

July 15, 2025

# **Department of Energy: Energy Conservation Program: Proposed Withdrawal of Determination of Miscellaneous Refrigeration Products as a Covered Consumer Product**

## **Notice of Proposed Withdrawal of Determination: Request for Comments 90 Fed. Reg. 20,840 (May 16, 2025)**

### **Comments of the Competitive Enterprise Institute**

#### **I. SUMMARY**

The Proposed Withdrawal of Determination of Miscellaneous Refrigeration Products as a Covered Consumer Product (proposed withdrawal) would correct the Department of Energy's (DOE) improper and unsupported use of the Energy Policy and Conservation Act (EPCA) to regulate this purported category of appliances. Elimination of this category would also advance the goals of several pro-consumer executive orders issued this year. For these reasons, the proposed withdrawal should be finalized.

#### **II. INTRODUCTION**

The Competitive Enterprise Institute (CEI) 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 DOE regarding energy conservation standards for home appliances. Most recently, we have submitted comments for proposed DOE rules targeting residential furnaces, stoves, clothes washers, light bulbs, dishwashers, and water heaters.<sup>1</sup> Our focus has been on ensuring that the consumer protections built into EPCA are given full weight by the agency and that the option of declining to regulate is taken when appropriate. In our view, these consumer protections have frequently been downplayed or ignored by the

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<sup>1</sup> Comments of Free Market Organizations to the Department of Energy, Energy Conservation Standards for Consumer Furnaces, Notice of Proposed Rulemaking, October 5, 2022, <https://cei.org/wp-content/uploads/2022/10/FurnaceComment-10-3-2022-final.pdf>; Comments of the Competitive Enterprise Institute to the Department of Energy, Energy Conservation Standards for Conventional Cooking Products, Notice of Proposed Rulemaking and Direct Final Rule, June 3, 2024, <https://cei.org/wpcontent/uploads/2024/06/StovesComment-5-30-2024.pdf>; Comments of Free Market Organizations to the Department of Energy, Energy Conservation Standards for Dishwashers, July 18, 2023, <https://cei.org/wpcontent/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-clotheswasherregulation/](https://cei.org/regulatory_comments/comments-to-the-department-of-energy-on-its-proposed-clotheswasherregulation/); Comments of Free Market Organizations to the Department of Energy, Energy Conservation Standards for Consumer Water Heaters, Notice of Proposed Rulemaking, September 26, 2024, <https://cei.org/wpcontent/uploads/2023/09/WaterHeaters-9-2023.pdf>.

agency when setting excessively stringent appliance efficiency standards that raise overall costs and/or compromise product choice, features, performance, and reliability.

Most of our previous comments dealt with appliances that are legitimate subjects for regulatory consideration under EPCA but in regulating them the agency went too far and engaged in overregulation. Here, however, the proposed withdrawal addresses a more fundamental agency error - an entire category of products that DOE should have never regulated in the first place.

### III. ARGUMENT

#### A. Regulation of Miscellaneous Refrigeration Products is Neither Required nor Advisable Under EPCA

EPCA lists numerous appliances that are subject to energy efficiency regulations.<sup>2</sup> In some instances, the statute itself sets out the stringency of the regulatory requirements, while in others it authorizes DOE to do so through a notice and comment rulemaking. EPCA also requires the agency to periodically review existing appliance regulations and consider tightening them based on criteria set out in the law. Under these provisions, residential refrigerators and freezers have been subjected to multiple rounds of successively tighter standards over the decades.

EPCA also includes provisions giving DOE the discretion to add “a type of consumer product” for regulation.<sup>3</sup> DOE may do so if it determines, among other things, that doing so “is necessary or appropriate to carry out the purposes of this chapter.”<sup>4</sup>

Initially, residential refrigeration products other than refrigerators and freezers were not a target of DOE. But in 2016 the agency decided to create a catchall category for these other products, hence miscellaneous refrigeration products. This new category is a hodgepodge of less common residential refrigeration products not yet regulated, including wine chillers and beverage coolers.

It is not the goal of EPCA to regulate every conceivable variety of energy-using home appliances, but DOE apparently set out to do so for refrigeration products.

It is the hodgepodge nature of miscellaneous refrigeration products that is its undoing under EPCA. Miscellaneous refrigeration products are not “a type of consumer product.” The statute requires that any new or amended standards be technologically feasible and economically justified.<sup>5</sup> In determining the economic justification of a proposed standard, the statute specifies seven factors, among them the energy savings versus the costs to consumers, any impact on appliance quality, the effects on competition, and the need for national energy conservation.<sup>6</sup>

Needless to say, these specific factors cannot rationally be applied to a disparate collection of products lumped together as miscellaneous refrigeration products. The statute does

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<sup>2</sup> 42 USC §6295.

<sup>3</sup> *Id.* §6292(b)(1).

<sup>4</sup> *Id.* §6292(b)(1)(A).

<sup>5</sup> *Id.* §6295(o)(2)(a).

<sup>6</sup> *Id.* §6295(o)(2)(B)(i).

not allow for catchall categories for the sake of regulatory convenience. Each type of appliance included in the miscellaneous category would have to individually meet the statutory requirements, which is something DOE has not demonstrated and is unlikely to be the case. Further, the fact that, in contrast to refrigerators, wine chillers and beverage coolers and other miscellaneous refrigeration products are found in relatively few households further militates against the need to regulate them.

For these reasons, miscellaneous refrigeration products is not a valid regulatory category for purposes of EPCA, and DOE is correct to propose withdrawing it.

## B. Elimination of This Regulatory Category Advances the Goals of Several Pro-Consumer Executive Orders

The Trump administration is acutely aware of the negative consequences of regulations on the American people, and this includes appliance regulations. Several 2025 executive orders specifically address these regulations with an eye towards reducing their adverse impacts. One, entitled “Unleashing American Energy,” singles out the need to “safeguard the American people’s freedom to choose from a variety of goods and appliances” and announced an immediate review of all such regulations.<sup>7</sup> Another, “Delivering Emergency Price Relief for American Families and Defeating the Cost of Living Crisis,” directs all agencies to “eliminate counterproductive requirements that raise the costs of home appliances.”<sup>8</sup>

In the most recent standards for miscellaneous refrigeration products promulgated in 2024, DOE admits in its analysis that nearly half the purchasers of compliant products would experience net costs – that is, the higher purchase price would not be earned back in the form of additional energy savings over the life of the product.<sup>9</sup> For the three most common types of appliances in this category (freestanding compact coolers, freestanding coolers, and compact cooler with all-refrigerator—automatic defrost), DOE estimates a higher purchase price of \$91.70, \$360.90, and \$124.30, respectively. Clearly, this is the very kind of adverse regulatory outcome these executive orders seek to address.

These executive orders are also very critical of the previous administrations’ inclusion of claimed climate change benefits as a justification for many rules. CEI has noted in many of its previous comments to the agency that incorporation of the social cost of carbon in appliance rulemakings is both factually and legally suspect.<sup>10</sup> These calculations are highly subjective, assumption-driven, and nearly-always skewed towards justifying an aggressive regulatory

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<sup>7</sup> Executive Order 14154, “Unleashing American Energy,” January 20, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy>.

<sup>8</sup> Executive Order, “Delivering Emergency Price Relief for American Families and Defeating the Cost of Living Crisis,” January 20, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/delivering-emergency-price-relief-for-american-families-and-defeating-the-cost-of-living-crisis/>.

<sup>9</sup> Department of Energy, Energy Conservation Program: Energy Conservation Standards for Miscellaneous Refrigeration Products, 89 Fed. Reg. 38,762, 38,826, May 7, 2024, <https://www.govinfo.gov/content/pkg/FR-2024-05-07/pdf/2024-08001.pdf>, at 38,826.

<sup>10</sup> See, Comments of Free Market Organizations to the Department of Energy, Energy Conservation Standards for Consumer Furnaces, Notice of Proposed Rulemaking, October 5, 2022 <https://cei.org/wp-content/uploads/2022/10/FurnaceComment-10-3-2022-final.pdf>.

agenda.<sup>11</sup> As stated in “Unleashing American Energy,” “[t]he calculation of the ‘social cost of carbon’ is marked by logical deficiencies, a poor basis in empirical science, politicization, and the absence of a foundation in legislation.” Most recently, a memorandum from the Office of Management and Budget calls upon all agencies to cease unauthorized reliance on the social cost of carbon.<sup>12</sup> The proposed withdrawal comports with this memorandum.

DOE’s use of social cost of carbon in appliance rulemakings is particularly troublesome because it serves as a finger on the scale favoring ultra-stringent provisions that impose additional costs and limit choices and thus runs counter to the pro-consumer thrust of the statute. Nonetheless, the 2024 standards for miscellaneous refrigeration products included the claimed climate benefits in its regulatory analysis.<sup>13</sup>

For all these reasons, eliminating miscellaneous refrigeration products as a regulated category would help carry out the goals of these executive orders. Consumers would reap the benefits of the proposed deregulatory action.

### C. Non-Regulatory Approaches Better Serve the Interests of Consumers

There is no downside to consumers from eliminating this regulatory category. Various governmental and non-government sources of information on these appliances and their energy use are available to prospective purchasers, who would be free to incorporate this information in their buying decisions. Indeed, Executive Order 12,866 encourages consideration of non-regulatory approaches, including “providing information upon which choices can be made by the public.”<sup>14</sup>

Wine chillers, beverage coolers and other products that would have complied with DOE’s standards can still be manufactured and sold if those standards were to be rescinded - which would be the case should the product category be withdrawn. The only change is that DOE-compliant models would no longer be the only such choices on the market. Thus, consumers would enjoy more product choice and likely more price competition than if the agency continued regulating them. Overall, consumers would be better off without the regulatory constraints imposed on miscellaneous refrigeration products.

## IV. CONCLUSION

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<sup>11</sup> Marlo Lewis, “Social Cost of Carbon: Pretzel Logic Cannot Save NetZero Agenda,” Competitive Enterprise Institute, January 28, 2022, <https://cei.org/blog/social-cost-of-carbon-pretzel-logic-cannot-save-netzero-agenda/>.

<sup>12</sup> Office of Management and Budget, “Memorandum for Regulatory Policy Officers at Departments and Agencies and Managing and Executive Directors of Commissions and Boards,” May 5, 2025, <https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-27-Guidance-Implementing-Section-6-of-Executive-Order-14154-Entitled-Unleashing-American-Energy.pdf>.

<sup>13</sup> Department of Energy, Energy Conservation Program: Energy Conservation Standards for Miscellaneous Refrigeration Products, 89 Fed. Reg. 38,762, 38,799-81, May 7, 2024, <https://www.govinfo.gov/content/pkg/FR-2024-05-07/pdf/2024-08001.pdf>.

<sup>14</sup> Executive Order 12,866, “Regulatory Planning and Review,” September 30, 1993, <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>.

The creation of miscellaneous refrigeration products as a regulatory category is not required under EPCA and doing so undercuts the interests of consumers. CEI urges DOE to finalize its proposed withdrawal of this category and rescind all current regulations promulgated pursuant to it.