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**Department of Energy, Energy Conservation Program: Energy Conservation Standards
for Residential Clothes Washers: Notice of Proposed Rulemaking
Docket Number EERE-2017-BT-STD-0014
88 FR 13,520 (March 3, 2023)**

Comments of the Competitive Enterprise Institute and Michael Mannino

I. SUMMARY

The proposed rule would tighten the energy and water efficiency standards for residential clothes washers, despite the fact that the standards currently in effect are causing numerous problems for consumers. This includes diminished clothes washer features, performance, reliability, and useful life. The proposed rule would exacerbate these problems and thus violates the consumer protections built into the law. For these reasons, we believe the proposed rule should be withdrawn and that the Department of Energy (DOE) should shift its focus to addressing the drawbacks caused by the existing clothes washer standards.

II. INTRODUCTION

The Competitive Enterprise Institute is a policy and analysis organization committed to advancing the principles of free markets and limited government. For over 20 years, we have participated in rulemakings conducted by the DOE regarding energy and water conservation standards for home appliances, including previous rulemakings on clothes washers.¹ Our focus has been on ensuring that the consumer protections built into the underlying statute, the Energy and Policy Conservation Act of 1975 (EPCA)², are given full weight by DOE in the rulemaking process. 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, choice, and value.

¹ See, Comments of the Competitive Enterprise on the Department of Energy's Proposed Conservation Standards for Clothes Washers, December 4, 2000, https://cei.org/regulatory_comments/comments-of-the-competitive-enterprise-institute-on-the-department-of-energys-proposed-conservation-standards-for-clothes-washers/. (CEI 2000)

² 42 U.S.C. §6291 *et seq.*

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The Biden administration is in the process of proposing stringent energy efficiency standards for many home appliances, including furnaces, stoves, refrigerators, and dishwashers. It is also implementing final rules for air conditioners and light bulbs that take effect this year. This sweeping and aggressive approach to appliance regulations is explained in part by the administration's "whole of government" prioritization of climate change considerations, which has been fully adopted by DOE.³ It is now standard practice for the agency to claim climate change benefits in its appliance rulemakings.

While each of the Biden administration's appliance measures threaten to compromise product quality, choice, and value for consumers, perhaps most troublesome of all is the proposed rule at issue here for consumer clothes washers. As it is, the existing energy and water efficiency measures for clothes washers have caused widespread problems for consumers. The proposal to tighten these provisions would make things worse.

EPCA expressly forbids DOE from setting an efficiency standard that in any way compromises appliance quality, nor one that does not save a significant amount of energy and/or water. The statute also makes clear that the best interests of consumers take precedence over other considerations, including climate change. As will be discussed below, the proposed rule violates EPCA on all of these counts and should be withdrawn. Instead, the agency should use its authority under EPCA to fix the problems with the current clothes washer regulations.

III. ARGUMENT

A. The Proposed Rule Exacerbates the Adverse Impacts of Regulations on Clothes Washer Quality

EPCA authorizes DOE to consider setting and periodically revising energy conservation standards for most home appliances, including clothes washers.⁴ 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."⁵ 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

³ 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-ontackling-the-climate-crisis-at-home-and-abroad/>; Department of Energy, "Climate Change," <https://www.energy.gov/climate-change>.

⁴ 42 U.S.C. §6292(a)(7).

⁵ 42 U.S.C. §6295(o)(2)(A).

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.”⁶ [Hereinafter the “features provision.”] This provision prohibits setting an efficiency standard that would sacrifice any desired product characteristics.

Unfortunately, a diminution in product quality has already occurred due to the previous efficiency standards applicable to clothes washers. Successively more stringent energy and water requirements took effect in 1994, 2004, 2007, 2015, and 2018. The 2007 and subsequent standards have been particularly problematic, and in several respects the quality of clothes washers has declined since then. Many of the problems stem from the fact that compliant models must use considerably less water per cycle, as well as the replacement of the traditional agitator in many models in favor of more efficient but less effective alternatives. These problems would be exacerbated by the proposed rule which would require further reductions in energy and water use.

The decline in clothes washer reliability and useful lifetime, especially since the 2007 standards, has been very evident to those who have serviced machines over that span, but it remains unacknowledged by the agency. Instead, DOE asserts that it has no need to look back at the actual performance of appliances complying with past standards and compare it to the agency’s original expectations. In the agency’s words, as long as it uses “the best available data at the time,” it has no need to recognize any adverse impacts it did not anticipate when setting the earlier standards.⁷ Unfortunately, the agency continues to ignore real-world evidence that consumer utility has suffered.⁸

The history is very relevant to the proposed rule here. When DOE promulgated its 2007 standards in 2000-2001, it predicted minimal impact on the reliability and on the nearly 14-year average useful life of a clothes washers that prevailed at the time.⁹ However, commenters pointed out that compliance would necessitate a transition to newer, costlier, and more complex systems (front-loaders, agitator substitutes), all with no track record for reliability.¹⁰ Time has shown these concerns to be warranted. Expensive repairs, including ones within the first three years of purchase, are no longer uncommon. Of course, reliability and longevity of clothes washers are related, as it rarely makes sense to undertake repairs that cost half or more of the price of a new machine. These problems are likely to be exacerbated by the proposed rule.

⁶ 42 U.S.C. §6295(o)(4).

⁷ 88 FR 13,570.

⁸ See, Art Fraas and Sophie Miller, “Measuring Energy Efficiency: Accounting for the Hidden Costs of Product Failure,” *Economics of Energy & Environmental Policy*, 2020, pp. 181-197.

⁹ 66 FR 3,314 (January 12, 2001).

¹⁰ CEI 2000, at 9.

Clothes washer performance has also suffered, but even the most common problems have been ignored by the agency. For example, neither the agency’s Notice of Proposed Rulemaking nor its lengthy Technical Support Document make any mention of mold, but mold accumulation in clothes washers – which was virtually unheard of in pre-standards models – is now a common problem. This is particularly true of front-loading models since 2007. Not only does mold lead to unpleasant odors emanating from clothes washers and pervading the laundry, but it can compromise performance and even impart stains on washed items. Addressing it requires many consumers to periodically run the clothes washer empty with a cleaning agent designed to get rid of the mold.¹¹ Such products have become strong sellers, which is evidence of how widespread the problem has become. And, as discussed in the next section, the need to occasionally wash the washer as well as the increased need to run some loads more than once adds to the energy and water use – one more reason why the real-world savings from these standards fall short of DOE’s projections.

Overall, mold problems are a time-wasting expense for consumers, and one that did not exist before DOE efficiency regulations. Yet the agency simply assumes away this issue as well as others that have emerged with regulated clothes washers and instead proposes to ratchet down further on the energy and water restrictions that caused them.

EPCA protects access to clothes washers that are as durable and long-lasting and perform as well as those available prior to federal regulations. The law is already being violated by current DOE regulations, and things would only get worse under the proposed rule.

B. The Energy and Water Savings are not Significant

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....”¹² This consumer protection prevents standards that risk being more trouble than they are worth. Unfortunately, the statute does not quantify significant conservation, and a 2020 agency rule doing so has since been reversed.¹³ Nonetheless, the proposed rule saves so little energy and water that it fails any rational interpretation of this provision.

¹¹ See, Popular Mechanics, “How to Clean Your Washing Machine,” Joseph Truini, Nov. 18, 2020, https://www.popularmechanics.com/home/interior-projects/how-to/a23624/how-to-clean-washing-machine/?utm_source=google&utm_medium=cpc&utm_campaign=arb_ga_pop_md_pmx_us_ur_lx_17606616866&gclid=EAIaIQobChMIgJbX3LrZ_gIVASqzAB35RwDxEAMYASAAEgKx-D_BwE

¹² 42 U.S.C. §6295(o)(3)(B).

¹³ 86 FR 70,924 (December 13, 2021).

According to DOE’s analysis, a compliant top-loading model would save consumers an average of about \$10 per year, and a compliant front-loader less than \$1.50 per year.¹⁴ And if past is prologue, these numbers may overstate actual savings. Against this modest benefit is the downside of a higher purchase price as well as diminished washer performance and features, along with the risk of higher repair and maintenance costs and an earlier replacement date.

It is worth noting that many of the performance-related deficiencies in compliant washers discussed in the previous section also undercut the estimated energy and water savings. The need to periodically run the machine to eliminate the mold is one example, as is the increased frequency of running loads of laundry more once to get them sufficiently clean. Neither are taken into account by the agency. Further, the not-uncommon practice of consumers using a bucket or garden hose to put extra water in their washers to improve performance is yet one more real-world consequence of DOE regulations that the agency refuses to acknowledge in its analysis. Ironically, because the excessively stringent water requirements have proven insufficient to properly clean clothes, the DOE rules may well have increased water use for some consumers. In any event, the actual savings, if any, fall well short of meeting EPCA’s requirement that they be significant.

It needs to be emphasized that 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.¹⁵ 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.¹⁶

C. The Disproportionate Impact on Low-Income and Senior Households is Largely Ignored

The proposed rule’s discussion of the impacts on consumer sub-groups completely dismisses the possibility of adverse impacts on low-income households. It does so by citing the larger-than-average percentage of such households who rent rather than own their residences, and then assumes that landlords absorb the higher purchase price of compliant clothes washers while most tenants reap the benefits in the form of lower operating costs.¹⁷ This analysis is flawed for many reasons.

¹⁴ Department of Energy, “Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment, Residential Clothes Washers, February 2023, pp. 8-39 to 8-40, <https://www.regulations.gov/document/EERE-2017-BT-STD-0014-0058>. (Estimated life cycle cost savings divided by the estimated 13.7 year useful life)

¹⁵ 42 U.S.C. §6291(4).

¹⁶ 88 FR 13,536.

¹⁷ 88 FR 13,573-4.

For one thing, DOE downplays the disproportionate impact of costlier clothes washers on those low-income households that do own their home, as well as those who aspire to own one. And in combination with many other pending DOE regulations likely raising the cost of other home appliances – in the last four months year alone, the agency has also proposed rules targeting stoves, refrigerators, room air conditioners, and dishwashers - the cumulative effect on home affordability is quite substantial.

Further, DOE’s projected price hikes, though substantial, don’t tell the entire story since the most affordable top-loading clothes washer models preferred by low-income households will very likely be the ones hardest hit by the proposed rule. Beyond higher purchase prices, maintenance and repair costs will also increase. It should also be noted that low-income households are likely to have higher financing costs when purchasing appliances, further raising the disproportionate impact.

Overall, efforts to increase home ownership rates among low-income Americans are harmed, not helped, by DOE’s proposed rule and others like it.

Even among low-income renters, it is simplistic and unrealistic to assume they are shielded from higher appliance costs because such purchases are undertaken by landlords. In reality, landlords take such costs into account when setting rental rates.

With regard to senior households, DOE did take into account the fact that that senior households don’t do as many loads of laundry as households in general and thus would need more time to recoup the higher up-front cost in the form of reduced operating costs. However, the agency did not acknowledge other impacts on seniors of the proposed rule, including the fact that it favors front-loading models that are less popular with seniors than top-loaders because they require bending down to load and unload.

D. The Claimed Climate and Other Environmental Benefits do not Justify the Proposed Rule

The proposed rule and underlying Technical Support Document include a lengthy and detailed analysis monetizing the projected climate change benefits. DOE downplays the role of its climate analysis, asserting that the agency “would reach the same conclusion presented in this proposed rulemaking in the absence of the social cost of greenhouse gases.”¹⁸ Notwithstanding this claim, the monetized climate change impacts are a substantial part of the agency’s published analysis. For this reason, 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 (SCGHG) values. These values are then multiplied by the estimated greenhouse gas emissions

¹⁸ 88 FR 13,580.

reductions attributable to the proposed rule to arrive at the dollar benefits.

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.¹⁹ 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.²¹

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 proposed furnace rule and for the proposed clothes washer rule at issue here is that the latter use considerably less energy and thus the agency's estimated greenhouse gas emissions reductions are lower. In any event, under EPCA such considerations cannot justify a standard not otherwise in the best interests of consumers.

In addition, because the agency refuses to acknowledge that its rules have shortened the useful lives of clothes washers and other appliances, it ignores the resulting adverse environmental impacts. This includes the greater energy and other resources that go into manufacturing additional clothes washers as well as additional landfill and other disposal requirements.

E. The Agency Should Consider Regulations Fixing Rather than Worsening the Problems with Clothes Washers

The features provision in EPCA seeks to prevent the promulgation of appliance efficiency regulations that harm consumers. Unfortunately, harm has already occurred in the case of clothes washer regulations. Fortunately, the statute also allows for corrective measures for any such damage that does occur. Specifically, if a standard proves to adversely impact any "performance-related feature," that has utility to the consumer, DOE can devise a new efficiency standard set so as to restore that feature.²⁰ Given the problems with clothes washers traceable to existing standards, this is the proper regulatory avenue that DOE should be pursuing.

DOE had taken initial steps down this path in 2020 with rules that sought to address longer cycle times for clothes washers resulting from previous standards.²¹ Specifically, the agency

¹⁹ Comments of Free Market Organizations to the Department of Energy, Energy Conservation Standards for Consumer Furnaces, Notice of Proposed Rule, October 5, 2022.

²⁰ 42 U.S.C. §6295(q).

²¹ Department of Energy, Energy Conservation Program: Establishment of New Product Classes for Residential Clothes Washers and Consumer Clothes Dryers, Final Rule, 85 FR 81,359

commenced the process of devising efficiency standards achievable by faster clothes washers and in so doing allowing their return to the marketplace. However, these efforts were reversed by the agency in 2022.²² Such corrective rulemakings should be revived and expanded to include all performance-related features, such as reliability and mold avoidance, that have been impacted by past clothes washer regulations.

The interests of consumers, as well as compliance with EPCA, is best served by DOE regulations that address the problems with clothes washers, not ones that add to them.

V. CONCLUSION

There is no better evidence that DOE's proposed rule tightening energy and water efficiency standards for clothes washers would harm consumers than the fact that the agency's existing provisions are already doing so. Digging further into this hole is both bad policy and a violation of EPCA. Instead, the agency should pursue its authority to correct the deficiencies with existing standards.

Respectfully Submitted,

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(December 16, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-12-16/pdf/2020-26976.pdf>.

²² Department of Energy, Energy Conservation Program: Product Classes for Residential Dishwashers, Residential Clothes Washers, and Consumer Clothes Dryers, Final Rule, 87 FR 2,673 (January 19, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-01-19/pdf/2022-00833.pdf>.