

April 17, 2023

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

**Department of Energy, Energy Conservation Program: Energy  
Conservation Standards for Consumer Conventional Cooking Products:  
Supplemental Notice of Proposed Rulemaking  
Docket Number EERE-2014-ST-STD-0005  
88 FR 6,818 (February 1, 2023)**

**Comments Submitted by the Competitive Enterprise Institute, Project 21, Caesar Rodney Institute, Center of the American Experiment, Mackinac Center for Public Policy, Thomas Jefferson Institute for Public Policy, Committee For A Constructive Tomorrow, Roughrider Policy Center, Heartland Institute, Eagle Forum, Rio Grande Foundation, Cornwall Alliance for the Stewardship of Creation, Conservative Caucus, Science and Environmental Policy Project, 60 Plus Association, Energy & Environment Legal Institute, Consumers' Research, Institute for Energy Research, FreedomWorks, Independent Women's Forum, John Locke Foundation, America First Policy Institute, Leadership Institute, Center for Urban Renewal and Education, Association of Mature American Citizens Action, Free Enterprise Project, Americans for Prosperity, Conservative Partnership Institute, American Constitutional Rights Union Action, Becky Norton Dunlop, Faith Wins, The Heritage Foundation**

I. INTRODUCTION

The undersigned free market and consumer organizations have a longstanding interest in bringing to light the deleterious consequences of federal regulations, which are often neglected by agencies in their attempts to adopt a regulatory agenda. For over 20 years, we have participated in rulemakings conducted by the Department of Energy (DOE) regarding energy and water conservation standards for home appliances. This includes agency rulemakings and subsequent litigation impacting dishwashers, air conditioners, clothes washers and dryers, showerheads, light bulbs, and furnaces.<sup>1</sup>

---

<sup>1</sup> See, Brief Amicus Curiae of the Competitive Enterprise Institute and FreedomWorks, in *Louisiana v. United States Department of Energy*, United States Court of Appeals for the Fifth Circuit, No. 22-60146, July 9, 2022, [https://cei.org/wp-content/uploads/2022/07/DishwasherAmicus-Final\\_FILED.pdf](https://cei.org/wp-content/uploads/2022/07/DishwasherAmicus-Final_FILED.pdf); Comments Of The Competitive Enterprise Institute Regarding The Energy Conservation Program For Consumer Products And Commercial And Industrial Equipment, December 5, 2001; Consumers Research Comment of the Notice of Proposed Rulemaking and Announcement of Public Meeting Concerning the Energy Conservation Program's Test Procedures for Showerheads, <https://consumersresearch.org/cr-comment-on-the-nprm-on-showerhead-test-procedures/>; Comments of Free-Market Organizations to the Department of Energy, Energy Test Procedure

Our focus has been on ensuring that the consumer protections built into the underlying statute, the Energy Policy and Conservation Act of 1975 (EPCA), are given full weight by DOE in the rulemaking process, and that the statutory option of declining to set a standard is chosen when appropriate.<sup>2</sup> In our view, these consumer protections have frequently been downplayed or ignored by the agency when setting excessively stringent appliance efficiency standards that raise overall costs and/or compromise product quality and choice.

Over the last two years, the risk of DOE appliance standards harming consumers has been heightened by the Biden Administration’s “whole of government” prioritization of climate change considerations, which has been fully adopted by the agency.<sup>3</sup> This agenda has included efforts by DOE, along with other agencies, to discourage the use of residential natural gas in favor of the electrification of all appliances.<sup>4</sup> However, doing so serves to subordinate the best interests of consumers to unrelated environmental objectives and thus is contrary to EPCA’s overriding emphasis on consumer utility.

It is for these reasons that we are very concerned about the proposed rule at issue here regarding consumer conventional cooking products. As will be discussed below, we believe this efficiency standard, the first of its kind for residential stoves, is not compliant with EPCA. In particular, it would disproportionately target natural gas-using stoves relative to electric ones while compromising consumer choice and features, and thus is arbitrary and capricious and in violation of the law. For these and other reasons, we believe the proposed rule should be withdrawn.

---

for Showerheads, Notice of Proposed Rulemaking, September 20, 2021, <https://cei.org/wpcontent/uploads/2021/09/Showerheads-9-2021.pdf>; Comments of Free Market Organizations to the Department of Energy, Energy Conservation Standards for General Service Incandescent Lamps, Notice of Proposed Determination, November 4, 2019, [https://cei.org/sites/default/files/GSIL\\_Comment-10-2019.pdf](https://cei.org/sites/default/files/GSIL_Comment-10-2019.pdf); Comments of Free Market Organizations to the Department of Energy, Energy Conservation Standards for General Service Incandescent Lamps, Notice of Proposed Rule, January 27, 2022, [https://cei.org/regulatory\\_comments/cei-leads-coalition-opposing-proposed-doe-lightbulb-rule/](https://cei.org/regulatory_comments/cei-leads-coalition-opposing-proposed-doe-lightbulb-rule/); Comments of Free Market Organizations to the Department of Energy, Energy Conservation Standards for Consumer Furnaces, Notice of Proposed Rule, October 5, 2022, [https://cei.org/wp-content/uploads/2022/10https://cei.org/opeds\\_articles/restrictions-on-natural-gas-stoves-are-climate-policy-by-another-name//FurnaceComment-10-5-2022-final.pdf](https://cei.org/wp-content/uploads/2022/10https://cei.org/opeds_articles/restrictions-on-natural-gas-stoves-are-climate-policy-by-another-name//FurnaceComment-10-5-2022-final.pdf).

<sup>2</sup> 42 U.S.C. §6291 *et seq.*

<sup>3</sup> Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad,” January 27, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>; Department of Energy, “Climate Change,” <https://www.energy.gov/climate-change>.

<sup>4</sup> White House, “Fact Sheet: New Innovation Agenda Will Electrify Homes, Businesses, and Transportation to Lower Energy Bills and Achieve Climate Goals,” December 14, 2022, <https://www.whitehouse.gov/ostp/news-updates/2022/12/14/fact-sheet-new-innovation-agenda-will-electrify-homes-businesses-and-transportation-to-lower-energy-bills-and-achieve-climate-goals/>.

## II. SUMMARY OF THE ARGUMENT

EPCA authorizes DOE to consider setting and periodically revising energy conservation standards for most home appliances, including stoves.<sup>5</sup> Such standards are to be set so as to “achieve the maximum improvement in energy efficiency...which the Secretary determines is technologically feasible and economically justified.”<sup>6</sup>

It is important to emphasize that EPCA does not prioritize efficiency above all else in the standards-setting process. Instead, the statute contains a number of provisions protecting consumers from excessively stringent standards that may do more harm than good. Most relevant here is the provision in the law categorically prohibiting any new or amended standard if the Secretary finds, by a preponderance of evidence, that it is “likely to result in the unavailability in the United States...of performance 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>7</sup> [Hereinafter the “features provision.”] This provision prohibits setting an efficiency standard that would sacrifice any desired product characteristics.

The features provision has special relevance to rulemakings for appliances that come in both natural gas and electric versions, such as stoves. It explicitly prevents standards that tilt the balance in favor of one over the other if doing so harms any consumers. Here, the proposed rule disproportionately burdens gas stoves and jeopardizes some of the very features that have led many consumers to prefer gas cooking.

Further, the agency is not permitted to adopt a standard unless it would save a significant amount of energy, something that is not the case with the proposed rule here.<sup>8</sup>

In addition, the extensive and detailed calculations of monetized climate change benefits included in the proposed rule are inappropriate given EPCA’s primary focus on direct consumer benefits. And in any event, this analysis is flawed in that it is based on the highly problematic Interagency Working Group’s social cost of greenhouse gases analysis to calculate regulatory benefits.

## III. ARGUMENT

### A. THE PROPOSED RULE IMPERMISSABLY JEOPARDIZES SEVERAL FEATURES ASSOCIATED WITH GAS STOVES

---

<sup>5</sup> 42 U.S.C. §§6292(a)(10), 6295(h).

<sup>6</sup> 42 U.S.C. §6295(o)(2)(A).

<sup>7</sup> 42 U.S.C. §6295(o)(4).

<sup>8</sup> 42 U.S.C. §6295(o)(3)(B).

Natural gas stoves have garnered about 40 percent of the residential market, in part because they have a number of attributes that many cooks prefer over electric stoves. The features provision requires that each such characteristic be preserved in substantially the same form, else the proposed rule violates the law. It is not within the agency's discretion to decide whether a particular feature is important enough to warrant protection – if the feature was available in at least one model before a new standard is promulgated, it has to remain available afterwards. Here, there is more than the required preponderance of evidence to believe that this is not the case and that the proposed rule would lead to diminished gas stove choices and characteristics.

Perhaps no home appliance is subject to more subtle variation in use than stoves. No two dishes call for exactly the same cooking techniques and no two cooks pursue their task in exactly the same manner. And every aspect of the cooking experience is protected under EPCA.

Of particular concern is the future availability of high input rate (HIR) burners that can provide as much as 20,000 Btus/hour for such tasks as stir-frying, searing, or heating up a large pot of water in a conveniently short time. The proposed rule would almost certainly limit gas stoves to only one such burner, though some currently-available models have more than one. It may also require that the maximum heat for the one HIR burner be reduced to considerably less than those currently available.

At the same time the proposed rule jeopardizes the highest heat burners, it may also threaten the availability of smaller, low heat burners ideal for cooking tasks like simmering. Overall, the range of burner types and capabilities is likely to get narrowed, to the detriment of consumers.

Also at risk are the heavy and/or continuous (often cast iron) grates needed to safely handle very large pots and to easily shift them from one gas burner to another as may be required by some recipes. As with HIR burners, these heavier grates are a feature on several currently-offered gas stove models, and they are available because there are consumers who want them.

DOE has asserted that a number of currently-offered gas stove models would likely meet the proposed standard, but this misses the point of the features provision – there has to be gas stove options available with all the desired characteristics that are on the market at the time of the rulemaking. And on this point the proposed rule falls short.

In addition to the features associated with cooking performance, having a stove that can operate during a blackout is also a protected feature, and it is one that is of increasing relevance to consumers. There is a documented and growing risk to electric reliability across much of the nation, especially as baseload generation sources like coal and natural gas are being retired and replaced by wind and other intermittent renewable sources.<sup>9</sup> Quite arguably, the same Biden Administration climate agenda that favors electric stoves over gas is also making dependence on electric stoves increasingly problematic. In any event, the ability to cook during an electricity

---

<sup>9</sup> See, PJM, “PJM Energy Transition: Resource Retirements, Replacements and Risks, February 23, 2023, <https://www.pjm.com/-/media/library/reports-notice/special-reports/2023/energy-transition-in-pjm-resource-retirements-replacements-and-risks.ashx>.

outage is a feature that gives gas stoves an advantage over electric ones, and is one more reason why fully-featured gas stoves must be preserved under EPCA.

## B. THE PROPOSED RULE’S ENERGY SAVINGS ARE TOO INSIGNIFICANT TO JUSTIFY A STANDARD

Along with the features provision, EPCA has another standalone requirement – separate from the agency’s balancing of factors that go into the determination of economic justification – precluding any new or amended standard “that will not result in significant conservation of energy....”<sup>10</sup> This consumer protection prevents standards that risk being more trouble than they are worth. Unfortunately, the statute does not quantify significant conservation of energy, and a 2020 agency rule doing so has since been reversed.<sup>11</sup> Nonetheless, the proposed rule saves so little energy that it fails any rational interpretation of this provision.

Average household energy use for cooking is low to begin with, less than \$35 per year for either electric or gas cooking.<sup>12</sup> Given the modest overall energy use from cooking, it is not surprising that the estimated savings from the proposed rule are quite small at about \$1.50 per year for a gas cooktop.<sup>13</sup> In retrospect, it is for good reason that the agency had previously declined to bother with an efficiency standard for cooking products.

The significance of the energy savings attributable to a proposed standard can be further reduced by improvements in efficiency that would likely occur even in the absence of a rule. Unfortunately, there is a long and documented track record of these “anyway” efficiency improvements being understated or completely ignored by advocates for such standards.<sup>14</sup> In this regard, it is worth noting that many consumer and environmental organizations are very enthusiastic about the promise of induction stoves, a potentially more energy efficient type of

---

<sup>10</sup> 42 U.S.C. §6295(o)(3)(B).

<sup>11</sup> 88 FR, at 6833 footnote 27.

<sup>12</sup> Energy Information Administration, “Thanksgiving Week: EIA Data Highlight How Energy is Used in the Kitchen,” November 18, 2018, <https://www.eia.gov/todayinenergy/detail.php?id=37552>.

<sup>13</sup> Department of Energy, “Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Consumer Conventional Cooking Products,” December 2022, (TSD), Table 8.3.6 and Section 8.2.2.5, (estimated energy savings of \$21.89 over an estimated 14.5 year life for a gas cooktop, or \$1.51 per year).

<sup>14</sup> See, Hunt Allcott, Michael Greenstone, “Is There an Efficiency Gap?” *Journal of Economic Perspectives*, Winter 2012, <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.26.1.3>; Sebastien Houde, Erica Myers, “Are Consumers Attentive to Local Energy Costs? Evidence From The Appliance Market,” National Bureau of Economic Research, February 2019, <https://www.nber.org/papers/w25591>; Arik Levinson, “How Much Energy Do Building Codes Really Save? Evidence from California,” *American Economic Review*, October 2016, <https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20150102>.

electric stove they claim offers numerous advantages for consumers.<sup>15</sup> If they are correct, these stoves would gain market share with or without the proposed rule and thus cast further doubt as to the significance of any marginal energy savings from agency action. In other words, the emergence of induction stoves further militates against a finding of significant energy savings as is required under EPCA.

Further, the insignificant direct energy savings for consumers cannot be buttressed by adding the agency's claims of environmental and public health benefits, including climate benefits. The statute specifically defines "energy use" as "the quantity of energy directly consumed by a consumer product at point of use," and this is the relevant definition from which energy savings should be assessed.<sup>16</sup> Based on this definition as well as many other provisions throughout the statute that focus on direct consumer impacts, the agency's inclusion of "the need to confront the global climate crisis" as a factor in determining the significance of the energy savings is not appropriate and cannot rescue the proposed rule from insignificance.<sup>17</sup>

### C. THE MONETIZED CLIMATE CHANGE BENEFITS ARE SPECULATIVE AND UNRELIABLE

The proposed rule and underlying Technical Support Document include a lengthy and detailed analysis monetizing the projected climate change benefits. These claimed benefits are comparable in magnitude to the consumer benefits that are the primary focus of the appliance standards-setting program under EPCA.<sup>18</sup>

DOE downplays the role of its climate analysis, asserting that "the proposed standards are economically justified no matter what value is ascribed to climate benefits."<sup>19</sup> Notwithstanding this claim, the monetized climate change impacts are a substantial part of the agency's published analysis, thus we would like to highlight several of the methodological problems with these calculations.

DOE's monetized benefits of reduced greenhouse gas emissions from the proposed rule are based on the 2021 Interagency Working Group on the Social Cost of Greenhouse Gases (IWG 2021). IWG 2021 provides the agency with the per ton Social Cost of Greenhouse Gases (SC-GHG) values. These values are then multiplied by the estimated greenhouse gas emissions reductions attributable to the proposed rule to arrive at the dollar benefits.

---

<sup>15</sup> Paul Hope, "Induction Ranges and Cooktops Are So Good You May Not Miss Your Gas Appliance," *Consumer Reports*, January 12, 2023, <https://www.consumerreports.org/appliances/ranges/induction-cooktops-ranges-are-so-good-you-may-not-miss-gas-a8912134554/>

<sup>16</sup> 42 U.S.C. §6291(4).

<sup>17</sup> 88 FR, at 6,833.

<sup>18</sup> 88 FR, at 6,822, Table I.4.

<sup>19</sup> 88 FR, at 6,865.

As we explained in detail in our October 5, 2022 comment on DOE's proposed energy conservation standards for residential furnaces (incorporated by reference herein), there are numerous flaws with IWG 2021, nearly all of which serve to overstate the calculated benefits of avoided emissions.<sup>20</sup> Among them are the use of improperly-low discount rates, reliance on climate models that have consistently overstated actual warming, reliance on baseline emission scenarios that implausibly assume an increasingly coal-centric global energy system through 2100 and beyond, and downplaying the capacity for adaptation to mitigate climate impacts.<sup>21</sup> Other questionable assumptions, such as the inclusion of claimed climate benefits out nearly 300 years into the future and the use of global rather than national benefits, are also skewed toward inflating the end result. These and other problematic assumptions were repeated in the analysis of the proposed rule here.

The only major difference between the agency's analysis for the furnace rule and for the proposed cooking products rule at issue here is that the latter use considerably less energy and thus the agency's estimated greenhouse gas emissions reductions are an order of magnitude lower. For cooking products, the agency projects reduced CO<sub>2</sub> emissions of only 19.6 million metric tons by 2056.<sup>22</sup>

Thus, even assuming the analysis is correct, the proposed rule would reduce future temperatures by an amount too small to confidently detect and would make no discernable difference on any measurable factor related to human well-being. According to an analysis conducted by Dr. Kevin Dayaratna of the Heritage Foundation, the agency's projected avoidance of 19.6 million metric tons of CO<sub>2</sub> would result in temperature mitigation of approximately 0.0004°C by 2050 and 0.0009°C by 2100.<sup>23</sup>

#### IV. CONCLUSION

EPCA does not mandate a new energy conservation standard for cooking products, but permits one only if it benefits consumers. This is not the case here. The proposed rule would almost certainly compromise some of the features that gas stove users want, and all for the sake of saving an insignificant amount of energy. The agency's exaggerated claims of climate change benefits do not alter the fact that proposed rule violates the consumer protections in the statute. For these reasons, we believe the proposed rule should be withdrawn.

---

<sup>20</sup> Comments of Free Market Organizations to the Department of Energy, Energy Conservation Standards for Consumer Furnaces, Notice of Proposed Rule, October 5, 2022, [https://cei.org/wp-content/uploads/2022/10https://cei.org/opeds\\_articles/restrictions-on-natural-gas-stoves-are-climate-policy-by-another-name//FurnaceComment-10-5-2022-final.pdf](https://cei.org/wp-content/uploads/2022/10https://cei.org/opeds_articles/restrictions-on-natural-gas-stoves-are-climate-policy-by-another-name//FurnaceComment-10-5-2022-final.pdf).

<sup>21</sup> Ibid, at 8-9.

<sup>22</sup> 88 FR, at 6,887, Table V.46.

<sup>23</sup> Assuming a sensitivity of 5°C (the upper end of the climate sensitivity range in the IPCC's Sixth Assessment Report).

Ben Lieberman  
Senior Fellow  
Competitive Enterprise Institute

Donna Jackson  
Director, Membership Development  
Project 21

David Stevenson  
Director for Energy and Environment  
Caesar Rodney Institute

Isaac Orr  
Policy Fellow  
Center of the American Experiment

Jason Hayes  
Director, Energy and Environmental Policy  
Mackinac Center for Public Policy

Chris Braunlich  
President & CEO  
Thomas Jefferson Institute for Public Policy

Adam Houser  
National Director of Outreach  
Committee For A Constructive Tomorrow

Bette Grande  
CEO  
Roughrider Policy Center

James Taylor  
President  
Heartland Institute

Kristen A. Ullman  
President  
Eagle Forum

Paul Gessing  
President  
Rio Grande Foundation

E. Calvin Beisner  
President  
Cornwall Alliance

Steven J. Allen  
Vice Chairman  
Conservative Caucus

Kenneth Haapala  
President  
Science and Environmental Policy Project

Saulius "Saul" Anuzis  
President  
60 Plus Association

Craig Richardson  
President  
Energy & Environment Legal Institute

William Hild  
Executive Director  
Consumers' Research

Tom Pyle  
President  
Institute for Energy Research

Cesar Ybarra  
Vice President of Policy  
FreedomWorks

Mandy Gunasekara  
Director, Center for Energy & Conservation  
Independent Women's Forum

Brian Balfour  
Senior Vice President of Research  
John Locke Foundation

Carla Sands  
Vice Chair, Center for Energy &  
Environment  
America First Policy Institute



Morton Blackwell  
President  
Leadership Institute

Star Parker  
President  
Center for Urban Renewal and Education

Bob Carlstrom  
President  
AMAC Action

Scott Shepard  
Director  
Free Enterprise Project

Diana Furchtgott-Roth  
Director, Center for Energy, Climate, and  
Environment  
The Heritage Foundation

Marc Marie  
Policy Fellow, Regulations  
Americans for Prosperity

Cleta Mitchell  
Senior Legal Fellow  
Conservative Partnership Institute

Lori Roman  
President  
American Constitutional Rights Union  
Action

Chad Connelly  
CEO  
Faith Wins

Becky Norton Dunlop  
Former Assistant Secretary of Interior