

July 18, 2023

**Department of Energy, Energy Conservation Program: Energy Conservation Standards
for Dishwashers: Notice of Proposed Rulemaking and Request for Comment
Docket Number EERE-2019-BT-STD-0039
88 FR 32,514 (May 19, 2023)**

**Comments of Competitive Enterprise Institute, AMAC Action, America First Policy
Institute, American Consumer Institute, Americans for Prosperity, Caesar Rodney
Institute, Center of the American Experiment, Consumers' Research, Energy &
Environment Legal Institute, Foundation Supporting Climate Science, Free Enterprise
Project, Heartland Institute, Heritage Foundation, Independent Women's Forum,
Independent Women's Voice, Institute for Energy Research, John Locke Foundation,
Project 21, Rio Grande Foundation, Roughrider Policy Center**

I. SUMMARY

The proposed rule would tighten the energy and water efficiency standards for residential dishwashers, despite the fact that the standards currently in effect are causing serious problems for consumers. Those problems include cycle times an hour or more longer than were the norm before the standards went into effect, as well as other adverse impacts. The proposed rule would exacerbate these problems and thus further violate 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 For these reasons, we believe the proposed rule should be withdrawn and that the Department of Energy (DOE) should shift its focus to addressing the drawbacks caused by its existing dishwasher regulations.

II. INTRODUCTION

The undersigned organizations have a longstanding interest in advancing the principles of free markets and limited government. Several of us have participated in past rulemakings conducted by DOE regarding energy and water conservation standards for home appliances, including previous proceedings on dishwashers.¹ Our focus has been on ensuring that the consumer

¹ See, Comments of the Competitive Enterprise Institute and Michael Mannino on Department of Energy Conservation Standards for Residential Clothes Washers, May 17, 2023, https://cei.org/regulatory_comments/comments-to-the-department-of-energy-on-its-proposed-clothes-washer-regulation/; Comments of Free-Market Organizations on Department of Energy Conservation Standards for Consumer Conventional Cooking Products, April 17, 2023, https://cei.org/regulatory_comments/cei-comments-to-department-of-energy-on-proposed-stove-regulation/; Consumers Research Comment of the Notice of Proposed Rulemaking and Announcement of Public Meeting Concerning the Energy Conservation Program's Test Procedures

protections built into the underlying statute, the Energy and Policy Conservation Act of 1975 (EPCA), are given full weight by DOE in the rulemaking process. In our view, these 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.

The agency has been particularly active thus far in 2023, proposing anti-consumer and likely illegal rulemakings for stoves, clothes washers, room air conditioners, refrigerators, and now dishwashers.² 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, despite the fact that EPCA prioritizes the interests of consumers over other considerations.

While each of the Biden administration's recently-proposed appliance measures raises a unique set of risks for consumers, the proposed dishwasher rule at issue here is particularly harmful. As it is, the existing energy and water efficiency measures for dishwashers have led to widespread and well-documented dissatisfaction over cycle times that have more than doubled from about an hour to two or more. The proposal to tighten these provisions would very likely make things worse. Further, since the existing energy and water limits are already quite stringent, the proposal to tighten them would generate very little marginal savings.

Overall, dishwashers may well have the distinction of being the most overregulated home appliance, yet DOE now seeks to regulate them further.

EPCA does not allow DOE to set an efficiency standard that in any way compromises appliance quality, nor one that fails to save consumers a significant amount of energy and/or water. As will be discussed below, the proposed rule ignores these and other provisions in EPCA and should be withdrawn. Instead, the agency should use its authority under the statute to fix the problems with the current dishwasher regulations.

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 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; Comments of Free Market Organizations to the Department of Energy, Energy Conservation Standards for General Service Incandescent Lamps, Notice of Proposed Rule, Jan. 27, 2022, https://cei.org/regulatory_comments/cei-leads-coalition-opposing-proposed-doe-lightbulb-rule/; Competitive Enterprise Institute, Petition for Rulemaking on a New Class of Fast Dishwashers, Mar. 21, 2018, <https://cei.org/sites/default/files/DOE%20Dishwasher%20Petition.pdf>.

² Department of Energy, Energy Conservation Program: Energy Conservation Standards for Dishwashers: Notice of Proposed Rulemaking and Request for Comment, 88 FR 32,514, May 19, 2023, <https://www.govinfo.gov/content/pkg/FR-2023-05-19/pdf/2023-09969.pdf>.

³ Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad," Jan. 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>.

III. ARGUMENT

A. The Proposed Rule Exacerbates the Adverse Impacts of the Current Dishwasher Rule

EPCA authorizes DOE to consider setting and periodically revising energy and/or water conservation standards for most home appliances, including dishwashers.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 But the statute does not end there. EPCA makes clear that the agency must 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, hereinafter the “features provision,” which categorically prohibits 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 This provision prohibits setting an efficiency standard so stringent that it that would sacrifice any desired product characteristics.

Unfortunately, the features provision has already been flouted by previous energy and water efficiency standards for dishwashers, including the fourth and most recent one set in 2012.⁷ Most notably, the rule greatly increased the time it takes to do a load of dishes from an hour or less to two or more. DOE has acknowledged that the longer cycle times are a direct result of its rules. In the agency’s words, “[t]o help compensate for the negative impact on cleaning performance associated with decreasing water use and water temperature, manufacturers will typically increase the cycle time.”⁸

To its credit, the agency opted not to make things worse by setting more stringent standards in 2016, but the adverse impact of the previous ones persists.⁹

In 2018, the Competitive Enterprise Institute petitioned DOE to correct the agency’s disregard of the features provision by promulgating a new efficiency standard achievable by dishwashers that

⁴ 42 U.S.C. §6292(a)(6).

⁵ 42 U.S.C. §6295(o)(2)(A).

⁶ 42 U.S.C. §6295(o)(4).

⁷ Department of Energy, Energy Conservation Program: Energy Conservation Standards for Residential Dishwashers, 77 FR 31,918, May 30, 2012, <https://www.govinfo.gov/content/pkg/FR-2012-05-30/pdf/2012-12340.pdf>.

⁸ Department of Energy, 2016-11-22 Final Rule Technical Support Document, chapter 3 at page 330, Nov. 22, 2016, <https://www.regulations.gov/document?D=EERE-2014-BT-STD-0021-0029>.

⁹ Department of Energy, Energy Conservation Program: Energy Conservation Standards for Residential Dishwashers, Final Rule, 81 FR 90072, Dec. 13, 2016, <https://www.govinfo.gov/content/pkg/FR-2016-12-13/pdf/2016-29328.pdf>.

can complete a load in an hour or less.¹⁰ This petition both documented the increase in cycle times resulting from the current DOE standards as well as the widespread consumer dissatisfaction with compliant dishwashers taking so long to do the job.

In 2019, DOE granted this petition and in 2020 commenced the process of both establishing a new category of one-hour dishwashers as well as promulgating the new efficiency standard for this category.¹¹ However, in 2022, the agency reversed course and stopped this process.¹² That decision is currently the subject of federal litigation brought by 13 state attorneys general pending in the United States Court of Appeals for the Fifth Circuit and for which the Competitive Enterprise Institute and FreedomWorks have filed an amicus curiae brief.¹³

Now, rather than correct this violation of the features provision resulting from existing standards, the agency seeks to double down and exacerbate matters via the proposed rule.

Longer cycle times are not the only problem. Though not as well documented, the previous efficiency standards have led to other performance drawbacks. For example, those who repair dishwashers have seen changes in reliability that resulted from DOE's actions. And, as with cycle times, the difference is stark between models that predate DOE standards and those that comply with them. Both the frequency of repairs as well as their cost have risen. Many of the problems are a direct result of insufficient water to flush out food particles, leading to the accumulation of food debris and mold inside the components. In addition and for the same reasons, dishwashers don't typically last as long as pre-standards models.

Cleaning performance has also been adversely impacted. This has resulted in more instances of consumers running loads twice to get them sufficiently clean. It has also led to more frequent rinsing of dishes before or after putting them in the dishwasher, or choosing to wash by hand instead. All of these actions undercut the water and energy-saving rationale behind dishwasher efficiency standards.

Dishwashers also have the feature of drying the dishes after they have been cleaned, but many compliant models no longer accomplish this task completely. Doing so requires energy and is one more feature that has been undermined as a result of DOE standards.

¹⁰ Competitive Enterprise Institute, Petition for Rulemaking on a New Class of Fast Dishwashers, Mar. 21, 2018, <https://cei.org/sites/default/files/DOE%20Dishwasher%20Petition.pdf>.

¹¹ Department of Energy, Energy Conservation Program: Energy Conservation Standards for Dishwashers, Grant of Petition for Rulemaking, 84 FR 33,869, July 19, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-07-16/pdf/2019-14545.pdf>; Department of Energy, Energy Conservation Program: Establishment of a New Product Class for Residential Dishwashers, 85 FR 68,723, Oct. 30, 2020, <https://www.govinfo.gov/content/pkg/FR-2020-10-30/pdf/2020-23765.pdf>.

¹² Department of Energy, Energy Conservation Program: Product Classes for Residential Dishwashers, Residential Clothes Washers, and Consumer Clothes Dryers, Final Rule, 87 FR 2,673, Jan. 19, 2022, <https://www.govinfo.gov/content/pkg/FR-2022-01-19/pdf/2022-00833.pdf>.

¹³ 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/legal_brief/cei-files-brief-of-amici-curiae-in-louisiana-v-department-of-energy/.

DOE fails to adequately address these concerns, asserting that its proposal “would not reduce the utility or performance of the products under consideration in this rulemaking.”¹⁴

Overall, a good dishwasher saves consumers water, energy, and time. This is why people buy and use them rather than rely on washing by hand. However, these advantages have been compromised by existing DOE standards, in clear violation of the features provision in EPCA. Dishwasher performance would only be made worse by the proposed rule, which ratchets down further on the energy and water limits that are the acknowledged source of the problems.

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....”¹⁵ This consumer protection prevents standards that risk being more trouble than they are worth. Unfortunately, the statute does not quantify what it means by significant conservation, and a 2020 agency rule doing so has since been reversed.¹⁶ Nonetheless, the proposed rule here saves so little energy and water that it fails any rational interpretation of this provision.

After four rounds of successively more stringent energy and water use limits for dishwashers, there simply isn’t much more to be saved. By the agency’s own analysis, the proposed rule would save consumers \$17 over the life of a standard dishwasher, which it estimates at 15.2 years.¹⁷ That works out to \$1.12 per year. Against this miniscule benefit is the very real risk of greatly diminished performance and convenience for consumers.

Further, the claimed utility bill savings would be further undercut if the proposed rule increases the need to hand wash dishes before or after or instead of running them in the dishwasher, or to run the load twice to achieve the desired results. These energy and water wasting workarounds have already been necessitated by the existing standards on dishwasher performance, and they would very likely be exacerbated by the proposed rule.

It needs to be emphasized that the insignificant direct energy savings for consumers cannot be salvaged by adding in 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 the significance of energy savings should be assessed.¹⁸ 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

¹⁴ 88 FR 32,526.

¹⁵ 42 U.S.C. §6295(o)(3)(B).

¹⁶ 86 FR 70,924, Dec. 13, 2021.

¹⁷ 88 FR, and 32,516 and 32,541.

¹⁸ 42 U.S.C. §6291(4).

significance of the energy savings is not appropriate and cannot rescue the proposed rule from insignificance.¹⁹

C. 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. It concludes that the proposed rule would provide \$34.6 million dollars in such annual benefits.²⁰ DOE downplays the role of this 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.”²¹ 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 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.²² 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.

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 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 dishwasher rule at issue here is that dishwashers use considerably less energy and thus the agency’s estimated greenhouse gas emissions reductions are lower. But whether large or small, monetized climate benefits cannot be used to justify a standard not otherwise in the best interests of consumers, in accordance with EPCA.

¹⁹ 88 FR 32,515.

²⁰ 88 FR 32,518.

²¹ 88 FR 32,555.

²² Comments of Free Market Organizations to the Department of Energy, Energy Conservation Standards for Consumer Furnaces, Notice of Proposed Rule, Oct. 5, 2022, https://cei.org/regulatory_comments/comments-to-doe-energy-conservation-standards-program/.

It should also be noted that with dishwashers, what is bad for consumers is also bad for reducing resource use and emissions. The adverse impacts of the agency's past dishwasher rules have necessitated compensating behaviors (hand washing, running loads twice) that are not only costly and inconvenient, but also undercut any climate benefits. The proposed rule would give us more of the same counterproductive behaviors, but they have not been adequately incorporated into the agency's analysis. The reduced useful life of compliant models is also environmentally detrimental, as it results in greater energy and other resources going into the manufacturing and disposal of dishwashers.

Missing from the agency's lengthy analysis is any estimate of the temperature increase it believes will be averted as a result of the proposed rule. According to an analysis conducted by Dr. Kevin Dayaratna of the Heritage Foundation that used the federal government's climate policy model (MAGICC), the agency's projected avoidance of 12.54 million metric tons of CO₂ would result in temperature mitigation of approximately 0.0003°C by 2050 and 0.0006°C by 2100.²³

D. The Agency Should Consider Regulations Fixing Rather than Exacerbating the Problems with Dishwashers

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 dishwasher regulations. Fortunately, the statute also allows for corrective measures for any such damage. 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.²⁴ Given the long cycle times and other issues with dishwashers traceable to current standards, this is the proper regulatory avenue that DOE should be pursuing. In other words, DOE should be fixing the problems with existing dishwasher standards rather than making them worse with the proposed rule.

As previously noted, DOE had taken initial steps down this path in 2020 with rules that sought to address longer cycle times for dishwashers resulting from previous standards.²⁵ Specifically, the agency commenced the process of devising efficiency standards achievable by faster dishwashers and in so doing allowing their return to the marketplace. However, these efforts were reversed by the agency in 2022.²⁶ Such corrective rulemakings should be revived and

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

²⁴ 42 U.S.C. §6295(q).

²⁵ Department of Energy, Energy Conservation Program: Energy Conservation Standards for Dishwashers, Grant of Petition for Rulemaking, 84 FR 33,869, July 19, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-07-16/pdf/2019-14545.pdf>; Department of Energy, Energy Conservation Program: Establishment of a New Product Class for Residential Dishwashers, 85 FR 68,723, Oct. 30, 2020, <https://www.govinfo.gov/content/pkg/FR-2020-10-30/pdf/2020-23765.pdf>.

²⁶ Department of Energy, Energy Conservation Program: Product Classes for Residential Dishwashers, Residential Clothes Washers, and Consumer Clothes Dryers, Final Rule, 87 FR 2,673, Jan. 19, 2022, <https://www.govinfo.gov/content/pkg/FR-2022-01-19/pdf/2022-00833.pdf>.

expanded to include all performance-related features that have been impacted by past dishwasher regulations.

Compliance with EPCA is best served by DOE regulations that address the consumer problems with dishwashers, not ones that exacerbate these problems.

IV. CONCLUSION

The old adage “when you find yourself in a hole, stop digging,” is particularly applicable to this proposed rule limiting energy and water use in dishwashers for the fifth time. DOE’s previous four successively tighter restrictions have already compromised dishwasher performance, in violation of the consumer protections built into EPCA. In addition, the marginal energy and water savings from the proposed rule are economically and environmentally inconsequential. For these reasons, we urge DOE to withdraw this proposed rule and focus instead on using the authority under the statute to undo the damage done by its previous dishwasher regulations.

Respectfully Submitted,

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