

Appliance Standards Awareness Project  
American Council for an Energy-Efficient Economy  
Consumer Federation of America  
National Consumer Law Center, on behalf of its low-income clients

May 27, 2021

John Cymbalsky  
U.S. Department of Energy  
Office of Energy Efficiency and Renewable Energy  
Building Technologies Office, EE-5B  
1000 Independence Avenue, SW  
Washington, DC 20585

**RE: Docket Number EERE–2021–BT–STD–0003/RIN 1904–AF13: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment**

Dear Mr. Cymbalsky:

This letter constitutes the comments of the Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEEE), Consumer Federation of America (CFA), and National Consumer Law Center, on behalf of its low-income clients (NCLC) on the notice of proposed rulemaking (NOPR) for procedures, interpretations, and policies for consideration in new or revised energy conservation standards and test procedures for consumer products and commercial/industrial equipment. 86 Fed. Reg. 18901 (April 12, 2021). We appreciate the opportunity to provide input to the Department.

We strongly support the proposed revisions to the Process Rule. The NOPR is consistent with Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.”<sup>1</sup> The proposed changes to the Process Rule will help DOE to be able to catch up on missed deadlines and meet upcoming deadlines for standards that have the potential to achieve very large consumer and climate benefits, while still providing the opportunity for substantial stakeholder input throughout the rulemaking process. Below we describe why we support each of the seven proposals in the NOPR. We also outline five additional revisions to the Process Rule that we urge DOE to make in a subsequent NOPR.

**We support restoring the Department’s discretion to depart from the Process Rule’s general guidance.** DOE explains in the NOPR that while the original 1996 Process Rule contained procedures, interpretations, and policies that DOE believed would generally be appropriate for use in rulemakings for energy conservation standards and test procedures, “DOE also acknowledged the possibility that the usual practices would not be appropriate for every rulemaking and that the circumstances of a particular rulemaking should dictate application of these generally applicable practices.”<sup>2</sup> However, in a significant

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<sup>1</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>.

<sup>2</sup> 86 Fed. Reg. 18904.

departure from the original Process Rule, in the February 2020 final rule DOE made the rule binding on the Department.<sup>3</sup>

We recognize the desire of industry stakeholders to have a predictable process, and we support DOE striving to adhere to the procedures in the Process Rule. However, there are a wide range of specific issues that can come up in any individual rulemaking, and it is impossible to predict every possible situation. It is therefore necessary for DOE to have flexibility to address situations as they arise, which ultimately benefits all stakeholders. For example, as we describe in more detail below, while we believe that in general it makes sense for test procedures to be finalized in advance of proposed rules for standards, there are situations when it is necessary to depart from this general practice to avoid uncertainty for manufacturers and/or to avoid unnecessary rulemaking delays. As another example, while the Process Rule outlines DOE's approach for conducting analyses for rulemakings, it is important for the Department to be able to make analysis improvements over time. With a binding Process Rule, DOE would have to modify the Process Rule each time the Department implemented an improved analysis methodology, which would result in unnecessary delays. Finally, as we explained in our comments on the February 2019 NOPR, having the Process Rule be binding significantly increases the potential for litigation solely over the question of whether DOE has followed all the procedures in the Process Rule.<sup>4</sup>

We agree with DOE's statement in the NOPR that "while the procedures, interpretations, and policies laid out in the Process Rule are generally applicable to DOE's rulemaking program, application of these guidelines to a specific rulemaking should be determined on a case-by-case basis,"<sup>5</sup> and we strongly support reverting the Process Rule back to its original, non-binding status.

**We support eliminating the threshold for determining when the significant energy savings criterion is met.** As DOE describes in the NOPR, DOE historically determined "on a case-by-case basis whether a particular rulemaking would result in significant conservation of energy."<sup>6</sup> However, in the February 2020 final rule, DOE adopted a numerical threshold that requires that any new energy conservation standard reduce site energy use by 0.30 quads or 10% over a 30-year analysis period.<sup>7</sup> This numerical threshold would result in sacrificing large savings for consumers and businesses—site energy savings of 0.30 quads are equivalent to electricity bill savings of about \$11 billion.<sup>8</sup> And importantly, the numerical threshold would not allow DOE to pursue a standard that did not meet the threshold even if such a standard would impose no costs. As we described in our comments on the February 2019 NOPR, there have been a number of instances where DOE analyses have identified efficiency improvements that have no first-cost impact.<sup>9</sup> Furthermore, as DOE describes in the NOPR, a numerical threshold does not allow DOE to account for factors such as the increased significance of energy savings that can reduce greenhouse gas emissions, nor does it account for the specific circumstances associated with a given product and its energy consumption impacts.<sup>10</sup> For example, DOE explains in the NOPR that energy savings from products whose energy consumption coincides with periods of peak demand, such as

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<sup>3</sup> 85 Fed. Reg. 8704 (February 14, 2020).

<sup>4</sup> <https://www.regulations.gov/comment/EERE-2017-BT-STD-0062-0126>. Submitted for the record as Attachment I.

<sup>5</sup> 86 Fed. Reg. 18905.

<sup>6</sup> 86 Fed. 18905.

<sup>7</sup> 85 Fed. Reg. 8705.

<sup>8</sup> Assuming an electricity price of \$0.13/kWh.

<sup>9</sup> <https://www.regulations.gov/comment/EERE-2017-BT-STD-0062-0126>.

<sup>10</sup> 86 Fed. Reg. 18905.

residential air conditioners, will have a greater impact on reducing the stress on the electric grid than the same savings from a product whose energy consumption is spread more evenly throughout the year. Yet a numerical threshold would not allow DOE to consider these differing impacts.

We support DOE's proposal in the current NOPR to eliminate the threshold for determining significant conservation of energy and to revert to the Department's prior practice of making such determinations on a case-by-case basis. DOE's proposal will allow the Department to consider a range of factors in determining significant conservation of energy as it has historically done.

**We support removing the requirement to conduct a comparative analysis in addition to DOE's analysis of economic justification under the factors listed in the statute.** The Energy Policy and Conservation Act (EPCA) requires that any new or amended efficiency standard "achieve the maximum improvement in energy efficiency . . . which the Secretary determines is technologically feasible and economically justified,"<sup>11</sup> and DOE has historically used the "walk-down" process to determine which standard level to adopt. DOE has implemented the walk-down process by first starting at the "max-tech" trial standard level (TSL) and evaluating whether that level is economically justified. If DOE concludes that that level is not economically justified, the Department then proceeds to the next-highest TSL and makes the same evaluation until reaching a level (if any) that the Department determines is economically justified. This process ensures that the maximum level that is technologically feasible and economically justified is selected. However, in the August 2020 final rule, DOE modified the walk-down process to require that, in evaluating economic justification, the Secretary "shall compare the benefits and burdens of the standard against the benefits and burdens of the baseline case ('no new standards' case) and all other trial standard levels under consideration."<sup>12</sup>

In our comments on the February 2020 SNO PR, we described our concern that the modified walk-down process could result in selecting standards that are not the maximum levels that are technologically feasible and economically justified as required by the statute.<sup>13</sup> We appreciate DOE's recognition in the current NOPR that the August 2020 final rule generated significant uncertainty as to how DOE would use a comparative analysis to determine whether a specific TSL is economically justified,<sup>14</sup> and we support removing the requirement to conduct a comparative analysis.

**We support clarifying that DOE may make modifications to industry test procedures to comply with the requirements of EPCA, as well as for certification, compliance, and enforcement purposes.** As part of the February 2020 final rule, DOE amended the Process Rule to require adoption of industry test standards as DOE test procedures unless those test standards do not meet the statutory criteria.<sup>15</sup> In our comments on the February 2019 NOPR, we explained that it is inappropriate to put undue emphasis on adopting industry test procedures.<sup>16</sup> In particular, industry test procedures are often not adequately representative of energy use in the field. In addition, because industry test procedures are generally not designed for regulatory purposes, they may also lack sufficient specificity to be repeatable and reproducible.

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<sup>11</sup> 42 U.S.C. 6295(o)(2)(A).

<sup>12</sup> 85 Fed. Reg. 50944 (August 19, 2020).

<sup>13</sup> <https://www.regulations.gov/comment/EERE-2017-BT-STD-0062-0171>. Submitted for the record as Attachment II.

<sup>14</sup> 86 Fed. Reg. 18906.

<sup>15</sup> 85 Fed. Reg. 8708.

<sup>16</sup> <https://www.regulations.gov/comment/EERE-2017-BT-STD-0062-0126>.

We appreciate DOE's recognition in the current NOPR that, rather than provide additional clarity, the language in the February 2020 final rule regarding adoption of industry test procedures generated significant uncertainty around how DOE would ensure that test procedures comply with the requirements in the statute.<sup>17</sup> We support DOE's proposed clarification that while DOE will first consider existing industry test procedures, the Department will ensure that any test procedure adopted meets the statutory requirements as well as DOE's compliance, certification, and enforcement requirements.

**We support—as part of a non-binding Process Rule—reverting to DOE's 1996 guidance regarding completion of test procedure rulemakings prior to issuance of a NOPR for an energy conservation standards rulemaking.** As part of the February 2020 final rule, DOE amended the Process Rule to require that test procedures be finalized at least 180 days prior to publishing a NOPR for energy conservation standards.<sup>18</sup> We believe that in general it makes sense for test procedures to be finalized in advance of a proposed rule for standards and that DOE should strive to do so. However, making this a binding requirement could create uncertainty and unnecessary delays, and specifying a 180-day period between test procedure final rules and standard NOPRs would also lead to unnecessary delays.

DOE describes in the NOPR how the requirement to finalize test procedures prior to publishing a standards NOPR creates uncertainty around what happens in the case of an error being identified at a later date. For example, as DOE notes, correcting an error in a test procedure may raise the question of whether the standards rulemaking must be "paused until or entirely restarted after the requisite test procedure change is made."<sup>19</sup> We believe that this potential concern may be broader to encompass any situation where a necessary test procedure change that does not impact measured energy use is identified in between publication of a standards NOPR and a standards final rule.

As an example, in February 2012, DOE published a final rule for test procedures for commercial refrigeration equipment.<sup>20</sup> More than a year later—in September 2013—DOE published a proposed rule for amended energy conservation standards.<sup>21</sup> However, subsequent to the publication of the February 2012 test procedure final rule, DOE received "a number of inquiries from interested parties regarding DOE regulations for commercial refrigeration equipment . . . and questions involving certain provisions of the DOE test procedure."<sup>22</sup> DOE therefore published a new test procedure proposed rule in October 2013 to address questions the Department had received and to add clarity to the existing DOE regulations. DOE noted in the October 2013 NOPR that the proposed clarifications would not affect measured energy use and "would serve only to clarify existing nomenclature, testing provisions, and requirements for certain features and types of commercial refrigeration equipment."<sup>23</sup> However, because the October 2013 test procedures NOPR was published after the publication of the standards NOPR, a mandatory requirement to publish a test procedure final rule prior to the publication of a standards NOPR would seem to create uncertainty in such a situation regarding the process for the standards rulemaking. For example, would DOE have been required to finalize the test procedure clarifications and then publish a new standards NOPR even though the test procedure clarifications had

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<sup>17</sup> 86 Fed. Reg. 18906.

<sup>18</sup> 85 Fed. Reg. 8708.

<sup>19</sup> 86 Fed. Reg. 18908.

<sup>20</sup> 77 Fed. Reg. 10292 (February 21, 2012).

<sup>21</sup> 78 Fed. Reg. 55890 (September 11, 2013).

<sup>22</sup> 78 Fed. Reg. 64298 (October 28, 2013).

<sup>23</sup> 78 Fed. Reg. 64299.

no impact on the standards analysis? This uncertainty could have unnecessarily delayed the rulemaking. Furthermore, DOE may have chosen to forego the test procedure rulemaking in order to avoid the potential significant delay, which would have ultimately harmed manufacturers by leaving in place ambiguity in the DOE regulations.

This uncertainty regarding the situation where a test procedure change that does not impact measured energy use is made after a standards NOPR is published is also present in the proposal in the current NOPR. However, because the NOPR would revert the Process Rule back to its original non-binding status, DOE would have the ability to address such a situation in a way that does not result in unnecessary delay.

DOE also describes in the NOPR how the 180-day period does not allow for distinguishing between significant test procedure changes and minor modifications.<sup>24</sup> DOE provides the example of a test procedure change for light-emitting diode (LED) lamps, which involved “a simple modification to one test condition in the entire test procedure” and “did not require manufacturers to make any adjustments.”<sup>25</sup> A required 180-day period after publication of a test procedure change such as that for LED lamps would clearly result in unnecessary delays.

As another example of how the 180-day period would create unnecessary delay, in at least several cases an Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) working group has negotiated both test procedures and standards. For example, during the 2015 ASRAC negotiation for walk-in coolers and freezers, the working group developed solutions to challenging issues such as how to address hot gas defrost and on-cycle variable speed evaporator fan control. These solutions impacted both the test procedures and the standards, and it was therefore necessary to consider both in parallel. DOE published a final rule for test procedures in December 2016 concurrent with the issuance of a NOPR and a direct final rule for standards.<sup>26</sup> If a requirement had been in place to publish a test procedure final rule 180 days prior to the publication of a standards NOPR, DOE would have been required to wait 180 days after publishing the test procedures final rule before publishing the standards NOPR and direct final rule even though the standards rules were negotiated by a working group which included manufacturer representatives. In this case, a delay in publishing the standards rules would have sacrificed energy savings by delaying the compliance date and created potential uncertainty for manufacturers without providing any benefit.

In summary, we believe that in general it makes sense for test procedures to be finalized in advance of a proposed rule for standards, but that it is also critical for DOE to have flexibility to address test procedure issues and to be able to advance rulemakings without unnecessary delays. We therefore support—as part of a non-binding Process Rule—reverting to DOE’s 1996 guidance regarding completion of test procedure rulemakings prior to issuance of a NOPR for an energy conservation standards rulemaking.

**We support reverting to DOE’s prior practice on direct final rules.** As DOE explains in the NOPR, the Department may issue a direct final rule (DFR) adopting energy conservation standards “upon receipt of a joint proposal from a group of ‘interested persons that are fairly representative of relevant points of

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<sup>24</sup> 86 Fed. Reg. 18908.

<sup>25</sup> Ibid.

<sup>26</sup> 81 Fed. Reg. 95758 (December 28, 2016); <https://www.energy.gov/eere/buildings/downloads/issuance-2016-12-28-energy-conservation-program-energy-conservation-0>.

view (including representatives of manufacturers of covered products, States, and efficiency advocates),’ provided DOE determines the energy conservation standards recommended in the joint proposal conform with the requirements of 42 U.S.C. 6295(o) or 6313(a)(6)(B), as applicable.”<sup>27</sup> DOE further explains that 42 U.S.C. 6295(o) and 6313(a)(6)(B) do not contain all the requirements of a typical energy conservation standards rulemaking, such as a specified period between publication of the final rule and the compliance date. DOE has instead “looked to the joint proposals to fill in these necessary details.”<sup>28</sup> However, in the February 2020 final rule, DOE included language stating that in issuing a DFR, the Department must identify a separate rulemaking authority and comply with the requirements listed in that provision, which would take away the flexibility to adjust compliance dates, for example. DOE also provided additional guidance on the Department’s interpretation of “fairly representative”—which went beyond what is specified in the statute—and specified that the Department may consider comments on a DFR to be “adverse” even if the issue was brought up previously during the rulemaking process.<sup>29</sup>

As we described in our comments on the February 2019 NOPR, many of the successful negotiated agreements that have been implemented through DFRs were made possible by the flexibility provided to DOE in their DFR authority.<sup>30</sup> For example, in the case of commercial package air conditioners and heat pumps, the 2016 DFR adopted a two-tiered standard: a modest improvement in efficiency which took effect on January 1, 2018, and a much more significant efficiency improvement which will take effect on January 1, 2023. (The statute otherwise specifies a 3-year compliance date for this equipment.) This flexibility in compliance dates enabled the enormous savings from the standard while providing manufacturers with additional time to make equipment upgrades.

We support DOE reverting to its prior practice on direct final rules, which we believe is consistent with the statute. As DOE describes in the NOPR, many of the other requirements in EPCA for setting standards beyond those included in 42 U.S.C. 6295(o) and 6313(a)(6)(B) are for the benefit of stakeholders; for example, specified compliance periods are intended to provide manufacturers with sufficient time to comply with a new standard. However, as DOE states in the NOPR, “if manufacturers agree to a shorter compliance period or two tiers of standards as part of a consensus agreement submitted under the DFR provision, it would be odd if DOE were then forced to deny such a proposal based upon requirements designed to protect the interests of those same manufacturers.”<sup>31</sup> We also agree with DOE’s tentative conclusion that additional guidance regarding “fairly representative” may be overly prescriptive in some circumstances and that the clarification regarding adverse comments “does not offer any insight into how DOE will determine whether an adverse comment provides a reasonable basis for withdrawing the rule.”<sup>32</sup>

In addition, while we do not object to retaining the modified section on DFRs as proposed in the NOPR, we also believe that the section could simply be removed since the statute already provides sufficient guidance regarding DOE’s DFR authority.

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<sup>27</sup> 86 Fed. Reg. 18908.

<sup>28</sup> *Ibid.*

<sup>29</sup> 86 Fed. Reg. 18909.

<sup>30</sup> <https://www.regulations.gov/comment/EERE-2017-BT-STD-0062-0126>.

<sup>31</sup> 86 Fed. Reg. 18909.

<sup>32</sup> *Ibid.*

**We support clarifying that DOE will conduct negotiated rulemakings in accordance with the Negotiated Rulemaking Act.** As DOE describes in the NOPR, as part of the February 2020 final rule, DOE added a new section titled “Negotiated Rulemaking Process” that describes the procedures that the Department will use when conducting negotiated rulemakings. The new section addresses items including the use of facilitators and convenors and the factors militating in favor of a negotiated rulemaking, and it also specifies that a negotiated rulemaking conducted under the ASRAC process will not result in the issuance of a DFR.<sup>33</sup> We support DOE’s proposal in the NOPR to generally revert to the approach the Department employed prior to the February 2020 final rule in relation to negotiated rulemakings including: (1) clarifying that the use of facilitators and convenors is not required under the Negotiated Rulemaking Act; (2) specifying that the list of factors militating in favor of a negotiated rulemaking are neither mandatory nor exclusive; and (3) reverting to the Department’s prior approach, which would allow a negotiated rulemaking to result in a term sheet recommending promulgation of a DFR.

DOE tentatively concludes in the NOPR that with these three proposed modifications, the section of the current Process Rule addressing negotiated rulemakings would become largely redundant of the Negotiated Rulemaking Act (NRA) requirements, and therefore proposes to remove the section.<sup>34</sup> We agree that Section 11 of the current Process Rule is unnecessary given the existing NRA requirements and support removing it.

**We urge DOE to make additional revisions to the Process Rule in a subsequent NOPR.** In the NOPR, DOE notes that, consistent with Executive Order 13990, the Department “may propose additional revisions in a subsequent NOPR.”<sup>35</sup> We urge DOE to make the following five additional revisions to the Process Rule in a subsequent NOPR:

1. Remove the interpretation of the term “clear and convincing” as it relates to the ASHRAE equipment. We believe that Congress clearly intended for DOE to be able to adopt more-stringent standards than the ASHRAE levels in those cases where clear and convincing evidence would support such standards and that DOE historically has appropriately applied the clear and convincing evidence threshold. However, in the February 2020 final rule, DOE modified the Process Rule to state that DOE will only consider standard levels more stringent than the ASHRAE levels if the Department “can meet a very high bar to demonstrate the ‘clear and convincing evidence’ threshold.”<sup>36</sup> This change appeared to be an attempt at severely restricting the Department’s ability to consider standards higher than the ASHRAE levels. As we described in our comments on the February 2019 NOPR, in the past decade, DOE has in most cases adopted the ASHRAE levels.<sup>37</sup> However, the ability for DOE to go beyond the ASHRAE levels when appropriate enabled the largest energy savings of any standard ever established by DOE: 14.8 quads over 30 years of sales from the standards finalized in 2016 for commercial package air conditioners and heat pumps.<sup>38</sup> The current language in the Process rule could therefore potentially sacrifice very large future savings, which we do not believe reflects the intent of Congress. Furthermore, in the past, the ability of DOE to go beyond the ASHRAE levels has also

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<sup>33</sup> Ibid.

<sup>34</sup> 86 Fed. Reg. 18910.

<sup>35</sup> 86 Fed. Reg. 18902.

<sup>36</sup> 85 Fed. Reg. 8708.

<sup>37</sup> <https://www.regulations.gov/comment/EERE-2017-BT-STD-0062-0126>.

<sup>38</sup> 81 Fed. Reg. 2420 (January 15, 2016).

influenced the ASHRAE process, encouraging participants in that process to develop proposals that will meet DOE's criteria.

2. Remove the requirement that a coverage determination be completed prior to initiating a rulemaking for test procedures or standards for a new product. As part of the February 2020 final rule, DOE modified the Process Rule to require that any coverage determination for a new product be completed prior to the initiation of any test procedure or standards rulemaking for that product.<sup>39</sup> As we explained in our comments on the February 2019 NOPR, the coverage process for miscellaneous refrigeration products illustrates how information that is learned during the rulemaking process for test procedures and standards through both stakeholder input and DOE's own research can ultimately inform the determination of coverage. In the case of miscellaneous refrigeration products, DOE revised the proposed scope of coverage twice in parallel to the test procedures and standards rulemakings in response to stakeholder comments, work by the ASRAC working group, and DOE's own research. If DOE instead had had to suspend work on the test procedures and standards to initiate and finalize new coverage determinations as new information was learned, this would have served only to add steps to the process and unnecessarily delay the rulemaking.
3. Simplify the early assessment process. As part of the February 2020 final rule, DOE modified the Process Rule to require that for any standards rulemaking, DOE must first conduct an "early assessment." If DOE decides to proceed with a rulemaking, the Department must publish a Framework Document and Preliminary Analysis, or an Advanced Notice of Proposed Rulemaking (ANOPR), prior to publishing a NOPR.<sup>40</sup> Similarly, for test procedures, DOE must first conduct an early assessment and then must provide "further opportunities for early public input" through documents including NODAs and/or RFIs.<sup>41</sup> We support DOE providing an opportunity for stakeholder input prior to the publication of a proposed rule for standards and test procedures. However, the early assessment process in the current Process Rule is too prescriptive regarding what the early steps need to be and, in many cases, would likely unnecessarily delay rulemakings. For example, as DOE notes in the NOPR, in cases where DOE is revisiting a determination that standards do not need to be amended (within three years after the prior negative determination), a notice of data availability (NODA) that updates the analysis from the previous determination "may be best suited for gathering early stakeholder input and establishing an adequate rulemaking record."<sup>42</sup> We believe that DOE can ensure that stakeholders have the opportunity to provide early input to the Department and allow DOE in appropriate circumstances to quickly determine not to proceed with a rulemaking by simply specifying that for both standards and test procedures, DOE will provide an opportunity for stakeholder input prior to the publication of a NOPR.
4. Remove the section on principles for distinguishing between effective and compliance dates. The February 2020 final rule added a section to the Process rule on "principles for distinguishing between effective and compliance dates."<sup>43</sup> While we agree that it would be useful for the terms "effective date" and "compliance date" to be clarified, we do not believe that the interpretations of these terms in the current Process Rule are consistent with EPCA. For example, while the current Process Rule defines "compliance date" for energy conservation

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<sup>39</sup> 85 Fed. Reg. 8704.

<sup>40</sup> Ibid.

<sup>41</sup> 85 Fed. Reg. 8707-08.

<sup>42</sup> 86 Fed. Reg. 18904.

<sup>43</sup> 85 Fed. Reg. 8709.




standards as “the specific date upon which manufacturers are required to meet the new or amended standards,”<sup>44</sup> there are many instances in EPCA where “effective date” is used to mean the same thing. Therefore, we believe that any clarification of these terms must be carried out by Congress.

5. Revise the description of DOE’s analyses to reflect current practice. There is a lot of text in the current Process Rule that was unchanged from the original 1996 Process Rule that describes how DOE conducts the analysis for rulemakings. Many of those details do not reflect how DOE conducts the analysis today. For example, Section 6(c)(2) of the proposed text for the Code of Federal Regulations (CFR) in the current NOPR states that “DOE and its contractor will perform engineering and life-cycle cost analyses of the design options.”<sup>45</sup> However, DOE does not conduct life-cycle cost analyses of the “design options,” but rather of efficiency levels. As another example, Section 13(f) of the proposed text for the CFR in the current NOPR states that in conducting the manufacturer impact analysis, “computations will be performed for the industry as a whole and for typical and atypical manufacturers.”<sup>46</sup> While DOE analyzes the impact on the net cash flow of manufacturers for the industry as a whole, the Department does not do this for “typical and atypical manufacturers.”

Thank you for considering these comments.

Sincerely,



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<sup>44</sup> Ibid.

<sup>45</sup> 86 Fed. Reg. 18917.

<sup>46</sup> 86 Fed. Reg. 18920.