

**COMMENTS OF THE CONSUMER FEDERATION OF AMERICA
and
THE NATIONAL CONSUMER LAW CENTER**

**DEPARTMENT OF ENERGY DOCKET EERE-2019-BT-NOA-0011
RIN: 1904-AE24**

**RE: Notice of Proposed Rulemaking on the Test Procedure Interim Waiver Process
Comments Submitted August 6, 2019**

I. INTRODUCTION

The Consumer Federation of America (“CFA”) and the National Consumer Law Center (“NCLC”) (collectively, “Consumer Groups”) file these comments in response to the Department of Energy’s May 1, 2019 Notice of Proposed Rulemaking (NOPR) to modify the test procedure interim waiver process (84 Fed Reg. 18414). We are signatories to more extensive comments being submitted by the Appliance Standards Awareness Project and others, but we wish to take this opportunity to underscore our concerns about the potential impact of this proposal on consumers.

II. BACKGROUND OF THE CONSUMER GROUPS

CFA is an association of more than 250 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. For more than 20 years, CFA has been a vigorous and continuous participant in the process of setting standards to improve the efficiency of energy-using consumer durables and lower the cost of energy borne by consumers. We recognize that test procedures are a critical component in arriving at good standards that benefit consumers.

NCLC is a 501(c)(3) non-profit organization founded 50 years ago, with the mission of advocating for justice and economic security for low-income consumers. Throughout its history, NCLC has worked to ensure that these households can afford the home energy they need for heating, cooling, lighting, refrigeration and other essential needs. Support for energy efficiency programs and policies has been a key part of NCLC’s strategy, since cost-effective efficiency reduces both energy consumption and households bills. NCLC has been actively involved in

DOE rulemaking dockets on appliance standards for the past 15 years. NCLC is filing these comments on behalf of its low income clients.

III. CONSUMER GROUPS' COMMENTS

We appreciate the Department's desire to "speed the availability of innovative product options to consumers" but are very concerned with the proposal as it makes the process of granting an application for an interim test procedure waiver quite opaque and puts consumers at risk of buying products that may not meet minimum efficiency standards. As we understand it, under the proposal, if the Department does not act within 30 business days upon receiving an application for an interim test procedure waiver, it is 'deemed granted' with no public notice, thus allowing the product to be marketed to consumers for an indefinite period. Even if the Department ultimately denies the petition, the manufacturer would be given a 180-day grace period to continue making the product available to consumers. If the product does not meet the minimum energy efficiency requirements, consumers will be harmed by paying more unnecessarily on their energy bills.

DOE's proposal presents too easy an opportunity for a company that wishes to evade its compliance obligations to "game" the system simply by submitting a waiver request, even if it is meritless. Even a meritless waiver request would be deemed granted if not approved in 30 days – which may prove likely in the future, given DOE's past, limited ability to move quickly. We urge DOE to seriously consider that this could give foreign companies the ability to avoid full compliance and thus to gain an advantage over American companies that may be more inclined to comply.

It also appears that the Department's practices are in conflict with the apparent intent of this proposed rule change. During the July 11, 2019 webinar, DOE staff expressed the intention to do better and to put greater effort in providing notification in a more timely fashion, i.e. within the 30 business days requirement, in order to avoid interim waivers being automatically 'deemed granted'. But the NOPR points out that between 2016 and 2018, there were 32 requests for an interim waiver and only one met the 30 business days notification requirement. While the Department says it wants to do better, it was also pointed out that it has limited resources and competing priorities. We are concerned with how the Department will "do better" as there was no mention of increasing resources or exactly how the Department will "do better." Unless the

Department were to gain significant capacity to process waiver requests, this rule will have less to do with “speeding the availability of innovative product options to consumers” and will more so function as a way for less-scrupulous manufacturers to avoid compliance with duly promulgated standards.

The combination of 1) giving foreign companies the ability to avoid full compliance and potentially gain advantage over American companies that may be more inclined to comply; 2) DOE’s proposal that test procedure interim waivers would be automatically ‘deemed granted’ for a product after the initial 30 business days; and 3) no public notice that this is occurring – this all leaves competing, more compliant manufacturers and other affected parties in the dark and puts consumers at risk for buying a non-compliant, less efficient product.

IV. CONCLUSION

We oppose the Department’s proposal in light of the many concerns that have been expressed and especially, the potential that it has to cause unnecessary harm to consumers.

Thank you for considering our views.

Respectfully submitted,



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On behalf of its low-income clients