

**COMMENTS OF ATTORNEYS GENERAL OF THE STATES OF NEW YORK,
CALIFORNIA, COLORADO, ILLINOIS, MARYLAND, MAINE,
NORTH CAROLINA, NEVADA, OREGON, VERMONT, WASHINGTON, THE
COMMONWEALTHS OF MASSACHUSETTS AND PENNSYLVANIA, AND THE
CORPORATION COUNSEL OF THE CITY OF NEW YORK**

March 11, 2021

Submitted via e-mail:

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U.S. Department of Energy

Appliance and Equipment Standards Program

**Re: EERE-2020-BT-STD-0004
Energy Conservation Program: Procedures for Use in New or Revised
Energy Conservation Standards and Test Procedures for Consumer
Products and Commercial/Industrial Equipment; Prioritization Process**

The undersigned Attorneys General and Corporation Counsel for state and local government entities submit the following recommendations in response to the Department of Energy’s February 19, 2021 request for comments on its rulemaking priorities. *See* “Energy Conservation Program: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment; Prioritization Process,” 86 Fed. Reg. 10,211.

We are encouraged by the initial steps already taken by President Biden, Secretary Granholm, and the Department of Energy to restore the Department’s energy conservation program, including the issuance of Executive Order 13,990 “Protecting Health and the Environment and Restoring Science to Tackle the Climate Crisis” (Jan. 20, 2021)¹ and Memorandum Regarding Review of Actions of the Prior Administration from Kelly Speakes-Backman, Acting Assistant Secretary for Energy Efficiency and Renewable Energy (Feb. 19, 2021)². Consistent with the policy goals and actions identified in the Executive Order and the Speakes-Backman regulatory review memo, the Department’s Spring 2021 regulatory agenda for the appliance standards program should focus on two main objectives: 1) undoing rules issued by the prior administration that are unlawful or otherwise undermine the Department’s mandate to improve energy efficiency, and 2) meeting the Department’s deadlines under the Energy Policy and Conservation Act (EPCA), 42 U.S.C. §§ 6291 *et seq.*, for reviewing and updating energy efficiency standards for consumer and commercial/industrial products, giving highest priority to regulatory actions that present the greatest opportunity for energy savings, lowering utility costs and reducing air pollutant emissions. By doing so, the Department can ensure that its appliance

¹ Available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/> (last accessed Mar. 9, 2021).

² Available at https://www.energy.gov/sites/prod/files/2021/02/f82/eere_eo13990_memo_1.pdf (last accessed Mar. 9, 2021).

standards program will continue to provide substantial economic and environmental benefits to the nation's consumers, businesses and environment.

Undo the Harm: Suspend, Revise, Rescind or Vacate Rules Contrary to Energy Efficiency

First, the Department should undo the harmful rules issued by the prior administration. The Speakes-Backman memo identifies over a dozen rules issued by the prior administration that are, or may be, inconsistent with policies set forth in Executive Order 13990. These agency actions include rules which the undersigned state and local government entities, and others, have challenged in litigation or otherwise opposed:

1. "Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters," 86 Fed. Reg. 4776 (January 15, 2021).
2. "Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters; Withdrawal," 86 Fed. Reg. 3873 (January 15, 2021).
3. "Energy Conservation Program: Establishment of New Product Classes for Residential Clothes Washers and Consumer Clothes Dryers," 85 Fed. Reg. 81359 (December 16, 2020).
4. "Test Procedure Interim Waiver Process," 85 Fed. Reg. 79802 (December 11, 2020).
5. "Energy Conservation Program: Establishment of a New Product Class for Residential Dishwashers," 85 Fed. Reg. 68723 (October 30, 2020).
6. "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 Fed. Reg. 8626 (February 14, 2020).
7. "Energy Conservation Program: Energy Conservation Standards for General Service Incandescent Lamps," 84 Fed. Reg. 71626 (December 27, 2019).
8. "Energy Conservation Program: Definition for General Service Lamps," 84 Fed. Reg. 46661 (September 5, 2019).

We urge the Department to undertake, as soon as possible, all necessary steps to suspend, revise, rescind or vacate these rules. Because many of them have already taken effect, it is imperative that the Department act expeditiously to minimize the harm that has resulted, and will continue to result, from such rules.

Comply With EPCA's Statutory Deadlines

Additionally, the Department should direct its resources toward promptly meeting its statutory duty to review and update energy efficiency standards. Congress, acting through EPCA, established a framework for the Department to periodically review existing energy efficiency standards as a means of ensuring that standards keep pace with technological progress. Regular

updates of existing standards result in maximum improvements in energy efficiency that are technologically feasible and economically justified. Yet, the Department now finds itself far behind in meeting its statutory obligations.

As explained in our lawsuit against the Department for its failure to comply with its statutory duties, *State of New York et al. v. Huizenga et al.*, 20 Civ. 9362 (AJN), the Department has missed rulemaking deadlines for at least 23 consumer or commercial product and industrial equipment categories. While the prior administration squandered its time and resources on unwarranted, ill-advised, and unlawful discretionary rulemaking, the Department fell further into non-compliance with EPCA's mandatory, non-discretionary deadlines.

The cost of such delays is substantial. The Department's failure to promulgate updated efficiency standards results in a host of lost benefits for consumers and businesses, and for the state and local governments in which they reside or operate. Such benefits include significant utility bill savings and reduced pollution associated with energy generation, including reduced emissions of pollutants such as carbon dioxide which contribute to climate change. In addition, updated standards help to reduce peak energy demand, a critical component of many state and local governments' clean energy and climate change policies.

According to experts, updated appliance standards based on currently available technology could, by the year 2050, cumulatively save American households and businesses up to \$1.1 trillion and avoid up to 2.9 billion metric tons of carbon dioxide emissions – an amount equivalent to the emissions of approximately 13–25 average sized coal-fired power plants over that period.³

Prioritize Actions Offering Biggest Energy Saving Potential

Consistent with the factors set forth in the Department's Revised Process Rule for establishing agency priorities, 10 C.F.R. Part 430, Subpart C, App. A, § 4, we urge the Department to prioritize actions that will yield the greatest potential energy savings and environmental benefits. Thus, the Department should reverse the harmful rules of the prior administration and comply with all statutory deadlines, focusing first on rulemaking that will offer the greatest opportunity for energy conservation. For example, in addition to revising the Revised Process Rule (85 Fed. Reg. 8626) and withdrawing the Department's interpretive rule regarding furnaces and water heaters (86 Fed. Reg. 4776), the Department should accelerate its work on updating existing standards for consumer appliances such as residential water heaters, light bulbs,⁴ central air conditioners and heat pumps, refrigerators and freezers, clothes dryers and furnaces. Similarly, the Department should focus its efforts on completing or updating standards for commercial products such as fans, refrigeration equipment, distribution transformers, commercial packaged air conditioners and heat pumps, and electric motors.

³ See Mauer, J. and A. deLaski, "A Powerful Priority: How Appliance Standards Can Help Meet U.S. Climate Goals and Save Consumers Money," Research Report of the American Council for an Energy Efficient Economy and Appliance Standards Awareness Project (ACEEE/ASAP Report) (November 2020), at iv and 9, *available at* aceee.org/research-report/a2001 (last accessed Mar. 9, 2021).

⁴ The Department should reinstate its 2017 expanded definition of "general service lamp" and update the standards for "general service incandescent lamps" as required by EPCA, 42 U.S.C. § 6295(i)(6)(B).

Improvements to the efficiency of these products alone could contribute a disproportionate amount of savings potential among products covered under DOE's appliance standards program.⁵

Thank you for the opportunity to help shape the Department's regulatory agenda. We look forward to a reinvigorated appliance energy conservation standards program.

Respectfully submitted,

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⁵ See ACEEE/ASAP Report, *supra*, Tables 1 and 2 (potential annual CO2 reductions in 2035 and 2050 and cumulative reductions through 2050 for residential and commercial/industrial products) at 9-10 and Tables A4 and A5 (potential cumulative energy, water, and utility bill savings for residential and commercial/industrial products) at 32-33.

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