



**KYLE PITSOR**

Vice President, Government Relations

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VIA EMAIL TO: [Regulatory.Review@hq.doe.gov](mailto:Regulatory.Review@hq.doe.gov)

Daniel Cohen  
Assistant General Counsel for Legislation, Regulation, and Energy Efficiency  
U.S. Department of Energy  
Office of the General Counsel  
1000 Independence Avenue SW  
Washington, D.C. 20585

**NEMA Comments on DOE RFI for Reducing Regulatory Burden  
77 Fed.Reg. 28518 (May 15, 2012) as amended by 77 Fed.Reg. 31548 (May 29, 2012).**

Dear Mr. Cohen,

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](mailto:alex.boesenberg@nema.org).

Sincerely,

A handwritten signature in black ink that reads "Kyle Pitsor". The signature is written in a cursive, flowing style.

Kyle Pitsor  
Vice President, Government Relations

**National Electrical  
Manufacturers Association**

1300 North 17th Street, Suite 1752  
Rosslyn, VA 22209  
(703) 841-3274  
FAX (703) 841-3374  
[kyl\\_pitsor@nema.org](mailto:kyl_pitsor@nema.org)

## 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 amendments<sup>1</sup> 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,<sup>2</sup> EPCA 2005,<sup>3</sup> and EISA 2007<sup>4</sup>, for other consumer, industrial and commercial products added to the Act's coverage, such as numerous lighting products, electric 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.<sup>5</sup> 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.

While the legislative framework arguably satisfies the national interest in maximizing energy savings wherever it may be found, 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 in 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

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<sup>1</sup> P.L. 100-12, National Appliance Energy Conservation Act of 1987.

<sup>2</sup> P.L. 102-486, Energy Policy Act of 1992.

<sup>3</sup> P.L. 109-190, Energy Policy Act of 2005.

<sup>4</sup> P.L. 110-140, Energy Independence and Security Act of 2007.

<sup>5</sup> P.L. 110-140. §§302 and 305.

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:<sup>6</sup>

#### 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 dates for new or revised standards that are appropriately coordinated with other regulatory actions to mitigate any cumulative burden. \*\*\*\*

The second type of burden is one 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 we may be approaching the year where it is time to declare victory in some cases and take a breather from regulation. This may be relevant for such covered products as electric motors, distribution transformers, and some lighting system components. In this vein, we note our recent proposal, 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 also refers to its conversations with DOE staff relating to studying energy efficient lighting in terms of a system rather than further regulating individual components.

NEMA’s first observation is to acknowledge that as a stakeholder in the public discourse on EPCA, NEMA and its members have had a role in the consensus development of EPCA over the past two decades. We have had a role in creating the burden that we will shortly discuss, 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

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<sup>6</sup> 10 CFR Part 430, Subpart C, Appendix A.

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 product, 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. (Docket Number EERE-2011-BT-STD-0006; NEMA Comments dated November 28, 2011).

This RFI focuses on “retrospective analysis of existing rules.” Such an analysis 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 rely heavily on benefits and burdens that extend thirty years into the future.

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 and 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.

#### **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 of 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 of the impact of prior rulemakings. 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 knows this is already on the DOE's radar screen, but in the case of consumer products regulated under EPCA there is a dual reporting to both the Federal Trade Commission and the Department of Energy, and this needs to be consolidated so that there is only single reporting for both agencies. Secondly, DOE has established annual reporting for conformity, certification and enforcement purposes. While NEMA understands there may be value in institutionalizing CCE among the regulated community by requiring regular reporting, NEMA recommends that within three years DOE look at the regulatory burden of this compliance program and look for ways to streamline it, including whether continued annual reporting for products that don't change and are not removed from the market needs to continue.

- (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.

- a) The DOE needs to expand its review process for Regulatory Burden, not only to better examine the impacts of a single rule but to better understand and account for the effects cumulative burden in companies who make products which are regulated by more than one rule. The process to date only examines the impact of a single rule, seemingly ignoring the fact that some manufacturers make multiple products. An example of this is in the lighting industry where not only Lamps are regulated but also their Luminaires (fixtures) and electronic Ballasts. A company which makes all three (there are many who do) must cope with multiple regulations at once and no one DOE manager seems willing to be the one to relax. This is of particular concern during the implementation phase of new rules.
- b) Another concern is that the evaluation tools the DOE uses to figure financial impact, cost and industry net present value (INPV), to name a few, are very "black box" in nature and industry has little input into the process save to answer surveys about anticipated impacts.
- c) DOE impact analysis for rules which in effect mandate new technologies or advanced materials do not appear to factor in the increased cost of those materials beyond their purchase price. This may miss the point that some advanced materials take more energy to produce and deliver, hence their higher cost. This lost energy is directly counter to the energy saving goals of energy rulemakings, and thus should be part of the impact analysis. The DOE should not mandate special technology or materials which must be produced at a higher energy cost than existing materials without fully accounting for the balance of energy saved and lost. This is a systems approach to energy conservation standards that we believe ought to be institutionalized.
- d) In the October 28, 2011 Fluorescent Ballast Final Rule, the DOE estimated that the rule would cost Industry upwards of 36.7 percent of Industry Net Present Value (INPV). The DOE goes on to explain that this should not result in any lasting impacts. How the DOE arrives at this judgment is not clearly explained, but it begs the question as to how an expenditure of over one-third of a company's worth can be viewed as anything but a major impact. To say this is acceptable because the investment is paid back bit by bit over 30 years ignores the impact of immediate costs and sacrifices necessary to conform to the rule by its implementation date.
- e) The DOE should include quality and satisfaction factors, not just energy savings estimates, in regulatory impact cost analysis modeling where appropriate. In the case of lighting rulemakings, the DOE should also evaluate how the regulation will impact occupant satisfaction, visual quality, supply chain issues (trade agreements / trade restrictions, availability of limited natural resources), environmental impacts, and safety/security. This is especially important when reviewing an existing regulation when considering a follow-on rulemaking. These considerations are burdens to industry which must be adequately accounted for.



- (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: Building and energy codes are the key to maximizing energy savings at the high level because they address the interaction and performance of systems of appliances to encourage and promote greater potential energy savings than individual components can deliver. Appliance efficiency gains are approaching diminishing returns for already-regulated products.