



National Electrical Manufacturers Association

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By email: [Process.Rule@ee.doe.gov](mailto:Process.Rule@ee.doe.gov)

Ms. Sofie Miller  
U.S. Department of Energy  
1000 Independence Avenue SW  
Washington, DC 20585

**NEMA Comments on Proposed Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment**

Docket ID No. EERE-2017-BT-STD-0062

Dear Ms. Miller:

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 Notice of Proposed Rulemaking for Proposed Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment. These comments are submitted on behalf of NEMA and its many dozens of Member companies with products affected by DOE Minimum Energy Conservation Standards and Test Procedures.

The National Electrical Manufacturers Association (NEMA) represents nearly 350 electrical equipment and medical imaging manufacturers that make safe, reliable, and efficient products and systems. Our combined industries account for 360,000 American jobs in more than 7,000 facilities covering every state. Our industry produces \$106 billion shipments of electrical equipment and medical imaging technologies per year with \$36 billion exports.

If you have any questions on these comments, please contact Alex Boesenberg of NEMA at 703-841-3268 or [alex.boesenberg@nema.org](mailto:alex.boesenberg@nema.org).

Sincerely,

A handwritten signature in black ink that reads 'Philip A. Squair'. The signature is written in a cursive, slightly slanted style.

Philip Squair  
Vice President, Government Relations  
National Electrical Manufacturers Association

## **NEMA Comments on Proposed Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment**

On behalf of the National Electrical Manufacturers Association (NEMA) we submit the following comments supplementing the Joint Comments of AHAM, AHRI, NEMA and others filed separately. These supplemental comments address points specific to NEMA.

### **A. The EPCA Rulemaking Timeline Is Not Jeopardized By an Early Assessment as Proposed by DOE**

During the first public meeting on the Department's Notice of Proposed Rule to amend the current Process Rule, concern was expressed by some interested parties that the proposed amendments would delay the rulemaking process and make it harder to meet statutory deadlines for appliance efficiency rulemakings under the Energy Policy and Conservation Act (EPCA). During the public meeting, NEMA expressed skepticism about that concern and indicated that NEMA understanding of the proposed rule did not reveal any additional steps in the rulemaking process. Instead we stated that meeting deadlines invited a project management solution.

Following the first public meeting, NEMA reviewed the sequence and timing of events reflected in the proposed rule amending the Process Rule in light of the statutory requirements for appliance efficiency rulemakings. Our assessment expressed at the first public meeting is confirmed.

EPCA contains different provisions for rulemaking deadlines established by Congress. First, there are statutory provisions for a specific covered product where Congress directs the Secretary of Energy to initiate a rulemaking procedure. Those provisions may be in the wake of enacting energy conservation standards and test procedures in the statute, or directing the Secretary to establish energy conservation standards in the first instance. These provisions are spread across sections 6295 and 6313 or 6317 of Title 42 in the case of energy conservation standards. Second, there are general statutory provisions for all covered products with respect to the amendment of energy conservation standards. 42 U.S.C. §6295(m) and 42 U.S.C. §6295(p). This comment focuses on the general statutory provisions, although our remarks could be relevant for the specific statutory provisions as well.

Subsection (m)(1) requires that "not later than 6 years after issuance of any final rule establishing or amending a[n energy conservation] standard as required for a product under this part, the Secretary shall publish (A) a notice of determination . . . that standards for the product do not need to be amended, based on the criteria under subsection (n)(2); or (B) a notice of proposed rulemaking, including new proposed standards based on criteria under subsection (o) and the procedures established under subsection (b)." Thus, there is a statutory, maximum 6-year timeframe between publication of a prior standards rule for a given covered product and a proposed rule amending that prior standard (or determining not to amend).

The next statutory deadline in this scheme, if the Secretary proposes to amend a prior standard, is that a Final Rule amending the prior standard (or determining not to amend) must be published not later than 2 years after a notice of proposed rule is published. 42 U.S.C. §6295(m)(3)(A). Thus, there is a statutory, maximum 8-year timeframe between Final Rules amending prior energy conservation standards.

Finally, there are statutory deadlines for manufacturer compliance dates in the wake of a Final Rule amending an energy conservation standard. These compliance deadlines can be specific to covered products and can vary from 3 to 5 years. See e.g., 42 U.S.C. §6295(m)(4).

Thus, if a hypothetical Final Rule establishing or amending an energy conservation standard for a covered product is published on June 14, 2019, the Secretary has until June 14, 2025 to publish a notice of proposed rule proposing to amend the prior standard or not. Historically, under the current Process Rule, it is DOE practice to publish either an Advanced Notice of Proposed Rule (ANOPR) or Framework Document outlining the Department's preliminary thinking about possible amendments to the existing energy conservation standard and invite public comment. This occurs before DOE publishes a Notice of Proposed Rulemaking contemplated by subsection (m)(1)(B). *The proposed amendments to the Process Rule would not change this step*, and NEMA supports continuing that sequencing.

The current Process Rule was adopted in 1996, and at that time subsection 6295(m) read differently than it does today. Subsection 6295(m) was amended by the Energy Independence and Security Act of 2007, see P.L. 110-140, 121 Stat. 1492, 1553-54 (December 19, 2007). The prior version of subsection 6295(m) did not explicitly provide that the Secretary could publish a notice of determination early in the appliance efficiency rulemaking process "that standards for the product do not need to be amended." Now subsection 6295(m)(1)(A) *explicitly* provides for that. Consequently the Process Rule should be updated to contemplate that statutory change early in the rulemaking process and provide for early public input on that specific question. As NEMA has previously commented in connection with the Process Rule, the DOE now has a significant knowledge base about covered product regulation based on prior rulemakings that were only recently completed that it can draw upon to evaluate early on whether there are really opportunities for improving energy savings or not. This knowledge base did not exist in 1996, but now it does.

The proposed rule to amend the Process Rule by including an "Early Assessment" contemplates precisely that update to the Process Rule that will match the statutory vision contemplated by Congress with its 2007 amendment to subsection 6295(m) and take advantage of DOE accumulated knowledge base. In **Table I** below, NEMA provides an illustration how the statutory deadlines can be managed. Table I describes two hypothetical subsequent rounds of rulemaking to amend energy conservation standards for a covered product after a previous Final Rule dated June 14, 2019 is published. With the exception of the Early Assessment --- which we submit is necessary under amended subsection 6295(m) and makes good policy sense --- the process described in **Table I** in accordance with the proposed amendments to the Process Rule adds nothing new to the current process. The dates in bold letters represent various statutory deadlines described above. Other dates are not statutory deadlines but are

intended to be illustrative. The addition of the Early Assessment, described in red lettering, fits easily in the statutory scheme and is consistent with statutory deadlines.<sup>1</sup>

**TABLE I  
EPCA APPLIANCE EFFICIENCY STANDARDS TIMELINE**

	<i>Action</i>		<i>Illustrative Date</i>
1	Prior Standards Final Rule Published for Covered Product X		June 14, 2019
2	Compliance Date for Manufacture/Import Covered Product X on Standard Pursuant to (1)		<b>3-5 years later; Est. June 14, 2022-24</b>
3	<b>Early Assessment</b>	<b>Notice Contemplating a Rulemaking and Request for Information Seeking Public Comment Whether Amended Standards Can or Cannot Meet Criteria under Subsections (n)(2) OR (o).</b>	<b>Est. June 14, 2023</b>
4	<b>Public Comment Due</b>		<b>Est. August 14, 2023</b>
5	Secretary Preliminarily Determines that Prior Standard Cannot Be Amended. 42 U.S.C. §6295(m)(1)(A)	Secretary Preliminarily Determines That Amended Standards May Meet Statutory Requirements	Est. June 14, 2024
	Secretary Publishes Notice With Analysis and Invites Public Comment on Determination Not to Amend and invites public comment 42 U.S.C. §6295(m)(2)	Secretary issues an ANOPR or similar document (e.g., Framework) with Candidate Standards Levels and invites public comment.	
6	Public Comment Due on Determination	Public Comment Due on ANOPR (or framework)	Est. August 14, 2024
7	Final Rule on Notice of Determination Published No Amendment of Prior Final Rule (1) 42 U.S.C. §6295(p)(3) <sup>2</sup>	Notice of Proposed Rulemaking 42 U.S.C. §6295(m)(1)(B)	<b>No later than June 14, 2025</b>
8	Public Meeting and Comments Due on NOPR 42 U.S.C. §6295(p)(2)		Est. August 14, 2025 unless extended
9	Final Rule Amending Standards For Covered Product X Or Negative Determination Published 42 U.S.C. §6295(m)(3)(A) 42 U.S.C. §6295(p)(3)		<b>No later than June 14, 2027</b>
10	Compliance Date for Manufacture/Import Covered Product X on Amendment Pursuant to (11)		<b>3-5 years later; Est. June 14, 2030-32</b>
11	<b>Early Assessment</b>	<b>If Final Rule Published Pursuant to (9) Amending Standards For Covered Product</b>	<b>Est. June 14, 2031</b>

<sup>1</sup> Of course, DOE is still faced with institutional constraints that can disrupt the statutory deadlines, including congressional appropriations and the complexity of a particular rule.

<sup>2</sup> Secretary required to make a New Determination to Not Amend or Propose An Amendment no later than 3 years after this Final Rule published, 42 U.S.C. §6295(m)(3)(B).

		<b>X</b> <b>Notice Contemplating a Rulemaking and Request for Information Seeking Public Comment Whether Amended Standards Can or Cannot Meet Criteria under Subsection (n)(2)</b>	
12		<b>Public Comment Due</b>	<b>Est. August 14, 2031</b>
13	Secretary Preliminarily Determines that Prior Standard Cannot Be Amended. 42 U.S.C. §6295(m)(1)(A)	Secretary Preliminarily Determines That Amended Standards May Meet Statutory Requirements	Est. June 14, 2032
	Secretary Publishes Notice With Analysis and Invites Public Comment on Determination Not to Amend and invites public comment 42 U.S.C. §6295(m)(2)	Secretary issues an ANOPR or similar document (e.g., framework) with Candidate Standards Levels and invites public comment.	
14	Public Comment Due On Determination	Public Comment Due on ANOPR (or framework)	Est. August 14, 2032
15	Final Rule on Notice of Determination Published No Amendment of Prior Final Rule (11) 42 U.S.C. §6295(p)(3) <sup>3</sup>	Notice of Proposed Rulemaking 42 U.S.C. §6295(m)(1)(B)	<b>No later than June 14, 2033</b>
16	Public Meeting and Comments Due on NOPR 42 U.S.C. §6295(p)(2)		Est. August 14, 2033 unless extended
17	Final Rule Amending Standards For Covered Product X Or Negative Determination Published 42 U.S.C. §6295(m)(3)(A) 42 U.S.C. §6295(p)(3)		<b>No later than June 14, 2035</b>
18	Compliance Date for Manufacture/Import Covered Product X on Amendment Pursuant to (11)		<b>3-5 years later; Est June 14, 2038-40</b>

**B. The Preference for Industry Test Procedures: test procedures that are commonly or routinely used by industry and consistent with statutory requirements**

At the Public Meeting on March 21, 2019, NEMA expressed its views as to what is meant by “industry test procedures” in connection with the Proposed Rule at Section 8(c):

DOE will adopt industry test standards as DOE test procedures for covered products and equipment, unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that equipment during a representative average use cycle.

<sup>3</sup> Secretary required to make a New Determination to Not Amend or Propose An Amendment no later than 3 years after this Final Rule published, 42 U.S.C. §6295(m)(3)(B).

There may be a better phrase to capture what is intended here, but the phrase does not necessarily refer to test procedures developed by industry or through an industry trade organization (like NEMA, for example). What it does refer to in our view is a test procedure --- which satisfies EPCA statutory requirements --- that is commonly or routinely used by industry for making measurements with respect to EPCA-relevant metrics. At the public meeting, NEMA pointed out that DOE has almost exclusively adopted test procedures for electrical products within NEMA scope of products that were originally developed by a wide variety of standards consensus bodies as well as governmental and private certification bodies including American National Standards developed by ANSI Accredited Standards Committees C78 and C82, the Illuminating Engineering Society of North America (IES), the International Commission on Illumination, the International Electro-technical Commission (IEC), the Institute of Electrical and Electronic Engineers (IEEE), the Environmental Protection Agency (Energy Star), the Canadian Standards Association (CSA), and NEMA (only in the case of electric motors as to only one of several tests; the other tests being CSA and IEEE). These test procedures were commonly or routinely used by the EPCA-regulated companies who are NEMA Members.

NEMA submits that there are valuable public policy objectives that can be achieved by adopting test procedures commonly or routinely used by industry as long as they meet EPCA statutory requirements. Test procedures that are already accepted by the regulated party facilitate legal compliance, and it also facilitates quicker compliance. These test procedures also likely meet EPCA requirement that a test procedure not be “unduly burdensome to conduct” as they are likely already in use.

The only other statutory requirement on the use of these test procedures is that they have to be “reasonably designed to produce test results which measure energy efficiency or energy use or water use or estimated annual operating costs of a covered product during a representative average use cycle or period of use.” 42 U.S.C. §6293(3). DOE proposed rule (quoted above) acknowledges that it must meet EPCA statutory requirements.

To the extent that DOE is adopting test procedures not prescribed by Congress that are based on voluntary consensus standards, the DOE should follow the requirements of OMB Circular A-119. See 81 FR 4673 (January 27, 2016) adopting: [https://www.nist.gov/sites/default/files/revise/circular\\_a-119\\_as\\_of\\_01-22-2016.pdf](https://www.nist.gov/sites/default/files/revise/circular_a-119_as_of_01-22-2016.pdf)

**C. The Walk-Down Approach To Determinations of Economic Justification Across Trial Standards Levels “Consistent with Both Economic Theory and Actual Purchasing Behavior of Rational Consumers”**

At the DOE public meeting on March 21, 2019, NEMA indicated that it could not effectively comment on this proposal until it understood how it would work in practice.

Section 2(i)(G) of the Proposed Rule proposes:

(G) The Department will determine whether a candidate/trial standard level would be economically justified when compared to the set of other feasible trial standard levels. In making this determination, the Department will consider whether an economically

rational consumer would choose a product meeting the candidate/trial standard level over products meeting the other feasible trial standard levels after considering all relevant factors, including but not limited to, energy savings, efficacy, product features, and life-cycle costs.

NEMA understands the “walk down approach to determinations of economic justification.” This approach has been embedded in the Process Rule since 1996. At the public meeting, NEMA explained that it would be interested in learning more from DOE about this proposal to consider the perspective of “an economically rational consumer” and how it would work. At the second public meeting on April 11, 2019 there was little further explanation about how DOE would determine “the actual purchasing behavior of rational consumers” and who determines what characteristics represent a “rational consumer”.<sup>4</sup>

NEMA is not opposed to considering the behavior of consumers in the DOE determination of economic justification,<sup>5</sup> but we need to know more about how this would work in regulatory practice. For example, in a 2015 Final Rule involving incandescent reflector lamps DOE had only one trial standard level under consideration over and above the current baseline rule. DOE correctly recognized that if the Secretary adopted that trial standard level, manufacturers would likely not invest in meeting the standard or they might elect to meet the standard by producing lamps with shorter lifetimes thereby undermining consumer benefits. 80 FR 4042, 4141 (February 19, 2015). There was evidence that this behavior had actually occurred after a prior rulemaking of the same product. Thus, while not an example of how this might work with respect to consumer behavior, it is an example of where DOE considered “actual” producer behavior, and these facts were both relevant and appropriate for the Secretary to consider.

We can think of one example where actual consumer behavior might be important to consider in the case of capital goods that are covered equipment. The consumers of this equipment are commercial concerns (industry, utilities, or government) and are often sophisticated purchasers. NEMA can envision, for example, that an increase in the efficiency above current standards for electric motors and distribution transformers will be very costly leading to price increases for the covered equipment. These electric motors and distribution transformers have long life and some presently in the installed base may have been

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<sup>4</sup> At the first public meeting, NEMA observed that economic texts refer to a variety of rational consumer choice models: Hicksian indifference curve modeling and marginal utility analysis, Samuelson’s revealed preference approach, and [Herbert Simon’s “satisficing” theory of behavior](#) (that does not involve “maximizing” anything) as different approaches to economic modeling of consumer behavior, and even [Richard Thaler’s “mental accounting”](#) or the concepts behind [Daniel Kahneman’s \*Thinking Fast and Slow\*](#) might be worth tossing into the mix of potential economic theories of consumer behavior for consideration. Is the rational consumer presumed to always act selfishly? Or can altruistic consumers be considered “rational”? Furthermore an “economically rational consumer” is not necessarily endowed with perfect information if that is one of the assumptions of the particular economic theory that underlies this approach. And how does imperfect information factor into the “actual purchasing behavior” of an economically rational consumer? Will DOE incorporate costly consumer surveys into its analysis?

<sup>5</sup> The statute requires the Secretary to consider “the economic impact of the standard on the consumers of the products subject to such standard.” 42 U.S.C. §6295(o)(B)(i)(I).

manufactured before the current standards levels were effective. A growing number of the motor and transformer consumers whose capital budgets are constrained in some way may elect to rewire or otherwise refurbish the motor or transformer to avoid the higher capital cost and the energy savings from by a motor or transformer meeting the current DEO standard is lost. Following prior rulemakings for these products, NEMA and the DOE have found evidence that rates of re-use of salvaged electric motors and rebuilding and rewinding of distribution transformers have risen in response to regulation. Further increases in prices, due to revised and elevated energy efficiency requirements, will drive more commercial consumers to re-use, refurbishment and rebuilding, all of which reduce energy-savings potential and undercut sales of new products. These reductions in sales will correspondingly increase burden on manufacturers by reducing return on investment in new products.

NEMA provides this illustration to suggest that DOE consider approaching this issue on a case-by-case basis in the course of rulemakings where there is an opportunity for notice and comment in relation to a specific set of facts and to let the principle evolve before incorporating this idea in the Process Rule in order to build confidence in the proposal if it has merit. Our concern is that different perspectives about the “rational consumer” are capable of being variably applied.