

**COMMENTS OF ATTORNEYS GENERAL OF CALIFORNIA, CONNECTICUT,  
ILLINOIS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEVADA, NEW  
JERSEY, NEW YORK, VERMONT, WASHINGTON, COMMONWEALTH OF  
MASSACHUSETTS, DISTRICT OF COLUMBIA, AND CITY OF NEW YORK**

May 15, 2020

Comments submitted via Regulations.gov and e-mail:  
PrioritySetting2020STD0004@ee.doe.gov  
U.S. Department of Energy  
Appliance and Equipment Standards Program

**Re: Docket No. 2020-07721  
EERE-2020-BT-STD-0004  
Energy Conservation Program for Appliance Standards: Proposed  
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 local government entities respectfully submit these comments on the Department of Energy’s (DOE) request for comment concerning prioritization of rulemakings, as solicited in its notice “Energy Conservation Program: Proposed Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment; Prioritization Process,” 85 Fed. Reg. 20,886 (Apr. 15, 2020) (Prioritization Notice). As explained below, DOE must comply with the Energy Policy and Conservation Act’s (42 U.S.C. § 6291, *et seq.* (EPCA))<sup>1</sup> deadlines for the promulgation of energy efficiency regulations. Consequently, the Prioritization Notice and DOE’s prioritization process constitutes an improper diversion of resources from meeting the agency’s statutory mandates, a violation of the law further compounded by DOE’s pursuit of multiple discretionary rulemakings that undermine the energy efficiency program. The undersigned have significant interests in increased energy efficiency and reduced energy use within their jurisdictions, in order to protect their environments by reducing emissions and to provide the economic benefits of those policies to consumers. Therefore, we urge DOE not to squander its resources on an unnecessary prioritization process, as well as other discretionary rulemakings, and instead proceed with the numerous overdue rulemakings for energy efficiency regulations that it has thus far failed to complete as mandated by law. Only in this way can DOE come into compliance with the law and further the energy efficiency program’s record of providing substantial economic and environmental benefits to the American people.

**I. EPCA and the Energy Efficiency Rulemaking Process**

EPCA was first passed in 1975, with the intent to “conserve energy supplies through energy conservation programs” and “improve[] energy efficiency of . . . major appliances, and certain other consumer products.”. EPCA, Pub. L. No. 94-163 (1975). Conserving energy reduces costs for consumers and protects the environment through reduced pollution. As explained in more

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<sup>1</sup> Subsequent statutory references refer to 42 U.S.C. unless otherwise noted.

detail below, later amendments to EPCA, driven by Congress’s impatience with DOE’s failure to complete the expected rulemakings, established an iterative rulemaking process that requires DOE to periodically reassess energy conservation standards and the test procedures used to demonstrate compliance with them. This process ensures that the products available in the United States are as energy efficient as possible, and that the American public reaps the economic and environmental benefits of that efficiency. Despite DOE’s frequent failures to comply with the statute, the energy efficiency program has nonetheless achieved consistent and substantial benefits for the American public: as of January 2017, energy conservation standards were expected to save American businesses and consumers nearly 142 quads<sup>2</sup> of energy—“more energy than the entire nation consumes in one year”—and 2 trillion dollars by 2030.<sup>3</sup>

### A. EPCA’s Legislative History

EPCA’s legislative history shows that Congress has consistently strengthened the applicable statutory provisions, to ensure that DOE rapidly and iteratively increases the energy efficiency of covered products. The initial enactment gave DOE the discretionary authority to establish energy conservation standards for household appliances. Pub. L. No. 94-163 (1975). Rather than implementing mandatory standards, the statute envisioned a market-based approach relying on labels disclosing appliances’ energy use.<sup>4</sup>

Three years later, Congress amended EPCA to mandate that DOE prescribe standards for thirteen classes of major appliances. *See* National Energy Conservation Policy Act (NECPA), Pub. L. No. 95-619 (1978). Congress expected that the law’s nondiscretionary mandates to DOE would yield expeditious improvements in energy efficiency.<sup>5</sup> The amendments required DOE to set standards that would achieve the maximum improvement in energy efficiency that was technologically feasible and economically justified, and included a citizen suit provision to allow enforcement of the deadlines.<sup>6</sup>

After DOE failed to promulgate any standards under the revised mandate, until litigation forced the agency to change its path as discussed below, Congress stepped in again to amend the law, explicitly establishing standards for household appliances such as room air conditioners, water heaters, and furnaces. These amendments required DOE to periodically review and update these standards in accordance with specific deadlines. *See* National Appliance Energy Conservation Act of 1987, Pub. L. No. 100-12 (1987). Furthermore, the amended standards were to “be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified.” *Id.*, sec. 5, § 325(1)(2)(A). In 1992, 2005, and 2007, subsequent Congressional action expanded the law’s coverage to include

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<sup>2</sup> A quad is a measurement of energy, defined as one quadrillion British thermal units (1,000,000,000,000,000 Btu). U.S. Energy Information Administration, “Glossary,” <https://www.eia.gov/tools/glossary/>.

<sup>3</sup> Dept. of Energy, “Saving Energy and Money with Appliance and Equipment Standards in the United States,” Jan. 2017, [https://www.energy.gov/sites/prod/files/2017/01/f34/Appliance%20and%20Equipment%20Standards%20Fact%20Sheet-011917\\_0.pdf](https://www.energy.gov/sites/prod/files/2017/01/f34/Appliance%20and%20Equipment%20Standards%20Fact%20Sheet-011917_0.pdf).

<sup>4</sup> *See* EPCA, §§ 323-26; *see also* H.R. Rep. 94-340; S. Conf. Rep. 94-516, pt. III, at 119-20 (1975).

<sup>5</sup> *See* H.R. Conf. Rep. No. 95-1751, at 114 (1978).

<sup>6</sup> *See* NECPA, sec. 422, § 325(a) & (c).

commercial and industrial equipment and other household appliances, further evidencing Congress's intent for DOE to secure the benefits of energy efficiency.<sup>7</sup>

## B. EPCA's Iterative Rulemaking Framework

As mentioned above, in response to DOE's failures, Congress imposed on DOE an iterative rulemaking framework, which requires the agency to periodically reassess energy conservation standards and the related test procedures. This program is intended to ensure that DOE fulfills its energy efficiency rulemaking mandate and consequently that the benefits of energy efficiency flow to the American public.

DOE's periodic energy conservation standards evaluation framework requires review of existing standards every six years.<sup>8</sup> Initially, DOE must determine whether to propose new standards or determine that no new standards are necessary (no-new-standards determination). §§ 6295(m)(1), 6313(a)(6)(C)(i). If DOE determines that stricter standards are justified because they are technologically feasible, economically justified, and would result in a significant conservation of energy conservation, DOE issues a notice of proposed rulemaking with new standards. §§ 6295(m)(1)(B), 6313(a)(6)(C)(i)(I). DOE then must issue a final rule promulgating amended energy efficiency standards within two years. §§ 6295(m)(3)(A), 6313(a)(6)(C)(iii)(I). Conversely, if DOE determines that any of those requirements are not met, DOE issues a notice of proposed determination that new standards are not justified, and follows that proposal with a final determination to that effect. §§ 6295(m)(1)(A), 6313(a)(6)(C)(i)(I). DOE must then begin the evaluation again and issue, within three years of the proposed determination, either proposed new standards or another proposed no-new-standards determination. §§ 6295(m)(3)(B), 6313(a)(6)(C)(iii)(II). Moreover, EPCA's "anti-backsliding" provision prohibits DOE from weakening existing standards, meaning that its evaluation may only result in either the maintenance of existing standards or the issuance of more stringent amended standards. § 6295(o)(4). After the issuance of a final rule amending or establishing standards, DOE is then required to restart the process and, within six years of the final rule, issue either proposed new standards or a proposed determination that standards need not be amended. §§ 6295(m)(1), 6313(a)(6)(C)(i).

EPCA provides a similar iterative process for the amendment of test procedures, requiring DOE to review test procedures every seven years. §§ 6293(b)(1)(A), 6314(a)(1)(A). In this review, DOE must amend the test procedures if doing so would make them more accurately measure the relevant efficiency metric or average operating cost while not being "unduly burdensome" to conduct. §§ 6293(b)(1)(A), 6314(a)(1)(A).

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<sup>7</sup> Energy Policy Act of 1992, Pub. L. No. 102-486 (1992); Energy Policy Act of 2005, Pub. L. No. 109-58 (2005); Energy Independence and Security Act of 2007, Pub. L. No. 110-140 (2007).

<sup>8</sup> See fn. 3, "Saving Energy and Money with Appliance and Equipment Standards in the United States," p. 2 (describing "the [energy efficiency] program's obligation to review all standards and test procedures at intervals of six and seven years, respectively").

### C. DOE's Inconsistent Compliance with EPCA's Rulemaking Mandates

Despite EPCA's clear requirement for DOE to periodically evaluate and potentially amend energy efficiency standards and test procedures, DOE has consistently failed to comply with those mandates. Moreover, DOE's efforts to reform the energy efficiency program have often resulted in litigation and the continued failure of the program to provide its full intended economic and environmental benefits to the American people.

After Congress required DOE to evaluate energy efficiency standards for nine priority products in 1978, DOE determined that standards were not justified for eight of those products. That determination resulted in litigation by efficiency advocates seeking to overturn the determinations. *Natural Resources Defense Council v. Herrington*, 768 F.2d 1355, 1363 (D.C. Cir. 1985). The D.C. Circuit invalidated DOE's interpretation of EPCA's energy savings significance requirement as inconsistent with Congressional intent, exposing DOE's efforts to avoid promulgating energy efficiency standards. *Id.* at 1383. Further Congressional amendments followed.

In 1996, to improve its compliance with its statutory duties, DOE promulgated the original Process Rule, which included a prioritization process for energy efficiency rulemakings.<sup>9</sup> The agency also convened a public workshop on its prioritization of energy efficiency rulemakings.<sup>10</sup> However, those attempted improvements did not result in improved compliance with EPCA's deadlines, as DOE ultimately fell further behind its rulemaking deadlines until states and environmental groups filed a lawsuit to enforce the various unmet deadlines. *State of New York et al. v. Bodman et al.*, No. 05-CV-7807 (S.D.N.Y. Sept. 7, 2005). That litigation ended in a consent decree in which DOE agreed to a compliance schedule for the overdue energy efficiency rulemakings. *Id.* Around the same time, in a required report to Congress on the energy efficiency program (15 U.S.C. § 15834), DOE recognized that the prioritization process under the Original Process Rule exacerbated the already significant delays plaguing the program, and stated that in order to focus its resources on mandated energy efficiency rulemakings, it would decline to consider rulemaking petitions or initiate rulemakings which were authorized but discretionary.<sup>11</sup> With the force of court supervision compelling its action, DOE ultimately did complete all the required rulemakings pursuant to the compliance schedule by 2011,<sup>12</sup> and the improved compliance persisted through 2016.<sup>13</sup>

More recently, however, DOE's compliance with EPCA's deadlines has been abysmal. The agency is now in violation of 26 energy conservation standard deadlines and 21 test procedure

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<sup>9</sup> Energy Conservation Program for Consumer Products: Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products, 61 Fed. Reg. 36,917 (June 15, 1996) (Original Process Rule).

<sup>10</sup> Energy Conservation Program for Consumer Products: Public Workshop on the Rulemaking Priority Setting for the Appliance Standards Rulemaking Process, 61 Fed. Reg. 28,517 (June 5, 1996).

<sup>11</sup> Report to Congress on Energy Conservation Standards Activities, Dept. of Energy (Jan. 2006), [https://www.energy.gov/sites/prod/files/2013/12/f5/congressional\\_report\\_013106.pdf](https://www.energy.gov/sites/prod/files/2013/12/f5/congressional_report_013106.pdf) (2006 Report).

<sup>12</sup> 11th Semi-Annual Report to Congress on Appliance Energy Efficiency Rulemakings – Implementation Report: Energy Conservation Standards Activities (Feb. 2012), [https://www.energy.gov/sites/prod/files/2013/12/f5/report\\_to\\_congress\\_february\\_2012.pdf](https://www.energy.gov/sites/prod/files/2013/12/f5/report_to_congress_february_2012.pdf).

<sup>13</sup> When the present administration began, DOE was in violation of deadlines for three energy conservation standards and four test procedures.

deadlines<sup>14</sup> and, as of its last report to Congress in July 2019, the agency has completed no energy conservation standards and only two test procedures under the current administration.<sup>15</sup> Nonetheless, while ignoring its statutory duties, DOE has squandered its resources on unlawful discretionary actions, including its rescission of the general service lamp definition, the Process Rule revisions, and proposals regarding residential furnaces and commercial water heaters, test procedure interim waivers, and dishwashers.

#### D. The Prioritization Notice

On April 15, 2020, DOE issued the Prioritization Notice, seeking input on its prioritization of energy efficiency rulemakings. 85 Fed. Reg. 20,886 (Apr. 15, 2020). The Notice was published pursuant to DOE's recent revisions to its Process Rule, an internal regulation that governs energy efficiency rulemakings. 10 C.F.R. pt. 430, subpt. C, appx. A. Those revisions made the Process Rule mandatory and reinstated a prioritization process for rulemakings, as DOE had attempted previously, despite public comments indicating that such prioritization could not be used to excuse the statutory deadlines imposed by EPCA. *Id.*, secs. 3, 4(b); *cf.* 61 Fed. Reg. 28,517 (June 5, 1996).<sup>16</sup>

The Notice states that the reinstated prioritization process will allow an “opportunity to provide input on the prioritization of rulemakings” for DOE's Spring 2020 Regulatory Agenda. 85 Fed. Reg. 20,887. Specifically, commenters can address which rulemakings should be placed in active or long-term action categories and “the timing of such rulemakings relative to other competing priorities.” *Id.* Further, commenters could recommend how quickly rulemakings should be completed or how certain rulemakings “should be prioritized, if it all.” *Id.* The Notice also seeks comment on the “initiation of new rulemakings.” *Id.*

## II. **DOE Must Comply with EPCA's Statutory Deadlines and Should Not Expend Resources on the Prioritization Process and Other Discretionary Rulemakings,**

DOE's consistent failure to comply with EPCA's statutory rulemaking deadlines is unlawful. DOE's emphasis on discretionary rulemakings, including this prioritization process, at the expense of those rulemakings, is improper and represents a misuse of its resources. DOE should allocate those resources to pursue Congressional directives and complete mandatory rulemakings.

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<sup>14</sup> Appliance Standards Awareness Project (ASAP), “Missed Deadlines for Appliance Standards,” May 2020, [https://appliance-standards.org/sites/default/files/Missed\\_deadlines\\_as\\_of\\_May\\_2020.pdf](https://appliance-standards.org/sites/default/files/Missed_deadlines_as_of_May_2020.pdf).

<sup>15</sup> See 21st Semi-Annual Report to Congress on Appliance Energy Efficiency Rulemakings – Implementation Report: Energy Conservation Standards Activities (Feb. 2018), Semi-Annual Report to Congress on Appliance Energy Efficiency Rulemakings – Implementation Report: Energy Conservation Standards Activities (Dec. 2018), Semi-Annual Report to Congress on Appliance Energy Efficiency Rulemakings – Implementation Report: Energy Conservation Standards Activities, Dept. of Energy (July 2019), Dept. of Energy, <https://www.energy.gov/eere/buildings/reports-and-publications>.

<sup>16</sup> Earthjustice Comments to Process Rule Notice of Proposed Rulemaking (May 6, 2019), <https://www.regulations.gov/document?D=EERE-2017-BT-STD-0062-0134>, p. 3; CEC Comments to Process Rule Notice of Proposed Rulemaking (May 6, 2019), <https://www.regulations.gov/document?D=EERE-2017-BT-STD-0062-0121>, p. 3.

A. DOE Must Comply with EPCA's Statutory Deadlines and Cannot Select Which Mandatory Rulemakings to Pursue through the Prioritization Process

EPCA's plain language requires regular energy efficiency rulemakings to ensure that energy conservation standards are as stringent as technologically feasible and economically justified and that test procedures accurately measure a product's efficiency. The statute requires every covered product to be evaluated every six years, providing that "the Secretary *shall* publish" a proposed standard for household appliances and "the Secretary *shall* conduct an evaluation" for commercial and industrial equipment. 42 U.S.C. §§ 6295(m)(1), 6313(a)(6)(C)(i) (emphasis added). Similarly, test procedures must be evaluated every seven years: "the Secretary *shall* review" appliance test procedures and "the Secretary *shall* conduct an evaluation" of commercial and industrial equipment test procedures. 42 U.S.C. §§ 6293(b)(1), 6314(a)(1)(A) (emphasis added). When used in a statute, "'shall' . . . generally denotes a mandatory duty." *Sierra Club v. Whitman*, 268 F.2d 898, 904 (9th Cir. 2001). As the statutory text provides no basis to depart from that rule, DOE's duty to promulgate rules according to EPCA's schedule is undoubtedly mandatory.

The legislative history discussed above affirms this interpretation, showing that Congress intended DOE to complete energy efficiency rulemakings regularly. The periodic rulemaking requirements were added because DOE had failed to complete the rulemakings Congress expected. Pub. L. No. 100-12. Congress also added the citizen suit provision subjecting DOE to litigation if it failed to meet the statutory deadlines. Pub. L. No. 94-163; 42 U.S.C. § 6305(a)(3). Further, Congress took the rare step of allowing suits enforcing rulemaking deadlines to be expedited on the district court's docket and empowering the district court to provide relief that ensures DOE compliance with future deadlines for the same covered product. Pub. L. No. 100-12; 42 U.S.C. § 6305(a). Congress's directive could not be clearer: DOE must regularly complete the energy efficiency rulemakings mandated under EPCA.

The prioritization process will not facilitate DOE's compliance with its statutory duties. When the agency last implemented a prioritization process, that process allowed many rulemakings to linger unfulfilled irrespective of their deadlines, such that "a substantial increase in the backlog occurred during and after the process improvement exercise." 2006 Report, p. 35-36 ("A significant consequence of the priority-setting process was . . . a reduced focus on statutory deadlines."). The prioritization further "contributed to statutory delays because it 'unbundled' low energy savings potential product from related appliances." *Id.*, p. 36. Thus, while a prioritization process could be appropriate when an agency is generally in compliance with statutory deadlines, such a process can only serve to improperly deemphasize statutory duties when an agency has not been in compliance. Consequently, this prioritization process is likely to further impede DOE's timely updating of efficiency standards and test procedures, contrary to its statutory mandate.

The present dismal state of DOE's compliance with EPCA's statutory requirements makes the prioritization process even more likely to obstruct its compliance with clear legal mandates. Indeed, it is unclear why input on prioritization would assist DOE when its manifest priority appears to be in fact to not promulgate any standards. Under the current administration DOE has completed no substantive energy conservation standards rulemakings (*see* fn. 15), and has sought

to unlawfully delay the publication and effective dates of final standards adopted by the prior administration, until courts forced DOE's compliance. *State of New York v. Perry*, No. 17-918 (2d Cir. Mar. 31, 2017); *Natural Resources Defense Council v. Perry*, 940 F.3d 1072 (9th Cir. 2018) (DOE required to publish standards pursuant to error correction rule); Energy Conservation Standards for Walk-In Cooler and Freezer Refrigeration Systems, 82 Fed. Reg. 31,808 (July 10, 2017) (standard published only after its inclusion in litigation). The agency's test procedure duties have fared little better, with only two substantive rulemakings completed. *See* fn. 15.

When implemented properly, residential and commercial efficiency standards are one of the most successful policies used by the federal government and the states to save energy. Yet, updated standards for many common high energy-consuming household appliances, such as residential refrigerators and freezers, clothes washers and dryers, and room air conditioners, are two or three years overdue. According to the American Council for an Energy-Efficient Economy (ACEEE) and ASAP, updated standards for these four types of consumer products would reduce national electricity consumption by approximately 39.7 terawatt-hours annually, save consumers and businesses more than \$ 7.5 billion per year, and avoid 22.4 million metric tons of carbon dioxide emissions by the year 2035.<sup>17</sup>

Currently, DOE is delinquent on 26 product standard deadlines and 21 test procedure deadlines (*see* fn. 14), and we understand that DOE is on pace to issue no energy conservation standards under the current administration. While DOE's Fall 2019 Regulatory Agenda indicates it is actively engaged in a number of overdue standards and test procedure rulemaking activities, DOE has ignored or relegated to "long-term" consideration many products for which action is past due (i.e., oil furnaces and weatherized gas furnaces) or soon-to-be due (i.e., furnace fans, general service lamps, residential boilers, miscellaneous refrigeration equipment, central air conditioners and heat pumps, ceiling fans, and dedicated-purpose pool pumps).

Should DOE go forward with its unnecessary prioritization process, the scope of DOE's review should be limited to determining how it can achieve compliance with statutory deadlines as soon as possible, prioritizing those products that are likely to yield the greatest energy savings. At a minimum, DOE must promptly complete pending rulemaking for overdue obligations and commence work on product standards and test procedures whose deadlines are quickly approaching.

#### B. DOE Should Refrain from Discretionary Actions and Commit to Complying with its Statutory Duties

Given its failure to comply with a multitude of statutory duties, DOE should focus all of its energy efficiency resources on those duties and cease its discretionary rulemakings activities. DOE's pursuit of discretionary rulemakings while failing to complete its statutory duties

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<sup>17</sup> *See* ASAP & ACEEE, "Next Generation Standards: How the National Energy Efficiency Standards Program Can Continue to Drive Energy, Economic, and Environmental Benefits," at Table 2 (Aug. 2016), <https://appliance-standards.org/document/report-overview-next-generation-standards>.

contravenes Congress's intent and reduces the benefits of the energy efficiency program to the American public.

To begin, DOE should not have pursued its discretionary Process Rule revisions, including the institution of this prioritization process.<sup>18</sup> DOE should have recognized that the prioritization process would be unlikely to result in improved agency compliance with its statutory duties, given its past implementation of a similar prioritization process. *See* 2006 Report. Furthermore, the introduction of more regulatory duties and reduction of flexibility through the Process Rule will likely impede DOE's compliance with its statutory mandates, as recognized by comments on the proposed rule.<sup>19</sup> Thus, DOE expended resources on a discretionary pursuit that will likely impede the satisfaction of its mandatory duties, while neglecting those very statutory duties. DOE's request for input through the Prioritization Notice on potential rulemakings to initiate only exacerbates this misuse of resources. 85 Fed. Reg. 20,887 (“[DOE] would welcome . . . feedback” on “rulemaking[s that] should be initiated”).

Similarly, DOE should cease its actions to undermine the energy efficiency gains already achieved by the agency in accordance with Congressional intent. While DOE's efforts to avoid the promulgation of standards completed by the prior administration were unsuccessful, DOE continues to pursue its unlawful attempts to reverse progress on general service lamp standards, in contravention of EPCA's general service lamp backstop and its anti-backsliding provision. *See* Energy Conservation Program: Definition for General Service Lamps, 84 Fed. Reg. 46661 (Sept. 5, 2019); *State of New York v. Dept. of Energy*, No. 19-3652 (2d Cir. Nov. 4, 2019); 42 U.S.C. §§ 6295(i)(6)(A)(v), (o)(4); *see also* Energy Conservation Program: Energy Conservation Standards for General Service Incandescent Lamps, 84 Fed. Reg. 71626 (Dec. 27, 2019); *State of New York, v. Dept. of Energy*, No. 20-743 (2d Cir. Feb. 28, 2020).

Furthermore, DOE should discontinue the host of unwarranted, energy-wasting discretionary actions it has already begun. These include, but are not limited to, a proposed interpretive rule<sup>20</sup> to protect inefficient non-condensing technology in residential furnaces and commercial water heaters in response to a gas industry petition; a discretionary proposal<sup>21</sup> to ostensibly “streamline” the test procedure interim waiver procedure, which would in fact allow manufacturers to write their own test procedures; and a proposal<sup>22</sup> to unlawfully divide dishwasher efficiency classes and eliminate existing standards in response to a petition, not from

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<sup>18</sup> As DOE knows, our states have filed a Petition in the U.S. Court of Appeals for the Ninth Circuit challenging DOE's Process Rule and seeking an order vacating it. *State of California v. U.S. Dept. of Energy*, 20-71068 (9th Cir. Apr. 14, 2020).

<sup>19</sup> State Government Comments to Process Rule Notice of Proposed Rulemaking, <https://www.regulations.gov/document?D=EERE-2017-BT-STD-0062-0111> (May 6, 2019).

<sup>20</sup> Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, 84 Fed. Reg. 33011 (July 11, 2019); State Government Comments to Residential Furnaces and Commercial Water Heaters Notice of Proposed Rulemaking (Sept. 9, 2019), <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0018-0082>.

<sup>21</sup> Test Procedure Interim Waiver Process, 84 Fed. Reg. 18,414 (May 1, 2019); State Government Comments to Test Procedure Interim Waiver Process Notice of Proposed Rulemaking (Aug. 6, 2019), <https://www.regulations.gov/document?D=EERE-2019-BT-NOA-0011-0051>.

<sup>22</sup> Energy Conservation Standards for Dishwashers, Grant of Petition for Rulemaking, 84 Fed. Reg. 33,869 (July 16, 2019); State Government Comments to Dishwashers Grant of Petition for Rulemaking (Oct. 16, 2019), <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-3136>.

a consumer advocacy group but an ideological think tank.<sup>23</sup> None of these actions are mandated by EPCA. Indeed, they are contrary to the statute, and thus represent an unlawful misuse of agency resources in contravention of Congressional intent. Instead of engaging in these misguided rulemakings, DOE should fulfill its statutory duties under EPCA to provide the greatest benefit to the American public.

## **Conclusion**

EPCA requires that DOE periodically review and update its energy conservation standards and test procedures. Under the current administration, DOE's progress on its obligations under the energy efficiency program has ground to a halt. Instead of seeking input on its prioritization of rulemakings, or pursuing discretionary actions that undermine the program, DOE should redirect its resources to the fulfillment of each of its statutory duties, as required by EPCA. A recommitment to its statutory duties will allow DOE to resume its provision of the substantial economic and environmental benefits of the energy efficiency program to the American public, as intended by Congress.

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<sup>23</sup> In fact, home appliance manufacturers oppose DOE's proposed weakening of dishwasher standards on the grounds that such changes would lead to "additional costs for manufacturers and, ultimately, consumers." Association of Home Appliance Manufacturers Comments to DOE Dishwasher Proposal (Oct. 16, 2019), <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-3188>.

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