

handlers, regardless of size, will benefit from the stabilizing effects of the volume restriction.

As noted earlier, the Board discussed several carry-out inventory alternatives, ranging from 70 million pounds to 100 million pounds. The Board noted if the carry-out number was too large, it could have a negative impact on grower returns, and if it was too small, it could negatively impact the supply processors need before the harvest next season. After consideration of the alternatives, the Board recommended a carry-out of 85 million pounds.

The Board also weighed alternatives when discussing the economic adjustment. At its June meeting, the Board did not recommend making an economic adjustment after considering alternatives that included making no economic adjustment or an economic adjustment of 26 million pounds. However, in September, the Board revisited the issue and after discussion, and considering the impact of purchases by the USDA on available supply, recommended an economic adjustment of 30 million pounds. Additionally, the Board met again on December 14, 2023, and unanimously recommended adding another 3.24 million pounds to the economic adjustment to reflect the additional production volume.

Given the concerns with regulation expressed by Board members and industry members in attendance, the Board also considered recommending no volume regulation. However, after considering the larger than expected harvest and the carry-in inventory adding to the available supply, the industry recommended a six percent restriction to the 2023–24 crop. Thus, the alternatives were rejected.

The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meetings and participate in Board deliberations on all issues. Like all Board meetings, the June, September, and December meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0177, Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and

Wisconsin. No changes are necessary in those requirements as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on April 19, 2024 (89 FR 28682). Copies of the proposed rule were sent via email to all Board members and tart cherry handlers. The proposed rule was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 20, 2024, was provided to allow interested persons to respond to the proposal. No comments were received during the comment period. Accordingly, AMS made no changes to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board and other available information, USDA has determined that this rule is consistent with and will effectuate the policy of the Act.

#### List of Subjects in 7 CFR Part 930

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agriculture Marketing Service amends 7 CFR part 930 as follows:

#### **PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN**

■ 1. The authority citation for part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Revise § 930.256 to read as follows:

#### **§ 930.256 Free and restricted percentages for the 2023–24 crop year.**

The percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2023, which shall be free and restricted, respectively, are designated as follows: Free percentage, 94 percent and restricted percentage, 6 percent.

**Erin Morris,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2024–17902 Filed 8–9–24; 8:45 am]

**BILLING CODE P**

#### **DEPARTMENT OF ENERGY**

#### **10 CFR Part 430**

[EERE–2014–BT–STD–0005]

RIN 1904–AF57

#### **Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Direct final rule; confirmation of effective and compliance dates.

**SUMMARY:** The U.S. Department of Energy (“DOE”) published a direct final rule to establish new and amended energy conservation standards for consumer conventional cooking products in the **Federal Register** on February 14, 2024. DOE has determined that the comments received in response to the direct final rule do not provide a reasonable basis for withdrawing the direct final rule. Therefore, DOE provides this document confirming the effective and compliance dates of those standards.

**DATES:** The effective date of June 13, 2024, for the direct final rule published on February 14, 2024 (89 FR 11434) is confirmed. Compliance with the standards established in the direct final rule will be required on January 31, 2028.

**ADDRESSES:** The docket for this rulemaking, which includes **Federal Register** notices, public meeting

attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at [www.regulations.gov/docket/EERE-2014-BT-STD-0005](http://www.regulations.gov/docket/EERE-2014-BT-STD-0005). The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email:

[ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

#### FOR FURTHER INFORMATION CONTACT:

Dr. Carl Shapiro, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-5649. Email:

[ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-4798. Email: [Peter.Cochran@hq.doe.gov](mailto:Peter.Cochran@hq.doe.gov).

#### SUPPLEMENTARY INFORMATION:

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#### I. Authority

The Energy Policy and Conservation Act, Public Law 94-163, as amended (“EPCA”),<sup>1</sup> authorizes DOE to issue a

direct final rule establishing an energy conservation standard for a product on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary of Energy (“Secretary”), that contains recommendations with respect to an energy or water conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. (42 U.S.C. 6295(p)(4))

The direct final rule must be published simultaneously with a notice of proposed rulemaking (“NOPR”) that proposes an energy or water conservation standard that is identical to the standard established in the direct final rule, and DOE must provide a public comment period of at least 110 days on this proposal. (42 U.S.C. 6295(p)(4)(A)–(B)) Not later than 120 days after issuance of the direct final rule, DOE shall withdraw the direct final rule if: (1) DOE receives one or more adverse public comments relating to the direct final rule or any alternative joint recommendation; and (2) based on the rulemaking record relating to the direct final rule, DOE determines that such adverse public comments or alternative joint recommendation may provide a reasonable basis for withdrawing the direct final rule. (42 U.S.C. 6295(p)(4)(C)) If DOE makes such a determination, DOE must proceed with the NOPR published simultaneously with the direct final rule and publish in the **Federal Register** the reasons why the direct final rule was withdrawn. (*Id.*)

After review of comments received, DOE has determined that it did receive adverse comments on the direct final rule. However, based on the rulemaking record, the comments did not provide a reasonable basis for withdrawing the direct final rule under the provisions in 42 U.S.C. 6295(p)(4)(C). As such, DOE did not withdraw this direct final rule and the DFR remains effective. Although not required under EPCA, where DOE does not withdraw a direct final rule, DOE typically publishes a summary of the comments received during the 110-day comment period and its responses to those comments. This document contains such a summary, as well as DOE’s responses to the comments.

## II. Consumer Conventional Cooking Products Direct Final Rule

### A. Background

The National Appliance Energy Conservation Act of 1987 (“NAECA”), Public Law 100-12, amended EPCA to establish prescriptive standards for gas cooking products, requiring gas ranges and ovens with an electrical supply cord that are manufactured on or after January 1, 1990, not to be equipped with a constant burning pilot light. (42 U.S.C. 6295(h)(1)) NAECA also directed DOE to conduct two cycles of rulemakings to determine if more stringent or additional standards were justified for kitchen ranges and ovens. (42 U.S.C. 6295(h)(2))

DOE undertook the first cycle of these rulemakings and published a final rule on September 8, 1998 (“September 1998 Final Rule”), which found that no standards were justified for conventional electric cooking products at that time. 63 FR 48038. In addition, partially due to the difficulty of conclusively demonstrating at that time that elimination of standing pilot lights for gas cooking products without an electrical supply cord was economically justified, DOE did not include amended standards for conventional gas cooking products in the September 1998 Final Rule. 63 FR 48038, 48039-48040.

For the second cycle of rulemakings, DOE published a final rule on April 8, 2009 (“April 2009 Final Rule”) amending the energy conservation standards for consumer conventional cooking products to prohibit constant burning pilot lights for all gas cooking products (*i.e.*, gas cooking products with or without an electrical supply cord) manufactured on or after April 9, 2012. 74 FR 16040, 16085. The prescriptive standards established by the April 2009 Final Rule remain applicable currently.

On August 22, 2022, DOE published a final rule establishing a test procedure for conventional cooking tops, at 10 CFR part 430, subpart B, appendix I1, “Uniform Test Method for the Measuring the Energy Consumption of Conventional Cooking Products.” On February 1, 2023, DOE published a supplementary NOPR (“February 2023 SNOPR”) proposing to establish new and amended standards for consumer conventional cooking products, consisting of design requirements for conventional ovens and a maximum integrated annual energy consumer (“IAEC”) levels for electric and gas cooking tops, as measured according to the newly established appendix I1 test procedure and expressed in kilowatt-hours (“kWh”) per year for electric cooking tops and kilo-British thermal

<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116-260 (Dec. 27, 2020), which

reflect the last statutory amendments that impact Parts A and A-1 of EPCA.

units (“kBTu”) per year for gas cooking tops. 88 FR 6818. On February 28, 2023, DOE published a notification of data availability (“NODA”) providing additional information to clarify the February 2023 SNOPR analysis for gas cooking tops. 88 FR 12603. On August 2, 2023, DOE published a second NODA updating its analysis for conventional gas cooking tops based on the stakeholder data it received in response

to the February 2023 SNOPR. 88 FR 50810.  
 On September 25, 2023, DOE received a joint statement (“Joint Agreement”) recommending standards for consumer conventional cooking products that was submitted by groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility.<sup>2</sup> In addition to the recommended standards for consumer

conventional cooking products, the Joint Agreement also included separate recommendations for several other covered products.<sup>3</sup> The Joint Agreement recommended amended standard levels for consumer conventional cooking products are presented in Table II.1. Details of the Joint Agreement recommendations for other products are provided in the Joint Agreement posted in the docket for this rulemaking.<sup>4</sup>

TABLE II.1—RECOMMENDED NEW AND AMENDED ENERGY CONSERVATION STANDARDS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS

Product class	Standard level	Compliance date
Electric Coil .....	No standard .....	January 31, 2028.
Propose new class: Electric smooth Cooktop* .....	207 kWh/year .....	
Propose new Class: Electric smooth range* .....	207 kWh/year .....	
Propose new class: Gas cooktop* .....	1,770 kBtu/year .....	
Propose new class: Gas range* .....	1,770 kBtu/year .....	
Ovens (Electric and Gas)* .....	Electric: Baseline + SMPS .....	
	Gas: Baseline + SMPS .....	

\* Excludes portable cooking products.

After carefully considering the recommended energy conservation standards for consumer conventional cooking products in the Joint Agreement, DOE determined that these recommendations were in accordance with the statutory requirements of 42 U.S.C. 6295(p)(4) for the issuance of a direct final rule and published a direct final rule on February 14, 2024 (“February 2024 Direct Final Rule”). 89 FR 11434. DOE evaluated whether the Joint Agreement satisfies 42 U.S.C.

6295(o), as applicable, and found that the recommended standard levels would result in significant energy savings and are technologically feasible and economically justified. *Id.* at 89 FR 11534–11540. Accordingly, DOE adopted the consensus-recommended efficiency levels for consumer conventional cooking products as the new and amended standard levels in the February 2024 Direct Final Rule. *Id.*  
 The standards adopted in the February 2024 Direct Final Rule apply

to product classes listed in Table II.2 and Table II.3 and that are manufactured in, or imported into, the United States starting on January 31, 2028. The February 2024 Direct Final Rule provides a detailed discussion of DOE’s analysis of the benefits and burdens of the new and amended standards pursuant to the criteria set forth in EPCA. *Id.* at 89 FR 11535–11540.

TABLE II.2—NEW AND AMENDED ENERGY CONSERVATION STANDARDS FOR CONVENTIONAL COOKING TOPS  
 [Compliance Starting January 31, 2028]

Product class	Maximum integrated annual energy consumption (IAEC)
Electric Open (Coil) Element Cooking Tops .....	No Standard
Electric Smooth Element Standalone Cooking Tops .....	207 kWh/year
Electric Smooth Element Cooking Top Component of a Combined Cooking Product .....	207 kWh/year
Gas Standalone Cooking Tops .....	1,770 kBtu/year
Gas Cooking Top Component of a Combined Cooking Product .....	1,770 kBtu/year

<sup>2</sup> The signatories to the Joint Agreement include the Association of Home Appliance Manufacturers (“AHAM”), American Council for an Energy-Efficient Economy, Alliance for Water Efficiency, Appliance Standards Awareness Project, Consumer Federation of America, Consumer Reports, Earthjustice, National Consumer Law Center, Natural Resources Defense Council, Northwest Energy Efficiency Alliance, and Pacific Gas and Electric Company. Members of AHAM’s Major Appliance Division that make the affected products include: Alliance Laundry Systems, LLC; Asko

Appliances AB; Beko US Inc.; Brown Stove Works, Inc.; BSH Home Appliances Corporation; Danby Products, Ltd.; Electrolux Home Products, Inc.; Elicamex S.A. de C.V.; Faber; Fotile America; GE Appliances, a Haier Company; L’Atelier Paris Haute Design LLC; LG Electronics; Liebherr USA, Co.; Midea America Corp.; Miele, Inc.; Panasonic Appliances Refrigeration Systems (PAPRSA) Corporation of America; Perlick Corporation; Samsung Electronics America, Inc.; Sharp Electronics Corporation; Smeg S.p.A.; Sub-Zero Group, Inc.; The Middleby Corporation; U-Line

Corporation; Viking Range, LLC; and Whirlpool Corporation.  
<sup>3</sup> The Joint Agreement contained recommendations for six covered products: refrigerators, refrigerator-freezers, and freezers; clothes washers; clothes dryers; dishwashers; cooking products; and miscellaneous refrigeration products.  
<sup>4</sup> The Joint Agreement is available in the docket at [www.regulations.gov/comment/EERE-2014-BT-STD-0005-12811](http://www.regulations.gov/comment/EERE-2014-BT-STD-0005-12811).

TABLE II.3—NEW AND AMENDED PRESCRIPTIVE ENERGY CONSERVATION STANDARDS FOR CONVENTIONAL OVENS  
[Compliance Starting January 31, 2028]

Product class	Maximum integrated annual energy consumption (IAEC)
Electric Ovens .....	Shall not be equipped with a control system that uses a linear power supply. <sup>5</sup> The control system for gas ovens shall: (1) Not be equipped with a constant burning pilot light; and (2) Not be equipped with a linear power supply.
Gas Ovens .....	

As required by EPCA, DOE also simultaneously published a NOPR proposing the identical standard levels contained in the February 2024 Direct Final Rule. 89 FR 11548. DOE considered whether any adverse comment received during the 110-day comment period following the publication of the February 2024 Direct Final Rule provided a reasonable basis for withdrawal of the direct final rule

under the provisions in 42 U.S.C. 6295(p)(4)(C).

**III. Comments on the Direct Final Rule**

As discussed in section I of this document, not later than 120 days after publication of a direct final rule, DOE shall withdraw the direct final rule if: (1) DOE receives one or more adverse public comments relating to the direct final rule or any alternative joint recommendation; and (2) based on the

rulemaking record relating to the direct final rule, DOE determines that such adverse public comments or alternative joint recommendation may provide a reasonable basis for withdrawing the direct final rule. (42 U.S.C. 6295(p)(4)(C)(i))

DOE received comments in response to the February 2024 Direct Final Rule from the interested parties listed in Table III.1.

TABLE III.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE FEBRUARY 2024 DIRECT FINAL RULE

Commenter(s)	Abbreviation	Comment No. in the docket*	Commenter type
The Attorneys General of the States of Nebraska, Florida, Tennessee, Alabama, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Hampshire, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Virginia, and West Virginia.	AGs of NE <i>et al.</i> ....	12838	State Government Officials.
The Attorneys General of the States of Utah and Montana .....	AGs of UT and MT	12841	State Government Officials.
Association of Home Appliance Manufacturers .....	AHAM .....	12845	Trade Association.
Antonin Scalia Law School Administrative Law Clinic .....	ALC .....	12834	Law School.
American Public Gas Association .....	APGA .....	6 12839, 12840	Trade Association.
WhoPoo App <sup>7</sup> .....	App .....		
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Consumer Federation of America, Consumer Reports, Earthjustice, National Consumer Law Center, Natural Resources Defense Council, Northwest Energy Efficiency Alliance, and Pacific Gas and Electric Company.	ASAP <i>et al.</i> .....	12842	Advocacy Organizations.
Arub Butt .....	Butt .....	12837	Individual.
Competitive Enterprise Institute .....	CEI .....	12844	Advocacy Organization.
Consumer Federation of America, Consumer Reports, Green Energy Consumers Alliance, Green & Healthy Homes Initiative, National Consumer Law Center, Philadelphia Solar Energy Association, and U.S. PIRG.	CFA <i>et al.</i> .....	12843	Advocacy Organizations.
National Propane Gas Association .....	NPGA .....	8 12835, 12836	Trade Association.
Michael Ravnitzky .....	Ravnitzky .....		
Representative Stephanie Bice .....	Rep. Bice .....	12831	Federal Government Official.
Rea Shimada .....	Shimada .....	12829	Individual.

\* DOE also received four comments from individuals wishing to remain anonymous (No. 12827, 12828, 12830, and 12833).

A parenthetical reference at the end of a comment quotation or paraphrase

provides the location of the item in the public record.<sup>9</sup> The following sections

discuss the substantive comments DOE received on the February 2024 Direct

<sup>5</sup> A linear power supply produces unregulated as well as regulated power. The unregulated portion of a linear power supply typically consists of a transformer that steps alternating current (“AC”) line voltage down, a voltage rectifier circuit for AC to direct current conversion, and a capacitor to produce unregulated, direct current output.

<sup>6</sup> APGA comments No. 12839 and 12840 are identical. Therefore, DOE only cites No. 12839 in this document.

<sup>7</sup> App commented opposing a ban on gas stoves and did not comment on the standard levels enacted in the February 2024 Direct Final Rule. (App. No. 12823 at p. 1) The standards adopted by the February 2024 Direct Final Rule do not ban the production or use of gas cooking products, including gas cooking tops or stoves (*i.e.*, gas ranges).

<sup>8</sup> NPGA comments No. 12835 and 12836 are identical. Therefore, DOE only cites No. 12835 in this document.

<sup>9</sup> The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to develop energy conservation standards for consumer conventional cooking products. (Docket No. EERE–2014–BT–STD–0005, which is maintained at: [www.regulations.gov](http://www.regulations.gov)). The references are arranged as follows: (commenter name, comment docket ID number at page of that document).

Final Rule as well as DOE's determination that the comments do not provide a reasonable basis for withdrawal of the direct final rule.

#### A. General Comments

DOE received comments from individual commenters who expressed support for the standards promulgated in the February 2024 Direct Final Rule. (Ravnitzky, No. 12826 at p. 1; Anonymous, No. 12827 at p. 1; Anonymous, No. 12828 at p. 1; Shimada, No. 12829 at p. 1; Anonymous, No. 12830 at p. 1; Anonymous, No. 12833 at p. 1)

Butt commented that the new and amended standards represent a critical step forward in advancing energy efficiency and environmental sustainability. (Butt, No. 12837 at p. 10)

AHAM supported the February 2024 Direct Final Rule for consumer conventional cooking products because it establishes standards that are consistent with recommendations submitted in the Joint Agreement. (AHAM, No. 12845 at pp. 1–2) ASAP *et al.* strongly supported the standards in the February 2024 Direct Final Rule, as they reflect the recommendation in the Joint Agreement submitted to DOE in September 2023 in conjunction with AHAM. (ASAP *et al.*, No. 12842 at pp. 1–2)

NPGA also commented in support of the Joint Agreement that led to the February 2024 Direct Final Rule and commended the parties for their efforts to achieve it. (NPGA, No. 12835 at p. 2) APGA commented that it is pleased the rulemaking ensures that consumers can continue to have access to the vast majority of gas-fired cooking products currently available on the market today. APGA also urged DOE to not use this rulemaking as precedent for future energy conservation standards rulemakings, as APGA had a few concerns regarding the underlying analysis. (APGA, No. 12839 at p. 2)

CFA *et al.* strongly supported the February 2024 Direct Final Rule, which it noted is one of many completed and pending efficiency standards that will together significantly reduce consumer costs and climate pollution, as well as reduce emissions of methane and nitrogen oxides, which cause health issues. (CFA *et al.*, No. 12843 at pp. 1–2)

Rep. Bice submitted a comment in opposition to the standards as recommended by the Joint Agreement and adopted in the February 2024 Direct Final Rule. (Rep. Bice, No. 12831 at p. 1)

ALC opposed the new and amended standards on the basis that the standards

represent an aggressive Federal effort to micromanage the lives of Americans and that DOE lacks the constitutional and statutory authority to do so. (ALC, No. 12834 at pp. 1–2)

The AGs of NE *et al.* asserted that the February 2024 Direct Final Rule over-regulates American kitchens and requested that DOE reconsider it. (AGs of NE *et al.*, No. 12838 at p. 1) The AGs of UT and MT expressed agreement with the AGs of NE *et al.*'s comments. (AGs of UT and MT, No. 12841 at p. 1)

CEI opposed the February 2024 Direct Final Rule and stated that it should be withdrawn. (CEI, No. 12844 at p. 1)

Butt listed several alternative approaches to energy conservation that might ease the burden on manufacturers and consumers while fulfilling DOE's emission reduction goals. (Butt, No. 12837 at pp. 3, 5–6, 9–10)

As required by Executive Order ("E.O.") 12866, as amended by E.O. 14094, DOE conducted a regulatory impact analysis ("RIA") to identify major alternatives to standards that represent feasible policy options to reduce energy consumption of consumer conventional cooking products. 89 FR 11502. Notwithstanding the requirements of E.O. 12866, as discussed, DOE is required by EPCA to establish or amend standards for consumer conventional cooking products that are designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A))

#### B. Anti-Backsliding

EPCA, as codified, contains what is known as an "anti-backsliding" provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1))

The AGs of UT and MT commented that the fact the Joint Agreement is contingent upon other parts being implemented conflicts with the anti-backsliding provision of EPCA.

DOE addressed this issue in the February 2024 Direct Final Rule. As discussed there, the Joint Agreement was contingent upon DOE initiating rulemaking processes to adopt all of the recommended standards. In other words, DOE could not pick and choose which recommendations in the Joint Agreement to implement. *See* 89 FR 11434, 11444. As described, DOE's adoption of the recommended standards conforms with the anti-backsliding

provision in 42 U.S.C. 6295(o)(1). The AGs of UT and MT stated that DOE must consider energy efficiency over the entire product lifecycle. The AGs of UT and MT agreed with DOE's statement that conscientious energy use is more complicated than increasing efficiency alone, and they attached documents with quotes from DOE officials testifying to this sentiment. The AGs of UT and MT commented that DOE's use of a single lifespan in its analysis for this rulemaking was in error, and given its statements about the energy consumed in raw materials, manufacturing, etc., its efficiency standards may violate anti-backsliding prohibitions in EPCA when shorter lifespans are considered, especially if the full fuel cycle ("FFC") costs of short lifespans are accounted for. (AGs of UT and MT, No. 12841 at pp. 2–3)

As discussed previously, DOE may not prescribe an amended standard that increases the maximum allowable energy use or decreases the energy efficiency of a covered product. Further, EPCA defines the term "energy use" to mean the quantity of energy directly consumed by a consumer product at point of use, determined in accordance with test procedures under 42 U.S.C. 6293. (42 U.S.C. 6291(4)) EPCA similarly defines "energy efficiency" to mean the ratio of the useful output of services from a consumer product to the energy use [as that term is defined] of such product, determined in accordance with test procedures under 42 U.S.C. 6293. (42 U.S.C. 6291(5)) Neither the energy use nor the energy efficiency of a product, as those terms are defined in EPCA, is dependent upon the lifespan of the product. As a result, product lifespan has no effect on whether an amended standard violates the anti-backsliding provision in 42 U.S.C. 6295(o)(1).

As product lifespan does not affect energy use or energy efficiency as defined in EPCA, DOE has determined that the comment provided by the AGs of UT and MT does not provide a reasonable basis for withdrawal of the February 2024 Direct Final Rule.

#### C. Economic Justification

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including consumer conventional cooking products. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In deciding whether a

proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE received several comments on its determination of economic justification under the statutory criteria.

Butt commented with a list of various manufacturer and consumer impacts that the commenter asserted were not accounted for in the February 2024 Direct Final Rule, including: price increases and potential demand decreases, necessity and increased cost of technological innovation, reduction in greenhouse gas emissions, potential need for production and product offering adjustments, changes in market competition, higher up-front costs for energy-efficient consumer cooking products with the tradeoff of energy savings along with food and cooking quality difference between gas and electric. (Butt, No. 12837 at pp. 8–9)

Contrary to the commenter's assertion, DOE affirms that the February 2024 Direct Final Rule accounted for the commenter's listed impacts in its consideration of the seven statutory criteria as required by EPCA. See section V.C of the February 2024 Direct Final Rule for a full discussion of the benefits and burdens of the adopted standards. 89 FR 11434, 11535–11540.

Rep. Bice asserted that increased standards will lead to increased

production costs for manufacturers, which will subsequently lead to increased costs to consumers. Rep. Bice added that the adopted standards will limit consumer choice, drive up prices, and impose onerous regulations on American manufacturers, many of whom are small businesses. (Rep. Bice, No. 12831 at p. 1)

The AGs of NE *et al.* commented that while they acknowledge that DOE has reduced the stringency as compared to the previously proposed standards, the February 2024 Direct Final Rule does not weigh heavily enough the appliance cost increase that the rule will cause and that will be borne by American consumers. (AGs of NE *et al.*, No. 12838 at p. 1)

Butt commented that DOE's regulatory efforts may inadvertently lead to sectoral overregulation, wherein certain industries face disproportionate regulatory burdens. By focusing on specific sectors, DOE runs the risk of imposing excessive regulatory requirements that could stifle innovation, hinder economic growth, and impede market competitiveness. (Butt, No. 12837 at p. 2)

In addition, Butt commented that the fraction of consumers encountering a net life-cycle cost ("LCC") is minimal, underscoring the equitable distribution of economic benefits. However, Butt also questioned the fairness of the rule given what the commenter characterized as a disparate impact on low-income households and households of color. (Id. at pp. 6–8)

DOE disagrees with the commenters' assessment of the impact of the adopted standard in the February 2024 Direct Final Rule. DOE considered the impacts to manufacturers, including cumulative regulatory burden and the potential increase in manufacturing costs, in the manufacturing impact analysis in the February 2024 Direct Final Rule. 89 FR 11434, 11489–11492, 11514–11522. At the adopted standard, DOE projects that 77 percent of electric smooth element cooking tops, 97 percent of gas cooking tops, 95 percent of electric ovens, and 96 percent of gas ovens will already meet or exceed the standards by the first year of compliance and, hence, will not lead to significantly increased production costs for manufacturers. *Id.* at 89 FR 11538. In the February 2024 Direct Final Rule, the LCC analysis calculated the distribution of impacts across a nationally representative sample of US households. As demonstrated by the LCC analysis, at the adopted standard, the LCC savings for all consumer conventional cooking product consumers is positive. The fraction of consumers experiencing a net

LCC cost is 0 percent for electric smooth element cooking top product classes, 1 percent for gas cooking top product classes, 0 percent for electric ovens, and 0 percent for gas ovens. *Id.*

AHAM stated given the finalized standards levels and the fact that compliance timelines for cooking standards are no longer on the same timeline as several other products AHAM members make, cumulative regulatory burden is significantly reduced. AHAM further stated that cost burdens to manufacturers, and ultimately consumers, have been mitigated. (AHAM, No. 12845 at pp. 1–2)

AHAM commented that the recommended standards are economically justified as required by 42 U.S.C. 6295(o)(2)(B)(i)(I) and will not result in lessening of utility, reliability, performance or availability of the cooking products considered under 42 U.S.C. 6295(o)(2)(B)(i)(IV). AHAM commented that under the standards adopted in the February 2024 Direct Final Rule, less than 1 percent of consumers will experience a net cost overall, and the percentage of consumers experiencing a net cost due to standards for gas products decreased compared to the previously proposed standards. In addition, AHAM noted that manufacturer costs to comply with the final standard are less under the February 2024 Direct Final Rule than under the previously proposed standards. (*Id.* at p. 6–8)

CFA *et al.* commented that the standards adopted in the February 2024 Direct Final Rule will ensure that all new electric smooth element cooking top models use at least 17 percent less energy annually than the lowest-performing models sold today, and that 0 percent of low-income consumers will incur a net cost with the standards for electric smooth element cooking tops. CFA *et al.* further commented that the cost to manufacturers to improve the efficiency of electric and gas cooking tops and ovens to meet the new standards will be less than \$3 for each of the product types. (CFA *et al.*, No. 12843 at p. 1)

The February 2024 Direct Final Rule did consider the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard (42 U.S.C. 4296(o)(2)(B)(i)(I)), and DOE has determined that the comments provided by Butt, the AGs of NE *et al.*, and Rep. Bice do not provide a reasonable basis for withdrawal of the February 2024 Direct Final Rule.

The AGs of UT and MT stated that DOE's reliance on 2022 data for energy

prices and *AEO2023* for pricing trends is faulty due to Federal rulemakings being issued that will force existing generating capacity offline, spike electricity demand, and decrease fossil fuel supply, as illustrated with several documents attached to the comment. (AGs of UT and MT, No. 12841 at p. 4)

DOE contends that *AEO2023* remains the best available source for projections of future energy price trends based on adopted energy policies. DOE also performed sensitivity analyses using alternate *AEO2023* growth scenarios with low and high energy prices relative to the reference scenario in the February 2024 Direct Final Rule to assess the impact of alternative energy price projections. 89 FR 11434, 11477. The results of these scenarios are available in appendix 8E of the February 2024 Direct Final Rule TSD and show that consumers of consumer conventional cooking products would still experience positive LCC savings even when considering lower and higher energy prices.

Therefore, the February 2024 Direct Final Rule did take into account energy price variability in its analysis, and DOE has determined that the comment provided by the AGs of UT and MT does not provide a reasonable basis for withdrawal of the February 2024 Direct Final Rule.

The AGs of UT and MT stated that DOE acknowledges but disregards consumer preference and assumes consumers are ignorant. The AGs of UT and MT stated that DOE ignores the cost of transitioning to a different energy source. The AGs of UT and MT attached studies demonstrating consumer preference for product lifetime over energy consumption, and the AGs of UT and MT commented that these longer-life appliances may use less energy over the entire life cycle and be a lower cost to the consumer, yet DOE did not address those issues. (AGs of UT and MT, No. 12841 at p. 2)

DOE did not disregard consumer preference but rather noted in the February 2024 Direct Final Rule that the economics literature provides a wide-ranging discussion of how consumers trade off up-front costs and energy savings in the absence of government intervention. 89 FR 11434, 11534. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements, as the AGs of UT and MT alleged in their comment. There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings

to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant trade-offs; and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers). *Id.* Having less-than-perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher-than-expected rate between current consumption and uncertain future energy cost savings. *Id.*

Potential changes in the benefits and costs associated with a standard due to changes in consumer purchase decisions were included in the analysis for the February 2024 Direct Final Rule in two ways. *Id.* First, if consumers forgo the purchase of a product in the standards case, as estimated based on price elasticity related to empirical data on appliances, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the manufacturer impact analysis. *Id.* Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard.

Further, the AGs of UT and MT stated that the reliability of products affected by the rulemaking will decrease due to complexity increases, which the commenters asserted is supported by engineering facts illustrated in a document attached to their comment, yet DOE does not address this issue. The AGs of UT and MT also commented that complexity increases will lead to less economic viability of repair, which is not reflected in DOE's assumption that the rulemaking will have no impact on lifespan. The AGs of UT and MT commented that DOE disregards the fact that reliability can be increased by lightening the electrical, mechanical, thermal, and other conditions of operation of the components, which tends to decrease energy efficiency but results in less repair downtime and longer times before replacement and, therefore, decreased costs, as illustrated in attached documents. (AGs of UT and MT, No. 12841 at pp. 3–4)

AHAM commented that the February 2024 Direct Final Rule addresses AHAM's key concerns with the February 2023 SNOPIR. AHAM stated that the finalized energy conservation standards levels do not favor electric

over gas cooktops and the essential consumer utilities for gas (and electric) cooktops are preserved. (AHAM, No. 12845 at pp. 1–2) AHAM added that the technology options DOE identified for meeting the standard levels in the February 2024 Direct Final Rule are established technologies used in the market today and do not negatively impact product reliability. (*Id.* at p. 7) ASAP *et al.* commented that they did not expect the standards in the February 2024 Direct Final Rule to have any impact on product reliability because the amended standards can be met with simple design changes that have already been incorporated in many models on the market today. (ASAP *et al.*, No. 12842 at p. 2)

In contrast to the comment from the AGs of UT and MT and as noted in the February 2024 Direct Final Rule, DOE did take into consideration the cost of repair and included higher repair costs for more efficient products when supported by available data. *See* 89 FR 11434, 11477. For example, DOE included a higher repair cost for induction cooking tops based on available data from Consumer Reports. *Id.* A review of cooking product reliability information of most major brands provides no indication that higher-efficiency products are less reliable at the adopted standard levels relative to baseline products. Hence, notwithstanding theoretical conjecture that higher-efficiency products may have poor reliability based on simplified textbook models, no real-world evidence or data related to the technologies used at the adopted standard levels can be found clearly supporting such a correlation. The AGs of UT and MT did not specify how the attached documents on network node analysis and reliability theory correspond to the technologies used at the adopted standard levels for cooking products. In the absence of data specific to the technologies used in cooking products, DOE has no practical basis to model the theoretical concern from the AGs of UT and MT at the adopted standard levels. The assertion made by the AGs of UT and MT also runs counter to comments from AHAM and ASAP that support the February 2024 Direct Final Rule repair cost methodology.

DOE further notes that the lifetime distribution used in the February 2024 Direct Final Rule is based on feedback from manufacturers. 89 FR 11434, 11477. DOE is unaware of data that suggests a different lifetime associated with the technology options considered in the February 2024 Direct Final Rule, and no such data was provided by stakeholders. In response to the

February 2024 Direct Final Rule, AHAM commented that the adopted standard will not impact the reliability of products, and hence lifetime of the product, at the adopted level, and it further stated that the standard levels are achievable by technology readily available on the market. (AHAM, No. 12845 at pp. 7–8) As there is no data to suggest different lifetime distributions for products at the adopted standards level, the comment from the AGs of UT and MT does not provide a reasonable basis for withdrawal of the February 2024 Direct Final Rule.

As discussed in the February 2024 Direct Final Rule, DOE did take into account product reliability, lifetimes, and cost of repair when considering the LCC of more efficient products when supported by available data. See 89 FR 11434, 11477. Therefore, the February 2024 Direct Final Rule did take into account consumer purchase decisions in its analysis, and DOE has determined that the comment provided by the AGs of UT and MT does not provide a reasonable basis for withdrawal of the February 2024 Direct Final Rule.

The AGs of UT and MT stated their belief that GHG emissions and climate change impacts should not be part of EPCA rulemakings, but given their inclusion, DOE must consider them throughout the entire life cycle of the product, including manufacturing and potential reductions in lifespan due to increased complexity. The AGs of UT and MT commented that the February 2024 Direct Final Rule failed to adequately address these full life cycle impacts. (AGs of UT and MT, No. 12841 at p. 4)

As previously stated in section III.B of this document, the comment from the AGs of UT and MT points to a statement made to the U.S. Senate Subcommittee on Energy to indicate that 40 to 60 percent of the carbon footprint for many consumer products can be attributed to the supply chain.<sup>10</sup> However, the McKinsey report, which is the primary source for the statement made to the U.S. Subcommittee on Energy, is only referring to the manufacturing company's energy and carbon footprint that can reside upstream in its supply chain and does not include the energy and emissions associated with the usage phase of the appliance life cycle, which represents more than 90 percent of the total for large appliances.<sup>11</sup> As such, the

energy and carbon footprint associated with supply chain likely accounts for approximately 4 to 6 percent of the overall carbon footprint of a product. Furthermore, there is no data suggesting that the supply chain carbon footprint would be different between baseline units and units that meet the adopted standard. In the February 2024 Direct Final Rule, DOE accounted for the environmental and public health benefits associated with the more efficient use of energy, including those connected to global climate change, as they are important to take into account when considering the need for national energy conservation under EPCA. (See 42 U.S.C. 6295(o)(2)(B)(i)(IV)) 89 FR 11434, 11531–11534. This analysis focused on the estimated reduced emissions expected to result during the lifetime of consumer conventional cooking products shipped during the projection period. *Id.*

The AGs of UT and MT stated that the Interagency Working Group's ("IWG's") SC-GHG based on global impacts is inconsistent with EPCA's requirements for standards to consider economic implications to U.S. consumers. The AGs of UT and MT claimed that DOE erroneously appears to assume that all the benefits accrue to U.S. citizens, despite using global values. The AGs of UT and MT cited the case of *Louisiana v. Biden* to demonstrate questions related to the accuracy of the IWG's SC-GHG estimates. (AGs of UT and MT, No. 12841 at p. 4)

DOE reiterates its view that the environmental and public health benefits associated with more efficient use of energy, including those connected to global climate change, are important to take into account when considering the need for national energy conservation. (See 42 U.S.C. 6295(o)(2)(B)(i)(IV)) In addition, Executive Order 13563, which was reaffirmed on January 21, 2021, stated that each agency must, among other things, "select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity)." Regarding the use of global SC-GHG values, many climate impacts that affect the welfare of U.S. citizens and residents are better reflected by global measures of SC-GHG. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities

by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents.

The AGs of UT and MT stated the monetized GHG benefits largely accrue centuries in the future, well beyond the rulemaking analysis period. Furthermore, the AGs of UT and MT stated that DOE improperly mixed discount rates in its cost-benefit analysis. (AGs of UT and MT, No. 12841 at p. 4)

ALC stated similar concerns that IWG estimates for the SC-GHG are based on "flawed policy choices," relying on discount rates that have a large influence on the present value of future damages far beyond the rulemaking analysis period. (ALC, No. 12834 at p. 6)

DOE's February 2024 Direct Final Rule analysis considers the costs and benefits associated with 30 years of shipments of a covered product. Because a portion of products shipped within this 30-year period continue to operate beyond 30 years, DOE accounts for energy cost savings and reductions in emissions until all products shipped within the 30-year period are retired. 89 FR 11434, 11499. In the case of carbon dioxide emissions, which remain in the atmosphere and contribute to climate change for many decades, the benefits of reductions in emissions likewise occur over a lengthy period; to not include such benefits would be inappropriate. *Id.*

With regards to discount rates used, the IWG found that the use of the social rate of return on capital (7 percent under current Office of Management and Budget Circular A-4 guidance) to discount the future benefits of reducing GHG emissions inappropriately underestimates the impacts of climate change for the purposes of estimating the SC-GHG. Consistent with the findings of the National Academies and the economic literature, the IWG continued to conclude that the consumption rate of interest is the theoretically appropriate discount rate in an intergenerational context and recommended that discount rate uncertainty and relevant aspects of intergenerational ethical considerations be accounted for in selecting future discount rates. With regards to mixing discount rates, DOE consulted the National Academies' 2017 recommendations on how SC-GHG estimates can "be combined in RIAs with other cost and benefits estimates that may use different discount rates." The National Academies reviewed several options, including "presenting

<sup>10</sup> See [www.energy.senate.gov/services/files/3D26FA56-F102-9E9F-BEA4-52BB0085B19A](http://www.energy.senate.gov/services/files/3D26FA56-F102-9E9F-BEA4-52BB0085B19A).

<sup>11</sup> Gonzalez, A., A. Chase, and N. Horowitz. 2012. "What We Know and Don't Know about Embodied Energy and Greenhouse Gases for Electronics, Appliances, and Light Bulbs." Energy Solutions and

Natural Resources Defense Council. ACEEE Summer Study on Energy Efficiency in Buildings.



all discount rate combinations of other costs and benefits with [SC–GHG] estimates.” 89 FR 11434, 11497.<sup>12</sup>

ALC commented that because DOE cannot conclude that the new standards are economically justified under the statutory factors, DOE instead relies on the non-statutory and discredited SC–GHG estimates and thereby skews the economic analysis it is required to perform under EPCA. ALC claimed that DOE’s reliance on SC–GHG estimates based on global damages conflicts with EPCA’s statutory mandate to consider the need for national energy conservation under 42 U.S.C. 6925 (o)(2)(B)(i)(II). ALC stated that according to the Trump Administration, the actual social cost of carbon is seven times less than the SC–GHG estimates. ALC commented that DOE should not be permitted to use the IWG estimates in formulating new standards. (ALC, No. 12834 at pp. 2, 5–6)

ALC commented that DOE cannot avoid judicial review by declaring that it would reach the same conclusion presented in the rulemaking in the absence of the SC–GHG; ALC further commented that this rulemaking represents another attempt by the Biden Administration to avoid judicial review by claiming that the estimates are not outcome determinative. (*Id.* at pp. 7–8)

In response and as stated in the February 2024 Direct Final Rule, DOE notes that it would have reached the same conclusion that the adopted standard levels were economically justified without considering the SC–GHG because the average LCC savings for all product classes is positive, a shipment-weighted 0 percent of consumers would experience a net cost, and the NPV for consumer benefits is positive using both the 3-percent and the 7-percent discount rate. 89 FR 11434, 11498, 11538.

<sup>12</sup> Following the issuance of this DFR, DOE issued a rulemaking document in an unrelated matter in which it preliminarily determined that new, updated SC–GHG estimates promulgated in 2023 by EPA (2023 SC–GHG estimates) represent a significant improvement in estimating SC–GHG. See 89 FR 59692, 59700–59701. DOE preliminarily determined that the updated 2023 SC–GHG estimates reflect the best available scientific and analytical evidence and methodologies, are accordingly the most appropriate for DOE analyses, and best facilitate sound decision-making by substantially improving the transparency of the estimates and representations of uncertainty inherent in such estimates. *Id.* DOE welcomed comment on that preliminary determination. *Id.*

Because it issued this DFR prior to making that preliminary determination, DOE estimated the climate benefits of the standards adopted in this rule using the IWG’s SC–GHG estimates. As noted in the text, DOE’s decision to adopt the DFR’s standards did not depend on the cost of greenhouse gasses; nor would the decision change based on a revised estimate of the cost of greenhouse gasses.

#### D. Significant Conservation of Energy

Pursuant to EPCA, any new or amended standard must result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

APGA urged DOE not to use this rulemaking as a precedent for future energy conservation standards. APGA expressed concern with the cost-saving justification for the final standards, commenting that DOE’s estimated savings are not sufficient to justify the rulemaking under EPCA. APGA commented that, using DOE’s calculations and the average 14.5-year lifetime of a gas-fired consumer conventional cooking product, the average savings for customers would only be \$3.09 over the life of the appliance. APGA commented that such an insignificant amount of savings over this timeframe does not seem to warrant a new standard under EPCA, and APGA is concerned that DOE is using what APGA asserted is miniscule savings to demonstrate a sufficient cost savings justification for a new standard. (APGA, No. 12839 at pp. 2–3)

CEI commented that by addressing stakeholders’ concerns about reducing performance and choice, DOE has reduced the proposed rule’s already-modest energy savings. CEI commented that EPCA expressly forbids promulgating efficiency standards that fail to result in significant conservation of energy and, as a result, the proper course of action would be for DOE to withdraw both the cooking products February 2024 Direct Final Rule and proposed rule. (CEI, No. 12844 at p. 3)

CEI commented that EPCA does not prioritize efficiency above all else in the standards-setting process; rather, any rule is prohibited if the Secretary determines said rule “will not result in significant conservation of energy.” CEI added that the February 2024 Direct Final Rule saves so little energy that it can be considered arbitrary and capricious. CEI commented that, as a result of the less-stringent standards in the February 2024 Direct Final Rule (compared to the proposed rule), the savings are now estimated by DOE to be \$3.09 over the 14.5-year average lifespan of a gas cooktop, or 21 cents per year. (*Id.* at pp. 3–5)

CEI commented that the February 2024 Direct Final Rule demonstrates that 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. CEI commented that EPCA fully contemplates—and indeed requires—that some appliances would not be

subject to energy use limits, and this should include consumer conventional cooking products. CEI commented that because energy savings are trivial and regulatory overreach threatens to harm the interests of consumers, the February 2024 Direct Final Rule should be withdrawn. (*Id.* at p. 5)

Despite supporting the Joint Agreement, NPGA reiterated a previous comment that this rulemaking does not satisfy the threshold for significant energy savings at either the proposed or finalized standards. (NPGA, No. 12835 at pp. 1–2)

Butt commented that the February 2024 Direct Final Rule is projected to yield substantial energy savings. Butt subsequently stated that the February 2024 Direct Final Rule amounts to a 2% reduction in energy consumption relative to conventional product usage. Butt noted that this minimal rate would not implicitly justify the need for a reduction in energy consumption. Butt recommended that DOE consider shifting regulation focus to other sectors that have higher relative emissions such as refrigeration or heating, ventilation, and air conditioning (“HVAC”). (Butt, No. 12837 at pp. 4–7)

AHAM commented that it finds DOE has satisfied all EPCA criteria for issuing a February 2024 Direct Final Rule because the recommended energy conservation standards were designed by the Joint Stakeholders (including manufacturers of various sizes as well as consumer, environmental, and efficiency advocacy groups; a utility; and some States) to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified in accordance with the provisions of 42 U.S.C. 6295(o), and because DOE issued a February 2024 Direct Final Rule together with a proposed rule identical to the standard established in the February 2024 Direct Final Rule and allowed 110 days for public comment, which is consistent with EPCA requirements. (AHAM, No. 12845 at pp. 8–10)

As discussed, pursuant to EPCA, any new or amended energy conservation standard must, among other criteria, be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)). As noted in *Herrington*, determining whether energy savings are significant should be informed by the underlying policies of the Appliance Standards Program. (*See*

*NRDC v. Herrington*, 768 F.2d 1355, 1376 (D.C. Cir. 1985)). DOE's Appliance Standards Program was created in the 1970s in response to an energy supply crisis. See EPCA (noting in the Act's description the law's intention "[t]o increase domestic energy supplies and availability; to restrain energy demand; to prepare for energy emergencies; and for other purposes.") Congress expanded further on the intended policies underlying the Appliance Standards Program in subsequent amendments to EPCA. For example, the Energy Policy Act of 2005, Public Law 109–58 (Aug. 8, 2005), which, among other things, amended EPCA to establish energy conservation standards for additional consumer products, was enacted to “ensure jobs for our future with secure, affordable, and reliable energy.” The Energy Independence and Security Act of 2007, Public Law 110–140 (Dec. 19, 2007), which similarly amended EPCA to establish new energy conservation standards for consumer products and commercial equipment, was enacted to “move the United States toward greater energy independence and security, to increase the production of clean renewable fuels, to protect consumers, to increase the efficiency of products, buildings, and vehicles, to promote research on and deploy greenhouse gas capture and storage options, and to improve the energy performance of the Federal Government, and for other purposes.” Thus, DOE is guided by the underlying policy objectives of EPCA, as amended, governing the Appliance Standards Program when determining whether potential energy savings are significant.

As discussed in the February 2024 Direct Final Rule, DOE's analyses indicate that the adopted energy conservation standards for consumer conventional cooking products would save a significant amount of energy. 89 FR 11434, 11437–11441. Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods.

Relative to the case without new and amended standards, the lifetime, FFC energy savings for consumer conventional cooking products purchased in the 30-year period that begins in the anticipated year of compliance with the new and amended standards (2028–2057), amount to 0.22

quadrillion British thermal units (“Btu”), or quads. This is equivalent to the primary annual energy use of 1.4 million homes. Further, during the same analysis period, the adopted standards for consumer conventional cooking products are projected to reduce emissions by 3.99 million metric tons<sup>13</sup> of carbon dioxide, 1.15 thousand tons of sulfur dioxide, 7.61 thousand tons of nitrogen oxides, 34.70 thousand tons of methane, 0.04 thousand tons of nitrous oxide, and 0.01 tons of mercury. The estimated cumulative reduction in carbon dioxide emissions through 2030 amounts to 0.06 Mt, which is equivalent to the emissions resulting from the annual electricity use of more than 11 thousand homes. *Id.*

DOE also estimates the cumulative monetary value of the climate benefits from a reduction in greenhouse gases and the money value of the health benefits from the reduction of sulfur dioxide and nitrogen oxides emissions. The climate benefits associated with the average SC–GHG at a 3-percent discount rate are estimated to be \$0.22 billion. DOE estimated the present value of the health benefits would be \$0.16 billion using a 7-percent discount rate, and \$0.42 billion using a 3-percent discount rate. *Id.* at 89 FR 11437–11438.

Based on the amount of FFC savings, the corresponding reduction in emissions, and the need to confront the global climate crisis, DOE determined in the February 2024 Direct Final Rule that the energy savings from the adopted standard levels are “significant” within the meaning of 42 U.S.C. 6295(o)(3)(B). *Id.* at 89 FR 11447.

APGA expressed concern that the rulemaking does not appear to save any more energy than a previous iteration of the rule for which DOE deemed similarly minimal energy savings insufficient to dictate a new ruling. APGA asserted that with the last iteration of this rule in 2009, DOE decided not to set a new standard, citing a lack of significant conservation of energy for gas cooktops. APGA commented it is therefore concerned that DOE is planning to set a new standard based on the same minimal energy conservation that previously did not warrant a new standard in 2009. (APGA, No. 12839 at p. 3)

DOE re-iterates that the significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.

<sup>13</sup> A metric ton is equivalent to 1.1 short tons. Results for emissions other than carbon dioxide are presented in short tons.

Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis. 89 FR 11434, 11441.

Contrary to APGA's assertions, DOE did in fact amend the energy conservation standards in the April 2009 Final Rule by prohibiting the use of constant burning pilot lights for all gas cooking products manufactured on or after April 9, 2012. 74 FR 16040. DOE further stated in the April 2009 Final Rule that the estimated energy savings at each of the standard levels considered for cooking products indicate that the energy savings each would achieve are nontrivial, and therefore, DOE considered these savings “significant” within the meaning of section 325 of EPCA. *Id.* at 74 FR 16052. The prescriptive standards prohibiting constant burning pilot lights for gas cooking products adopted in the April 2009 Final Rule were projected to save 0.14 quads of energy. *Id.* at 74 FR 16084.

#### *E. Unavailability of Performance Characteristics*

EPCA specifies the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

The AGs of NE *et al.* also stated that the February 2024 Direct Final Rule does not account for the consumer preference that AHAM identified through consumer research of safety, value, performance, and cost at purchase over energy efficiency and cost to use over time. (AGs of NE *et al.*, No. 12838 at p. 3)

Rep. Bice asserted that the adopted standards will limit consumer choice. (Rep. Bice, No. 12831 at p. 1)

ALC commented that, as noted by CEI, the new and amended standards would unlawfully eliminate desired features that are on the market and that DOE did not adequately respond to the core of CEI's argument regarding desired features such as the maximum heat output of an HIR burner. ALC commented that among the more troublesome aspects of the rulemaking is the fact that DOE does not dispute that the new rule will likely regulate gas stoves with multiple HIR burners out of existence, and DOE does not attempt to show that any efficacious substitutes exist on the market; ALC commented that DOE therefore does not fulfill its statutory burden to carefully assess any

impact to decreased consumer utility or to avoid establishing a new standard if it will result in the unlawful elimination of key features from the market. (ALC, No. 12834 at pp. 3–4)

DOE determined that the February 2024 Direct Final Rule would not result in the unavailability of products that are substantially the same as those currently available in the United States. 89 FR 11434, 11524–11530. AHAM noted that the energy conservation standards adopted in the February 2024 Direct Final Rule maintain important consumer features and utilities. (AHAM, No. 12845 at pp. 6–8)

As discussed, DOE specifically addressed the ability of consumer conventional cooking products to maintain certain features and functionalities. DOE stated in the February 2024 Direct Final Rule that the adopted standards would not preclude multiple HIR burners and continuous cast-iron grates or any combination of features mentioned by manufacturers, as demonstrated by products from multiple manufacturers in DOE's test sample. 89 FR 11434, 11524, 11526. AHAM noted that the energy conservation standards adopted in the February 2024 Direct Final Rule maintain important consumer features and utilities. AHAM commented that DOE expanded the number of models with the consumer utilities AHAM identified in its testing, including 55 models of gas cooking tops with continuous cast-iron grates, which demonstrates a greater care for the features that consumers value. AHAM added that DOE's analysis shows that 35 gas units with at least two HIR cooking zones, or where the input rate is greater than or equal to 14,000 Btu/h, meet the finalized standard, thus preserving that key consumer utility. (AHAM, No. 12845 at pp. 6–7)

In response to ALC's claim that the standards in the February 2024 Direct Final Rule would reduce an HIR burner's maximum heat considerably, DOE reiterates that the highest input rate burners in its test sample (up to 25,000 Btu/h) meet the efficiency threshold corresponding to the finalized standard. 89 FR 11434, 11464.

The February 2024 Direct Final Rule evaluated whether the new and amended standards would result in the unavailability of products that are substantially the same as those currently available in the United States, and DOE has determined that the comments provided by the AGs of NE *et al.*, Rep. Bice, and ALC do not provide a reasonable basis for withdrawal of the February 2024 Direct Final Rule.

#### F. Stakeholder Representation

Under 42 U.S.C. 6295(p)(4), interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by DOE, may submit a joint recommendation to DOE for new or amended energy conservation standards.

The AGs of NE *et al.* questioned the expertise and relevancy of several advocacy groups who contributed to the Joint Agreement (*i.e.*, the Alliance for Water Efficiency, Earthjustice, the Northwest Energy Efficiency Alliance, the Natural Resources Defense Council, and the National Consumer Law Center). The AGs of NE *et al.* asserted that none of the advocacy groups has expertise in setting energy efficiency standards for kitchen appliances, and none of the advocacy groups raised concerns related to consumer pricing, appliance functionality, or economic implications. (AGs of NE *et al.*, No. 12838 at p. 4)

The AGs of NE *et al.* commented that there were several other groups that commented on the February 2023 SNOPR but did not appear in the joint statement. The AGs of NE *et al.* stated that the joint agreement did not include the National Apartment Association (“NAA”) and the National Multifamily Housing Council (“NMHC”). NAA and NMHC previously raised concerns about the effects of the rulemaking on mass-appliance purchases, which will disproportionately affect low-income individuals. The American Gas Association (“AGA”), APGA, and NPGA also authored a comment opposing the February 2023 SNOPR and were not part of the joint statement. (*Id.* at p. 5)

The AGs of NE *et al.* commented that while Massachusetts, New York, and California support DOE's proposed rulemaking, 23 States caution DOE about the February 2024 Direct Final Rule's effects on consumer welfare; the AGs of NE *et al.* asserted that EPCA requires DOE to receive the concurrence of States across the ideological spectrum in order to proceed with a direct final rule rather than acknowledge only the few opinions in favor without receiving the support of a majority of States. The AGs of NE *et al.* commented that many States also previously raised legal concerns with DOE's proposed rule, which they stated were not resolved in the February 2024 Direct Final Rule. The AGs of NE *et al.* commented that States have a direct interest in protecting consumers and are also directly affected by the rule because so many State entities purchase

conventional kitchen appliances. (*Id.* at p. 6)

The AGs of UT and MT agreed with the AGs of NE *et al.*'s concerns over the participants in the Joint Agreement underlying the February 2024 Direct Final Rule, along with their concerns that the group does not comply with EPCA. (AGs of UT and MT, No. 12841 at p. 1)

The AGs of NE *et al.* stated their concern that DOE engaged in “administrative arm-twisting” and indicated that AHAM's change of approach from opposing to supporting the energy efficiency standards in question reflects a subtle example of the effect of DOE's arm-twisting on AHAM. (AGs of NE *et al.*, No. 12838 at p. 5)

In response to the comments regarding whether the Joint Agreement was submitted by persons fairly representative of relevant points of view, DOE reiterates that 42 U.S.C. 6295(p)(4) states that if the criteria in 42 U.S.C. 6295(o) are met, the Secretary may issue a final rule that establishes an energy conservation standard “[o]n receipt of a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary.” (42 U.S.C. 6295(p))

As stated in the February 2024 Direct Final Rule, DOE determined that this requirement was met. 89 FR 11434, 11446. The Joint Agreement included a trade association, AHAM, which represents 19 manufacturers of the subject covered products—consumer conventional cooking products. *Id.* The Joint Agreement also included environmental and energy-efficiency advocacy organizations, consumer advocacy organizations, and a gas and electric utility company. *Id.* Additionally, DOE received a letter in support of the Joint Agreement from the States of New York, California, and Massachusetts (*see* comment No. 12812). *Id.* DOE also received a letter in support of the Joint Agreement from the gas and electric utility, San Diego Gas and Electric, and the electric utility, Southern California Edison (*see* comment No. 12813). *Id.* Representatives from each of the relevant points of view described in 42 U.S.C. 6295(p)(4) supported the Joint Agreement.

DOE has ample authority to accept a joint statement in these circumstances. EPCA does not require that the Joint Agreement be representative of every point of view. Nor does it require that a statement be submitted by *all*

interested persons. Rather, it requires a statement from a sufficient number and diversity of “interested persons” such that the statement is “fairly representative of relevant points of view.” The Joint Agreement presented here is such a statement, as the Secretary determined.

Contrary to the commenters’ suggestion, EPCA does not include any requirement that “relevant points of view” must include politically opposite points of view. Rather, EPCA ensures a diversity of opinions and interests by requiring that parties that provide a joint agreement must be fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary. (42 U.S.C. 6295(p)(4)(A))

Moreover, regardless of whether amended energy conservation standards are recommended as part of a joint agreement or proposed by DOE, the standards have to satisfy the same criteria in 42 U.S.C. 6295(o). Thus, once DOE has determined that a joint agreement was submitted by interested persons that are fairly representative of relevant points of view, DOE then determines whether the joint agreement satisfies the relevant statutory criteria. As a result, in evaluating whether comments provide a reasonable basis for withdrawing a direct final rule, it is the substance of the comments, not the number of stakeholders that submit statements in favor of, or opposed to, the joint agreement, that determines whether a rule should be withdrawn.

DOE also finds meritless the contention that the Joint Agreement parties are not competent to present a statement for the purposes of section 6295(p). Contrary to the characterizations by the AGs of NE *et al.*, the parties to the Joint Agreement have an established historical record of participation in DOE rulemakings and have submitted detailed comments in the past that demonstrate a thorough understanding of the technical, legal, and economic aspects of appliance standards rulemakings, including factors affecting specific groups such as low-income households.

In a follow-up letter from the parties to the Joint Agreement, each organization provided a brief description of its background. American Council for an Energy-Efficient Economy is a nonprofit research organization and its independent analysis advances investments, programs, and behaviors that use energy more effectively and help build an equitable clean energy future. Alliance

for Water Efficiency is a nonprofit dedicated to efficiency and sustainable use of water that provides a forum for collaboration around policy, information sharing, research, education, and stakeholder engagement. ASAP organizes and leads a broad-based coalition effort that works to advance new appliance, equipment, and lighting standards that cut emissions that contribute to climate change and other environmental and public health harms, save water, and reduce economic and environmental burdens for low- and moderate-income households. AHAM represents more than 150 member companies that manufacture 90 percent of the major portable and floor care appliances shipped for sale in the United States. CFA is an association of more than 250 non-profit consumer and cooperative groups that advances the consumer interest through research, advocacy, and education. Consumer Reports is a mission-driven, independent, nonprofit member organization that empowers and informs consumers, incentivizes corporations to act responsibly, and helps policymakers prioritize the rights and interests of consumers in order to shape a truly consumer-driven marketplace. Earthjustice is a nonprofit public interest environmental law organization advocating to advance clean energy and combat climate change. National Consumer Law Center supports consumer justice and economic security for low-income and other disadvantaged people in the United States through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. National Resources Defense Council is an international nonprofit environmental organization with expertise from lawyers, scientists, and other environmental specialists. Northwest Energy Efficiency Alliance is a collaboration of 140 utilities and efficiency organizations working together to advance energy efficiency in the Northwest on behalf of more than 13 million consumers. Pacific Gas and Electric Company represents one of the largest combined gas and electric utilities in the Western United States, serving over 16 million customers across northern and central California.<sup>14</sup>

Finally, DOE notes that it had no role in requesting that the parties to the Joint Agreement submit the Joint Agreement or in negotiating the terms of the Joint Agreement. As noted in the Joint Agreement itself, the parties accepted

the agreement based on the totality of the agreement. DOE’s participation was limited to evaluating the joint submission under the criteria set forth in 42 U.S.C. 6295(p).

Therefore, DOE reaffirms its determination that the Joint Agreement was submitted by interested persons that are fairly representative of relevant points of view.

#### G. Responses to Previous Stakeholder Comments

The AGs of NE *et al.* commented that there were many comments made by AHAM, Whirlpool, and Sub-Zero Group Inc. in previous rounds of the rulemaking that the AGs of NE *et al.* found were not adequately addressed in the February 2024 Direct Final Rule. For example, the AGs of NE *et al.* stated that the February 2024 Direct Final Rule does not address Whirlpool’s concern that DOE did not conduct a North American integrated supply-chain analysis. The AGs of NE *et al.* commented that the February 2024 Direct Final Rule neglects to address AHAM’s previous concern cooking products will not be able to maintain certain features and functionalities and households at or near the poverty line would be negatively affected by having to purchase new cooking appliances. The AGs of NE *et al.* commented that although AHAM later authored a joint agreement in favor of the February 2024 Direct Final Rule, DOE did not adequately address the concerns listed in AHAM’s earlier comment and therefore does not assuage concerns that the new energy efficiency standards will raise prices for conventional stoves and ovens with disproportionate harm to low-income households. (AGs of NE *et al.*, No. 12838 at pp. 2–4)

In response to the comments from the AGs of NE *et al.* that DOE did not respond in the February 2024 Direct Final Rule to the comments submitted by signatories to the Joint Agreement and other stakeholders in response to the February 2023 SNOPR, DOE notes that the commenters misunderstand DOE’s direct final rule authority under EPCA. As discussed in the February 2024 Direct Final Rule, DOE was already conducting a rulemaking to consider amending the standards for consumer conventional cooking products when the Joint Agreement was submitted. 89 FR 11434, 11444. After receiving the Joint Agreement, DOE initiated a separate rulemaking action and subsequently issued the February 2024 Direct Final Rule after determining that the recommendations contained in the Joint Agreement were compliant with 42 U.S.C. 6295(o). *Id.* The February

<sup>14</sup> This document is available in the docket at: [www.regulations.gov/comment/EERE-2014-BT-STD-0005-12814](http://www.regulations.gov/comment/EERE-2014-BT-STD-0005-12814).

2024 Direct Final Rule is a separate rulemaking, conducted under a different statutory authority from DOE's prior rulemaking in the February 2023 SNOPIR, and DOE has no obligation to consider comments submitted in response to that prior rulemaking in a different rulemaking. Further, both the efficiency levels and compliance periods proposed in the February 2023 SNOPIR are different from those adopted in the February 2024 Direct Final Rule.

Even though DOE was not required to consider comments from the February 2023 SNOPIR, DOE did in fact consider relevant comments, data, and information obtained through the February 2023 SNOPIR. This included the issues that the AGs of NE *et al.* asserted DOE ignored in the February 2024 Direct Final Rule.

In response to concerns about manufacturer supply chain, DOE noted in the February 2024 Direct Final Rule that 77 percent of electric smooth element cooking tops, 97 percent of gas cooking tops, 95 percent of electric ovens, and 96 percent of gas ovens will already meet or exceed the standards by the first year of compliance. 89 FR 11434, 11516. Given that a significant portion of the market already meets or exceeds the adopted standard, it is very unlikely that the adopted standard will impact the cooking product supply chain.

Additionally, in the February 2024 Direct Final Rule, DOE specifically addressed the ability of consumer conventional cooking products to maintain certain features and functionalities. 89 FR 11434, 11524. For example, DOE determined that the adopted standards would not preclude any combination of features mentioned by manufacturers, can be achieved by both standalone cooking tops and the cooking top portion of combined cooking products (*e.g.*, ranges), do not preclude the use of extra-high input rate burners or multiple high-input rate ("HIR") burners<sup>15</sup> on a cooking top and would therefore not impact cooking times, do not preclude the use of low-input rate burners, and can be achieved by gas cooking tops with continuous cast iron grates. *Id.* at 89 FR 11526, 11529–11530. Furthermore, DOE emphasizes that the adopted standard will not impact the utility or performance of consumer conventional cooking products and consumers are not likely to switch fuel types as a result of the adopted standard. AHAM commented that the energy conservation

standards adopted in the February 2024 Direct Final Rule fully addressed those concerns and maintain important consumer features and utilities. AHAM commented that DOE's expanded test sample shows that both electric and gas ranges can meet the adopted standards while preserving important consumer features. (AHAM, No. 12845 at pp. 6–7)

In the February 2024 Direct Final Rule, DOE considered the impact on low-income households by performing a LCC subgroup analysis for low-income households. 89 FR 11434, 11488–11489. Notably, consistent with Joint Agreement, in the February 2024 Direct Final Rule DOE adopted a lower standard level for gas cooking tops than the level proposed in the February 2023 SNOPIR. DOE estimated that the lower standard level would result in 1 percent of low-income households experiencing a net cost due to the standard, compared with 18 percent at the proposed level in the February 2023 SNOPIR. The adopted standard level for gas cooking tops in the February 2024 Direct Final Rule also reduced the estimated incremental increase in purchase price to \$2.24, compared with \$18.27 at the proposed standard level in the February 2023 SNOPIR. Furthermore, in response to concerns that the adopted standard will impact housing costs, DOE notes that the estimated installed cost increase associated with the adopted standards is less than one percent relative to the cost of a baseline unit for all product classes and is unlikely to impact housing production or affordability.

#### H. Formal Rulemaking

The AGs of NE *et al.* recommended that before enacting these stringent new standards for consumer conventional cooking products, DOE return to formal rulemaking or, at a minimum, to proceed with informal notice-and-comment rulemaking to allow States and other relevant parties to participate in rulemaking processes that affect nearly every household appliance and also ensure a minimal level of political accountability by giving visibility to internal agency deliberations. The AGs of NE *et al.* further commented that the lack of a formal process does not allow people the opportunity to comment on rules that touch the lives of nearly all Americans. (AGs of NE *et al.*, No. 12838 at pp. 1–2, 7–8, 9–10) The AGs of UT and MT similarly recommended DOE halt the rulemaking. (AGs of UT and MT, No. 12841 at p. 5)

ALC recommended that the rulemaking be reviewed in accordance with the Administrative Procedure Act ("APA")'s requirements; ALC added that the Administration's attempt to

shield its regulations from review seeks to undermine that principle. ALC recommended that DOE reconsider the use of the standards and present rationale for its standards that satisfies the APA and respects the important role of judicial review. (ALC, No. 12834 at pp. 7–8) Similarly, the AGs of UT and MT expressed concerns about pretext and circumvention of the APA, and regarding DOE's conduct in this rulemaking and in recent litigation. (AGs of UT and MT, No. 12841 at pp. 1–2)

Butt commented that DOE's limited engagement with stakeholders raises concerns about transparency, accountability, and inclusivity in the regulatory process. (Butt, No. 12837 at p. 2)

AHAM stated that interested parties have had ample opportunity to comment through the proposed and supplemental proposed rules, two notifications of data availability, and the February 2024 Direct Final Rule. AHAM noted that, in fact, the February 2024 Direct Final Rule process provided an extra 110 days for interested parties to review DOE's final rule and submit comments—which met EPCA requirements. (AHAM, No. 12845 at p. 5)

In response, DOE notes that Congress granted DOE the authority to issue energy conservation standards as direct final rules subject to certain conditions and procedural requirements. As discussed in the February 2024 Direct Final Rule, DOE determined that the Joint Agreement was submitted jointly by interested persons that are fairly representative of relevant points of view and the adopted energy conservation standards as recommended in the Joint Agreement would result in significant energy savings and are technologically feasible and economically justified as required under 42 U.S.C. 6295(o) and provided supporting analysis. 89 FR 11434, 11446. DOE did not contribute to the development of the Joint Agreement. Rather, as provided in EPCA, DOE's role was to evaluate what was submitted and determine if meets the criteria for issuing a DFR. DOE strongly disagrees with the assertions that its actions here violate the APA or are otherwise improper.

Additionally, DOE notes it followed the procedures in 42 U.S.C. 6295(p)(4) to publish a direct final rule in the **Federal Register** simultaneously with a NOPR proposing identical standards and allowed 110 days for public comment. *See* 89 FR 11434 and 89 FR 11548. Regarding the comment about formal rulemaking, DOE has met all of its statutory requirements under its

<sup>15</sup> In the February 2024 Direct Final Rule, DOE defined an HIR burner as a burner rated at or above 14,000 Btu per hour.

direct rule authority, which does not require formal rulemaking.<sup>16</sup> Finally, regarding the comments about the APA, EPCA mandates the substance and process by which DOE establishes energy conservation standards and develops direct final rules. While the APA provides DOE direction in areas in which EPCA is silent, EPCA is a comprehensive statutory mechanism for the development, implementation, and enforcement of energy conservation standards.

### I. Other Legal Concerns

ALC commented that Congress may only regulate intrastate activity under the Commerce Clause when the activity substantially affects interstate commerce. ALC commented that in order to properly regulate the intrastate market for covered products, DOE must demonstrate that the intrastate activity substantially affects the interstate market for the covered appliances, which ALC asserted DOE has not done. Further, ALC disputes DOE's response to the Commerce Clause concerns in the February 2024 Direct Final Rule. ALC states that Department's understanding of the Commerce Clause deviates from the Clause's original meaning and does so without addressing more recent Supreme Court decisions questioning such an expansive interpretation of the Commerce Clause. ALC argues that DOE overreads Raich and places it in serious tension with precedents such as *Lopez*, *United States v. Morrison*, *Solid Waste Agency of Northern Cook County v. Army Corps of Engineers*, *Sackett v. EPA*, and *West Virginia v. EPA*. ALC states as an example in *West Virginia*, the Court held that Congress did not grant the Environmental Protection Agency "authority to devise carbon emissions caps" via the Clean Power Plan because courts must "greet assertions of 'extravagant statutory power over the national economy' with 'skepticism.'" See *West Virginia v. EPA*, 597 U.S. 697, 724 (2022) (citing *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)). (ALC, No. 12834 at pp. 8–9)

As noted by ALC, DOE addressed Commerce Clause concerns in the February 2024 Direct Final Rule. Intrastate commerce involving a fungible commodity for which there is an established national market, such as consumer conventional cooking products, substantially affects interstate commerce. And, as the Supreme Court

noted in *Gonzales v. Raich*, 545 U.S. 1 (2005), the Commerce Clause case law "firmly establishes Congress' power to regulate purely local activities that are part of an economic 'class of activities' that have a substantial effect on interstate commerce." *Id.* at 17. The Court concluded that to leave intrastate goods unregulated where there is an established interstate market for the commodity would have a substantial impact on the market and could undermine the very purpose of the regulatory scheme. See *Id.* at 18–19. There is an established interstate market for conventional cooking products as the majority of these products are sold through large, national retailers. DOE therefore affirms its view that Congress' intent in EPCA was to provide it with authority to regulate all consumer conventional cooking products distributed in commerce.

ALC commented that the February 2024 Direct Final Rule raises questions under the major questions doctrines. ALC asserted that the February 2024 Direct Final Rule imposes comprehensive design requirements that drastically affect consumer use and enjoyment and without a clear statement of authority the Department cannot exercise such control over "a significant portion of the American economy." *West Virginia*, 597 U.S. at 722 (citing *Util. Air Regul. Grp.*, 573 U.S. at 324). (ALC, No. 12834 at p. 9)

DOE reiterates that it determined the February 2024 Direct Final Rule would not result in the unavailability of products that are substantially the same as those currently available in the United States. As discussed, DOE specifically addressed the ability of consumer conventional cooking products to maintain certain features and functionalities. DOE stated in the February 2024 Direct Final Rule that the adopted standards would not preclude multiple HIR burners and continuous cast-iron grates or any combination of features mentioned by manufacturers, as demonstrated by products from multiple manufacturers in DOE's test sample. 89 FR 11434, 11524, 11526. Further, contrary to ALC's assertion, DOE has very clear authority under EPCA to establish energy conservation standards for consumer conventional cooking products. See 42 U.S.C. 6292(a)(10). Under EPCA, as amended, DOE has been directed by Congress to establish or implement energy conservation standards for consumer products for over 40 years.

ALC commented that the February 2024 Direct Final Rule raises questions under the nondelegation doctrine because DOE employs the social cost of

greenhouse gases ("SC-GHG") to justify the final rule yet cites no clear congressional statement of authority to rely on such a factor. Further the rule is legislative in nature because it formulates generally applicable rules of private conduct—an inherently legislative function. (ALC, No. 12834 at pp. 9–10)

First, as stated in the February 2024 Direct Final Rule, DOE determined that the rule was economically justified without accounting for the social cost of greenhouse gases. 89 FR 11434, 11498. DOE, however, continues to believe that the environmental and public health benefits associated with more efficient use of energy, including those connected to global climate change, are important factors to evaluate when considering the need for national energy conservation. *Id.* As for ALC's comment about the nondelegation doctrine, "a delegation is constitutional so long as Congress sets out an intelligible principle to guide the delegate's exercise of authority." *Gundy v. United States*, 588 U.S. 128, 130 (2019). Further, "the standards for that principle are not demanding." *Id.* In EPCA, Congress lists criteria that must be met before DOE can issue a new or amended standard. See 42 U.S.C. 6295(o) ("[c]riteria for prescribing new or amended standards"). Congress, among other things, directs DOE to establish energy conservation standards that represent the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Congress further specifies the factors DOE has to consider when determining whether an energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)-(VII)) Congress also specifies that a new or amended standard has to result in significant conservation of energy (42 U.S.C. 6295(o)(3)(B)) and cannot result in the unavailability of performance characteristics, features, sizes, capacities, and volumes that are substantially the same as those generally available in the market (42 U.S.C. 6295(o)(4)). In EPCA, Congress has clearly indicated a general policy for DOE to follow in prescribing energy conservation standards and the boundaries of that authority. See *American Power & Light*, 329 U.S. 90, 105 (1946).

ALC commented that the February 2024 Direct Final Rule raises serious Federalism questions because it forecloses States from exercising their own judgment in an area traditionally reserved to their discretion, which upsets the balance between Federal and State powers. ALC commented that

<sup>16</sup> DOE notes that outside of its direct rulemaking authority, DOE utilizes informal or legislative rulemaking (i.e., notice and comment rulemaking under the Administrative Procedure Act, 5 U.S.C. 553) when it promulgates rules under EPCA, not formal rulemaking.

because of the rule's significance and the constitutional questions it raises, the standards must be authorized by clear authority. (ALC, No. 12834 at p. 10)

As discussed in section II.A of the February 2024 Direct Final Rule, DOE has clear authority to establish energy conservation standards for cooking products. 89 FR 11434, 11441–11443. Further, the preemptive effect of Federal energy conservation standards on State laws is clearly described in EPCA. See 42 U.S.C. 6297.

#### IV. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition that is likely to result from new or amended standards. (42 U.S.C. 629(p)(4)(A)(i) and (C)(i)(II); 42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General of the United States (“Attorney General”) to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)) To assist the Attorney General in making this determination, DOE provided the Department of Justice (“DOJ”) with copies of the February 2024 Direct Final Rule, the corresponding NOPR, and the February 2024 Direct Final Rule TSD for review. DOE has published DOJ's comments at the end of this document.

In its letter responding to DOE, DOJ concluded that, based on its review, the direct final rule standards for consumer conventional cooking products are unlikely to have a significant adverse impact on competition.

#### V. Conclusion

In summary, based on the previous discussion, DOE has determined that the comments received in response to the direct final rule for new and amended energy conservation standards for consumer conventional cooking products do not provide a reasonable basis for withdrawal of the direct final rule. As a result, the energy conservation standards set forth in the direct final rule became effective on June 13, 2024. Compliance with these standards is required on and after January 31, 2028.

#### Signing Authority

This document of the Department of Energy was signed on August 2, 2024, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to

delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 2, 2024.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

[FR Doc. 2024–17474 Filed 8–9–24; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 14 CFR Parts 259, 260, and 399

[Docket No. DOT–OST–2022–0089]

RIN 2105–AF04

#### Refunds and Other Consumer Protections (2024 FAA Reauthorization)

**AGENCY:** Office of the Secretary (OST), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Transportation (Department or DOT) published a final rule on April 26, 2024, to establish requirements for refunds and other protections for consumers of air travel. Subsequent to publication of that final rule, the FAA Reauthorization Act of 2024 (Act) was signed into law on May 16, 2024. This final rule amends the Department's regulations, as updated by the April 26, 2024, final rule, consistent with the requirements of the Act.

**DATES:** This rule is effective August 12, 2024.

**FOR FURTHER INFORMATION CONTACT:** Clereece Kroha or Blane Workie, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202–366–9342 (phone), [clereece.kroha@dot.gov](mailto:clereece.kroha@dot.gov) or [blane.workie@dot.gov](mailto:blane.workie@dot.gov) (email).

**SUPPLEMENTARY INFORMATION:**

## Executive Summary

### I. Purpose of the Regulatory Action

The purpose of this final rule is to amend the Department's regulations for consistency with the Act, Public Law 118–63.

### II. Background

The Act was signed into law on May 16, 2024, after publication in the **Federal Register** of the Department's final rule titled “Refunds and Other Consumer Protection.” Section 503 of the Act, which is codified at 49 U.S.C. 42305, addresses refunds for cancelled or significantly delayed or changed flights. The requirements in Section 503 concern several topics addressed in the Department's final rule.

Subsection (a) of section 42305 requires that, for passengers<sup>1</sup> that hold a nonrefundable ticket on a scheduled flight to, from, or within the United States, an air carrier or foreign air carrier provide a full refund of the fare (including any taxes and ancillary fees) the carrier collected for any cancelled or significantly delayed or changed flight if the passenger chooses not to fly on the significantly delayed or changed flight or accept rebooking on an alternative flight or accept any voucher, credit, or other form of compensation offered by the air carrier or foreign air carrier pursuant to subsection (c) of section 42305. The obligation for carriers to provide a refund is upon request as specified in subsection (f) of section 42305.

Subsection (f) specifies that an air carrier or foreign air carrier must consider a passenger to have requested a refund if one of the following criteria are met: (1) a flight is cancelled and the air carrier or foreign air carrier does not offer a passenger an alternative flight or any voucher, credit, or other form of compensation pursuant to subsection (c) of section 42305; (2) a passenger rejects the significantly delayed or changed flight, rebooking on an alternative flight, or any voucher, credit, or other form of compensation offered pursuant to subsection (c) of section 42305; or (3) a passenger does not respond to an offer of either of the following: (A) a significantly delayed or changed flight or an alternative flight and the flight departs without the passenger; or (B) a voucher, credit, or other form of compensation by the date on which the cancelled flight was scheduled to depart

<sup>1</sup> Note that the regulatory text uses the term “consumer” rather than “passenger” for consistency with use of this term throughout the Department's consumer protection regulations. No change in meaning is effectuated through use of the term “consumer”.