost sales and market share impacts to NEMA members who are participating via the CCMS database. DOE needs to do more in conjunction with its partner federal agencies to combat imported, non-reported products. We appreciate that the DOE CCE office tried to develop an Import Data Collection rulemaking, but the program as proposed would have only increased burden on responsible manufacturers while doing little if anything to combat non-compliant imports and outright scofflaws.

b) DOE needs to establish an effective and non-burdensome enforcement regime so as to ensure that consumers are benefiting from the energy savings and that compliant manufacturers have a level playing field regarding imported products. Without an effective border program, we question the appropriateness of imposing additional energy conservation standards on compliant domestic manufacturers.

5. Are there rules or reporting requirements that have become outdated and, if so, how can they be modernized to better accomplish their objective?

NEMA Comment:

a) Annual reporting requirements for product certification: Manufacturers are required to file reports on products with DOE and the Federal Trade Commission every year even if there is no design change. This creates unnecessary paperwork costs for no reason. This reporting burden was put in place under the previous Administration, and we believe they are a strong candidate for regulatory reform. Manufacturers should be required to report only when a new product is introduced, when a model is changed in a way that impacts measured energy or efficiency, and when a product is no longer in production. Annual reporting does nothing to enhance consumer knowledge and serves no purpose for DOE rulemaking or enforcement efforts. Streamlining annual report will noticeably reduce costs for manufacturers.

6. Are there rules that are still necessary, but have not operated as well as expected such that a modified or slightly different approach at lower cost is justified?
NEMA has no comment on this item

7. Are there rules of the Department that unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources?
NEMA has no comment on this item

8. Does DOE currently collect information that it does not need or use effectively?
NEMA has no comment on this item

9. Are there regulations, reporting requirements, or regulatory processes that are unnecessarily complicated or could be streamlined to achieve statutory obligations in more efficient ways?

NEMA Comment:

a) The DOE process practice of using 20- or 30-year economic forecast horizons for calculation of recovery of lost Industry Net Present Value and other National Impact Analyses should be re-evaluated. Businesses and consumers both deal with much shorter term expectations regarding product efficiency benefits/costs. Twenty and thirty year forecasting is highly problematic and relies on too many assumptions that are never validated for real-market accuracy. A number of energy conservation standards have been set claiming industry will achieve sufficient payback on multi-million dollar capital investments and lost product sales that the standards will cause, while ignoring this claimed payback might take decades.

b) Similarly, the same forecasting practices claim higher than reasonable energy savings by looking decades into the future. Changes in consumer practices and behavior, as well as technological innovation and changes in market focus mean that estimates beyond 10 years for energy savings are questionable. DOE should undertake a thorough public process to evaluate the forecasting models and assumptions.

c) Consumers deserve products that they can afford, with reasonable payback periods. The 3-year rebuttable presumption is specifically intended to protect consumers from high first-cost and too-long payback. Consumers that value energy efficiency over first-cost and who are willing to pay a little more to get more in the long run can always continue to do so without a government mandate.

d) A good example of unintended impacts of conditions similar to the above may be found in the 2011 DOE Final Rule for Fluorescent Ballast Energy Conservation Standards². This rule forecast a -37.5% impact to Industry Net Present Value but allowed it to proceed, assuming that future sales would offset losses over time. Flash forward just 6 years and LED lighting is taking over all new installations and most retrofits while fluorescent sales are shifting to maintenance and repair with few new fluorescent lighting installations. Even a ten-year horizon might have been too long.

10. Are there rules or reporting requirements that have been overtaken by technological developments? Can new technologies be leveraged to modify, streamline, or do away with existing regulatory or reporting requirements?
NEMA has no comment on this item

11. Does the methodology and data used in analyses supporting DOE's regulations meet the requirements of the Information Quality Act?
NEMA has no comment on this item

² <https://www.regulations.gov/docket?D=EERE-2010-BT-STD-0003>