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**Department of Energy, Energy Conservation Program: Energy
Conservation Standards for Consumer Conventional Cooking Products
Notice of Proposed Rulemaking and Direct Final Rule
Docket Number EERE-2014-ST-STD-0005
89 FR 11,548 and 89 FR 11,434
February 14, 2024**

Comment Submitted by the Competitive Enterprise Institute

I. Summary

The Department of Energy (DOE) is permitted to set energy efficiency standards for home appliances, but only if certain conditions are met. This includes the statutory requirement that a rule must result in significant conservation of energy for consumers. That requirement has not been met for the proposed energy efficiency standard for residential stoves at issue here. For this reason, the proposed rule should be withdrawn and the agency should refrain from setting any efficiency standards for stoves.

II. Introduction

The Competitive Enterprise Institute (CEI) has 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, CEI has participated in rulemakings conducted by the 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, furnaces, and water heaters.¹

¹ See, Comments of Free Market Organizations to the Department of Energy, Energy Conservation Standards for Dishwashers, July 18, 2023, <https://cei.org/wp-content/uploads/2023/07/dishwashers-7-18-2023.pdf>; Comments of the Competitive Enterprise Institute and Michael Mannino to the Department of Energy, 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 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;

Our focus has been on ensuring that the consumer protections built into the underlying statute, the Energy Policy and Conservation Act of 1975 (EPCA),² 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.³ In our view, these consumer protections have frequently been downplayed or ignored by the agency when setting unnecessary or excessively stringent appliance efficiency standards that raise overall costs and/or compromise product quality and choice.

Over the last three 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.⁴ 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.⁵ 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 CEI and 30 free market and consumer organizations submitted a coalition comment critical of the February 1, 2023 proposed energy conservation standards (Proposed Rule) for consumer stoves.⁶ Our comment focused on natural gas stoves and the threat posed by the Proposed Rule to several of the features that have made them the preferred choice of many homeowners. This included concerns that the Proposed Rule would impact the availability of high heat burners needed for tasks like searing and stir-frying, as well as the continued availability of heavy-duty grates preferred by some homeowners.⁷

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/ceileads-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/2022/10/FurnaceComment-10-5-2022-final.pdf>.

² 42 U.S.C. §6291 *et seq.*

³ See, 42 U.S.C. §6295(o)(3) and (4).

⁴ 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>.

⁵ See, 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/>; Department of Energy, “Decarbonizing the U.S. Economy by 2050: A National Blueprint for the Buildings Sector,” April 2024, <https://www.energy.gov/eere/articles/decarbonizing-us-economy-2050>.

⁶ Comments of Free-Market Organizations to the Department of Energy, 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/.

⁷ *Id.* at 4-5.

It appears that DOE has agreed with the concerns we and others raised. The agency is no longer proceeding with the Proposed Rule and is now pursuing the Direct Final Rule that is the subject of this comment.⁸ The Direct Final Rule is considerably less stringent than the Proposed Rule and thus reduces the risk of compromising gas stove features, performance, and choice. However, by addressing one concern, the agency has exacerbated another by further reducing the Proposed Rule’s already-modest energy savings. Because EPCA expressly forbids promulgating efficiency standards that fail to result in significant conservation of energy, the proper course of action would be for DOE to withdraw both the Direct Final Rule as well as the Proposed Rule.

III. Argument: The Direct Final Rule Would Result in Insignificant Energy Savings and Thus Violates the Law

EPCA authorizes DOE to consider setting and periodically revising energy conservation standards for most home appliances, including stoves. 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.”⁹ 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. It is for these reasons that the agency has previously chosen not to set energy use limits for residential stoves, and why it apparently has abandoned the Proposed Rule in favor of the less stringent Direct Final Rule.¹⁰

Most relevant here is the explicit prohibition on any rule that the Secretary determines “will not result in significant conservation of energy.”¹¹ 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 DOE rule doing so has since been reversed in favor of an interpretation that that gives the agency wide discretion.¹² Nonetheless, the Direct

⁸ 89 FR 11,444.

⁹ 42 U.S.C. §6295(o)(2)(a).

¹⁰ 89 FR 11,443.

¹¹ 42 U.S.C. §6295(o)(3)(B).

¹² Department of Energy, Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 85 FR 8,626, February 14, 2020, <https://www.govinfo.gov/content/pkg/FR-2020-02-14/pdf/2020-00023.pdf>; Department of Energy, Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 86 FR 70,924, Dec. 13, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-12-13/pdf/2021-25725.pdf>, (Note that the Direct Final Rule’s estimated energy savings of 0.22 quads would have fallen short of the 0.30 threshold in the 2020 rule).

Final Rule saves so little energy that it fails any rational application of this provision and is arbitrary and capricious.

Average household energy use for cooking is low to begin with, less than \$35 per year for either electric or gas cooking.¹³ Given the modest overall energy use from cooking, it is not surprising that the estimated savings from the 2023 Proposed Rule were quite small at about \$1.50 per year for a gas cooktop.¹⁴ CEI and other commenters challenged the significance of these estimated savings.¹⁵ Prior to the 2023 Proposed Rule, the agency had cited insignificant energy savings as one of the reasons it declined to set a standard for stoves in 2020.¹⁶

The Direct Final Rule at issue here saves even less energy. In order to avoid compromising gas stove features and performance, it now proposes considerably less stringent energy use limits on stoves (1,770 kBtu/year versus 1,204 k/Btu/year in the Proposed Rule). As a result, the savings are now estimated by the agency to be \$3.09 over the 14.5 year average lifespan of a gas cooktop.¹⁷ This works out to about 21 cents per year. For its part, the agency provides scant explanation of how this amount complies with the statutory requirement, other than to conclude that it does.

Further, the miniscule direct energy savings for consumers cannot be buttressed by adding the agency's claimed 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.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 significance of the energy savings is not lawful and cannot rescue the proposed rule from insignificance.¹⁹

It is also worth noting that the climate benefits are also quite trivial. The agency's climate analysis, though lengthy, neglected to provide an estimate of the bottom-line impacts of the Direct Final Rule on future temperatures. However, according to an analysis of the Proposed

¹³ 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>.

¹⁴ Department of Energy, "Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Consumer Conventional Cooking Products," December 2022, 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).

¹⁵ CEI et.al, "Comments of Free-Market Organizations to Proposed Rule," at 5.

¹⁶ Department of Energy, Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products, 85 FR 80,892, December 14, 2020, <https://www.govinfo.gov/content/pkg/FR-2020-12-14/pdf/2020-26874.pdf>.

¹⁷ 89 FR 11,436-7.

¹⁸ 42 U.S.C. §6291(4).

¹⁹ 89 FR 11,447.

Rule conducted by Dr. Kevin Dayaratna of the Heritage Foundation and included in our comment to the agency, the projected avoidance of 19.6 million metric tons of CO₂ equivalent over 30 years would result in temperature mitigation of approximately 0.0004° C by 2050 and 0.0009° C by 2100.²⁰ As we noted in the Proposed Rule, this estimated temperature reduction is far too small to detect, much less make any appreciable difference in human health and well-being. And now, the less-stringent Direct Final Rule is estimated to avoid only 3.99 million metric tons of CO₂ equivalent, nearly five times less than that from the Proposed Rule. Thus, notwithstanding the inappropriateness of the agency's inclusion of calculated climate change benefits in determining that the Direct Rule would result in significant conservation of energy, those claimed benefits are every bit as insignificant as the claimed consumer benefits.

IV. Conclusion

The purpose of the appliance efficiency program in EPCA is not regulation for its own sake, nor regulation in pursuit of an environmental agenda, but regulation towards the goal of improved efficiency consistent with consumer utility. Towards that end, the statute contains several checks on regulatory overreach for rules that threaten to harm the interests of consumers. This includes the requirement that no rule can be promulgated if the energy savings are insignificant. Here, the energy savings are indisputably trivial, which is why we believe the Direct Final Rule must be withdrawn.

As we have seen with the Proposed Rule and now the Direct Final Rule, the only way to avoid an energy efficiency standard that compromises gas stove performance and features is to set one so weak that the consumer savings become insignificant. The statute fully contemplates – and indeed requires - that some appliances would not be subject to energy use limits, and this should include residential stoves.²¹

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²⁰ CEI et.al, “Comments of Free-Market Organizations to Proposed Rule,” at 7.

²¹ 42 U.S.C. §6295(o)(3) and (4).