

November 4, 2019

Via: <http://www.regulations.gov>

Re: Docket Number EERE-BT-STD-0022: Energy Conservation Standards for General Service Incandescent Lamps, Notice of Proposed Determination; 84 FR 46830 (September 5, 2019).

## Comments Submitted By Free Market Organizations

### Introduction

The undersigned free market organizations have a longstanding interest in bringing to light the deleterious consequences of regulations, which are often neglected by federal agencies in their attempts to adopt a regulatory agenda. Of particular concern are the energy conservation standards for home appliances promulgated by the Department of Energy (DOE) pursuant to the Energy Policy and Conservation Act of 1975, as amended (EPCA). Several of us have commented to DOE as far back as 2001 that many appliance rules ignore the consumer protections built into EPCA and are set at excessively stringent levels that risk imposing net costs and compromising product choice and quality.<sup>1</sup> Most recently, the Competitive Enterprise Institute (CEI) has petitioned DOE to make improvements to the standards for dishwashers.<sup>2</sup>

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<sup>1</sup> See, Petition for Administrative Reconsideration of “Energy Conservation Program for Consumer Products: Clothes Washer Energy Conservation Standards: Final Rule,” November 4, 2001, <https://cei.org/coalition-letters/petition-administrative-reconsideration-%E2%80%9Cenergy-conservation-program-consumer-product>; Comments of the Competitive Enterprise Institute Regarding The Department of Energy’s Fiscal Year 2004 Priorities For The Appliance Standards Rulemaking Process, August 14, 2003, <http://cei.org/sites/default/files/COMMENTS%20REGARDING%20THE%20ENERGY%20CONSERVATION%20PROGRAM%20FOR%20CONSUMER%20PRODUCTS%20AND%20COMMERCIAL%20AND%20INDUSTRIAL%20EQUIPMENT.pdf>.

<sup>2</sup> “Department of Energy Grants Petition to Speed Up Dishwashers,” July 12, 2019, <https://cei.org/blog/department-energy-grants-petition-speed-dishwashers>

The interests of consumers were further eroded under the Obama administration, which shifted the focus to the claimed climate change benefits by factoring in the social cost of carbon (SCC) when justifying tighter standards.

In contrast, DOE's proposed determination for light bulbs, which is the subject of these comments, is part of the Trump administration's efforts to restore the statutory focus on consumers in the appliance standards-setting process.<sup>3</sup> As will be discussed in more detail below, we support the preliminary decision declining to set a tighter standard for general service incandescent lamps (GSILs, the category that includes the traditional pear-shaped incandescent bulb). DOE's proposed determination both complies with the law and preserves freedom of choice by allowing affordable incandescent bulbs to remain on the market for those who prefer them.

## Background

Under EPCA, most major energy-using home appliances – air conditioners, heaters, refrigerators, ovens, water heaters, clothes washers and dryers, others – have been subject to multiple rounds of successively tighter standards over the years. Provisions added to EPCA in 2007 also set energy conservation standards for several residential lighting products, which took effect beginning in 2012.<sup>4</sup> These proved to be very controversial, as many perceived the statutory provisions and DOE's implementing rules as a de facto ban on traditional incandescent light bulbs. However, manufacturers found ways to modify incandescent bulbs to meet the

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<sup>3</sup> See, Energy Conservation Program for Appliance Standards: Proposed Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 84 FR 3910 (February 13, 2019), <https://www.federalregister.gov/documents/2019/02/13/2019-01854/energy-conservation-program-for-appliance-standards-proposed-procedures-for-use-in-new-or-revised>

<sup>4</sup> 42 U.S.C. 6295(i)(6).

original standards, which allowed them to remain on the market with only a modest price increase. In addition, very efficient light emitting diode (LED) bulbs have emerged as a popular alternative to incandescent bulbs and have rapidly gained market share.<sup>5</sup>

The law also requires DOE to consider tightening the standard for GSILs, which is the reason for the proposed determination.<sup>6</sup> We agree with DOE that an amended standard is not warranted. The agency's analysis demonstrates that incandescent bulbs cannot be made significantly more efficient without a prohibitive price increase, and thus an amended standard would effectively force them off the market. Furthermore, LED bulbs, despite their growing popularity and market share, do not suit every lighting need, thus consumers are best served by maintaining the existing standard for GSILs which would allow them to remain on the market as well. We also agree with DOE's decision not to include SCC calculations in reaching their conclusion.

#### Preserving Consumer Choice and Quality

EPCA contains a number of provisions protecting consumers from energy conservation standards that compromise product features, performance, or reliability. For example, DOE is required to consider "any lessening of utility or performance" as a factor in determining whether a standard is economically justified.<sup>7</sup> In addition, the Secretary of Energy is expressly forbidden from setting a new or amended standard if there is a preponderance of evidence that "the standard is likely to result in the unavailability in the United States ... of performance

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<sup>5</sup> Initially, most proponents of these standards presumed that compact fluorescent (CFL) bulbs would be the preferred alternative to incandescents, but many consumers did not like their light quality and they are losing market share to LEDs.

<sup>6</sup> 42 U.S.C. 6295(i)(6)(B).

<sup>7</sup> 42 U.S.C. 6295(o)(2)(B)(i)(IV).

characteristics (including reliability) features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary’s finding.”<sup>8</sup> Past DOE standards for clothes washers and dryers, air conditioners and other appliances arguably ignored this provision, and CEI’s recent dishwasher petition seeks to restore to the market models that can clean a load of dishes in an hour or less, a feature that was impermissibly sacrificed by the previous efficiency standard.<sup>9</sup>

Here, DOE’s analysis shows that a tighter standard for GSILs would very likely make incandescent bulbs prohibitively expensive (\$7.00 each, a more than threefold price increase).<sup>10</sup> Thus, for all practical purposes, an amended standard would be no different than an outright ban and lead to LEDs becoming the only viable choice. While LEDs are more efficient and longer-lasting than incandescent bulbs, they currently cost more than incandescents and are inferior for certain functions such as dimming. Some consumers also prefer the light quality of incandescent bulbs over LEDs and other alternatives. Consumers are best served by retaining the choice between incandescent bulbs and LEDs rather than regulating incandescents off the market.

### Protecting Cost Effectiveness

EPCA also protects consumers from efficiency standards that may cost more than they save. Standards typically raise the up-front cost of a product but save money over its lifetime in the form of reduced energy use, and the same is true for GSILs. In determining whether a new or amended standard is economically justified, DOE must consider “the savings in operating costs throughout the estimated average life of the covered product in the type (or class)

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<sup>8</sup> 42 U.S.C. 6295(o)(4)

<sup>9</sup> “CEI Petitions Department of Energy: Stop Washington From Ruining Dishwashers,” March 21, 2018, <https://cei.org/content/cei-petitions-department-energy-stop-washington-ruining-dishwashers>

<sup>10</sup> 84 FR 46842

compared to any increased in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard.”<sup>11</sup>

For each appliance rulemaking, DOE conducts a lifecycle analysis in which it projects the percentage of consumers who will incur net gains or net losses over the product lifespan, and it also does so for subgroups such as low income households. To further assist in determining whether consumers will save money, the statute also requires DOE to calculate the payback period for a proposed standard, which is the number of years in energy savings it takes to earn back the higher up-front cost.<sup>12</sup> For payback periods of three years or less, there is a rebuttable presumption that the standard is economically justified.

Here, DOE’s analysis finds that lifecycle costs would be negative for 97.7 percent of consumers – in other words, nearly all users of incandescent bulbs subject to an amended efficiency standard would lose more money than they save as compared to currently available bulbs.<sup>13</sup>

The payback period calculation is even worse. In fact, there never is a payback since it takes more time to earn back the higher purchase price of compliant light bulbs (6 years) than they usually last (2 years).<sup>14</sup>

Thus, unless it can be shown that DOE’s analysis is dramatically off base, it is an open and shut case that products complying with an amended GSIL standard would cost consumers more money than they would save. For this reason, retaining the current standard is the correct thing to do.

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<sup>11</sup> 42 U.S.C. 6295(o)(2)(B)(i)(II).

<sup>12</sup> 42 U.S.C 6295(o)(2)(B)(iii).

<sup>13</sup> 84 FR 46852, 46858.

<sup>14</sup> 84 FR 46852, 46858.

## The Social Cost of Carbon

The Obama administration incorporated the SCC into many of its energy-related policy decisions, including appliance standards. Thus, when tabulating the claimed benefits of a proposed standard, the Obama DOE would factor in the estimated benefits attributable to the appliance using less energy and thus reducing greenhouse gas emissions. In effect, SCC became a finger on the scale favoring more stringent standards, of which there were a record 44 during the Obama administration.

However, SCC is highly speculative,<sup>15</sup> and the Trump administration has wisely abandoned several problematic aspects of the Obama administration's approach to it.<sup>16</sup> DOE is right not to incorporate SCC in its proposed determination.

Consideration of SCC in setting product efficiency standards shifted the focus away from what is best for consumers, and its use may contradict the consumer protections in EPCA. Keeping SCC out is a welcome step that puts consumers first and better comports with the intent of EPCA.

## Conclusion

American consumers want freedom of choice and quite sensibly oppose regulations that restrict it. Nor do they want regulations that cost more than they save. These very rational preferences are reflected in EPCA's consumer protections, but unfortunately these statutory provisions have been sidestepped by DOE in the past. In contrast, the Trump DOE is both

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<sup>15</sup> Comments of the Heritage Foundation to the Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, September 16, 2013, [file:///C:/Users/ben.lieberman/Downloads/20130916\\_The\\_Heritage\\_Foundation\\_-\\_Dayaratna\\_and\\_Kreutzer.pdf](file:///C:/Users/ben.lieberman/Downloads/20130916_The_Heritage_Foundation_-_Dayaratna_and_Kreutzer.pdf).

<sup>16</sup> Presidential Executive Order 13783, Promoting Energy Independence and Economic Growth, March 28, 2017, <https://www.federalregister.gov/documents/2017/03/31/2017-06576/promoting-energy-independence-and-economic-growth>.

complying with the law and doing the right thing for consumers with its proposed determination not to amend the standard for GSILs.

Sincerely,

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