# TRANSCRIPT OF PROCEEDINGS

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IN THE MATTER OF: )
)
ENFORCEMENT FOR CONSUMER )
PRODUCTS AND COMMERCIAL )
AND INDUSTRIAL EQUIPMENT )
NOTICE OF PROPOSED RULEMAKING )
)

Pages: 1 through 117

Place: Washington, D.C.

Date: December 8, 2020

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BEFORE THE U.S. DEPARTMENT OF ENERGY
OFFICE OF ENERGY EFFICIENCY & RENEWABLE ENERGY

IN THE MATTER OF: )
)
ENFORCEMENT FOR CONSUMER )
PRODUCTS AND COMMERCIAL )
AND INDUSTRIAL EQUIPMENT )
NOTICE OF PROPOSED RULEMAKING )
)

Virtual Meeting
Suite 206
Heritage Reporting
Corporation
1220 L Street, N.W.
Washington, D.C.

Tuesday,
December 8, 2020

The parties met remotely, pursuant to the notice, at 12:02 p.m.

ATTENDEES: (Via Webinar)

DAN BALDEWICZ
Energy Solutions

LAURA BARHYDT
United States Department of Energy

ROBERT BOTELER
Marvair

JENNIFER CLEARY
Barnes & Thornburg, LLP

CAROLINE DAVIDSON-HOOD
AHRI

DAVE GATTO
Westinghouse Lighting

ROBERT GREESON
Electro-Mechanical Corporation

ATTENDEES: (Cont'd.)

JAMIE WATKINS
Crane Pumps & Systems

JOHN BADE
2050 Partners

BENJAMIN MADISON
Grundfos

KAREN MEYERS
Rheem

NAEEMA CONWAY
United States Department of Energy

PAUL SOHLER
Crown Boiler Company

PHILLIP STEPHENS
The Marley Wylain Company

RONALD SHEBIK
Hussmann Corporation

KANCHAN SWAROOP
ASAP

TOM CATANIA
Air Movement and Control Association

SHAUN TAYLOR
Lutron

SMITHA VEMURI
United States Department of Energy

RUBEN VANDERDUIM
Sumitomo Machinery Corporation of America

P R O C E E D I N G S

(12:02 p.m.)

MS. VEMURI: Thanks for joining us today. So this is a public meeting for DOE to receive comment on the Notice of Proposed Rulemaking regarding enforcement for consumer products and commercial and industrial equipment. I am Smitha Vemuri, Senior Trial Attorney in the enforcement office.

So, right off the bat, many thanks to Naeema Conway. She's running the webinar and is going to be helping us field comments. Laura Barhydt, the former assistant general counsel for enforcement, is also here today to help out.

To start, some housekeeping rules. We ask that everyone keep their microphone on mute until you are recognized to speak. If you want to speak, please raise your hand. In other words, click the little hand next to the name or phone number, and we'll call on one person at a time to speak. If you are unmuted, please state your name and affiliation or organization for the record.

There will be a complete transcript of this meeting. We have a lot of material to cover this afternoon, so please be concise so that everyone gets a chance to speak. We're going to go straight through

the four hours, so let's talk about the agenda.

So we've scoped out a rough agenda that you can refer to for the order of topics. Please do not step away assuming that we'll start covering sampling right at 2:00. We could get ahead or behind, and we'll just keep going through to the next topic when one is completed.

So most of you are pretty familiar with this slide format for the appliance standards rulemaking public meetings, but we aren't using them in exactly the same way. For example, we didn't draft the NOPR with issues numbered for comment. What we've done for today's meeting is highlight certain issues in boxes. For some topics, we are going to discuss several issues and then take comments, and for other topics, we'll stop and take comment on each issue individually. Of course, you should read the full proposal, which is available on regulations.gov, and you can see the link here on the slide. The deadline for submitting comments is December 30, 2020.

In terms of submitting written comments, please be sure to refer to the rulemaking as the enforcement NOPR or by the docket number, or by the RIN, or the Regulatory Identification Number. You can see all of that here on the screen. We strongly

encourage you to submit your comments via e-mail to enforcement2019ce0015@ee.doe.gov. You can also submit it on regulations.gov, or by postal mail, or by courier. Please keep in mind that most of us are not in the building due to COVID, so, if you sent something in on paper, then someone in the building has to scan it in and e-mail it to us. By far, the best way is to get us your written comments by e-mail.

So, with all of the preliminaries covered, meeting participants are invited to provide opening remarks or statements at this time. To ensure that we have enough time to get to everyone who wishes to provide opening remarks and to get through all the slides today, we ask that you please keep your statement brief. Please raise your hand if you would like to make a statement, and we'll unmute folks one person at a time. Naeema, who do we have?

MS. CONWAY: So we have Caroline Davidson.

MS. DAVIDSON-HOOD: All right. Good afternoon. Can you hear me?

MS. CONWAY: Yes.

MS. DAVIDSON-HOOD: Okay. I will try to be quick. Thank you very much for hosting this meeting. We appreciate it. I'm AHRI General Counsel, Caroline Davidson-Hood, and we were one of the parties that

requested the public meeting, so we do appreciate this opportunity.

I'll state that AHRI read the proposal with much interest, and we do appreciate the transparency and the clarifications that DOE has put forward in the proposal. And we believe that several amendments in the proposal will streamline DOE's procedures to the benefit of all stakeholders. However, AHRI has some significant concerns with several proposals and two in particular that we hope to learn more about today.

The first is the reliance on third-party test data both in investigations and for the purposes of enforcement. The other is a reduction in the number of samples that DOE will rely upon in order to carry its burden of proof in issuing a civil assessment. We believe that more consideration should be given to who is targeted by these amendments, namely, manufacturers that undertake to verify that their ratings are valid by volunteering in third-party certification programs.

We believe that DOE should take a closer look at the policies that underscore their amendment and possibly give them additional consideration, particularly to the unintended consequences of some of the proposals that have been raised. We will be

submitting comments based on what we learn today, and we also appreciate the opportunity to provide additional constructive feedback in ways to improve the enforcement process and increase engagement between DOE and their regulated stakeholders. Thank you very much.

MS. CONWAY: Okay. Next, we have Kanchan Swaroop.

MS. SWAROOP: Hi. Yeah, can you hear me?

MS. CONWAY: Yes.

MS. SWAROOP: Hi, my name is Kanchan Swaroop, and I'm with the Appliance Standards Awareness Project. Thank you for the opportunity to participate in today's meeting. We largely support DOE's efforts to increase transparency and specificity in the enforcement provisions and have some brief remarks on a few of the proposed revisions.

First, we support DOE clarifying that design requirements are energy conservations standards and therefore are subject to DOE investigation and enforcement. We also support DOE's proposal to allow test data from third-party certification programs to be used in making a finding of noncompliance.

However, we do not support DOE's proposal to no longer require manufacturers to inform customers of

DOE's determination of noncompliance. We believe that the requirement of informing consumers of noncompliance is a deterrent to noncompliance itself. In addition, the very small cost savings from this proposal do not seem significant enough to justify the change. We look forward to hearing more about these issues and the remaining proposed changes. Thank you.

MS. CONWAY: Okay. I believe that's all for the opening remarks, Smitha.

MS. VEMURI: Okay. Thank you. Thanks, everyone, for those remarks.

Okay. So, before we get started, I think it might be helpful for me to just very briefly talk about why DOE is doing this rulemaking. So, you know, we've been wanting to do this rule for a while. As we've gained experience with our regulations, we've seen some room for improvement in a variety of places and for a variety of reasons.

But the primary reason we want to do this rule is to provide more transparency and clarity and to provide more formal process to help manufacturers understand their rights in the enforcement process. Now, without question, the rule also helps the Department because it would help us avoid wasted resources, and we think we have a responsibility to do

that, particularly where the changes are also beneficial to the manufacturers.

So, with that said, let's go ahead and get started. We'll touch on some regulatory history and the Department's goals for the rulemaking. Just to hit a couple of key dates here, DOE first adopted enforcement regulations back in 1989, and our first major revisit to those regulations was in 2011. You may hear us call the 2011 rule today the CCE rule.

So we have a few major goals for this rulemaking. First, after almost 10 years of experience enforcing the appliance standards regulations, we've found that, during the enforcement process, we interact with manufacturers much more than our current procedural regulations would suggest, and we think that that interaction is good. It helps us ensure that we have the input and feedback from manufacturers earlier in the process so that if something is wrong, we can address it and save both DOE and the manufacturer time and money.

But we've seen, you know, we've seen this engagement fail in, I'd say, two key ways. First, some manufacturers don't realize that they could raise issues early, so there's a missed opportunity to engage that we would have welcomed. And second, some

manufacturers just do keep coming back over and over and over with new issues, right, and it's often done in this kind of piecemeal approach that is very hard sometimes to follow or understand.

So our key proposal for this rule will hopefully address both of those issues by making all manufacturers aware of the opportunity to raise issues early but also to provide some structure for doing so.

Another major goal we want is to align our regulations with our statutory authority. Notably, there have been some statutory changes affecting enforcement since the 2011 revision, or the CCE rule, and this rule does some catch-up.

So DOE proposes various edits to make clear the extent of the Department's enforcement authority under EPCA and to make more transparent the Department's process for exercising its statutory authority. And finally, the rule should reduce burden for regulated entities.

So this leads us to our proposal to create a process for a manufacturer to petition to reexamine -- excuse me, to petition for reexamination of the Department's pending determination that a basic model is noncompliant.

I think one of the biggest changes you will

see in the proposed rule is this concept of a petition for reexamination. This is something brand new, and it's basically a process by which the manufacturer will be informed of DOE's intent to make a finding of noncompliance for a basic model. So, essentially, we will tell you in advance that we are planning to issue a Notice of Noncompliance Determination, or NND. To be clear, what triggers this process is DOE's decision to issue an NND.

We had originally drafted this as a petition to reexamine after issuing the NND, but then Executive Order 13892 came out, and to comply with that order, we moved it to before the NND. So, after we notify the manufacturer that DOE intends to issue an NND, if the manufacturer wants to use this petition process, the manufacturer would then need to provide DOE within 30 days of that notice a variety of information to essentially convince the Department not to make the finding.

DOE would review the information and then would make a decision on how to proceed. We might modify our findings or not make a finding, or we might go ahead and make the finding as we originally intended. So what you see on this slide are the high-level points of the process. Let's get into the finer

details of what a petition must include. We will do that on the next slide, and then we'll open up for comments.

Okay. So, within 30 days of issuance of the letter of intent to make a finding, if the petitioner wants to take advantage of this process, and they don't have to, but if they would like DOE to reexamine the pending determination of noncompliance, they would need to submit a petition to DOE that contains certain information. That information includes material issues that the petitioner has with DOE's testing of the basic model, test reports or AEDM information that the petitioner believes demonstrate the basic model's compliance with applicable standards, legal and other arguments that the petitioner wants to make in support of its petition -- position, excuse me, information regarding any previous representations of the basic model's energy consumption, including test reports or AEDM information underlying those representations.

These are all pieces of information that DOE believes are important and extremely relevant to the reexamination of a pending noncompliance determination. That being said, the petitioner's welcome to include in its petition any other information that it deems pertinent to the matter. We

are going to discuss some final details very specific to the test reports submitted as part of the petition, but before we do that, I think it might be a good idea to stop here for a brief moment and see if there's any comments.

MS. CONWAY: Okay. So we have a comment from Phillip Stephens.

MR. STEPHENS: Yes. My name is Phillip Stephens. I'm with Weil-McLain. I am concerned about this issue with 30 days not being long enough for manufacturers. To the best of my knowledge, manufacturers, upon receiving a notice, they would want the opportunity to evaluate their products themselves to see if something had happened that they were not aware of. Thirty days does not give them that opportunity to do that.

MS. VEMURI: Okay. Thanks, Mr. Stephens, for that comment. So, you know, let me just note that in a typical enforcement action, you know, the manufacturer is made aware that it is the subject or that one of its models is the subject of a potential enforcement action at the time of the test notice, and so, you know, from the point of the test notice all the way until this letter of intent is submitted is often very long, months, in fact.

So the manufacturer does have an opportunity to start kind of putting together the information, you know, even well in advance, and, obviously, it's up to the manufacturer to determine, you know, what they would like to do. To your point, we understand that some manufacturers want to do additional testing, some may not.

It's not a requirement of this process that additional testing is done after the letter of intent, but, you know, it's kind of a balance here, right, because we want to get to the -- we want the manufacturer to have an opportunity to be fully heard. On the other hand, we also have this balance of an interest of making sure that we get to the right answer and do it in a timely manner.

MS. CONWAY: Okay. So we have a comment from Caroline Davidson.

MS. DAVIDSON-HOOD: Hi. Yes, this is a question. I think that the notice and the opportunity for petition are -- they're good ideas. I just wanted to clarify for the record that the opportunity to issue a petition during this interval does not act as any kind of a waiver to raise additional arguments if the case were to go to administrative litigation at some point in the future. Can you just clarify that,

please?

MS. VEMURI: Sure. Thanks for your comment, Caroline. So what we want to convey with this provision about -- in there about waiving any further arguments is that once you have our letter of intent with the complete data set, make your arguments to DOE, you know, make them now, we will stop, essentially stop the process and give them due consideration. And so we want manufacturers to understand with that that, you know, this is their chance to present their argument to DOE.

They will get to make their case before, you know, an ALJ or in federal district court later, you know, in the civil penalty phase of the process and, you know, later down the line, but here, early on, we're creating this very specific process so that we can get a single and cohesive argument for our consideration. And, again, I mean, you don't have to take advantage of this process, but if you don't, if you choose not to, then we will kind of continue moving on after those 30 days.

And I'll also just note, just kind of piggybacking off of that, that we often find that manufacturers raise issues, you know, when they get to testing this, and this might play into kind of the

comment earlier on. You know, when they get the NND, they might raise some comments, after the NND when they get the civil penalty notice, you know, during negotiation, so there's comments being raised kind of continuously throughout, and we get a running stream of different arguments often, and it's very inefficient for us to process all of that.

And, frankly, while it delays the process quite a bit, it really doesn't make a good case, I think, for DOE to make -- to change the conclusion, right? And so what we're hoping with all of this is that this will help us evaluate up front the claims that are made fairly but to keep the process moving without undue delay. So I hope that answers your question.

MS. CONWAY: Okay. Looks like we have one more --

MS. VEMURI: Any other comments?

MS. CONWAY: I think we have another comment from Phillip Stephens.

MS. VEMURI: Okay.

MR. STEPHENS: Oh, sorry. I hit the button. No question.

MS. CONWAY: Okay. So we have a comment from Jennifer Cleary.

MS. CLEARY: Hi, this is Jen Cleary with AEM. I agree with Caroline that this has some good elements to it, and we appreciate DOE's thought here. I think what strikes me is that, you know, DOE is talking here about a process that's taking place during a pending determination of noncompliance, and yet, the language that's being used here makes it sound like it's final with the petition for reexamination process.

And so I think we would hope that DOE might consider, you know, changing the nomenclature here and defining it a little bit more. I mean, how I think we see the process here is that DOE is sending a company a preliminary notice, and companies have the opportunity to respond, which they should have in any case. And, you know, if the company doesn't respond, we would expect that DOE would finalize its determination, but, if they do, then, as you indicated, Smitha, we would expect that DOE would consider the information before issuing their final decision.

So that's how I'm sort of interpreting what is here in terms of the process, but just the words being used make it sound like it's a final determination, or maybe I'm misunderstanding the

proposal.

MS. VEMURI: Thanks, Jen, for your comment. So, you know, I think that where we're at, at the point that we are -- that we see ourselves getting ready to issue a letter of intent, is DOE has in hand whatever data, whatever information we need. We already have that in hand, where we are comfortable, right, and ready to make a finding. We haven't made one yet, so I wouldn't call it final -- that's the point of the process, in fact -- we're ready to make that finding. We are convinced that the model is not compliant, right?

And this process, this kind of procedural rule, it creates a right for the manufacturer that doesn't exist under the current regulations, right? And it's a right to say stop the process, right? And if you don't take advantage of this process, which, again, you don't have to, then, you now, there is an element of we need to move forward, right?

So, if someone gives us a package on day -- instead of, you know, 30 –- on day 45, we get something, we may have already issued the NND, right? We may have already gone forward. It doesn't mean that you can't engage with us. It just means that we're continuing to move forward with the process.

And this right of saying, stop, you know, stop the process, look at this before you keep moving, that kind of process is over.

And we do look at everything. But, again, there's some keys here, which is -- let me just say that one, you know, the section lays out what we feel we need, right, to inform our decision to modify or rescind our pending decision, not our final decision, but our -- it's a pending decision but one that we're comfortable with, right? So we're essentially laying out a roadmap of what we find persuasive.

You know, you may give us things, if it's not what we're laying out here, it may not have a huge impact. It probably wouldn't. And then, also, you know, this other point of being, again, not to reiterate, but, yes, to say -- we're telling you right now that the process is going to keep moving outside of this process. So, you know, I wouldn't call it final, but I would say this is an opportunity to stop the process and have you convince us, persuade us that we are wrong, that what we're about to do is not right.

MS. CLEARY: Thanks for the clarification, Smitha. I think that's kind of what we were understanding, is that this is a preliminary

determination of which you're notifying the manufacturer and providing the manufacturer an opportunity to respond.

But the language of "petition for reexamination" makes it sound like the final decision has already been made by DOE and that the manufacturer is now in a position of having to request -- although the proposal would give them the right to do so -- of having to request the opportunity for DOE to hear this information. And so I think it's just the language.

I think we're on the same page about what the process should be, but this makes it sound like DOE has already reached a decision, and now the manufacturer is in a position of having to convince them otherwise and is having to request the opportunity to do so via a petition.

So I think we'd just like to see -- and we'll suggest in our written comments -- maybe some language that might be more in-line with what it sounds like DOE is proposing, which is that this is a back-and-forth between DOE and the company upon notice of a preliminary determination, not a final determination.

MS. VEMURI: Thanks, Jen. We look forward to your written comments specifically regarding, you

know, what nomenclature. If you have other nomenclature you'd suggest, we're open to that. I do want to just add one more point of clarification. You know, this concept of kind of the back-and-forth, I do want to just add a clarification there.

You know, this is not a process where DOE, for 30 days, will, you know, kind of engage back and forth and, even beyond that 30 days, you know, make a promise of kind of engagement, continuously asking for information to fulfill the petition or anything like that. I'm not saying necessarily that you've suggested that.

But I do want to clarify that, you know, the expectation really is we've created this roadmap, and we expect the manufacturer to have the responsibility of providing us with, you know, a full package and to get rid of kind of this piecemeal back-and-forth where we don't have really any context of what's being submitted to us and to kind of try to resolve that problem.

And so that is one of the goals here, is to create kind of a little bit more of a streamlined situation of give us all your information. Give it to us once in a cohesive way that we can understand. Surely, if we have a question, we would ask. But, you

know, trying to get this a little bit more so it's not this very convoluted and piecemealed kind of submissions and discussions that we've been experiencing. But thank you for your comment.

Any other comments, Naeema?

MS. CONWAY: Yes. We have a comment from John Bade.

MR. BADE: Yeah. So a question on the timing once the petition is submitted. I don't see any language in the proposed regulation that says, okay, you know, I'm a manufacturer; I've submitted the petition. You know, how do I know that my petition has been accepted or denied or, you know -- and what I'm more concerned about, can -- if I submit the petition, can the thing just hang fire and there's no particular timing for when DOE needs to make a decision on the petition?

MS. VEMURI: Thanks for your comment, Mr. Bade. So I think that, you know, I welcome you to share that also, of course, with everyone else, but welcome that comment in written comments. I think the DOE would certainly engage with the manufacturer to let them know that the information -- that the package was received or not.

In terms of, you know, how much time until

we make a decision, it really depends on the complexity, I think, of the issue, what is provided, you know, if there's going to be a big difference in a package that might have some test data, you know, and others that have reams of test data. So, you know, really, it's very fact-specific. And even with a complete and very thorough package, there may be instances where we feel like we do need to engage and ask some questions. So it really depends.

I mean, obviously, I understand your point. The goal is to get a response out, and if a decision -- on the Department's end, if the decision is that we feel like we want to still continue with the NND, then we too would want to get that NND out quickly. But I understand either way that the goal would be for all parties just to try to come to some kind of conclusion about the next steps as quickly as possible. So thank you for your comment. It's noted.

MS. CONWAY: Okay. We have a comment from Tom Catania.

MR. CATANIA: Yes. Hi, can you hear me?

MS. VEMURI: Yes, we can.

MR. CATANIA: Okay. My comments go along the same lines as Jen Cleary, but I'd like to offer a suggestion. I think it would be very helpful if

you -- if DOE were to share some sort of a decision tree kind of document that would show the various steps that you're outlining and maybe contrast it with what you see as some of the infirmities of the current decision tree or the practice of the way you're receiving and responding to information so that it would both make it clearer.

And in addition, it might be nice, consistent with Jen's comment, if, at some point in this process, the burden of proof, so to speak, shifts back and forth, especially if it's sort of legally significant at that point, as opposed to just facilitating information exchange preliminary to making even an initial decision, that there was a clear line across the decision tree that explained when a Rubicon of some kind was crossed. But some sort of a decision tree format might be helpful to supplement the written description.

MS. VEMURI: Thank you, Tom. I think --

MR. CATANIA: Oh, I forgot to mention, by the way, for the record, my name's Tom Catania, and I'm a consultant to the Air Movement and Control Association.

MS. VEMURI: Okay. Thanks, Mr. Catania, for your comment. Appreciate it.

Do we have any other comments?

MS. CONWAY: No, that's all.

MS. VEMURI: Okay. So let's move on to the next slide then. Okay. So the final point we want to highlight here deals with the test reports submitted as part of the petition. Those test reports have to demonstrate that the applicable DOE test procedure was followed. DOE cannot rely on testing that was not done in accordance with DOE test procedure, and it's a problem when we can't tell whether the test procedure was followed or not. Truly, good recordkeeping can be the key to convincing DOE not to proceed.

Further, if the tested units differ in any way from the model at issue or were prepared, adjusted, or modified in any way prior to the testing, the petitioner would need to inform DOE of that fact in its petition. Moreover, if the tested units were built or tested after the issuance of the letter of intent, the petitioner must provide documentation that shows us whether there was inventory of the model at the time of the test, identify for us the source of the tested units, and explain how the units were selected for testing.

These requirements ensure that we have a full understanding of the petitioner's testing and

helps us determine the weight or relevance of submitted data. Note that the manufacturer must provide us this information about the testing. We don't have a complete package for consideration without understanding the full picture of what testing was done. Comments on this slide or any other comments on the petition for reexamination process generally?

MS. CONWAY: We don't have any.

MS. VEMURI: Okay. Okay. Before we move on to the next topic, let me just say -- let me just summarize for you again why we think this process is needed. So, you know, we -- and we've touched on some of this, but, for the record, right, this process creates a right for the manufacturer, again, that just -- that doesn't exist right now under our current regulation.

So this benefit of stopping the process for a brief period, presenting us with all the information we talked about, is quite beneficial. Obviously, it's good for the respondent in the enforcement case, but it is also beneficial to the Department, again, in the sense that it helps us avoid these delay tactics we see pop up throughout our enforcement cases and helps us avoid some of these piecemeal and disorganized kind

of random drops of information that we've been getting.

In addition, I'll also add that, you know, competitors who have complained about unfair competition are very frustrated about the amount of time it already takes to see a noncompliant product removed from the market. And so we're hoping that providing a roadmap for the respondent to make its best case early in the process benefits everyone: the respondent, Department, and competitors.

So, with that, thanks for your comments on this topic. We look forward to your written comments, and we'll move on to the next slide.

Okay. So the other major change in this proposal is to move motors into Part 429. We're going to cover adjustments to the prohibited acts as well because these two topics are intertwined. Laura, who's with us today, is going to take us through the next couple of sections. Laura?

MS. BARHYDT: Thanks, Smitha. So, as the motors folks are aware, DOE has previously proposed to move electric motors into the same enforcement procedural framework that we use for all other covered products and equipment on at least two prior occasions. In fact, DOE actually issued a final rule

that was never published. So we're not expecting this to be a contentious issue, but having said that, let me highlight a couple of the changes that could be viewed negatively by manufacturers.

First, under the current motor regs, DOE has to talk to the manufacturer before beginning enforcement testing. Second, under the current motor regs, manufacturers have the option to have additional testing done at their expense after DOE completes its testing. Both of these provisions existed for other manufacturers but were removed for all of the other covered products and covered equipment as part of the procedural changes back in 2011.

So, in DOE's view, the other procedures that were added in the 2011 rule, plus the additional procedures that we're proposing to add in this rule, together, we think that those provide manufacturers with a more meaningful and productive opportunity to engage with DOE during the enforcement process. Again, we didn't receive any negative comments on this last time around, and we do think it ultimately benefits electric motor manufacturers who do find themselves in enforcement actions because it provides them with a lot more structure and process than the current regulations do.

Obviously, it also benefits the Department because we don't have to deal with two separate processes that are different. And so any questions or comments on this proposal to move the motors over to the enforcement procedures? I will also note this doesn't affect motor certification. This is purely on enforcement. Nobody?

MS. CONWAY: Yeah, I don't see any comments.

MS. BARHYDT: Okay. Okay. So we'll be highlighting aspects of moving motors to Part 429 off and on through today's presentation. Next, we're going to cover a variety of edits we've proposed for the prohibited acts section in Part 429.

So there are three major categories of amendments we're proposing. First, amendments that reflect statutory changes since the 2011 final rule, amendments as part of the proposal to move motors to the Part 429 enforcement regulations, and amendments that reflect the full scope of violations established in the statute. And we're going to go through how these proposed amendments will impact each of the products you see on the screen in particular. I'll also note that we've proposed to remove one prohibited act that we think is redundant related to distribution after DOE has issued a Notice of Noncompliance

Determination.

So DOE is proposing to move three prohibited acts from 10 C.F.R. 431.382, paragraph A1, A2, and A4, to 10 C.F.R. 429.102. We reworded them a bit to make the formatting consistent with the other prohibited acts in 429.102, and we're going to cover them over this slide and the next slide. So all three of these prohibited acts were already spelled out in the regulations for electric motors, but they were not listed in Part 429 for other covered equipment.

And so you may be wondering, why weren't they in Part 429? And, really, the history here is that these are prohibited acts for which the Federal Trade Commission has authority with respect to consumer products but for which DOE has authority with respect to covered equipment. And, as far as I can tell, we just left these out in the 2011 rule. I think, when we were doing that rule, we were very focused on the consumer products because that's where our earliest enforcement efforts were concentrated.

So now we're proposing to fill in that gap so that the regulations reflect the full range of acts that are prohibited by EPCA and enforced by DOE. Having said that, note that these prohibited acts only apply to covered equipment for which DOE has a

labeling rule. Most covered equipment, including small electric motors, are not subject to DOE labeling requirement, so these prohibited acts would not apply.

The second point is sort of the converse of the first. Where there were some prohibited acts that were spelled out in 431 that were missing from 429, there are also a number of prohibited acts in 429 that were not integrated in Part 431. So, in moving electric motors over to Part 429, it'll make clear the full range of prohibited acts that actually apply to electric motors.

So there are a couple points I want to cover for the third prohibited act. First, I've italicized the last part of this -- it's paragraph 14 in the proposed regulatory text -- because DOE specifically asked in the NOPR whether that last clause adds value or if it creates confusion. So, to be clear, even if we did not put the clause in the regulation, DOE still could not enforce the labeling provision if distribution of the catalog began before the effective date of the labeling rule.

If you just go to the CFR and read this prohibited act, does it mean anything to you, or does it just leave you wondering, what labeling rule? It's sort of out of context. You're just reading the

regulation. Is there a different way we could word it that would help? And so we're just looking for some feedback on what the best way to structure that prohibited act so that somebody who's reading it out of the context of the rulemaking understands what the requirement is.

The other item is that we have already received a very helpful comment from the Hydraulic Institute, and I want to thank them for pointing this out to us and doing so early. As we've noted, our goal with this rule is to align our regulatory text with our statutory authority. The NOPR language that we put in there would suggest that this prohibited act only applies to electric motors. Under EPCA, it actually applies to other covered equipment as well.

So, in order to align the regulatory text with our statutory authority, it really should read something more like this: manufacturers, distributors, retailers, and private labelers are prohibited from advertising covered equipment in a catalog from which the equipment may be purchased without including in the catalog all information required to be displayed on the label, except as otherwise provided in Part 431. However, this does not apply to an advertisement of the covered equipment

in a catalog if distribution of the catalog began before the effective date of an applicable labeling rule.

So I'm just kind of throwing out some language there of how that might be structured to capture the broader scope of the prohibited act. As with the other two prohibited acts, this would only apply to covered equipment for which DOE has established a labeling requirement.

Any questions or comments on these three prohibited acts, either with respect to moving them, for motors, to Part 429, or as they apply to other covered equipment? Any comments on the rewording of the third prohibited act to apply to covered equipment generally? And any comments on the wording of that last clause regarding the timing of the prohibited act?

MS. CONWAY: Okay. So we have a comment from Karen Meyers.

MS. MEYERS: Hey, good morning, or good afternoon. Thank you for this, Laura. So I just want to make sure I'm clear. So, if we -- if there is a contractor out there who puts a newspaper out for, you know, a covered piece of equipment, whether it may be a water heater or an air conditioner, this is saying

that they have to include all the efficiency information, et cetera, on the product?

MS. BARHYDT: So, for DOE purposes, this is limited to covered equipment, not the consumer, so I want to make sure that's clear, first of all. And then, second, it's only for covered equipment for which DOE has established a labeling rule. And I'm struggling here. I don't recall having a labeling requirement for HVAC and water heaters, but I could be wrong on that. And so, if DOE does not have a labeling requirement for covered equipment, these do not apply.

MS. MEYERS: Okay. Thank you.

MS. CONWAY: We have a comment from Phillip Stephens.

MR. STEPHENS: Yes. I think the prior comment is still applicable. I don't think the question was focused as much to covered products as entities in the distribution channels which generate their own product literature for their own marketing purposes beyond the manufacturer.

MS. BARHYDT: Right. So the folks down the distribution chain are not required to include information in a catalog unless DOE already has a specific labeling requirement for that covered

equipment. So, for example, an electric motor has very specific labeling requirements that DOE has established. I think widgets, doors, panels, and refrigeration systems are another example of covered equipment where DOE has established labeling rules.

Where there are labeling rules, that's where you see catalog requirements, and the catalog requirements apply sort of down the whole distribution chain. But, if there's not that first fundamental labeling requirement on the equipment itself, you're not going to have a catalog requirement.

Any other questions or comments?

MS. CONWAY: I believe that's all for the comments on this section.

MS. BARHYDT: Okay. All right. Okay. So the next two prohibited acts we're going to cover are related to lighting. DOE is proposing to add a prohibited act related to rough service lamps and vibration service lamps. So those of you in the lighting industry, you're already familiar with the statutory provision that triggered new requirements for rough service and vibration service lamps, which include both performance requirements as well as a limitation on retail distribution. This proposed prohibited act addresses the retail distribution

requirement. And you can see it there. That's the first bullet point.

And then the second one, DOE is also proposing to modify the language of the prohibited act related to medium screw base adapters. And this one is a little screwy, if you'll pardon the pun. Okay. So take a look at paragraph I. Paragraph I is what we're proposing, and I'm going to read to you the relevant excerpt from the current language. So "is designed to allow an incandescent lamp that does not have a medium screw base."

So what I just read you is the current reg text. It seems simple enough, like we're taking out the word "incandescent," but the reason is that "incandescent lamp" is defined as a lamp that has a medium screw base. So, if you literally insert that in there, that would make the prohibited act read, "is designed to allow a medium screw base lamp that doesn't have a medium screw base."

Obviously, that's completely nonsensical, and in DOE's view, it's clear that the intent of the prohibited act was to prevent the sale of adapters that would allow non-medium screw base lamps to be used in a fixture with a medium screw base socket. So we're proposing to adopt the language you see here to

avoid the apparent inconsistency in the current language. So any questions on either of the prohibited acts on this slide?

MS. CONWAY: So we have a comment from Dave Gatto.

MR. GATTO: Hey, Laura. Can you hear me?

MS. CONWAY: Yes.

MS. BARHYDT: Hi, Dave.

MR. GATTO: Nice to hear your voice again. So I guess my question is on the (ii). I don't remember in the original prohibition the voltage mattering. I guess my question is this doesn't matter to us because we stopped making several of these products over a decade ago. However, I don't understand why typically adapters, something that we make for other base types, there's no voltage.

Or, if there is a voltage, you know, it's like 660 or something because, basically, it's just a method of changing the electrical connection from one screw base size to another, so say from, you know, E12 to E26 or E11 to E26. So I don't remember there being anything about voltage in there, and I guess I'm concerned that somebody would just label something 12-volt even though it could be used at 110 to 130 and then go right back to making products that we no

longer are allowed to make. Does that make sense?

MS. BARHYDT: Yes. I understand your concern. So that language about the voltage is actually straight out of the statute. While you were talking, I pulled it up to confirm it.

MR. GATTO: Okay.

MS. BARHYDT: So that is straight from the statute. But, in terms of someone –-

MR. GATTO: It's still wrong, though.

MS. BARHYDT: -- labeling it 12-volt, it's "is capable of being operated." So, even if they label it 12-volt, if it's capable of being operated in that voltage range, they're in.

MR. GATTO: It's still prohibited. Okay. Good. That was our hope. You know, again, we dealt with that early on that there were still some people using those types of adapters and just remarketing them for different things. So, okay, that makes perfect sense. It's so long ago I forgot that that was even in there. So thanks, Laura.

MS. BARHYDT: Anything else?

MS. CONWAY: I think that's all we have for this section.

MS. BARHYDT: Okay. So let's go on to the next slide. So, finally, DOE is proposing to add four

prohibited acts related to grid-enabled water heaters. These were added to EPCA since the 2011 CCE rule, and our regs have not been updated to reflect the change. So these are basically just straight out of the statute. And so we welcome comment on any of the proposed additions and modifications to the prohibited acts section. Anyone have anything else on the prohibited acts?

(No response.)

MS. BARHYDT: Okay. Let's move on to the next topic. So the next three slides and two issues deal with the test data DOE considers or could consider in the enforcement process. And I'm going to cover all three slides, and then we're going to open it up for comment.

So let me give you a little background on this proposal. First, DOE's regulations already state "DOE may at any time request any information relevant to determining compliance with any requirement under Parts 429, 430, and 431, including the data underlying certification of a basic model. Such data may be used by DOE to make a determination of compliance or noncompliance with an applicable standard."

And that language is pretty broad. In practice, though, DOE normally only requests data from

manufacturers, and DOE normally only makes noncompliance determinations based on non-DOE data when the manufacturer's own test data shows noncompliance. We just haven't been comfortable making determinations based on third-party data.

In part, this is because, in a different section, 429.110, our regulations say "units tested in accordance with the applicable test procedure under this part by DOE or another federal agency, pursuant to other provisions or programs, may count towards units in the test sample."

So, if we can make a finding purely on a manufacturer's own test data, we do that. But, if we think we need to test once we go down the enforcement testing process, then we won't mix and match test data. Once DOE goes down that path, we rely solely on federally conducted testing.

So there are two places in the regulations that address the sources of data DOE uses as the basis for a compliance determination. This proposal would change the test notice process to allow DOE to include test data obtained from third-party certification testing as part of the enforcement samples included in the statistical analysis for compliance or noncompliance. We currently get test data from AHAM

only for EnergyStar products under an agreement to avoid duplicate testing for the EnergyStar program, and we currently get test data from AHRI for products that fail standards.

This idea of including third-party certification test data in the enforcement process is one that's been bandied about pretty much starting in 2010 with our first CCE rule NOPR. We talked extensively about how DOE might go about recognizing third-party programs prior to accepting their testing during the commercial certification negotiated rulemaking. We did recently hear in an ex parte that industry may not be interested in pursuing this anymore, and we encourage all parties to include their thoughts in their written comments.

We know manufacturers of industrial equipment often have small sample sizes and that the cost of building units for testing can be extremely high. This proposal would allow DOE, where we have confidence in the underlying testing and unit selection, to include test data from a third-party program as part of DOE's compliance evaluation.

So I want to be clear here. This is a notice of proposal. This is an idea we wanted to put out there for comment. It may be that, if we were to

go down this path, more details would need to be worked out. That's fine too. We could always SNOPR it. If you like the idea of DOE including third-party test data but think there should -- that we need more explicit parameters, then I want to encourage you to put a lot of thought into your written comments and to provide us details about how you would want to see this work. From that, we could craft an SNOPR with a good proposal fleshed out.

If you think we should abandon the idea of including third-party test data in the data sample set, we want to hear that too. Again, we put this in here because it's an issue we've heard about off and on over the years, and we thought we would be remiss to leave it out of an overarching enforcement rule. So, before we take comment on this, let me go over the last slide in the section because the issues are almost two sides of the same coin, and I think it'll make more sense to put it all out on the table.

Okay. So, in addition to proposing to change the test notice process, we also propose to change the language addressing compliance determinations. In the preamble, we highlighted the idea of DOE treating third-party data as official enforcement data because it's been an issue raised by

industry over the years.

But, as I mentioned previously, although DOE already has the authority to make noncompliance determinations based on non-DOE data, we have, to date, limited those determinations to instances in which the manufacturer's own test data shows noncompliance or the manufacturer admits the product is noncompliant.

And our proposed language explicitly adds both of those scenarios to the regulations in addition to the third-party data so that we can provide more transparency to everyone about how DOE is going about making its determinations regarding compliance. So, overall, our proposal is to make clear the variety of bases upon which DOE may make a determination of noncompliance and the variety of sources for that information.

In practice, historically, those ways that we've made those determinations have been based on manufacturer provided data and U.S. Government-generated data. And we're putting out there the option for comment as to whether we ought to also consider test data from a third-party certification program.

This issue, what the sources of data are

that DOE will use as a basis for a determination of compliance or noncompliance, is captured in our regulations in two different, interrelated ways, and, conceptually, we can't adopt incompatible approaches in those two spots. So, whether we decide to include third-party data or not, that would ultimately be consistent in the two different parts of this proposal. So, with that, questions or comments on the last three slides?

MS. CONWAY: Okay. So we have a comment from Jamie Watkins.

MR. WATKINS: Hi. This is Jamie Watkins. I'm with Crane Pumps. Is there a definition someplace of what is a third party?

MS. BARHYDT: No, there isn't. Really, from DOE's perspective, you know, one party is DOE, the second party is the manufacturer, and so any other party would be a third party. So it could be a test lab; it could be an industry program. I suppose, conceptually, it could be like maybe even state or international testing, although, honestly, I'm just kind of making that up off the top of my head. I didn't even think about that previously.

But it would be any third party, but it would have to be tested in accordance with the DOE

test procedure, and it would have to be something that DOE felt comfortable about the source of the units that were tested.

MS. CONWAY: Okay. We have a comment from Caroline Davidson.

MS. BARHYDT: I think Caroline's still muted.

MS. DAVIDSON-HOOD: I'm trying to not be on mute. Can you hear me?

MS. BARHYDT: I can hear you now.

MS. DAVIDSON-HOOD: Oh, there it goes. There it goes. It was, like, three separate clicks. Okay. Sorry. This is Caroline Davidson-Hood from AHRI. I would say that this proposal -- and I agree that there are two sides to this coin -- gives us the most pause of everything that is put forth in this provision, and I just want to highlight some of the potential unintended consequences of the data collection provision and the reliance on third-party test data for enforcement purposes, one of which is -- and I'm sure -- Laura, have we touched on the data collection? Is that included in this, or is that a separate -- are we going to talk about that later?

MS. BARHYDT: I'm trying to remember whether we talk about that later.

MS. DAVIDSON-HOOD: Okay. Well, I'll just jump in.

MS. BARHYDT: Go ahead.

MS. DAVIDSON-HOOD: I'll try not to repeat myself, though. So one of the concerns that we have with relying on third-party test data is the notion that this is an enforcement action, and when you're using third-party test data, you are essentially relying upon hearsay evidence, right?

How does a manufacturer defend themselves against information that they do not generate and from which DOE does not -- you know, if you are not testing that data, one of the -- what DOE's burden of proof is to demonstrate that it has, in fact, been tested not just in accordance with the DOE test procedure, but it has been tested accurately, has been set up properly, that there are no major errors or mistakes or aberrations that would lead to inappropriate results.

So that is something that is called into question, I think, by the use of third-party test data. And I know that, you know, hearsay evidence may be admissible, but it does sort of step on the due process of a defendant, if you will, in this given circumstance to really test all of their possible defenses. So that is one concern that has been raised

by members.

Another is the idea that these are -- manufacturers that participate in voluntary certification programs are the ones that are expending resources to try to ensure that their products live up to their ratings and really meet the efficiency standards and the efficiency representations that they put forth for consumers. You know, they are undergoing additional testing. They are, you know, expending sufficient time and money to not just undertake the resources but make sure that they're complying with all of the various requirements of certification programs.

And, ultimately, certification programs are contributing to energy efficiency and energy savings by keeping manufacturers honest about their efficiency ratings. And there is a sense that if DOE is to use third-party certification data as a source of enforcement that that unfairly raises the risk profile of manufacturers that are already doing the right thing. Those manufacturers that are not involved in third-party certification programs do not have additional test data floating around that may end up in the hands of the Department of Energy for the purposes of enforcement, and they are really the ones

that we think should be targeted by DOE. Can you hear me okay? I'm getting a chat that I'm breaking up.

MS. BARHYDT: I can hear you fine.

MS. DAVIDSON-HOOD: Okay. All right. That's great.

MS. BARHYDT: I just want to make sure that the court reporter can hear you okay as well.

COURT REPORTER: Yes. My audio's fine, so we'll be good for the transcript and the recording.

MS. DAVIDSON-HOOD: Okay. Great.

MS. BARHYDT: Okay. Great.

MS. DAVIDSON-HOOD: And then -- so, on that note, I do -- I see the perspective of the Department, and I think that, you know, one comment that I will make –- obviously, we will be providing significant written comments -- is that, you know, to the extent that third-party test data is going to be used for enforcement, it should also be used for defense, right?

So, if we -- if you have an opportunity to have multiple tests available, and many of those were conducted by AHRI or our affiliate labs, then if you're going to be doing a statistical analysis of, say, four products, then, you know, if there are multiple test reports that come from a third party

that demonstrate compliance, then DOE would have to give, you know, sufficient weight to those as well. So just an additional consideration.

And I do think that there is a lot more opportunity for us to set up the appropriate parameters around what information is collected and what information is used to ensure that we are not creating unintended consequences of unfairly raising the risk profile of manufacturers but also, you know, creating a collaborative approach between AHRI, AHAM, and DOE regarding, you know, compliance with efficiency standards. So, with that, I will put myself back on mute.

MS. BARHYDT: So, to your first point, I actually completely agree. The Department would not be using the data unless we had a great deal of confidence in the testing and the units, making sure that this was a fair representation of the performance of the unit. And I think, from our perspective, you know, where we are here -- we're 10 years after we did -- well, nine years after we did the first CCE rule, and, you know, we found that there were things like the manufacturer's own test data where, you know, we felt like the regulatory text allowed us to make a determination based on that, but we felt like it also

precluded us from mixing DOE test data with manufacturer test data or other sources of data.

And I think where we were looking at this was, you know, we don't want to end up in a situation where the Department has a set of data in front of it that it actually feels very confident in as being a good representation of the performance of the unit and we're not able to actually include that in the sample.

And I think, on your third point, we actually agree completely that if we could use it for enforcement in the sense that you meant it that we could -- that it also has to be included for defense purposes. And I think, from our perspective, that is also part of including it for enforcement. So, if we're including it in an enforcement sample, it would be -- you know, if we had four units and, say, they were four AHRI units, we'd have a sample size of eight, and some of those may be passing values and some of those may be failing values.

And whatever that full sample set would be, all of the data that met the criteria of being, you know, done in accordance with the DOE test procedure where the Department has a strong confidence in the testing and the selection of the units that this data is really representative of what the manufacturer was

making, absolutely, it should all go in.

We're not talking about picking and choosing, oh, well, this is a failing test, so we're going to take it, and this is a passing test, so we're not going to take that. I think we completely agree that that would be inappropriate. So it sounds to me like maybe some –- it sounds like we may not actually be that far apart, but I very much appreciate your comments.

MS. DAVIDSON-HOOD: Just one final, just I think that the policy considerations really need to be evaluated with regard to risk profile and the particular manufacturers that are being targeted.

MS. BARHYDT: Understood. Thank you.

MS. CONWAY: Okay. So we have a comment from Tom Catania.

MR. CATANIA: Yeah. Hi, this is Tom Catania again, consultant at AM Con. You know, I'm trying to avoid PTSD from experiences more than 10 years ago in a similar role where we confronted these issues directly. I guess what I would say is that, you know, in the real world, there are a couple of categories of issues that can be addressed by this, and I think it's laudable that the DOE is trying to do it. I think some of the issues that have been raised by the

previous questioners do a nice job of talking about unintended consequences.

But, for example, in one case, if you are a small manufacturer and you don't have a lot of resources yourself and you want to become part of a certification program as a bit of a defense to getting the DOE's attention when you discover noncompliance by a competitor, that's a good thing to facilitate.

On the other hand, if you're a large member or there's someone who's not part of the certification program deliberately and is violating and putting product on the market that does not comply with the belief that the cumbersomeness of the existing procedures for DOE will allow them to continue for a very long time without consequences.

So, you know, bringing this issue up and attempting to address those dilemmas is laudable. I would suggest that it's really important for manufacturers to want to embrace a certification program as a safe harbor and not use -- and not stay outside of that system because of fear that, for those who are acting in good faith, will have, you know, an unintended noncompliance whistle blown, so to speak, over to the DOE before it can be fixed in good faith.

But, on the other hand, you also don't want

to have a procedure where this activity is so insulated that individual competitors can tie up not just the DOE but can tie up third-party certification programs from dealing with people who are deliberately not complying. So I think it's in everyone's interest to kind of find an accommodation of those competing concerns and not just default to the way things are because the way things are, as on a number of occasions, either left small companies with no real opportunity to get this on the priority list of DOE for enforcement or has allowed larger non-participants in programs to continue to violate with impunity and gain market share that more than covers the cost of noncompliance.

MS. BARHYDT: Thank you for those comments.

MS. CONWAY: Okay. We have a comment from Jen Cleary.

MS. CLEARY: Hi, this is Jen Cleary with AHAM. I would echo the comments that have already been made, so I won't repeat them. But, if it's possible for us to go to, I think, the previous slide, or maybe it was the one before this actually. Sorry. Yes. Thank you.

So I just would like to get a little clarity, Laura, if it's possible, on DOE's

interpretation of the scope of the current regulation and what it's able to do. So, you know, for example, or, specifically, I guess, does DOE view that its current authority --

(Technical interference.)

MS. CLEARY: -- data from third parties, either third-party labs, verification programs, you know, others, under these requirements, or is the authority limited to seeking the data?

MS. BARHYDT: Sorry, Jen, I think I lost two words in there that must have been very key because I didn't follow the question.

MS. CLEARY: Okay. Let me repeat it. Can you hear me okay?

MS. BARHYDT: I can. It just dropped for one -- for a second.

MS. CLEARY: Okay. I apologize. So, just looking at this, I'm interested in DOE's interpretation of the scope of its ability to request data here. Is it -- does DOE view the current regulations as allowing it to simply request information from third parties? I mean, specifically here, I'm thinking of non-regulated parties in this instance. Or does DOE believe that under the current regulations it has the authority to compel information

from non-regulated parties or even from regulated parties outside of the scope of, you know, the data underlying certification?

MS. BARHYDT: So this provision, DOE believes that we have the -- well, so this provision is talking about we may request information, and that would be from any party. But we do also believe we have the ability to compel. That would be a different section that we don't have in the slides.

MS. CLEARY: Okay. Thank you. Do you have that section offhand? Or I'm sure I can look for it.

MS. BARHYDT: Actually, I don't right offhand.

MS. CLEARY: Okay. Thank you.

MS. CONWAY: All right. We have a comment from Shaun Taylor.

MR. TAYLOR: Hi, Shaun Taylor from Lutron Electronics. The proposal listed some examples of the third-party data sources that included third-party certification programs or other manufacturers with independent test data, and I was just wondering if you could clarify which type of manufacturers could provide this type of information? We'd support the ability of DOE to use OEM manufacturer data, but we wouldn't like the use of competitive manufacturer

data.

MS. BARHYDT: So, just to be clear, was that something you saw in the slide, or was it something I said? Because maybe I misspoke.

MR. TAYLOR: It was not on the slide. It was something that I had read earlier.

MS. BARHYDT: Okay. So I think -- so we got a question about who is a third party, and I said, you know, a third party really could be just about anyone, but, here, we have set a third-party certification program, so that would limit it, that actually would limit it more than I had indicated in my prior answer. So, here, it would be only where there is some sort of a formal program set up, but those can be run by labs or by industry associations. But our proposal would not extend to making a determination based on, say, a competitor's test data. It would only be the manufacturer of the product, their test data.

MR. TAYLOR: Great. Thank you very much.

MS. CONWAY: Okay. We have a comment from Paul Sohler.

MR. SOHLER: So this is Paul Sohler with Crown Boiler Company. Basically, just want to echo the comments from AHRI and, you know, just add to them that I think, yeah, I think it just leaves too much

discretion to DOE as to what is considered, you know, kind of an acceptable source of data, and, you know, I guess that's the fundamental problem we have with it, is that unless there are -- unless the rule spells out very specifically, you know, some requirements for what these third parties are -- what requirements they have to be, I don't –- well, I simply don't support that.

I think that if DOE feels that there is a noncompliance and gets data from somewhere that shows that, if they are really that competent, I don't think it's unreasonable to ask them to run their own tests to kind of establish that. That's all I have.

MS. BARHYDT: Thank you. So a couple of things I'd like to say in response. First, so Caroline made some reference to the fact that the Department bears the burden of proof in an enforcement case, and so, you know, that actually imposes a huge amount of, well, burden, but obligation on the Department to ensure that any test data that we would rely on is, you know, rock-solid. So I think it might be hard to articulate in sort of a checklist format the data has to meet x, y, and z.

But, at the same time, the legal strictures for us to prove our case that a product is

noncompliant, we're going to have to have a lot of confidence in the data, and so that's one piece of it.

And then the other thing I wanted to comment on is we know that there are manufacturers who do really small batches of products, and so there can also be an expense to the manufacturer to have to make more units for DOE to test. Sometimes they're very small businesses, and, you know, if they've already made some units for an industry program that were tested, but then those units are no longer available, and then DOE wants to test, then they have to go make more units.

And so, from our perspective, there's also an element here of providing some flexibility so that we're not in a position where we say, well, you know, we see your test data and we understand that it failed the testing from the industry association, but we can't do anything with that, and we're going to have to have you make more units for test. And so there is just some tradeoff there. But, again, we really do appreciate all of these comments and the feedback.

MS. CONWAY: Okay. We have a comment --

MS. BARHYDT: Go ahead.

MS. CONWAY: We have a comment from Jamie Watkins.

MR. WATKINS: Thanks. Just to follow up on my previous question about who is a third party. If I understood your clarification remarks more recently, there's a third-party certification program yet to be defined by DOE, such that, taking it to the extreme, the third party would not be my in my garage. Is that understanding correct, that a program needs to be developed?

MS. BARHYDT: Yeah. I mean, so the words we used were "third-party certification program" in our proposal, and, conceptually, what we were imagining is a formal program that has specific policies and procedures in place to ensure that the units being tested are representative of normal manufacturing, that has procedures to ensure that the DOE test procedure is being followed, you know, that there's some internal auditing. We're imagining something that has a lot of controls on it, not somebody running a program in their garage. That's correct.

MR. WATKINS: Okay. And I think that makes more sense. Assuming that this third-party certification program is developed with folks from the participating industry, then I think that would make a lot more sense than this as it's proposed here now as an undefined, yet to be defined, third-party

certification program. That just seems to leave it really open.

MS. BARHYDT: Understood. Thank you.

Caroline, I see you have your hand up again.

MS. DAVIDSON-HOOD: Can you hear me?

MS. BARHYDT: I can hear you.

MS. DAVIDSON-HOOD: Okay. Great. I asked if it was okay if I could make one more comment. This is Caroline Davidson-Hood, AHRI. Because I'm not sure if we're going to get to talk about the question that Jen raised about compelling data versus requesting data, and I just want to make it sort of very clear that that is something that is of significant concern to AHRI.

As you know, we test something like 20 percent of all basic models in a given year, upwards of that number, and our manufacturer data is held under strict confidence subject to significant contracts, and it's not something that we share ever, really, unless given specific knowledge and permission by the manufacturers that have that. And since DOE already has the authority to acquire that information through the manufacturer, we have significant concerns about exposure to our data, particularly if the request is not targeted and will ultimately be used as

the basis for enforcement.

So that is something that we consider to really be sort of a major source of concern from this, and we will be submitting comments on it but wanted to flag that sharing data, particularly volumes of it, is not something that is really amenable to AHRI as a third-party certification programs. That's all I got.

MS. BARHYDT: So are you -- because, I mean, AHRI already provides us with the data on the failures.

MS. DAVIDSON-HOOD: Right.

MS. BARHYDT: So are you drawing a distinction between that and data that we would ask for?

MS. DAVIDSON-HOOD: Yeah. Well, say, a general request that asks for all of our verification data.

MS. BARHYDT: Oh, okay.

MS. DAVIDSON-HOOD: I mean, we would consider that unduly burdensome regardless, right? But there is nothing in the proposal that limits -- I mean, we feel that the information that we're providing is, you know, mutually acceptable. All of our members are aware there are specific parameters, and that information goes to an assessment, right? It

doesn't go to enforcement. So we haven't been able to sort of test the limits of what would happen in the event of an enforcement action.

But, you know, it's not -- we feel that data requests, data sharing, any kinds of those communications must be highly prescribed and limited. And this proposal gives DOE a broad license to essentially ask for anything, including fishing expeditions. And we assume here, based on what you -- your response to Jen, that you would want to compel. I mean, the way that it reads, it looks like a request, you know, and then it's up to us to go to the manufacturer and say, well, is it okay if we provide this information to DOE? And it's up to them to say yes or no.

But, if you're going to compel the information, then we're going to have concerns with, you know, what our rights and responsibilities are, you know, and our engagement with DOE's enforcement under those circumstances. So I just wanted to make sure that you knew that this was something that was a significant concern to AHRI.

MR. BARHYDT: Understood.

MS. CONWAY: We have a comment from Benjamin Madison.

MR. MADISON: Yeah. Ben Madison, Grundfos Pumps. Just in the same thread of conversation, between this proposal and the proposal that DOE can request any data from anybody, you know, we have the same concern that there's no guiderails here for what's allowed. You know, as mentioned already, the third-party certification program is a blanket term with no definition. One might assume it's ANSI-accredited organizations such as, you know, the standard ULs and things like that, but the regulation is not proposing to put any sort of guiderails on that.

And so we're also of the opinion that this is essentially giving DOE carte blanche approval to ask for any data from anybody and use that in enforcement. And we feel that that's a little extreme and that some thought needs to be put into how to -- we agree with the intent, of course, but we don't agree with how wide of a net that this is casting.

MS. BARHYDT: Thank you for that comment. And if people want to suggest alternate language in their comments, we would certainly welcome that.

Any other comments on this topic?

MS. CONWAY: That looks like all we have for this section.

MS. BARHYDT: Okay. So let's go on to the next slide, and I'm going to hand it back over to Smitha.

MS. VEMURI: Thanks, Laura.

Okay. So the next set of slides discuss the provisions regarding the enforcement samples DOE uses when conducting its own enforcement testing. That is, this topic will cover sample sizes and sample selection.

So we were just discussing the sources of data that DOE could consider as part of the enforcement test sample. We actually proposed a lot of restructuring and clarifying edits to the enforcement sampling procedures. A significant portion of the information contained within DOE's proposal is currently contained at 10 C.F.R. 429.110(e) and is restructured in DOE's proposed 10 C.F.R. 429.111. But the current applicable sample sizes and references to the applicable appendices remain unchanged.

So let me say that again. While the new 429.111 looks pretty different than 429.110(e), our intent here was not to change the current applicable sample sizes and enforcement statistics, although we are trying to clarify some special situations, each of

which we will discuss in a little bit.

So 429.110(e) was just a ton of information all nestled into a subparagraph of a section, and it's a lot of very important information, so we moved it out to its own section and reorganized it, hopefully, to make it easier to read. And on the restructuring front, we also proposed to move the current enforcement sampling plan for electric motors, which is currently in Part 431, to a new Appendix E to subpart C of Part 429 without substantive change.

I do encourage everyone to run through the current regulatory text and the proposed regulatory text for the products of interest to you. If you believe we have inadvertently changed the applicable sampling provisions, please do provide a comment on that in your written comments.

Okay. So, with that said, as a starting point for most products, if DOE issues a test notice, we are aiming to test a total of four units, which is usually made up of one assessment unit that DOE purchased off the market and three additional units that the manufacturer provides at its expense for testing. Generally speaking, DOE uses the sampling statistics in Appendix A for high-volume products, all covered products, and a few types of covered

equipment, and the statistics in Appendix B for lower-volume products, most covered equipment. The general idea is that Appendix A allows for larger sample sizes if needed, whereas Appendix B is designed for lower-volume products.

Now distribution transformers, pumps, uninterruptable power supplies, and motors have their own unique methods of evaluating compliance that were established in their product-specific rulemaking. Walk-in cooler and freezer components were not explicitly addressed in the regulations because they were only subject to the design standard when we did the 2011 rule, so we are proposing to add them to the list of covered equipment subject to Appendix B. We're also proposing to add compressors to the list of products subject to the Appendix A statistics in anticipation of the 2025 standards.

So, having said all that, we are proposing regulatory text to clarify or address some special cases that I alluded to before, and we're going to go through those one by one next. But, before we do that, any questions on what I just discussed here?

MS. CONWAY: We don't have any comments.

MS. VEMURI: Okay. Thanks, Naeema.

Okay. So one of the areas we wanted to

address to provide more information and clarity to manufacturers on the topic of sample size is the question of when DOE can use a reduced sample size.

Currently, the regulations specify a few instances, such as where units are unavailable for test or the normal sample size is impractical. In the most extreme of cases, that can result in a sample size of one unit. The current regulations already permit a finding on the single sample size, but the way that the regulations are worded suggests that the sampling statistics apply, which really doesn't make any sense because one cannot do a statistical analysis on a sample size of one.

So we are proposing to make explicit that where we have a sample size of one, the statistics don't apply, and DOE will make a determination based simply on the single unit. Now I'm going to go through some of the other bullets here on the slide, specifically in regards to design requirements, manufacturer's own test data, single assessment tests, but before we get into the details on that, any comments on the statistical -- excuse me, the sampling statistics not applying to a sample size of one? Anyone have any comment on that?

MS. CONWAY: Caroline Davidson-Hood.

MS. DAVIDSON-HOOD: Hi, this is Caroline Davidson-Hood from AHRI. Our comments will reflect that we do not think a sample size of one is sufficient for DOE to bear their burden of proof. I believe preponderance of the evidence is DOE's requirement at the minimum, and a sample size of one does not sufficiently demonstrate that an entire basic model, which would be subject to civil penalties, is out of compliance.

It's equally as likely that that single sample size is an aberration. So we believe that unless, you know, unless it's at the discretion of the manufacturer that doesn't want to provide additional sample sizes, DOE should be obligated to at least demonstrate a preponderance of multiple noncompliant sample sizes according with their current sampling plan.

MS. VEMURI: Thanks, Caroline, for your comment. I think we're going to get into some of the other scenarios. You mentioned one of them. You know, there may be a scenario where the manufacturer does not want to provide further units, but beyond that, there are some other scenarios we're going to get into where we can probably flesh out a little bit more about why a sample size of one, from DOE's

perspective, is appropriate. So we can get into that and hopefully -- but thank you for your comment. Your comment is noted.

MS. CONWAY: Okay.

MS. VEMURI: Any other questions on this one before we dive in?

MS. CONWAY: I don't see any, so I think we can move on.

MS. VEMURI: Okay. Okay. So, like we were saying, there are some other scenarios where we do need to provide some information, and I think some discussion is appropriate. So one is where we're evaluating the compliance with the design requirement.

So, as you're all aware, we have one set of statistics, right, that apply when a manufacturer is evaluating a basic model to determine or ascertain whether the manufacturer can certify that the basic model meets a performance standard. The manufacturer has to test a sample of sufficient size to ensure that the population as a whole meets certain criteria which vary by product type, and there is a minimum sample size of two units. Those certification statistics are designed to protect consumers. That is, those statistics push manufacturers to ensure that most units in the population of units manufactured meet the

performance standard.

In contrast, DOE applies a different set of statistics where DOE is doing enforcement testing. Those enforcement statistics are designed to protect a manufacturer from a determination of noncompliance due to differences in testing or minor changes in performance. That is, those enforcement statistics prevent DOE from making a determination of noncompliance unless, statistically, most units, again, in a population of units manufactured, don't meet the standard.

So that statistical approach dates back, I think, to the mid- or maybe late '80s. At the time, DOE was dealing with certification and enforcement for performance standards. Now design standards are fundamentally different from performance standards. Manufacturers aren't required to conduct testing to evaluate whether a product has a feature.

Some of the design standards are as simple as does a gas stovetop have a constant burning pilot light? If it does, then it fails the standard. Another example, does the ceiling fan have a reverse switch? If not, it fails the standard. Or there is, you know, does the WICF door have the required two panes of glass? If not, it fails the standard.

So this isn't a question of, do more units have the feature than those that don't? This is a question of, does every unit have the feature, right? One hundred percent of the units have to meet the design standard. Even some of the more complicated design features, for example, the requirement that residential boilers have automatic means for adjusting water temperature, those features apply to 100 percent of the units. A manufacturer can't provide the feature on only 95 percent of the units it distributes.

In the boiler example, DOE established a test protocol for DOE to use to ascertain whether a basic model has the feature or not, but it is a pass-fail test. It isn't like a performance test, where you might get an AFUE of 82 for one unit and then get 83 on another and 80 for the third, and then you apply the statistics to all of those.

You know, here, either the boiler automatically adjusts the water temperature or it doesn't, and every unit of the basic model must have that feature. So, with that in mind, DOE is proposing to specify in the enforcement sampling provision that DOE would make a determination of whether a basic model has a design feature or not based on a single

unit. Now, as previously explained, under this proposed rule, DOE would let the manufacturer know about the pending NND, and the manufacturer could respond prior to the issuance of the NND.

You know, if, for some reason, a manufacturer wants to raise an issue, perhaps that the unit DOE purchased had been modified after it left the manufacturer or something like that, the manufacturer would have the opportunity prior to DOE's issuance of the NND. Before we keep going and talking about the next bullet, I think we should maybe stop here and see if there are any comments on the manufacturers' -- on the design requirement.

(No response.)

MS. VEMURI: Okay. I don't see anything. Naeema?

MS. CONWAY: I'm sorry. We have a comment from Phillip Stephens.

MS. VEMURI: Okay. Mr. Stephens, we can't hear you. I think you might still be on mute.

MR. STEPHENS: Yes. Is this better? I'm having to listen on the telephone. Never mind.

MS. VEMURI: Okay. So is that it, Naeema?

MS. CONWAY: Yes.

MS. VEMURI: Okay. The next scenario to

talk about here is where we want to make a finding of noncompliance based on the manufacturer's own data. Many manufacturers only test the bare minimum required for certification, two units. So, when DOE makes a finding based on the manufacturer's own data, we often have a sample size of two. So that is another scenario where we would make a finding of noncompliance based on a lower sample size. Any comments on this one?

MS. CONWAY: Okay. We have a comment from Benjamin Madison.

MR. MADISON: Yeah. My only comment here is that the idea of just simply saying 25 percent or more isn't clear. Does that mean 25 percent worse than the minimum efficiency standard, or is that 25 percent worse than the published standard for that model?

MS. VEMURI: So --

MR. MADISON: I get the intent, and I feel like it's a worthwhile intent, but I feel like that some thought needs to be put into this, especially with the differing standards that all of the products in the regulation have and how this would be applied to each of those.

MS. VEMURI: Thanks, Mr. Madison. So we are actually going to flesh out the 25 percent on the next

slide, and I'll have plenty to share with you on there. So, once we get to that, if you have any further comment, we, of course, welcome it. But we will be getting to that.

MS. CONWAY: Okay. Looks like that's all the comments.

MS. VEMURI: Okay.

MS. BARHYDT: I think the slides are ahead of your presentation.

MS. VEMURI: Oh, we jumped. Okay. Naeema, could we get back to Slide 27? I think we're still on 27.

MS. CONWAY: We're on 27.

MS. VEMURI: Yeah. Thank you. Okay.

MS. CONWAY: Okay. So we have a comment.

MS. VEMURI: Okay. So, if there's no other comments --

MS. CONWAY: We have a comment from Benjamin Madison.

MR. MADISON: Another comment just here. In the actual text in the NOPR, there's kind of a distinction between a sample size of one for the situation where, you know, that's all that's available, right, which is kind of what's currently in there, right, where there's not availability or that,

you know, a normal sample size is impractical for one reason or another. And then, in a completely different section in the NOPR, it talks about, you know, some of the reasons, like the design requirements can be a sample of one and that sort of thing.

And I feel like it's important to keep that distinction separate in discussing these two things. I feel like, you know, one is a sample size of one just based on circumstances outside of -– or, you know, based on what's available, right, to test, of course. And the other idea of a sample size of one is that things are so bad or things are so far outside of the norm that further testing shouldn't be necessary.

But, in my opinion, those are two distinct topics that need to be kept separate so that they don't get convoluted in understanding and interpreting the regulation.

MS. VEMURI: Thanks for your comment. If there's a particular area in the proposed regulations that you think kind of confuse those two issues, we welcome you to share that in written comment. But I think, in terms of feedback on -- yes. I mean, the current regulations already identify the idea of impracticality or where units are unavailable for

test, and then these other kind of what -- I'll call them for our purposes of discussion these kind of more special topics of discussion where a sample size of one would also apply or may be permissible include the things that we're talking about now: design requirements, manufacturer's own data, and the 25 percent, which we're going to talk about in just a bit. So, if you feel that there's some confusion in the actual regulatory language, please do share that in your written comments.

Any other comments?

MS. CONWAY: That looks like all we have for this section.

MS. VEMURI: Okay. So I think we can move on to Slide 28, and this is something new also. So this last area where we propose a reduced sample size also requires a little bit of explanation. The language is "DOE proposes that it may make a finding of noncompliance based on a single test where the results of the assessment test are so far from an applicable standard" -- in other words, at least 25 percent worse – "that a finding of compliance is extremely unlikely."

So this is another proposal that we thought we would put out there to get your comments. But let

me explain our goals here. We have three goals with this proposal. First, we want to make good use of our resources. The second is about fairness to the manufacturer facing enforcement actions. We want to make sure we end up at the right result, meaning we only make a finding of noncompliance where we should.

Third, though, is that we want to make sure we are protecting consumers and competitors from unscrupulous actors in a timely fashion. So we've looked at cases where we think we could have reasonably short-circuited the process and still found that we would have ended up at the same result and actually think that the line would be somewhere less than 25 percent, but let me emphasize that was not a detailed empirical analysis of all of our data.

So we bumped it up to 25 percent out of an abundance of caution. Again, we are really trying to capture some of the most egregious of cases to move them forward more efficiently. Let me lay out two scenarios for you to convey how we view this provision playing out. Bear with me. We're going to talk about a couple scenarios.

So the first scenario is with a manufacturer called Bad Apple, okay? Bad Apple doesn't test its product or certify its product. DOE goes out and buys

a unit and tests it, and it fails badly. Under the current regulation, DOE issues a test notice to get three more units, and Bad Apple tells us that it needs to build units because it doesn't maintain any in stock. DOE emphasizes that the company needs to send units that don't have any extra quality control or other changes from its normal manufacturing process. And then, over a month later, Bad Apple sends three units which actually bear little resemblance to the unit that DOE purchased. Then DOE tells the company that it has to provide units that are the same as what it's been selling and not its new redesign.

So then Bad Apple takes several more weeks to build more units. Eventually, DOE receives those units, tests them, and they all fail equally badly. Under the proposed petition for reexamination process, DOE now sends a notice of its intent to issue an NND, and Bad Apple has 30 more days. If Bad Apple has no information to change DOE's determination, DOE would finally issue an NND.

Now consider a second scenario, and we're also going to play this out with a proposed petition for reexamination process. You have another manufacturer, and this manufacturer is Angel Products. Angel Products makes a product it believes to be

compliant. It's tested its product; it's certified its product. DOE tests the product, and it fails, again, badly, and DOE sends a letter to the manufacturer along with the test data saying, based on the egregious failure, DOE intends to issue an NND.

Now, once it receives the letter of intent, Angel Products reviews the test data and comes back to DOE saying that the test data looks really odd. They tell DOE, as a part of its petition for reexamination, this product runs a special cycle the first time it's powered up, and it looks like every single cycle that was tested was running that initial cycle in the DOE testing. And DOE goes back to the lab and discovers that the manufacturer is correct and has the lab retest the product, and it passes with flying colors, and DOE drops the case.

Now both of these scenarios are true stories, except they've been modified to reflect our proposed procedure. So, again, there is a balance, right? The point of this is that there's a balance here of various interests: our ability to move in a timely fashion to protect consumers and competitors, saving resources, and getting to the right result in fairness to the manufacturer. And we believe that this proposal, when combined with the petition for

reexamination process, allows a manufacturer who has a legitimate concern with DOE's testing to stop the process before we get to an NND.

Conversely, we think that allowing a manufacturer to drag out the process when it has no basis for believing that the testing was not done properly, or in some cases, as we've experienced, not even a basis for thinking that the product meets the standard, is not fair to consumers or competitors and that the additional expenditure of testing resources by DOE is not necessary or reasonable.

Now we welcome your comments on the concept, on the process. If you think 25 percent off the standard is not the right place to draw the line on where you think we should draw the line, we'd like to hear your feedback on this. So, with that, any comments?

MS. CONWAY: We have a comment from Jen Cleary.

MS. CLEARY: Hi, this is Jen Cleary with AHAM. I would reiterate the comments that Caroline Davidson-Hood with AHRI made earlier with sample sizes of one. I think those are applicable to this proposal as well, which AHAM opposes. You know, I think, in addition to that, the implication seems to be here

that despite the fact that a unit fails by 25 percent or more, DOE, I'm glad, recognizes that there could be other -- there could be reasons for that and that it doesn't necessarily mean that the product actually failed the standard. In fact, it could be just as likely that there was an anomaly and that the other units all pass, as I think the example that was just given recognizes.

So the implication I see here is that DOE's proposal is saying, well, when we couple this together with the possibility to petition for reexamination, everything's okay because they made sure to tell us that I know, really, that was an anomaly and there's some other reason for it. But what I see that doing is putting the burden, inappropriately, on the manufacturer to disprove the finding of noncompliance in this case rather than keeping the burden where it is supposed to lie, with DOE, to demonstrate that there is, in fact, a noncompliance.

And, of course, you know, your comments on the expenditures by the --

(Technical interference.)

MS. CLEARY: -- be welcomed, but, currently, manufacturers do have the option to agree to findings of noncompliance without further testing and,

certainly, if they saw that this wasn't an option that they might select in that case. But I think, overall, we're very concerned that this proposal really flies in the face of the statistical approach that DOE's current regulations require, and so we're just not able to support it.

MS. VEMURI: Thanks, Jen, for your comment. I'll also just add that the proposal would provide, you know, DOE with the option to move forward with a truncated process, but I just want to clarify that it would not require that DOE do so in every instance where there is a 25 percent or worse number, even outside of, you know, any information we receive from the manufacturer in a petition for reexamination.

We could decide to go forward with a normal test notice process. And, you know, you might ask why we would do that, and I think the answer is that there is absolutely an interest in getting to the right answer here, right? Is it really compliant or not? We certainly don't have any interest in issuing NNDs for compliant products.

So, you know, let's say maybe our technical folks tell us there's nothing wrong with the testing, but it's just, you know, the unit maybe didn't operate the way they would have expected. We would likely go

ahead with a test notice to see if we could get some more units in hand to see how those units operated or, if it was an aberration, as you mentioned, you know, this idea of an aberration, and in that case, a larger sample size would help inform DOE's analysis of the performance of the model.

So I just want to clarify that this is not an absolute 25 percent or worse and DOE issues an NND. It's in instances where we're really convinced and we feel very, you know, comfortable that nothing's -- you know, that we haven't seen anything that would tell us that it's an aberration. And, certainly, you know, combined with the petition for reexamination process, we haven't heard anything or seen anything that tell us that -- that would change our minds. This is an option that we would have for the other interests that I mentioned, you know, regarding resources and time delay and all of those things. But thank you for your comment.

MS. CONWAY: Okay. We have a comment from Caroline Davidson.

MS. DAVIDSON-HOOD: Hi. I will second Jen's comments. Oh, Caroline Davidson-Hood, AHRI. I'll second Jen's comments and also would like to point out sort of an interesting fairness element to this

proposal. I think we all agree that we want, you know, Bad Apple to be held accountable, and we'd like to do it in an efficient process.

But we also have to recognize that every single manufacturer has to comply with the rules that are set forth and all of which all stakeholders, all regulated stakeholders, can be caught up in some kind of problem or enforcement action from time to time. So we really need to assess, you know, what is fair. And one of the points that was made previously, Smitha, is that, you know, basic model civil assessments are really an all-or-nothing proposition.

And if you have a situation where something fails by 25 percent or more, maybe that product is noncompliant. But maybe it's a bad batch situation; it's not necessarily a Bad Apple situation. And, although I do not think that DOE can carry their burden of proof with this particular sample size, I do think it raises an interesting question about how civil penalties are assessed, because you might have a handful of products that were actually subject to a manufacturing aberration or some, you know, some limited component failure that caused them to fail by 25 percent or more.

And DOE has a stated policy of issuing the

highest possible civil penalties for every single product that is on the market for that basic model for every single day that it's on the market. And that really stacks the cards in DOE's favor from a leverage perspective. But, fundamentally, it raises questions of fairness when you have -- the manufacturer should have the opportunity to say, okay, fine, there might be these eight products that are on the market or this limited batch of this series of units that were out of compliance and, therefore, the limitation of our liability should be equally prescribed.

So I think that, you know, DOE should perhaps look at this consideration and their desire to get to a fair result effectively, but also look at all of the other possible circumstances where these sort of manufacturing problems can arise and where stakeholders can find themselves in an enforcement situation and to make sure that the rules are applied evenly and fairly across the board when it comes to the significant civil penalties that DOE does issue.

MS. VEMURI: Got it. I understand your point, Caroline. It's noted, and I would -- oh, before we jump to the next comment, I would also ask, you know, if those who think that -- what I'm hearing is, you know, a pushback, you know, on the concept.

But, you know, if there is a line where folks think it might be more reasonable or, you know, more comfortable, we'd be curious to know what that is, right? If there is a place where a bad enough failure combined with a petition for reexamination process might lead to kind of a different response. So, in your written comments, we urge you if that is the case. And if not, please share that as well.

The next comment?

MS. CONWAY: Okay. We have a comment from Jen Cleary.

MS. CLEARY: Hi, Jen Cleary with AHAM again. At the risk of being alone here, I'll support again what Caroline said. I agree with that entirely, and I think it's actually a broader point than just being limited to the sample size of one proposal here. I think, more broadly, AHAM would like to see DOE propose enforcement rules that expressly allow ––

(Technical interference.)

MS. CLEARY: -- population of impacted products using meaningful evidence. And what I mean by that is that in a situation such that Caroline mentioned where there could be a limited batch of products that may not comply with the numbers, there could be millions of others that do. And under the

current regulations, all of those are at issue.

And so I think what we're suggesting is that instead of having the entire population at risk, it makes much more sense for DOE to look at actual evidence that there are particular –- you know, let's call them for the sake of discussion batches of product that might be impacted by the noncompliance, and if it is limited to those, then the fees should also be limited to those products as well.

So we can expand on that in our written comments, but I think it's a broader point than simply in a situation where there's a product that may be appearing to be very noncompliant, as Caroline raised.

MS. VEMURI: Thanks, Jen. So, yeah, I think I understand -- I understand your comment in the context of a sample size of one, but it sounds like it's also -- I understand it, you know, beyond that as well between yours and Caroline's comments. You know, I think this concept -- I think we're getting beyond maybe the scope with that of kind of the proposals in this rulemaking.

But I do follow what you're saying about that being the backdrop of considerations when we're thinking about, you know, how to do this, whether to do this. You know, in terms of kind of revisiting the

basic model concept and things like that, that would be something we would need to do in a separate rulemaking. But I do understand why you are raising that and welcome your comments on all of it.

Next comment?

MS. CONWAY: Okay. We have a comment from Benjamin Madison.

MR. MADISON: Yeah. Kind of following along with Jennifer and Caroline's comments, you know, it is a distinct possibility that, you know, you maybe have a manufacturing aberration and you have a batch of product that does not meet compliance. But, as the rule is proposed, there's no guiderails, again, for the limits of how the DOE will use this, even so much as maybe a product is damaged in shipment to the testing facility. And you even mentioned, you know, a case where the testing DOE conducted was not done properly.

And so I think, you know, in general, supporting this, we don't necessarily see a problem with it, but I do believe that if you do implement it, you need to make it clear on what the circumstances are when you're going to enforce it and that it's not some black box where a decision is made behind the scenes in when this applies and when it doesn't. And

furthermore, some guiderails need to be put in place for circumstances where a damaged product or, you know, a batch of products is damaged, things like that that would also possibly get caught up in this one test failure.

MS. VEMURI: Thanks for your comment.

MS. CONWAY: Okay. So that's all we have for this section.

MS. VEMURI: Okay. So let's see here. So, yep, thanks, everyone, for all of your very good comments on that. Let's move on to the next topic. It's the last broad topic we're going to cover. Here are our proposed changes to the test notice, and we'll have some kind of miscellaneous items after that as well. But, to talk about the test notice for a bit, the test notice, as you all probably know, is a document DOE issues to a manufacturer to start the enforcement testing process.

Specifically, the test notice is the document DOE issues to direct a manufacturer or private labeler to provide units for enforcement testing. I think it's important to note that the proposed edits do not change DOE's current process for issuing a test notice, but the proposal addresses the huge communication problem we have experienced when it

comes to test notices.

With the proposal, DOE is trying to make more clear which units the manufacturer needs to provide. So, in DOE's experience, units sent in response to a test notice are frequently not what DOE seeks to test. To address that, DOE believes the extra information about the requested units may be necessary or helpful to the manufacturer or private labeler.

For example, we might get units in response to a test notice that, in fact, have different components or features that affect energy consumption from the units we seek to test. Oftentimes, we do not even know that the manufacturer is sending alternate units until the lab informs us that something different came in than what we expected. So there can then be quite a bit of back-and-forth and wasted resources all around for both parties in that type of scenario.

So the proposed text states that, in addition to identifying in the test notice the basic models selected for testing, DOE may also include other characteristics or specifications of the requested units to provide the manufacturer some more clarity about what we seek, for example, individual

model numbers, serial numbers, manufacturer date ranges, locations. Any questions or comments on this? No?

MS. CONWAY: No, we don't have any for this issue.

MS. VEMURI: Okay. Continuing the discussion on test notice, so, in current practice, DOE works with manufacturers to create a plan for testing anytime units are unavailable, anytime. DOE is proposing to codify this practice for every instance where the manufacturer believes that it has fewer than the requested number of units for shipment or maybe even none of them.

DOE proposes that when there aren't as many units available as DOE has requested, the manufacturer must inform DOE if it believes that the requested units are not available to be shipped by the date specified in the test notice. In addition, if the manufacturer does not have the requested units but has similar ones, then the manufacturer has to inform DOE prior to shipping the units.

In that case, the manufacturer must provide sufficient details about the available similar units in order for DOE to evaluate whether the units are a suitable replacement for the units DOE originally

requested. So then what happens, right? I mean, as listed in the current DOE regs, if we determine that there are not the requested number of units available, we may decide to test the units that are available, and that may include testing of similar units identified by the manufacturer and/or units that become available within 30 days.

These options are not new; they are in the current regulations, but they are simply restructured to apply to any scenario of unavailability.

Any questions or comments on this?

MS. CONWAY: Okay. We have a comment from Ron Shebik.

MR. SHEBIK: Yeah. Hi, this is Ron Shebik with Hussmann Corporation. Just one quick question just to make sure I have clarity here. How does this apply to build-to-order product or customized product? You know, someone who builds to order or customizes product would not have anything readily available. It would have to be manufactured.

MS. VEMURI: Right. Hi, Ron. Thanks for your comment. So, in the context of a build-to-order, the manufacturer would let us know, right, that they don’t have any available units at that moment in stock, right, and that they would need to be built,

and then we would engage in a plan. That's a scenario where you don't have them kind of readily available, and we would engage in a plan and talk to you all about the timeline to build those units. It would be fact-specific depending on the circumstances, but we would engage with you at that point.

So it's not just, well, we don't have them. So, you know, what we're trying to avoid here is we don't have them, they're built to order, let's just ship something else. You know, there would have to be an engagement between the parties.

And so what we're trying to achieve with this proposal is trying to kind of formalize more of a discussion, right, and an engagement with the manufacturer where we know what's going on on the manufacturer's end before these units get to the lab and where there's a discussion between the Department and the manufacturer about what the plan is.

And DOE works with manufacturers. I mean, we do this now, so, again, I don't really think this is quite that different than our practice, but this is kind of fleshing everything out a lot more in our regulations.

MR. SHEBIK: Okay. Thank you.

MS. VEMURI: Sure. Anything else on this?

MS. CONWAY: Looks like those are all the comments we have for this issue.

MS. BARHYDT: Actually, it looks like Phillip Stephens typed in a question. He had mentioned earlier he was having some feedback problems. He had asked, let's see, can DOE provide reference to where the authority to request specific serial numbers or date ranges comes from?

MS. VEMURI: So I think that the goal of providing that information is to give the manufacturer a really good sense of what we're seeking. So it's supposed to be helpful information that we provide to you, you know, this is the serial number range or kind of a date range. This is the kind of product or the units that we're seeking, you know, were produced at this time to kind of narrow the focus a little bit so the manufacturer understands what we are seeking.

There may be instances where we don't have that information to provide, but, you know, if we have it, we'd like to share it, and the point is for it to be helpful. Is there any particular concern with sharing that information or anything that you all would find confusing about sharing additional information? Or, frankly, I mean, I have to say, you know, we've talked a lot about this at our end about

why there seems to be a disconnect with the test notice, and we're not sure why.

But, if there is something inherently unclear about how test notices, you know, list the basic model number, or even with this proposal, some of this additional information, if it would be -- if it's confusing, or if there's something that would be more helpful, we welcome you to provide that comment.

Oh, okay. I see Mr. Stephens made a comment that, he says, that clarification helped. As written, it appeared as a requirement in the test notice. And, no, it's really information that we're sharing to kind of narrow the scope here, you know, on what units we want. And we may not always have that; we may not have anything more than the basic model number and individual model number.

But, certainly, we do place some parameters on the test notice, and if for some reason the manufacturer isn't able to produce something within those parameters, you know, we would be interested to know. We would be interested to hear from the manufacturer, you know, what they do have. Again, to have that dialogue is very important.

Any other comments?

MS. CONWAY: Okay. We have a comment in the

chat box from Rob Greeson. With transformers, a basic model could consist of hundreds of different transformers. Transformers may need some different language.

MS. VEMURI: Okay. Thank you, Mr. Greeson. If there's any specific information you think might be helpful for a test notice pertaining to a transformer, we welcome that information.

MS. CONWAY: Okay. That looks like all the comments we have for this issue.

MS. VEMURI: I think Mr. Shebik, Ron Shebik, has his hand still up. Ron, I don't know if that is just up from before or if it's a new hand-raise?

MS. CONWAY: Ron?

(No response.)

MS. VEMURI: Uh-oh. Okay. I think we may have lost Ron, but if he makes it back on --

MR. SHEBIK: Okay. I'm sorry. I'm here.

MS. VEMURI: Oh, there you are. Okay.

MR. SHEBIK: Yeah, I'm sorry. No new questions. That was my mistake. I thought it was down.

MS. VEMURI: No worries, no worries. The challenges of a webinar.

Okay. Well, I don't see any other

questions, so if we can, we'll move on to the next slide. Okay. So the last area of the test notice we want to highlight deals with the text that addresses changes to a unit that is to be tested. So the current regulatory text states that a test unit shall not be prepared, modified, or adjusted in any manner unless such preparation, modification, or adjustment is allowed by the applicable DOE test procedure.

In practice, those restrictions are not just on the manufacturer, but they are on DOE as well, and this has always been the case. But we have received inquiries as to whether these restrictions apply to DOE as well as questions about whether DOE could unilaterally alter test units, which we don't do. We wouldn't make any modification outside of the test procedure unless authorized by the manufacturer. So we thought the proposal could be helpful in clarifying these points.

Further, DOE will also notify the manufacturer if a test unit is received by the test lab in a condition that may impact performance. And in such an instance, DOE may decide that the unit is defective and not test that unit and may instead test another unit depending on the condition of the particular unit at hand.

DOE may also determine that it can rectify the condition easily to continue with the test, for example, by replacing a commonly available part. However, in that notice -- in that instance, excuse me, in that kind of scenario, DOE would still discuss the matter with the manufacturer prior to any modification. So everything on this slide reflects our current practice, and it's designed to give better visibility and clarity to manufacturers about what DOE will or won't do.

So any comments or questions on that?

MS. CONWAY: It looks like we don't have any comments or questions on this issue.

MS. VEMURI: Okay.

MS. CONWAY: Sorry, we have a comment from Benjamin Madison.

MS. VEMURI: Okay.

MR. MADISON: Yeah, I noticed in the proposed language that there's now language in there that says -- and it doesn't really go into detail, but it says things like testing are not allowed for the samples, but it doesn't go in -- you know, if a product is tested during production, does that violate what the DOE is now restricting? So I think that that expansion of what's not allowed before or, you know,

for test samples is pretty broad and probably needs to be addressed. You know, what's the true intent of what DOE's trying to get to there?

MS. VEMURI: Are you referring, just for my clarification, are you referring to the "test unit shall not be prepared, modified, or adjusted in any manner" or something else?

MR. MADISON: Yeah. It's in that same section. I'm trying to dig through here and look at where that reference is actually at. But there's an expansion of that, I think, where it says -- it includes, actually, testing and so forth is not allowed.

MS. VEMURI: Yeah, if you could point me in that direction. Let me pull that up, but I don't recall off the top of my head anything like that.

MR. MADISON: Yeah, I'll dig that reference up, and I'll just put it in the text, and we can move on.

MS. VEMURI: Okay. Yeah, I don't recall anything like that. I mean, I think the purpose of this section -- our intent here, again, is just to make sure that we clarify that, you know, DOE not only, you know, expects that the manufacturer doesn't modify, adjust, or prepare the test units in any way

before sending them to us but also that we, once we receive them, that we have the same obligation. We're not just going to just, you know, change the units without talking to you or, you know, modify things that are not permissible by the DOE test procedure. So we just wanted to clarify that point because we have heard some folks kind of question and ask, did you do anything to this? And we just wanted to clarify that point. But, yeah, please, you know, if you can find it, feel free to share it later, or put it in your written comments. That's fine too.

MR. MADISON: Yeah, I did find it.

MS. VEMURI: Okay.

MS. BARHYDT: This is Laura Barhydt. That language is actually in the current regs as well, and the language, for everybody's reference, is "no quality control, testing, or assembly procedure shall be performed by the manufacturer on a test unit or any parts and subassemblies thereof that is not performed during the production and assembly of all other units included in the basic model."

So that's in our current regs as well, and the key there is that it has to be performed on all other units as part of your normal production and assembly if you're going to do it. If you really do

that to everything coming off the line, you're allowed to do whatever you would normally do. But you don't get to apply anything special to units that are being provided to DOE.

MR. MADISON: Okay. So, I mean, my point here is that, in normal production, you know, not -- and, of course, we're a pump manufacturer, right -- not necessarily every pump coming off the line is tested, but a subset is. And so, in this particular case, if it's a unit that the DOE selects, if it happened to have that testing, because it's not done to everything, that wouldn't be allowed to be sent as a sample, right? And I understand the intent, right. The intent is, send us what you make, don't play games. But the way that it's written could catch manufacturers in ways that's not intended.

MS. BARHYDT: So this is Laura Barhydt again. A follow-up question for you. So, if it's a unit that we are getting out off the market, we would just use whatever we have off the market. This is for units that are being provided to DOE from the manufacturer. And so do you -- are you saying that, like, if we said, send us three more units, you're asking whether you would need to check your internal records for individual serial numbers to see whether

or not that particular unit got the extra testing? I mean, are you trying -- do you actually track each individual unit that has the additional testing versus units that didn't?

MR. MADISON: In our case, in most productions line, the units that were tested are logged.

MS. BARHYDT: Okay.

MR. MADISON: The point is is that --

MS. BARHYDT: And so you're asking --

MR. MADISON: -- that that test doesn't change -– yeah, the testing doesn't change anything as far as production goes or quality control from any other different product. It just happens to be a subset of what's manufactured goes through that testing, as an example.

MS. BARHYDT: That's really helpful. And if you have suggestions on how to reword that, I think that would be helpful for us. But I definitely understand the issue you're raising.

MS. VEMURI: Yeah. Thanks, Laura, for diving in on that. I think we have one more comment.

MS. CONWAY: Yes. We have a comment from Dan Baldewicz.

MR. BALDEWICZ: Hi. This is Dan Baldewicz

on behalf of the California IOUs. I had a clarifying question for this section, which is just how this would interact with the interim waiver process on the test procedure, so if there would be special provisions if a basic model group was undergoing the interim waiver process.

MS. VEMURI: A clarifying question. So are you asking if we would issue a test notice for a model that is currently the subject of an interim waiver or waiver review, a pending waiver? Is that the question?

MR. BALDEWICZ: Yeah, that was effectively my question, was how would this -- if a product would have to be modified due to an interim waiver process that was ongoing to test it effectively, how this would account for that situation.

MS. VEMURI: So, typical, you know, the interim waivers, if you have a test -- you're talking about if there's a test procedure waiver, I assume?

MR. BALDEWICZ: Yeah, exactly.

MS. VEMURI: Yeah. I mean, you know, the model would have to comply with the test procedure -- the interim waiver that's granted or the test procedure that's granted would have to be followed. If we were to grant an interim waiver and then we were

to issue a test notice, and that waiver is granted -- I wouldn't even call it an interim waiver at that -- maybe it's a final waiver at that point, and we've issued a test notice, then the expectation is that everyone would test in accordance with the alternate test procedure that was granted by that waiver.

So whatever that test procedure requires is what DOE would follow and what the manufacturer would follow. So, you know, in terms of modifications that are required by the DOE test procedure, that would be covered in whatever that alternate test procedure is.

MR. BALDEWICZ: So, if the waiver was still in process, would that result in it having to test to the original test procedure at that time?

MS. BARHYDT: So this is Laura Barhydt. We have an enforcement policy of not enforcing against products that are subject to pending waivers.

MR. BALDEWICZ: Oh, for sure. Thank you.

MS. VEMURI: Okay. Do we have any other comments?

MR. BOTELER: Yeah. This is Rob Boteler. Can you hear me okay?

MS. VEMURI: Yes. We can hear you.

MR. BOTELER: Yeah, I'm with Nidec, a motor manufacturer. My question is, in the basic model

world, motor manufacturers have a basic model that might cover dozens of actual model numbers or catalog numbers that we manufacture based off of the electrical design of a basic model. When DOE has a test requirement, you're look at something, I would assume, that is a motor manufacturer by catalog number. If we reply to you with additional samples, as long as they're the same basic model, is that permissible, or would that be construed as that we have somehow prepared or modified the product?

MS. BARHYDT: So this is Laura. I think, typically, when we're looking at motors, we have something we've already tested. It's not just looking at a catalog. It really is, typically, a product that we've already bought one, we've already tested one. And we're going to provide you the test data for the thing that we tested, and we're going to tell you that we would like more units of something like what we tested.

And to Smitha's point earlier, I mean, that's part of why we think that maybe it would help if, in the test notices, if we provide more specificity. Instead of just saying basic model blah, we actually said, you know, we'd like to test more units of this particular model like the one that we

tested for the assessment test. So that's part of why we're thinking it would be helpful for us to provide more clarity so that the manufacturer understands exactly what it is we're looking for.

And I think, as Smitha also alluded to, we frequently are having conversations with manufacturers about, well, I don't have exactly that thing, but I have this other thing, and then they explain to us what the difference is between what they have available and what we are asking for. And so, you know, we'll engage with those conversations with the manufacturer to make sure that what they ship is really what we're looking for.

MR. BOTELER: So I guess that begs the next question, is if that product is then deemed to be -- you know, you issue a noncompliance to that manufacturer's catalog number, does that noncompliance then reach out to all of the basic models that are derived -- that that catalog number was derived from?

MS. BARHYDT: So you're using terms that are not DOE regulatory terms, so it makes me a little uncomfortable trying to answer that on the fly. But what I'll say is that when a manufacturer groups a variety of models into a single basic model, they are representing to the Department that those models

should be treated as essentially identical with respect to energy performance. And so, if one of the models within the basic model fails, the expectation is that all of the other models in that basic model will also fail because they are essentially identical with respect to electrical performance.

I do want to emphasize that I think that -- I think there was some language maybe in the motors rule, final rule, that didn't publish that might have addressed this issue. So that's something that we can go back and we can look at and see whether there might be some additional clarification that we might need to SNOPR with respect to motors and basic models.

MR. BOTELER: Okay. Thank you.

MS. CONWAY: Okay. That looks like all the questions -- all the comments we have for this section.

MS. VEMURI: Okay. Thanks, everyone.

So this last section is a bit of a catch-all. We're going to cover some other topics that we think might be of interest and that we've already heard are of interest. So let's start off by talking about DOE's proposal to remove the requirement that manufacturers inform customers who purchase the relevant model of DOE's determination of

noncompliance. So this is a burden-reducing measure.

It's important to note that the information about the relevant model and DOE's finding of noncompliance will still be available to the public because DOE posts the major enforcement documents related to any case where DOE makes a finding of noncompliance on its website once the case is closed. So this isn't a question of making it public or not. It's just the degree of notice consumers get weighed against the burden to the manufacturer.

Comments on this proposal?

MS. CONWAY: Looks like we don't have any comments in this section.

MS. VEMURI: Okay. Seeing no comments, can we move on to the next slide, please? Okay. So DOE's regulations are somewhat unclear about how a manufacturer proceeds with modifying a basic model that has been found to be noncompliant. DOE has been issuing a notice of allowance so that manufacturers have documentation that they have modified the basic model and provided test data to DOE that shows the modified basic model complies with the standard.

The proposal explicitly provides within DOE's regulations the full notice of allowance process, which will ensure consistency regarding how

to obtain a notice of allowance to distribute a redesigned or modified basic model after a finding of noncompliance. Comments on this process?

MS. CONWAY: It looks like we don't have any comments on this section either.

MS. VEMURI: Okay. Moving on to the next slide, please. So we've made great time, which I'm pleased because we've been able to highlight, I think, the major features of this rule. But are there any other topics in the rule anyone would like to discuss?

MS. BARHYDT: Just for the record -- this is Laura Barhydt -- it looked like Rob Greeson typed in another message, and just to make sure we capture that in the record, Rob Boteler's question or comment is the same as mine. Transformers and motors are treated similarly as far as basic model goes.

And I think I have a follow-up question on that just to clarify. For distribution transformers, are you talking about basic models, or are you talking about KDA groupings? Because distribution transformers do have sort of that extra tier of grouping that most other products don't have. And so I would encourage you to provide some more detail on that in written comments to follow up to make sure we get all of that information into the record.

MR. GREESON: Can you hear me right now? Hello?

MS. BARHYDT: I can hear you, Rob.

MR. GREESON: Okay. I think, before, I didn't unmute myself properly because I'm on the phone, and I unmuted the phone, but I didn't unmute the computer. But what Rob was stating was a similar question of mine. With transformers, a basic model will consist of a bunch of different, I guess you could say, specific models of the same KDA.

So, really, all I was saying was, if you were to, say, test a transformer and you wanted to send some more, depending on which transformer you picked, it may or may not be stock, and, you know, we might propose to you that we send you what we have on-hand which would be contained within the KDA grouping. And, you know, we're given the option, I think like motor manufacturers are, that we can kind of provide a basic model by KDA grouping or by specific model.

And if you go by KDA grouping, it's a much simpler process with regard to recordkeeping, so that's the way we kind of do it. I think a lot of motor manufacturers do as well. But I think, as I listened to the conversation, it sort of became clear to me that, should that come up, I think we could work

those details out with the DOE, and you guys would understand, based on our reporting and on the way that we're doing our testing, that you guys would understand what we could provide, and probably we could come to an agreement on something that would satisfy the testing requirements if I'm not mistaken.

MS. BARHYDT: This is Laura. I think you hit the nail on the head.

MR. GREESON: Okay. You just pretty much confirmed kind of what I thought, but I had a little trouble figuring out how to turn my audio on. So I apologize.

MS. BARHYDT: No problem. We appreciate your comments.

MR. GREESON: All right. Thank you.

MS. VEMURI: Okay. Any other topics or comments before we move on? We'll cover this slide here about submitting any comments again, and we'll take some closing remarks. But any other topics anyone would like to discuss in the proposed rule?

MS. CONWAY: I don't see anything.

MS. VEMURI: Okay. So I want to thank everyone for your verbal comments today.

MS. CONWAY: I'm sorry. Hold on for a second. We have a comment in the chat from Ruben

Vanderduim.

MS. VEMURI: Oh, I see it. Okay. Thanks, Naeema. So Ruben Vanderduim provided a comment in the chat box that says, what if basic electrical motor is not a standalone device but needs additional components, in other words, seals, to interface with the remainder of final assembly and those additional devices have a negative impact on the motor's test results? Can those additional devices be removed to test the efficiency of just the motor?

MS. BARHYDT: So this is Laura Barhydt. I'm seeing if I can find information really quick on that. But the method of test is actually specified in the test procedure. I just can't find that really quick on exactly how that works for the motors. But I do know that the test procedure specifically addresses how those are tested, and those test procedure requirements would apply to the manufacturer for assessing the certification testing as well as the enforcement testing. And so, again, I don't remember exactly whether the seals are required when tested or whether they're permitted to be removed when tested, but we would be following the test procedure with respect to how to treat the seals.

MR. VANDERDUIM: Ruben here. So the

requirements with regard to something like seals, again, which are -- if I were to compare our motor against a motor that you would pick up off of any electrical shop, these additional devices are added to interface with the rest of the machine. The current policy or the policy that will be coming down the road has not changed from what it was a few years ago?

MS. BARHYDT: So this test procedure -- sorry, this enforcement rule does not change any of the test procedure. So it would not change the provisions that are already in place with respect to testing.

MR. VANDERDUIM: Very good. Okay. Very good. Thank you.

MS. VEMURI: Okay. So do we have any other comments? I see there's another written comment in the chat box. I'll read that out loud. That is from Jeff Barth. Will the slides of your presentation be available to everyone who would like a copy? And the answer -- Naeema just responded -- the presentation will be available via the docket.

Okay. Well, I want to thank everyone for your verbal comments today and for utilizing the chat box. And I think we've gotten through a lot of information. We welcome your written comments. To

submit written comments on the proposed rule, again, please reference this rule as the enforcement NOPR, Docket Number EERE2019BTCE0015 and/or RIN 1904-AE34. And, due to COVID, we do encourage everyone to submit their comments via e-mail to enforcement2019ce0015@ee.doe.gov.

You can also submit comments on regulations.gov, by mail, or by courier, and the comment period closes at 11:59 p.m. Eastern Standard Time on December 30.

So, with that, can we have the next slide, please? If anyone would like to make any closing remarks, we are happy to hear them in just a moment, and you can just raise your hand.

MS. CONWAY: Okay. We have a comment from Caroline Davidson.

MS. DAVIDSON-HOOD: Hi. Yes, Caroline Davidson-Hood from AHRI. I just want to thank the Department of Energy for hosting this webinar. I think it was informative. The tone was receptive, and we look forward to engaging you in more detail about some of the specific parameters that we would like to see detailed and some changes and adjustments that we would like to see made in the proposal. But, otherwise, really appreciate the opportunity to learn

more today, and we'll be submitting our comments. And also, good luck to Laura in your future travels. You'll be missed. That's all I've got.

MS. CONWAY: Okay. We have a comment from Jennifer Cleary.

MS. CLEARY: Hi. This is Jen Cleary with AHAM. I want to also thank the --

MS. CONWAY: Hello, Jen?

MS. CLEARY: It's been very informative. We appreciate the additional information and the time that DOE took to prepare for this and to respond to our questions and comments today. We will also provide written comments, and in addition to responding to some of the proposals that DOE has made today, we will have some higher-level things that we hope the Department will consider.

And to the comment that, I think, was made by DOE earlier that some of the proposals might require a separate rulemaking, I would just note that I think if they are in line with the topics that are presented in this proposal, that we would hope a supplemental proposal might be something that's possible in order for the Department to consider some additional enforcement-related issues. So thank you again for the time today. We appreciate it.

MS. CONWAY: Okay. That was all of the --

MS. VEMURI: Any other closing remarks?

(No response.)

MS. VEMURI: Okay then. Well, thank you to everyone for spending time with us this afternoon. We do really look forward to reading your written comments as well. Take care, stay safe, and happy holidays to everyone. Bye-bye.

(Whereupon, at 2:45 p.m., the meeting in the above-entitled matter adjourned.)

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REPORTER'S CERTIFICATE

DOCKET NO.: EERE2019BTCE0015

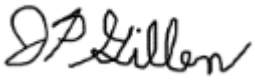
CASE TITLE: Enforcement Regulations for Consumer Products and Commercial and Industrial Equipment

HEARING DATE: December 8, 2020

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the U.S. Department of Energy, Office of Energy Efficiency & Renewable Energy.

Date: December 8, 2020



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