COMMENTS OF THE ATTORNEYS GENERAL OF CALIFORNIA, COLORADO, CONNECTICUT, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW YORK, OREGON, PENNSYLVANIA, VERMONT, WASHINGTON, THE DISTRICT OF COLUMBIA, and THE CITY OF NEW YORK

September 13, 2021

Comments submitted via Regulations.gov and by e-mail:
processrule2021STD0003@ee.doe.gov
U.S. Department of Energy
Appliance Standards Program

Re: EERE-2021-BTD-STD-0003
RIN 1904-AF13
Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment

The undersigned Attorneys General and local government entities (State Commenters) respectfully submit these comments on the Department of Energy's (DOE) notice of proposed rulemaking proposing revisions to its Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, commonly referred to as the Process Rule.[1] 86 Fed. Reg. 18901 (July 7, 2021) (Proposal). The Process Rule governs DOE's consideration and promulgation of energy efficiency regulations under the Energy Policy and Conservation Act, 42 U.S.C. §§ 6291 et seq. (EPCA), including efficiency standards, test procedures, and coverage determinations. As explained below, the Proposal would make beneficial changes to the Process Rule by reversing many of the changes made in DOE's most recent revisions to the Process Rule,[2] which created unnecessary obstacles for DOE's energy efficiency regulations and, in turn, the provision of their benefits to the public. Many of the State Commenters opposed the 2020 Final Rule, and supported DOE's initial proposed changes in its April 12, 2021 notice of proposed rulemaking[3] (April 2021 Proposal) to reverse the 2020 revisions and alleviate their harmful impact.[4] We support the further reversal of the 2020 Final Rule in this proposal. Beyond

[1] 10 C.F.R part 430, subpart C, appendix A (in citations, Proc. Rule).
[2] *Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment*, 85 Fed. Reg. 8626 (Feb. 14, 2020) (2020 Final Rule).
[3] *Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment*, 86 Fed. Reg. 18901 (Apr. 12, 2021).
[4] Exhibit A, Comments of Attorneys General of California, Colorado, Connecticut, Illinois, Maine, Maryland, Michigan, Minnesota, New York, New Jersey, North Carolina, Oregon, Vermont, Washington, the Commonwealth of Massachusetts, the District of Columbia and the City of New York, EERE-2017-BT-STD-0062-0111 (May 6, 2019) (2019 Comments); Exhibit B, Comments of California, Colorado, Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Vermont,

those reversals, DOE should also make limited additional changes and return the Process Rule to its intended role of facilitating, instead of obstructing, DOE's energy efficiency program. Therefore, we urge DOE to finalize the Proposal and include additional appropriate changes to the Process Rule.

As noted in the 2019 Comments, DOE's energy efficiency program has resulted in substantial economic and environmental benefits: by 2030, DOE projects the program will have resulted in more than $2 trillion dollars in cumulative utility bill savings for consumers and 2.6 billion tons in avoided carbon dioxide emissions.[5] DOE achieved virtually all of those projected benefits through rulemakings subject to the pre-2020 Process Rule, which provided guidance to DOE and transparency to the public while also ensuring DOE met EPCA's mandate to promulgate energy conservation standards within the prescribed statutory deadlines. The recent Intergovernmental Panel on Climate Change report—which confirmed that substantial and immediate action is necessary to combat climate change and protect the planet—significantly heightened the importance and necessity of the environmental benefits realized through DOE's energy efficiency program, including specifically the reduction of greenhouse gas emissions.[6]

As will be explained further, the restorative changes advanced in the Proposal include the removal of: (1) the 180-day coverage determination finalization-test procedure proposal delay; (2) the coverage determination finalization requirements; (3) the rulemaking initiation document-type mandates, including a notice of proposed determination for coverage determinations and an early assessment request for information for test procedure and efficiency standards rulemakings; (4) the interpretation of "clear and convincing evidence" standard as applicable in the review of energy efficiency standards for products covered by American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE); and (5) the expectation that ASHRAE standards or industry test procedures for ASHRAE-covered industrial and commercial equipment would be adopted "except in very limited circumstances." In each of these areas, the 2020 Final Rule improperly or unnecessarily limited DOE's discretion, improperly deferred to industry, or demanded the purposeless and wasteful expenditure of resources. Two of the restorative changes—the removal of the 180-day coverage determination-test procedure delay and the "clear and convincing evidence" interpretation—were identified and recommended by the State Commenters in our May 2021 Comments. Together with the additional changes identified below, the Proposal will return the Process Rule to its prior form, where appropriate, and allow DOE to pursue energy efficiency regulations appropriately within the confines of EPCA, free of obstacles raised by its own internal regulation.

Washington, the District of Columbia, and the City of New York, EERE-2021-BT-STD-0003-0029 (May 27, 2021) (May 2021 Comments).

[5] See DOE Fact Sheet, "Saving Energy and Money with Appliance Equipment Standards in the United States" (Jan. 2017), *available at*: https://www.energy.gov/sites/prod/files/2017/01/f34/Appliance%20and%20Equipment%20Standards%20Fact%20Sheet-011917_0.pdf. See DOE Fact Sheet, "Saving Energy and Money with Appliance and Equipment Standards in the United States" (Feb. 2016), *available at*: https://www.energy.gov/sites/prod/files/2016/02/f29/Appliance%20Standards%20Fact%20Sheet%20-%202-17-2016.pdf.

[6] Intergovernmental Panel on Climate Change, 2021; Summary for Policymakers; Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, *available at*: https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf.

Although the two Proposals address the most significant problems with the 2020 Final Rule, DOE should consider reversing two other problematic changes instituted by that amendment in a subsequent rulemaking: (1) the improper definition of "effective date" and "compliance date" and (2) the inclusion of improper references to "economic justification" during the early assessment of energy conversation standards.

As we asserted in our May 2021 Comments, the restoration of the Process Rule to its proper position as an aid to facilitate DOE's energy efficiency rulemakings will allow DOE to better implement its mandate under EPCA and provide the benefits of energy efficiency to the public. For those reasons, as further explained below, the State Commenters support the Proposal and suggest further limited action to beneficially restore the Process Rule.

I. BACKGROUND: THE ENERGY POLICY AND CONSERVATION ACT; THE PROCESS RULE; THE APRIL 2021 PROPOSAL; THE CURRENT PROPOSAL

A. Energy Policy and Conservation Act: Legislative History; DOE's Energy Efficiency Program; The Process Rule

The May 2021 Comments provided the relevant legislative history of EPCA; a summary of DOE's Appliance Standards Program implemented pursuant to EPCA's mandate and authority; and a description of the Process Rule, the revisions instituted by the 2020 Final Rule, and the reversals advanced by April 2021 Proposal. See May 2021 Comments, Ex. A.

As recounted there, the legislative history demonstrates that Congress repeatedly made EPCA's mandates more forceful and specific. In fulfilling its duties thereunder, DOE's Appliance Standards Program has provided substantial and significant benefits to the American people. The Process Rule delineates DOE's internal procedures for its promulgation of energy efficiency regulations—including coverage determinations, test procedures, and conservation standards. Historically, the Process Rule facilitated efficient, beneficial rulemakings by prescribing appropriate guidelines to ensure considered, informed deliberation with adequate public input by DOE, while providing necessary and justified flexibility to allow DOE to expeditiously pursue those rulemakings in a manner adapted to the relevant context and circumstances. The 2020 Final Rule improperly and unlawfully altered the Process Rule to obstruct and delay DOE's efficiency rulemakings and, as a result, petitioners including many of the State Commenters filed a challenge to the 2020 Final Rule in the Second Circuit. *State of California, et al. v. Dept. of Energy, et al.*, 9th Cir. Case No. 20-71068 (April 14, 2020).

B. The Present Proposal, the April 2021 Proposal, and the Authorizing Executive Order

On January 20, 2021, President Biden signed Executive Order 13,990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." 86 Fed. Reg. 7037 (Jan. 20, 2021) (Executive Order). The Executive Order directed federal agencies to identify and reconsider regulatory actions taken by the prior administration that undermined or weakened the federal government's programs, actions, and regulations that address the proper use of science, the protection of public health and the environment, and specifically the response to climate

change. Under the Executive Order, agency heads were directed to immediately review agency actions taken during the prior administration to identify regulatory actions constituting such negative actions and submit a preliminary list of those actions that would be subject to reconsideration. *Id*. at 7037-38. It specifically identified DOE's Process Rule as one of four priority regulations for reconsideration and possible suspension, revision, or rescission, directing that major revisions to the Process Rule be proposed by March 2021 and remaining revisions proposed by June 2021. *Id*. Following the Executive Order, DOE issued a memorandum[7] identifying actions by the prior administration for review, including the 2020 Final Rule as well as the final rule resulting from a related supplemental rulemaking. Based on the stated intention of DOE to reconsider the 2020 Final Rule, the petitioners in the litigation challenging the 2020 Final Rule agreed with DOE to a 150-day abeyance to allow DOE to proceed with its reconsideration, which ran through August 2, 2021. *State of California*, Dkt. 56. Based in part on DOE's issuance of the current Proposal and its continued efforts to appropriately restore the Process Rule, the parties agreed to an additional 150-day abeyance, which was entered by the Ninth Circuit on August 5, 2021. *State of California*, Dkt. 68.

Consistent with the Executive Order and the reconsideration memorandum, after issuing the April 2021 Proposal, DOE issued a pre-publication version of this Proposal on June 30, 2021, which was subsequently published in the Federal Register on July 7, 2021. 86 Fed. Reg. 35688.[8] The Proposal advanced the following proposed changes to the Process Rule (*Id*. at 18904-10), which would undo more of the deleterious changes made in the 2020 Final Rule, beyond the reversals included in the April 2021 Proposal, including:

- Removal of coverage determination-test procedure delay and coverage determination finalization requirements;
- Elimination of requirements that DOE start certain rulemaking types with specified regulatory documents; and,
- Withdrawal of improper or unnecessary interpretive language pertaining to ASHRAE product rulemakings.

II. THE PROPOSAL WOULD MAKE THE PROCESS RULE MORE CONSISTENT WITH EPCA AND SUPPORT A MORE EFFECTIVE ENERGY EFFICIENCY PROGRAM

The State Commenters strongly affirm the benefits and propriety of the changes advanced by the Proposal, and urge the Department to finalize them, along with those included in the April 2021 Proposal. The proposed changes will undo counterproductive changes of the 2020 Final Rule, to make DOE's energy efficiency rulemakings more expeditious while also providing appropriate discretion for DOE to take into account product- or rulemaking-specific concerns during the regulatory process. As EPCA's legislative history demonstrates, Congress has clearly mandated

[7] *Review of Actions of the Prior Administration*, Kelly Speakes-Backman, Acting Assistant Secretary for Energy Efficiency and Renewable Energy (Feb. 19, 2021).

[8] As a basis for the Proposal, in addition to the Executive Order, the Proposal identified in the lawsuit led by the New York Attorney General and joined by the California Attorney General and many of the State Commenters, along with the parallel suit filed by efficiency advocacy organizations, which alleged DOE has violated numerous deadlines for energy efficiency rulemakings. *State of New York, et al. v. Dept. of Energy, et al.*, S.D.N.Y Case No. 20-CV-9362 (Nov. 9, 2020). DOE said those cases caused it to reconsider the changes instituted by the 2020 Final Rule and "the obstacles" it presents "to DOE's ability to meet its obligations under EPCA." 86 Fed. Reg. at 35669.

that DOE regularly and timely promulgate the most stringent energy efficiency standards that are technologically feasible and economically justified. Because the changes instituted by the 2020 Final Rule were in fact detrimental to DOE's energy efficiency rulemaking process, and counter to DOE's congressional mandate, the Proposal appropriately reverses those changes and in doing so restores DOE's flexibility in its energy efficiency rulemakings and removes unnecessary burdens and obstacles for those rulemakings. As a result, the Proposal will improve DOE's Appliance Standards Program and enable the program to provide more timely and significant consumer and environmental benefits to the American people, as intended by EPCA.

A. DOE Should Remove the 180-Day Coverage Determination-Test Procedure Delay and Coverage Determination Finalization Requirements

In the Proposal, DOE proposes to remove multiple requirements related to the finalization of coverage determinations and their interplay with test procedure rulemakings. Specifically, DOE proposes to (1) eliminate the requirement that DOE delay publication of proposed test procedures until 180 days after the publication of a final coverage determination, and (2) eliminate the requirement that coverage determinations be finalized before test procedure rulemakings, with explicit recognition that coverage determinations may be amended during subsequent test procedure or efficiency standard rulemakings if necessary without restarting the entire product efficiency rulemaking process. 86 Fed. Reg. at 35672; Proc. Rule sec. 5(c), (d). The State Commenters' 2019 Comments (p. 8-9) and May 2021 Comments (p. 11-12) argued against the introduction of these provisions as improper restrictions of DOE's rulemaking flexibility. The State Commenters continue to support the removal of these provisions for the same reasons.

The removal of the 180-day delay between the finalization of coverage determinations and the proposal of test procedures will allow DOE to proceed as expeditiously as possible with its energy efficiency rulemakings. See Proc. Rule sec. 5(c). The Proposal rightly identifies no "potential benefit[s]" (86 Fed. Reg. at 35672) to a mandatory delay after the finalization of test procedures before the proposal of test procedures, unlike the limited though ultimately unpersuasive benefits to delaying standards proposals after test procedure finalization which DOE considered in the April 2021 Proposal (86 Fed. Reg. at 18908). Instead, as DOE recognizes, the reduced flexibility imposed by the "one-size-fits-all" approach would impair DOE's discretion and hinder its compliance with EPCA's statutory deadlines. 86 Fed. Reg. at 35672. Considering the numerous deadlines that DOE has failed to meet, the introduction of arbitrary delays into its rulemaking process is inconsistent with EPCA's mandate and Congress's intent in requiring DOE to regularly promulgate updated standards that achieve the maximum possible energy savings. The removal of the delay is thus appropriate and justified to better effectuate EPCA and achieve its goals.

Similarly, the removal of the coverage determination finalization requirements (see Proc. Rule sec. 5(c), (d)) will allow DOE to proceed as it deems appropriate in order to expeditiously complete the different stages of efficiency rulemakings. As DOE recognizes in the Proposal, the coverage determination, test procedure, and conservation standards rulemakings are "interdependent," in that the different rulemakings can inform each other and potentially be determinative as to whether the requirements of one rulemaking stage can even be satisfied—for example, if efficiency standards would not result in significant savings for a given product, a

coverage determination for that product would not be necessary. 86 Fed. Reg. at 35672. Thus, the restoration of DOE's discretion to proceed with different stages of the efficiency rulemaking process concurrently will enable DOE to promulgate the most appropriate and beneficial regulations possible, while also avoiding the unnecessary use of resources.

In sum, the removal of the limitations on DOE's discretion in the coverage determinations context will allow the agency to better implement its energy efficiency program under EPCA, and thereby provide more consumer and environmental benefits to the American public and thus, consistent with our 2019 and May 2021 Comments, those limitations should be removed.

B. DOE Should Eliminate the Requirement to Initiate Efficiency Rulemakings with Designated Documents

In the Proposal, DOE also moves to eliminate the requirements that DOE start different rulemaking types with certain specified rulemaking documents, restoring the discretion EPCA and the Administrative Procedure Act afford DOE to pursue rulemaking in the most appropriate manner. As amended by the 2020 Final Rule, the Process Rule requires that coverage determination rulemakings commence with a notice of proposed determination while test procedure and efficiency standard rulemakings commence with request for information notices. Proc. Rule secs. 5(b), 6(a), 8(a). The specification of these document types for rulemaking initiation unjustifiably constrains DOE's flexibility without any benefit. Accordingly, they should be eliminated to permit DOE to seek adequate public input in its rulemakings while also proceeding most efficiently.

The requirement that DOE commence a coverage determination with a notice of proposed determination (Proc. Rule sec. 5(b)) should be removed because it precludes DOE from collecting necessary information prior to issuing a coverage determination. As DOE states plainly in the Proposal, "in some cases it may be necessary to gather information about a consumer product or commercial/industrial equipment before issuing a proposed determination of coverage." 86 Fed. Reg. at 35672. The collection of such information enables DOE to determine whether in fact a product and its energy use meet the requirements of EPCA to justify a coverage determination, and thus is necessary for the proper implementation of the statute. Furthermore, by removing this requirement from the Process Rule, DOE does not prevent itself from beginning a coverage determination rulemaking with a notice of proposed determination, if it has adequate information to justify such a determination. Instead, removing the requirement allows DOE to ensure that it has adequate information to justify a coverage determination, whether that determination can be made immediately or after the issuance of other rulemaking documents and collection of corresponding input. The removal of this requirement will thus result in more effective and efficient rulemakings and the concomitant environmental and consumer benefits by restoring DOE's rulemaking discretion.

The requirement that DOE commence test procedure and efficiency standards rulemakings with an early assessment request for information unnecessarily imposes the same "one-size-fits-all" approach on DOE's rulemaking course and constrains the agency's discretion to pursue rulemaking in the most expeditious manner possible. Proc. Rule sec. 6(a) (standards), 8(a) (test procedures). In both stages, DOE rightly notes that expeditious rulemaking is particularly necessary "in light of the significant number of legal deadlines confronting the Appliance

Standards Program and the anticipated benefits to the Nation of the associated energy conservation standards." 86 Fed. Reg. at 35673, -74.

For standards rulemakings, because interested parties can address the issues identified as the subject of the early assessment request for information (cost-effectiveness; economic justification; technological feasibility; and potential energy savings significance) at any stage in the standards rulemaking process, a rulemaking document focused solely on those aspects "may unnecessarily delay the overall process without appreciable benefit if used in all cases." 86 Fed. Reg. at 35673. DOE identifies the same lack of benefit in the test procedure context: interested parties there can also raise the statutory requirements for test procedure amendment—improved accuracy and reduced testing burden—throughout the test procedure rulemaking process. 86 Fed. Reg. at 35674. Furthermore, as the 2019 Comments asserted in the standards context, the use of this limited request for information as the potential basis for a determination that the amendment of standards or test procedures is not necessary would inappropriately reduce stakeholder input and could result in insufficiently considered rulemakings. 2019 Comments, p. 8.

In sum, the Proposal correctly concludes that the 2020 Final Rule's specification of certain document types to initiate rulemakings is unnecessary and could result in both less thorough and less expeditious rulemakings. On that basis, DOE should eliminate the specifications.

C. DOE Should Rescind the "Clear and Convincing Evidence" Interpretation and Industry Adoption Presumption for ASHRAE Products

In the Proposal, DOE further proposes to reverse changes to DOE's treatment of standards and test procedures for industrial and commercial equipment covered by ASHRAE: first, by removing the interpretation of the "clear and convincing evidence" standard applicable to ASHRAE product rulemakings; and, second, by eliminating language stating that DOE would adopt ASHRAE efficiency standards and industry test procedures for ASHRAE products "except in very limited circumstances." 86 Fed. Reg. at 35676; Proc. Rule sec. 9(b).

In regards to the "clear and convincing evidence" standard, DOE moves to withdraw the interpretation because it does not, and lawfully cannot, expand on the term as used in EPCA and addressed by case law. 86 Fed. Reg. at 35676. The 2020 Final Rule introduced the interpretation in a purported attempt to provide additional clarity to this standard, though DOE also recognized then that the term "has a specific meaning that the courts have routinely addressed through case law." 86 Fed. Reg. at 35676; see 85 Fed. Reg. at 8642. Because the term is already well defined by other authority, this interpretation does not "add[] value" to the statutory language or the established case. 86 Fed. Reg. at 35676. Furthermore, as the 2020 Comments (p. 12-13) and May 2021 Comments (p. 12) argued, any interpretation of the standard is either superfluous, if it only confirms the language in the statute, or unlawful, if it changes that standard. Thus, the removal of this interpretation ensures the proper consideration standards for ASHRAE products, consistent with EPCA's direction.

The Proposal also would withdraw the presumption that DOE will adopt the conservation standards adopted by ASHRAE or industry test procedures for ASHRAE products "except in very limited circumstances" for the same reason: because the standards for adoption of either type of regulation are set forth in EPCA, further elaboration of that standard either does not

change the standard, in which case it is superfluous, or does change the standard, in which case it violates EPCA. Although the 2019 and May 2021 Comments did not address this issue specifically, the Comments' discussion of the test procedure adoption presumption for non-ASHRAE products explained that provision was unnecessary or unlawful for the same reasons: namely, DOE's burden for action in that context is already specified in EPCA. 2019 Comments, p. 14; May 2021 Comments, pp. 9-10. As the standard for adoption of ASHRAE standards and adoption of industry test procedures for ASHRAE products is also specified in EPCA (42 U.S.C. §§ 6313(a)(6)(A)(ii)(II), 6314, the "except in very limited circumstances" language is "an ambiguous description for a process [already] delineated in EPCA" and thus similarly superfluous without adding value. Consequently, the Proposal would appropriately remove this ambiguous and unnecessary phrase from the Process Rule.

III. ADDITIONAL CHANGES TO THE PROCESS RULE WOULD CONFORM THE RULE TO EPCA'S MANDATE AND FURTHER BENEFIT THE ENERGY EFFICIENCY PROGRAM

Although the proposed changes in the Proposal as well as the April 2021 Proposal would reverse nearly all of the counterproductive and unlawful changes instituted to the Process Rule through the 2020 Final Rule, two additional limited changes would make further meaningful improvement to DOE's energy efficiency program. These additional changes include: (1) the elimination of the improper "effective date" and "compliance date" definitions; and (2) the elimination of improper references to the economic justification criteria for the early assessment of conservation standards, when DOE should only be considering cost effectiveness. While we request these changes, failure to make either change would not provide a basis to challenge any new or updated energy efficiency standard issued by DOE; rather, as currently constituted, those provisions place an added burden on DOE to be precise in its terminology regarding dates and to properly consider economic justification when appropriate.

A. DOE Should Rescind the Definitions of Compliance and Effective Dates Because It Does Not Comport with Use of Those Terms in EPCA

The 2020 Final Rule sought to clarify the use of "effective date" and "compliance date" under EPCA, but failed to recognize that the terms are used at times interchangeably within the statute. See Proc. Rule sec. 12. As a result, the 2020 Final Rule's purported clarification instead only increased the likelihood of confusion and introduced the possibility of unlawful interpretations of those terms. While the 2020 Final Rule defines "effective date" as "the date a rule is legally operative after being published in the Federal Register," Congress at times plainly uses "effective date" to refer to the date at which manufacturers must comply with a standard. See, e.g., 42 U.S.C. § 6295(e)(5)(D)(ii) (providing standards for covered water heaters "shall take effect 1 year after the date of publication of the final rule" in section titled "Effective date"). The 2020 Final Rule's interpretation seeks to impose a consistency on the interpretation of "effective date" and "compliance date" not present in the statute. Consequently, the definitions are inconsistent with EPCA, and should be removed.

B. DOE Should Eliminate Improper References to Economic Justification Instead of Cost Effectiveness at the Early Standards Rulemaking Stage

The 2020 Final Rule introduced references to economic justification in Section 6(a) of the Process Rule, which covers the early assessment of energy conservation standards. Under EPCA, cost effectiveness is evaluated by comparing savings in operating costs relative to increased costs resulting from the imposition of a standard, 42 U.S.C. § 6295(o)(2)(B)(i)(II), while economic justification considers cost effectiveness as well as other factors such as the economic impact on manufacturers or consumers and the lessening of competition caused by imposition of a standard. 42 U.S.C. § 6295(o)(2)(B)(i). However, DOE's evaluation at the early assessment phase of the standards rulemaking process, when it is determining whether to issue proposed amended standards, is limited by EPCA to cost effectiveness; DOE is not authorized to consider economic justification. See 42 U.S.C. §§ 6295(m)(1)(A), (n)(2). Because the consideration of economic justification is not authorized at this stage in the process, DOE should remove the references to economic justification from section 6(a) of the Process Rule to ensure the proper assessment of prospective conservation standards.

IV. CONCLUSION

For the reasons explained above, the State Commenters support DOE's Proposal and urge DOE to finalize and implement these proposed changes, as well as those proposed in the April 2021 Proposal and the additional changes identified in these comments. The reversal of the 2020 Final Rule and the restoration of the Process Rule's prior form will enable DOE to better effectuate and comply with EPCA, and in doing so more fully and promptly provide the consumer and environmental benefits of energy efficiency to the American public.

Respectfully submitted,

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