

May 15, 2020

**Re: “Energy Conservation Program for Appliance Standards: Proposed Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment; Prioritization Process,” 85 Fed. Reg. 20,886 (Apr. 15, 2020).**

**Docket No. EERE-2020-BT-STD-0004**

Center for Biological Diversity, Consumer Federation of America, National Consumer Law Center (on behalf of its low-income clients), Natural Resources Defense Council, Public Citizen, Sierra Club, and Earthjustice submit the following comments on the U.S. Department of Energy’s (“DOE’s” or the “Department’s”) prioritization process for energy conservation standards rulemakings. As explained below, DOE must fulfill all statutorily-required duties within the time period Congress has allowed. The Department’s persistent refusal to meet those statutory deadlines confers no authority on DOE to designate any of the overdue actions as a low priority or a long-term objective. Accordingly, DOE must focus on completing all mandatory actions, deferring the many discretionary rulemakings through which this administration has sought to undermine the energy conservation standards program, until the Department has come into compliance with the schedule Congress prescribed.

The Department has fallen far behind the schedule established in the Energy Policy and Conservation Act (“EPCA”) for the completion of proposed and final rules to update test procedures and energy conservation standards for covered products and equipment. EPCA requires DOE to review the energy conservation standards for each category of covered consumer products and commercial equipment every six years and either make a determination that no amendments are needed, or propose amended standards. 42 U.S.C. §§ 6295(m)(1), 6313(a)(6)(C)(i). DOE has missed this six-year review deadline for several products for which significant additional energy savings are achievable through strengthened standards. In addition, DOE has missed numerous deadlines under EPCA for other proposed and final actions concerning updates to energy conservation standards and test procedures. *See, e.g., id.* §§ 6295(m)(3), 6313(a)(6)(C)(iii).

DOE must comply with all rulemaking deadlines prescribed in EPCA. Because EPCA explicitly reflects Congress’s intent to have energy conservation standards and test procedures reviewed and updated according to the schedule prescribed in the Act, DOE cannot lawfully extend the statutory deadlines to perform those actions. The Department has no discretion to delay the completion of a mandatory duty to which a statutory deadline applies, and thus no discretion to “prioritize” among many such duties. Nor can DOE authorize a delay or suspension of work that would lead to or exacerbate the violation of a statutory deadline. Instead, DOE must proactively satisfy each of the rulemaking obligations that EPCA imposes according to the deadlines established in the Act. When those deadlines have been exceeded, DOE must return to compliance as quickly as possible.

In light of DOE's growing backlog of unmet obligations, the Department's decision to detour already-delayed rulemakings through this prioritization process casts doubt on the sincerity of DOE's commitment to its legal obligations. Allocating staff time to identifying which mandatory rulemaking obligations to prioritize and which to continue ignoring is a misuse of Departmental resources. Moreover, to the extent this prioritization exercise enables the many discretionary rulemakings DOE has initiated to leapfrog the overdue actions EPCA requires the Department to complete, it only further subverts DOE's compliance with EPCA.

Completing the overdue actions to update standards and test procedures is statutorily required and would provide consumer benefits and improvements in public health and environmental quality. Compliance with the law must be DOE's top priority.

Respectfully submitted,

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