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

Steven Croley, General Counsel
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U.S. Department of Energy
1000 Independence Avenue SW.,
Washington, DC 20585

NEMA Comments on DOE Reducing Regulatory Burden RFI

79 Fed.Reg. 28518 (July 3, 2014)

Dear Mr. Croley,

The National Electrical Manufacturers Association (NEMA) thanks you for the opportunity to provide comments on the Department of Energy's efforts to make its regulatory program more effective and less burdensome in achieving its regulatory objectives.

As you may know, NEMA is the trade association of choice for the electrical manufacturing industry. Founded in 1926 and headquartered near Washington, D.C., its approximately 450 member companies manufacture products used in the generation, transmission and distribution, control and end-use of electricity. These comments are submitted on behalf of NEMA member companies who manufacture products which are regulated or might become regulated by DOE Rules.

Please find our detailed comments below. If you have any questions on these comments, please contact Alex Boesenberg of NEMA at 703-841-3268 or alex.boesenberg@nema.org.

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NEMA Comments on Reducing Regulatory Burden

General NEMA comments: (response to specific DOE RFI items follows this section).

NEMA's engagement in Department of Energy rulemakings is largely confined to energy conservation standards for consumer, industrial and commercial products promulgated under the authority of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. §6291 *et seq.*, as amended, and our comments will be confined to that context.

EPCA is heavily prescriptive in terms of the demands it imposes on energy conservation rulemakings, particularly since the 1987 NAECA amendments¹ that inserted provisions amending section 325 of EPCA requiring the Secretary of Energy to determine whether standards established by Congress for various appliances such as refrigerators, air conditioners, water heaters, furnaces, and dishwashers, clothes dryers and washers, kitchen ranges and ovens should be amended, and legislating the procedures for amending those standards. This legislative scheme was essentially followed in EPCA 1992,² EPCA 2005,³ and EISA 2007⁴, for other consumer, industrial and commercial products added to the Act's coverage, such as numerous lighting products, motors, battery chargers, external power supplies, dehumidifiers, ceiling fans, commercial ice makers, commercial clothes washers, and distribution transformers, where DOE is likewise required to determine whether the legislatively prescribed standards should be amended. Congressional interest in ensuring that the DOE continuously review existing federal energy conservation standards followed on the heels of court cases challenging the DOE's implementation of EPCA, such as *NRDC v. Herrington*, 768 F.2d 1355 (D.C. Cir. 1985) and *State of New York v. Bodman* (05-CIV-7807, SDNY). In EISA 2007, Congress added provisions amending sections 323 and 325 of EPCA requiring the DOE to review test procedures on all covered products every seven years and determine whether they should be amended, and to review existing energy conservation standards every six years and determine whether they should be amended or not.⁵ While this discussion of the legislative framework is arguably beyond the scope and intent of this Request for Information, NEMA believes it is a necessary part of the discussion of regulatory burden that cannot and should not be ignored.

As NEMA recently commented to DOE in connection with the pending rulemaking for incandescent reflector lamps and general service fluorescent lamps, NEMA member manufacturers have become increasingly concerned about the regulatory burden of the EPCA rulemakings, their adaptation to final rules, compliance and certification.⁶ We reiterate here our comment there that the structure of the statute is partly responsible for this burden, and it is therefore something that may warrant congressional review in the future. NEMA has made the point in several DOE rulemakings in the past several years that the amount of time between successive energy conservation rulemakings for the same product is too short for DOE to even take note of the effect of its prior rule as a key piece of information to guide a subsequent rule.

¹ P.L. 100-12, National Appliance Energy Conservation Act of 1987.

² P.L. 102-486, Energy Policy Act of 1992.

³ P.L. 109-190, Energy Policy Act of 2005.

⁴ P.L. 110-140, Energy Independence and Security Act of 2007.

⁵ P.L. 110-140. §§302 and 305.

⁶ See NEMA Comments at 2 (June 30, 2014). Energy Conservation Program: Notice of Proposed Rulemaking for General Service Fluorescent Lamps and Incandescent Reflector Lamps, Docket Number: EERE-2011-BT-STD-0006.

The legislative framework has been successful in driving energy conservation and this is important,⁷ but it is clear that the legislative framework is not an unbounded command to maximize energy efficiency from products and components wherever it may be found. The statute is clear that there are limits on the Department’s ability to legislate product features that have consumer utility out of existence or impose burdens that exceeds benefits. There are some covered products that may be reaching the end of the iterative process of challenging the manufacturers of these products to make only more efficient versions of their products or at least within the timeframe of the regulatory review cycle contemplated EPCA, as amended. Some of our members are asking under what circumstances will the Secretary “publish . . . a notice of determination . . . that standards for the product do *not* need to be amended, based on the criteria established under [section 325(n)(2)]?” 42 U.S.C. §325(m)(1)(A)(emphasis added). Two types of burden underpin this question. The first is the regulatory burden of participating in an endless cycle of rulemakings. The quoted statutory provision does not really address this type of burden. In the lighting industry for example, where the list of covered products is now long, this burden is not trivial. Component after component of a lighting system is now under EPCA review, and the cumulative burden on manufacturers is growing. In its Process Rule, enacted in 1996, the DOE indicated it will consider cumulative impacts of other DOE regulations.⁸

One point that this provision in the Process Rule provision does not tee up is whether the DOE will ever consider not adopting an amended rule, because it no longer makes sense to have a new rule. This point is, however, contemplated by the quoted statutory provision (42 U.S.C. §325(m)(1)(A)): any incremental improvement in energy conservation imposes significant burdens on manufacturers of covered products and their customers such that the regulatory process is approaching the end point of regulation. This point has become relevant for such covered products as electric motors, distribution transformers, and some lighting system components. In this vein, NEMA developed, as part of a coalition known as the Motor Coalition representing diverse stakeholders, is presented as finding ways to improve energy conservation without adding to the burdens respecting incumbent covered motors. (Docket No. EERE–2010–BT–STD–0027). NEMA’s current perspective on motor rulemaking is that a new paradigm to seek energy conservation in connection with the use of electric motors must be pursued rather than the component regulation paradigm contemplated by EPCA. Ratcheting up standards on electric motors in the future will not be economically viable for anyone. It may be time to place a higher priority on energy savings derived from product systems or even building systems.

⁷ According to the DOE’s website: “The implementation of standards has driven remarkable gains in energy efficiency of household appliances and other products, translating into substantial savings for American consumers. The cumulative energy savings of standards phased in through 2012 will be about 70 quadrillion British thermal units (quads) of energy through 2020, and will amount to 120 quads through 2030. (The US consumes a total of about 100 quads of energy per year.) The cumulative utility bill savings to consumers of these standards are estimated to be over \$900 billion by 2020, growing to over \$1.6 trillion through 2030.”

⁸ 10 CFR Part 430, Subpart C, Appendix A. **10. Principles for the Analysis of Impacts on Manufacturers**

(g) Cumulative impacts of other Federal regulatory actions. (1) The Department will recognize and seek to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same products. DOE will analyze and consider the impact on manufacturers of multiple product-specific regulatory actions. These factors will be considered in setting rulemaking priorities, assessing manufacturer impacts of a particular standard, and establishing the effective date for a new or revised standard. In particular, DOE will seek to propose effective for new or revised standards that are appropriately coordinated with other regulatory actions to mitigate any cumulative burden. **

We highlighted this very point with some data in the pending rulemaking on general service fluorescent lamps and incandescent reflector lamps. It is worth reprinting that information here.

Graph I on the next page is a scatter graph that displays data derived from information in Appendix I. Each point on Graph I represents two important variables in the Secretary's computational analysis in each appliance efficiency rulemaking since 2008: the percentage impact on manufacturers' net present value, as determined by the Secretary in the Final Rule, and the estimated energy savings, as projected by the Secretary in the Final Rule.⁹

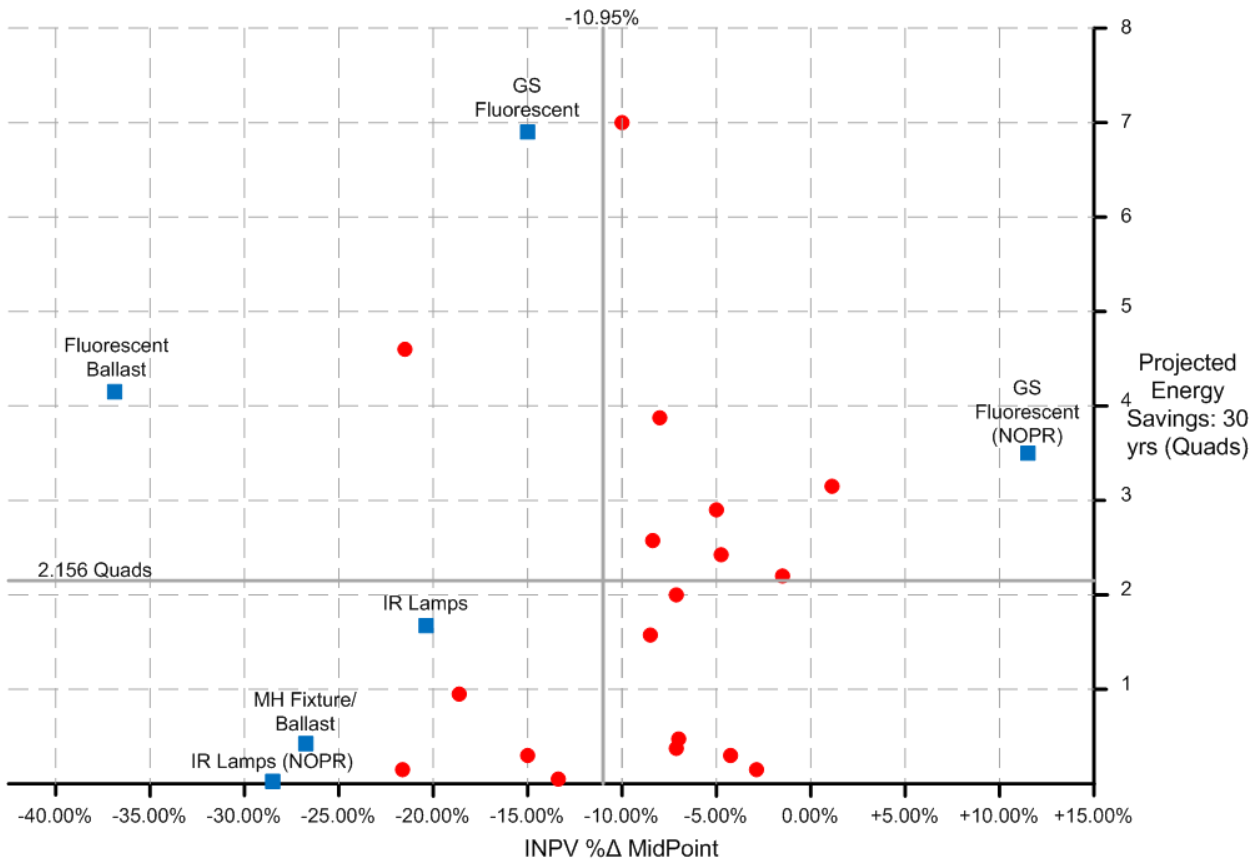
DOE quantitatively models the impact of a regulation on manufacturers utilizing an industry cash flow model adapted for equipment called the GRIM model (Government Regulatory Impact Model).¹⁰ The GRIM inputs include information on industry cost structure, shipments, and pricing strategies. The GRIM's key output is the industry net present value (INPV). DOE evaluates manufacturer impact qualitatively through manufacturer interviews and investigates equipment characteristics, manufacturer characteristics, market and equipment trends, as well as the impact of standards on subgroups of manufacturers such as small manufacturers. DOE also examines compliance costs. Finally, DOE looks at other regulatory impacts, including regulations imposed outside the United States that may currently impact product manufacturers to assess the cumulative regulatory impact.

The vertical line in the middle of this graph represents the average percentage impact on manufacturers' net present value in all the rulemakings since 2008 at -10.95%. Thus, manufacturers in industries represented by a dot to the left of the vertical line are impacted more negatively than the average. What this chart shows is that with one exception --- the pending NOPR for general service fluorescent lamps --- all lighting rulemakings are to the left of the vertical line and the lighting industries have suffered the most severe impact of all those to the left of the vertical line. The pending incandescent reflector lamp proposed rule would be the second most severe in manufacturer impact.

⁹ **A Note on Methodology:** NEMA ascertained manufacturer net present value data from DOE rulemakings since 2008 as published in the Federal Register. In most, but not all of these regulatory analyses, the DOE evaluates alternative scenarios that produce a range of estimated impacts on manufacturers and DOE publishes a high and low impact, both in dollar terms and percentage terms. In connection with its comparative evaluation of these impacts, NEMA selected the mid-point between the high and low percentages. First, NEMA selected the percentage impact on a specific industry rather than the dollar impact because some industries are larger than others and a dollar value impact for one industry is not comparable to the dollar value impact of another industry when the two industries can be very different in their size. The percentage (or relative) impact figures can be compared. Second, NEMA identified the mid-point between the high and low percentages when DOE evaluated manufacturer impact under alternative scenarios. The mid-point was selected to avoid making critical judgments and arguments about which scenario was more realistic. For purposes of this comparative evaluation, those judgments did not need to be debated. Third, NEMA felt that evaluating both the high and the low scenarios unnecessarily complicated the analysis. The mid-point suffices for now to illustrate the issue. The data underlying this analysis for each rulemaking is found in Appendix I to these comments.

¹⁰ As described by DOE, the basic structure of the GRIM is an annual cash-flow analysis that uses manufacturer prices, manufacturing costs, shipments, and industry financial information as inputs, and accepts a set of regulatory conditions such as changes in costs, investments, and associated margins. The GRIM spreadsheet uses a number of inputs to arrive at a series of annual cash flows, beginning with the base year of the analysis, and continuing out 30 years from the compliance date of the rule. The model calculates the INPV by summing the stream of annual discounted cash flows during this period and adding a discounted terminal value. The GRIM projects cash flows using standard accounting principles and compares changes in INPV between the base case and the standard case scenario induced by new and amended energy conservation standards. The difference in INPV between the base case and the standard case(s) represents the estimated financial impact of the new and amended energy conservation standard on manufacturers.

GRAPH I



The horizontal line represents the average projected energy savings for the DOE’s appliance efficiency rulemakings completed since 2008 --- 2.156 quads. The dots above the horizontal line show that some of the lighting rulemakings have contributed most significantly to the cumulative energy savings of these rulemakings, but there are some below the horizontal line that have only contributed marginally. Notably, the projected energy savings from the pending incandescent reflector lamp proposed rule ranks at the bottom of the list for all of these rulemakings. As the DOE notes in its NOPR, “energy savings” is addressed twice in Section 325 of EPCA. NOPR at 48, 79 Fed.Reg. at 24081. A final rule must produce “significant energy savings,” 42 USC 6295 (o)(3)(B). “Although the term ‘significant’ is not defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council v. Herrington*, 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended ‘significant’ energy savings in this context to be savings that were not ‘genuinely trivial.’” NOPR at 45, 79 Fed.Reg. at 24080. NEMA will assume, without conceding, that the relatively small projected energy savings of 0.013 quads over 30 years is not trivial under section 325(o)(3)(B) in the context that the D.C. Circuit identified in *Herrington*, but NEMA submits that that conclusion does not mean that the relatively paltry amount of energy savings identified in the pending incandescent reflector lamp NOPR is without a very different substantive context and legal meaning under section 325(o)(2)(B)(i)(III). NEMA submits that the measurement of significant energy savings in subsection (o)(3)(B) is akin to a

jurisdictional threshold for regulation; the measurement of projected energy savings under subsection (o)(2)(B)(i)(III) is different and takes its meaning from the context of the other several factors under subsection (o)(2)(B)(i) against which it is balanced such as the context in which it is presented in Graph 1. This “context” is very different than the “context” in subsection (o)(3)(B) identified by the court of appeals in *Herrington*.

Obviously, the upper right quadrant of Graph 1 represents the best outcome for EPCA policy in this analysis: better than average energy savings and relatively modest or no adverse impact on manufacturers. The lower left quadrant of Graph 1 represents the least desirable outcome for EPCA policy in this analysis. Half of the lighting rulemakings since 2008 are in this lower left quadrant, including the pending incandescent reflector lamp proposed rule. The proposed rule for incandescent reflector lamps so deviates from norms that it cannot and should not be economically justified on this basis alone.

To NEMA’s knowledge, this type of assessment of EPCA rulemakings has never been presented before, but it is our assessment that the Administration is committed to manufacturing in the United States¹¹ and it is therefore important to elevate the discussion of the impact on manufacturers under EPCA so it is specifically addressed.

In our review of the DOE’s appliance efficiency rulemakings since 2008, the final rules document that the impact of the rule on manufacturers’ net present value is almost always negative. NEMA understands that and that may very well be the likely nature of the statute, but what NEMA does not accept, and the Secretary should not accept, is that all negative impacts on manufacturers’ net present value are acceptable.¹² Congress never intended U.S. manufacturers of covered product and their employees to be sacrificed for just the smallest slice of energy savings. That is not how Congress intended the policy calculus of subsection (o)(2)(B)(i) to play out.

Cumulative Regulatory Burden

While the substantial negative impact on manufacturers’ net present value in the context of the small benefit to the nation in terms of projected energy savings is enough to justify the conclusion that the energy conservation standards for incandescent reflector lamps should not be amended, the Secretary should also take account of the cumulative regulatory burden of the rule in light of other, recent appliance efficiency rulemakings directed at the lighting industry as required by Executive Order 12866 (September 30, 1993), the principles of which were recently reaffirmed in Executive Order 13563 (January 18, 2011). Among those principles is the requirement that each agency “tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.” The Secretary should recognize the fact that it is largely the same lighting manufacturers who are affected by each of these separate lighting component rulemakings because they are engaged

¹¹ For example, a number of important and recent federal manufacturing initiatives can be found at the federal website: http://www.manufacturing.gov/pubs_resources.html. See the Commerce Department’s list of manufacturing initiatives at <http://www.commerce.gov/news/fact-sheets/2012/05/09/fact-sheet-build-it-here-sell-it-everywhere-why-manufacturing-matters> (as of 2012).

¹² NEMA is familiar with EPCA rulemakings where the Secretary has not selected a higher TSL because of impacts on manufacturers. The IRL rulemaking uniquely presents a decision between a rule and no new rule where the impact on manufacturers’ INPV is substantial and the energy savings is small.

in manufacturing and selling the lighting components affected by the separate rules. Below is a list of energy conservation rules either congressionally enacted or DOE promulgated that the lighting industry has had to respond and adapt to since 2005.

LIGHTING RULES SINCE 2005

Covered Product	Source	Compliance Date	
Medium Screw Base CFL	EPAct 2005 adopting 2001 Energy Star specification	January 1, 2006	
Illuminated exit signs	EPAct 2005 adopting Energy Star specification	January 1, 2006	
Fluorescent lamp ballast	EPAct 2005 adopting higher energy conservation standards over those effective in 1990.	July 1, 2009/July 1, 2010	
General service incandescent lamps	EISA 2007 adopting l/w efficacy standards by setting a maximum rated wattage for specific lumen bins. Applies to modified spectrum lamps as well and adopts slightly different stds for them.	1490-2600 lum	1/1/2012
		1050-1489 lum	1/1/2013
		750-1049 lum	1/1/2014
		310-749 lum	1/1/2014
Candelabra base incandescent lamps	EISA 2007 by adopting a wattage cap (60W)	1/1/2014	
Intermediate base incandescent lamps	EISA 2007 by adopting a wattage cap (40W)	1/1/2014	
Metal halide lamp fixtures	EISA 2007 by adopting ballast efficiency standards for MH ballasts used in MH fixtures.	1/1/2009	
General service fluorescent lamps	DOE Final Rule July 2009 by adopting significantly higher l/w standards over the EPAct 92 stds	July 2012	

Incandescent reflector lamps	DOE Final Rule July 2009 by adopting significantly higher l/w standards over the EPL 92 stds.	July 2012
General Service Lamps	FTC Final Rule July 2010 revising lighting labeling requirements	July 2012
Fluorescent lamp ballast	DOE Final Rule November 2011 adopting significantly higher stds over EPL 2005 standards	November 2014
Metal halide lamp fixture	DOE Final Rule February 2014 adopting higher standards for MH fixture ballasts over EISA 2007	February 2017

The following table summarizes the cumulative energy savings from just the completed DOE rulemakings and identifies the cumulative negative impact on manufacturer net present value in each case, and contrasts those with the energy savings and impact on manufacturer net present value in other covered product sectors:

Industry Sector	Total quads (projected energy savings: 30 years)	Change in INPV % (midpoint)
Lighting	13.155	-36.7% (fluorescent lamp ballast)
		-26.7% (MH fixture ballast)
		-20.4% (2009 IRL)
		-15% (2009 Fluorescent lamp)
Heating/Cooling/Refrigeration	12.341	-21.6%
		-15.10%
		-8.4%
		-8.1%
		-5.96%
Electric Motors	9.2	-10%

		-2.7%
		-1.5%
Distribution Transformers	5.28	-8.4%
		-4.7%
		-4.2%
		-13.3%
Food Equipment	3.149	1.16%
Home Appliances	3.12	-14.75%
		-13.3%
		-7.2%
		-7.0%
		-2.92%
Electronics	0.94	-18.7%
Vending machines	0.159	-21.55%

It can be seen that the lighting industry rules have contributed most significantly to projected energy savings, but at the same time the industry’s manufacturers have suffered the greatest impact as a result of DOE rules. When a proposed rule, such as the proposed incandescent reflector lamp rule, is presented that indicates it will have the next highest negative impact on manufacturer net present value of all DOE rulemakings, at negative 28.35% (on top of the previous negative impacts the lighting industry has experienced as a result of DOE rules), Executive Order 12866 directs the agency to consider “alternatives to direct regulation” so that its regulations “impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.” Since there was only one trial standard level that could be considered in the case of incandescent reflector lamps, the alternative in that case is that DOE determine that the energy conservation standards for incandescent reflector lamps do not need to be amended and let the marketplace transition to more energy efficient lighting technologies combined with other regulatory initiatives such as the EPA Energy Star program and state energy efficiency initiatives subsidizing other lighting technologies.

As a stakeholder in the public discourse on EPCA, NEMA and its members have had a role in creating the burden that we discuss in these comments, and in hindsight we pose a question to ourselves: how could we have done this better? Our second observation is that the Department is suffering the impact of this burden in a manner not unlike our members in many respects: scarcer resources in an environment where an increasing number of resource demands are competing vigorously for attention and

prioritization. NEMA's third observation is to applaud the DOE for some of its regulatory initiatives in recent years by taking a look at and working with some of the alternatives methods of undertaking rulemakings under the Administrative Procedure Act, such as negotiated rulemakings and using the Direct and Final Rule approach to rulemaking authorized by EPCA. These approaches to rulemakings have, we believe, reduced the cost of participation in the regulatory process by our members and we hope they have reduced the cost of participation by the Department as well. While the first two observations are undoubtedly a conversation with the legislature and the energy efficiency stakeholder community, the Department may have some thoughts to contribute to that dialogue. And so NEMA is not misunderstood, NEMA and its members are not retrenching from our interest and commitment to promoting and advocating that it is in the national interest to pursue energy conservation as part of an overall national energy policy, NEMA does believe we need to take a look at the existing statutory scheme and whether it strikes the right balance.

The cost of participating in the regulatory process was acutely felt during the period when the Department was compelled to "catch up" with the regulatory timetable established by Congress in EPCA as a result of the District Court's order in *State of New York v. Bodman* (05-CIV-7807, SDNY). This court order, however, was not the only resolution of the regulatory timetable issue; as noted above, Congress, with the input and endorsement of all stakeholders including NEMA, after prescribing energy conservation standards in legislation amending EPCA over the past decade, also included, as it had in the past, mandatory review and improvements to standards over the course of the remainder of this decade. As a consequence, a cycle emerges that combines or aggregates the burden of participating in the regulatory process with the burden of complying with the regulations: at the end of the development of a new energy conservation standard for a covered products, the parties regulated by the standard --- NEMA members and manufacturers in other industries who make covered products --- then incur the cost of adding new capital equipment, sourcing new and more costly materials, and redesigning products in some cases to meet the new requirements. And when that compliance effort is heading toward completion as the effective date of the new rule approaches, it seems we are often starting up another mandated round of regulation to change the standard again, with no time to catch our breath and no time to assess whether what we just accomplished in the name of energy conservation was significant or not. This is the situation NEMA believes we currently find ourselves in with respect to general service fluorescent lamps and incandescent reflector lamps.

A "retrospective analysis of existing rules" would presumably focus on both (a) whether the existing rule was effective in achieving the benefits contemplated by the Rule (in this case the expected energy and economic savings and reduction in pollutants) and (b) whether the costs to manufacturers and customers and impact on the workforce contemplated by the Rule are in line with what occurred. An important question for NEMA and its members in this analysis is: is this merely a one-time examination of the issue, or will it become part of a continuous process improvement program? The significance of the legislatively compelled rulemaking schedule that we have described above for this analysis, which focuses on *continuing* "retrospective analyses of existing rules," is that there is insufficient time to make a complete assessment in the course of or even prior to an ongoing program of rulemakings with respect to the same products. DOE's analysis of the benefits and burdens of a proposed rule count heavily on benefits and burdens that extend thirty years into the future, a period of time in which virtually all economists recognize that economic forecasting models become speculative and cannot account for unforeseen events.

At best, there might be some opportunity to address whether the projected burdens for manufacturers and customers that were expected in connection with the discontinuance of products and retooling to either make new products or expand production of the more efficient products was off-base or not. We suspect that this does occur, at least anecdotally, in the course of some second-tier rulemakings for a particular covered product. But this does raise an issue that NEMA not infrequently hears from its members who participate in EPCA rulemakings: they do not always fully understand the modeling or the data that takes place in support of DOE's analysis under EPCA. NEMA can assert that its members who manufacture distribution transformers believed there was a higher level of transparency about the modeling and the assumptions and data in the course of the recent negotiated rulemaking process that resulted in providing more coherent comments about a proposed rule. This allows for a better *ex-post* understanding of the impact of a prior rule. NEMA would like to see this kind of transparency, which provides a more meaningful opportunity for exchange of data and assumptions and views about the modeling, incorporated into the process. The typical format for a public meeting either before or after a NOPR is published has not historically been accommodating to this kind of dialogue. The public meeting seems largely to support an exchange of opinions, but NEMA feels that a better-informed rulemaking would allow for exchange of both opinions and data. It would allow for more valuable written comments to be filed prior to the adoption of a Final Rule.

There is one aspect of the DOE's standard analytical format in EPCA rulemakings, which inexplicably does not get addressed in the course of these rulemakings, but we believe it skews the analysis of regulatory burden. NEMA has commented on this several times. The DOE uses an incorrect, arbitrary 30 year (or longer) payback model for justification analysis: In recent rulemakings, DOE staff have not been able to offer any justification as to why the default 30-year payback period exists beyond "that's what we've always used." In the case of the Small Electric Motors rulemaking, an even longer payback period was used. NEMA believes the DOE's 30 year payback model is mired in legacy thinking and practices which no longer reflect the pace of current innovation and market dynamics. NEMA member customers do not use a 30 year payback period for their investments and expenditures, and many products do not have a 30-year life. The DOE should perform a study to determine a new (shorter) default payback period to be used for rulemaking justifications and manufacturing impact analysis, and should also consider flexible (i.e. even shorter) payback periods by technology and sector.

Another issue of general concern relates to certification, conformance and enforcement. Our members, who expend considerable resources in terms of producing, selling, as well as certifying to DOE their conformant products, know that they are losing sales where persons purchase non-conformant products. Pure and simple, this a regulatory burden, not just on the firm that strives to comply, but for the energy conservation program in general because the lost energy savings are not discounted in DOE's analysis of benefits or added to the calculation of burdens. We appreciate that this is a challenging problem for both the manufacturers of covered products as well as DOE, and we cannot measure it, but it is real for some covered products. NEMA and its members have had ongoing conversations with DOE staff about this issue, and we look forward to solving it.

DOE should also examine the scheduling of its rulemakings, particularly as it relates to the timing between a test procedure rulemaking and an energy conservation standard for the same rulemaking. In comments on the pending HID lamp rulemaking and the electric motor rulemaking, we pointed out that when these two rulemakings closely parallel one another it can be difficult to make comments in the

energy conservation standard rulemaking when the test procedures are not settled.¹³ This poses a burden on both the stakeholders who submit comments as well as the DOE.

Finally, we note our comments in every recent EPCA rulemaking with respect to the social cost of carbon calculation and its import for these rulemakings. We are familiar with the controversy that surrounds this subject. NEMA's position, which has been expressed in several DOE rulemakings,¹⁴ is centrist and we believe well-grounded in the economic literature. NEMA's view is that climate science ought not to be the point of controversy, but the debate should focus on risk economics, which currently provides a wide range of uncertainty about the impact of climate change. This uncertainty cautions that a regulatory agency such as DOE needs to be careful in applying the social cost carbon in EPCA rulemakings, particularly to products that do not emit carbon. As our comments summarize (*id* n.12 at 44):

Given the enormous uncertainty in the IAMs models, these models --- even "averaged" as the Interagency Working Group has done --- are poor tools for agency decision-making, *particularly with respect to products regulated by EPCA that are not themselves a source of emissions*. Reliance on the SCC to justify a standard could be socially counterproductive: An agency could very well end up justifying the imposition of enormous costs upon a non-polluting, energy-saving product that it wants to see penetrate the market in greater numbers that could not otherwise be justified without the uncertain benefits attributed to the SCC. NEMA believes that DOE should base its net benefit determination for justifying a particular energy conservation on the traditional criteria relied upon by DOE --- impacts on manufacturers, consumers, employment, energy savings, and competition. If there are estimated benefits from reduced carbon emissions, they should be noted --- subject to the inherent uncertainty and difficulty in monetizing those benefits --- as benefits over and above the net benefits from DOE's traditional analysis under EPCA.

We also note our reference in those same comments to the recently published comments of William Nordhaus in *The Climate Casino* that appliance efficiency regulations are a very poor policy tool to address carbon emissions. They are the most costly and the least effective.¹⁵

The results of detailed energy models suggest an important troubling conclusion. The favorite policies of most countries today are energy efficiency regulations such as those for automobiles and appliances like refrigerators. However, such regulations will not touch the area where reductions are most economical --- electricity generation from coal.***

This leads to one further point. The costs involved in reducing CO₂ emissions are potentially very large.*** Yet we need to ensure that societies rely on the least expensive approach. Returning to our examples of refrigerators versus electricity generation, we saw a cost difference of a factor of almost

¹³ See Ex Parte Communications in Connection with Docket No's EERE-2010-BT-TP-0044 and EERE-2010-BT-STD-0043, Energy Conservation Program: Energy Conservation Standards and Test Procedures for HID Lamps (August 30, 2013).

¹⁴ Most recently, NEMA Comments at 38-44 (June 30, 2014). Energy Conservation Program: Notice of Proposed Rulemaking for General Service Fluorescent Lamps and Incandescent Reflector Lamps, Docket Number: EERE-2011-BT-STD-0006.

¹⁵ W. Nordhaus, *The Climate Casino* 172-173 (2013)

ten.¹⁶ When we are talking about reducing emissions by billions of tons, the economic stakes are enormous.”

Items on which the DOE seeks comment:

- (1) How can the Department best promote meaningful periodic reviews of its existing rules and how can it best identify those rules that might be modified, streamlined, expanded, or repealed?

NEMA comments: NEMA believes that DOE should solicit in all follow-on energy conservation standard rulemakings (*i.e.*, those where either Congress or DOE has previously promulgated energy conservation standards) specific input relating to the impact (in terms of both benefits and burdens) of the prior standard-setting: were there unexpected consequences? It would probably not be fruitful to ask this question generally, but for DOE to develop specific sub-questions that probe some of the specific aspects of the prior rulemaking that were significant to the Department’s prior decision-making. As we noted in our opening comments above, there may be limited data available to fully address this, but it should be asked.

This question, as phrased, has limited significance for EPCA energy conservation standards rulemakings because EPCA’s anti-backsliding rule and the fact that the statute in several places requires DOE to consider amending the regulations and whether additional products should be added to the regulation. As described above, EPCA also requires DOE to review all energy conservation standards and test procedures periodically. The real question, NEMA believes, is the one phrased in our general comments: under what circumstances will the Secretary “publish . . . a notice of determination . . . that standards for the product do *not* need to be amended, based on the criteria established under [section 325(n)(2)]?” 42 U.S.C. §325(m)(1)(A)(emphasis added).

- (2) What factors should the agency consider in selecting and prioritizing rules and reporting requirements for review?

NEMA comments: For the reasons described in NEMA’s response to the previous question, the statute compels periodic review. The question that NEMA believes is most important, and which we identified in our general comments as well as the response to the previous question above, is whether that review will include any kind of look-back and assessment at the impact of prior rulemakings. Our prior comments also indicate that DOE needs to consider that the endless cycle of rulemakings has reached a logical endpoint and other strategies (including non-regulatory strategies) pursued. NEMA believes it is equally important to give significant consideration to the Section 10, paragraph (g) on cumulative impacts in the Process Rule that we cited in our general comments.

- (3) Are there regulations that are or have become unnecessary, ineffective, or ill advised and, if so, what are they? Are there rules that can simply be repealed without impairing the Department’s regulatory programs and, if so, what are they?

NEMA comments: NEMA appreciates that DOE has worked with the Federal Trade Commission and the Environmental Protection Agency to reconcile and streamline some dual reporting situations with respect to the same subject-matter.

¹⁶ W. Nordhaus, *id* at 170 (comparing cost of reducing CO₂ emissions by purchasing a more refrigerator to cost of reducing CO₂ emissions by changing electricity generation fuel source from coal to natural gas).

- (4) Are there rules or reporting requirements that have become outdated and, if so, how can they be modernized to accomplish their regulatory objectives better?

NEMA comments: Please see our comments in response to the previous question.

- (5) Are there rules that are still necessary, but have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?

NEMA comments: Our comments to the first and second questions should be considered.

- (6) Does the Department currently collect information that it does not need or use effectively to achieve regulatory objectives?

NEMA comments: NEMA's remarks in the general comments relating to transparency and exchange of views with respect to data and assumptions used in modeling for regulatory decision-making purposes in EPCA rulemakings should be considered on this question.

- (7) Are there regulations, reporting requirements, or regulatory processes that are unnecessarily complicated or could be streamlined to achieve regulatory objectives in more efficient ways?

NEMA comments: Yes.

- a) In general, the technical support documents and other rulemaking milestone documents of many recent rulemakings are large and cumbersome. This highly technical information is reported to the stakeholders in the form of spreadsheets and documents hundreds of pages in length, often with a very limited comment period window. For the reasons explained in our general comments, we think the development of a more transparent means of having a dialogue over this kind of information at an early, timely point in the process might benefit DOE, the stakeholders, and the overall objectives of the statute. As mentioned in our general comments, the public meeting format currently employed is not conducive to this kind of exchange. This would occur prior to the issuance of a NOPR and would allow for better written comments to DOE prior to the development of the Final Rule.
- b) Reporting requirements. NEMA and its members appreciate that the CCE reporting program is in its incipiency, but it has drawn numerous questions from our members about what reporting is required. We expect that this will be worked out in a timely manner in the coming months, and the development of FAQs and further reporting guidance on the DOE website may be the most efficient way of dealing with this. We also refer to our response to Question No. 3 on reporting.

- (8) 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 comments:

- a) While reporting via electronic mail has become increasingly available, the DOE should also consider online submission methods whereby user accounts may be established and databases may be directly

populated electronically, forgoing DOE-led account creation, reducing the need for emails and file attachments and reducing overall message traffic as well as processing time.

- b) The accessibility of online reporting databases also affords multiple entities the ability to leverage the same database. Therefore, reporting requirements and guidelines for DOE, Federal Trade Commission, and California Energy Commission databases should be harmonized so as to reduce overall reporting burdens and establish one common database. The DOE is the appropriate entity to lead and direct this harmonization.
- (9) How can the Department best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations? Are there existing sources of data the Department 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 comments: NEMA's general comments and responses to the specific questions above are responsive to this question, including the recommendation that EPCA energy conservation standard rulemaking process should include a transparent pre-NOPR dialogue over the data, assumptions, and modeling used in developing energy conservation standards.

- (10) Are there regulations that are working well that can be expanded or used as a model to fill gaps in other DOE regulatory programs?

NEMA comments: NEMA believes a better question is whether there is a different regulatory paradigm that public policy should pursue to advance energy conservation in the United States in place of the paradigm that currently exists under EPCA, and we have suggested above that the time has come to have a conversation about what that different paradigm ought to look like.