

**U.S. House of Representatives
Committee on Small Business
2360 Rayburn House Office Building**

November 8, 2023

**Hearing on “Burdensome Regulations: Examining the Effects of
Department of Energy Regulations on America’s Job Creators.”**

**Written Statement of Ben Lieberman
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Chair Williams, ranking member Velazquez, and members of this committee, thank you for the opportunity to testify today. My name is Ben Lieberman and I am a Senior Fellow at the Competitive Enterprise Institute (CEI) a non-partisan public policy organization that concentrates on regulatory issues from a free-market perspective. I work in CEI’s Energy and Environment Department where I cover a number of regulatory programs, including Department of Energy (DOE) appliance efficiency standards. Prior to joining CEI in 2018, I was a staff member on the House Committee on Energy and Commerce where I also worked on DOE appliance regulations as well as other issues and had the privilege of occasionally collaborating with this committee under Chairman Chabot.

When I was here, the problem of appliance overregulation was already serious enough that we held hearings on the program and considered measures to reform it. However, over the last two years and especially thus far in 2023, things have really gone too far, in large part due to the use (or misuse) of these regulations as climate change policy tools. As we all recall, the year began with a commissioner on the Consumer Product Safety Commission (CPSC) telling the media that a ban on gas stoves is a real possibility, sparking a powerful public backlash and strenuous denials from the Biden administration that any such ban was in the cards. But within weeks of those denials, the administration launched a second regulatory attack on stoves, this time from DOE. The pending stove efficiency standards now join many other 2023 DOE proposals for consumer and commercial appliances and equipment, including dishwashers, water heaters, ceiling fans, and washing machines. I would also note that some appliances being regulated by DOE are simultaneously being regulated by other agencies, such as a recent EPA final rule impacting residential and commercial air conditioners.

Each proposed and final rule threatens higher appliance prices, compromised performance, and reduced choices. CEI has filed coalition comments critical of several of these proposed rules and is a party to litigation regarding another.¹

¹ Comments of Free-Market Organizations on Department of Energy Conservation Standards for Consumer Conventional Cooking Products, April 17, 2023, https://cei.org/regulatory_comments/cei-comments-to-department-of-energy-on-proposed-stove-regulation; Comments of Free Market Organizations to the Department of Energy, Energy Conservation Standards for Consumer Furnaces, Notice of Proposed Rule, October 5, 2022, <https://cei.org/wp-content/uploads/2022/10/FurnaceComment-10-5-2022-final.pdf>; Comments of the Competitive

With a regulatory agenda so out of touch with what real people want, its not surprising that Congress is pushing back with a number of legislative efforts that repeal specific appliance regulations, defund their implementation, or prospectively reform the entire program. This includes two bipartisan House bills to stop further regulation of stoves. And, once DOE’s proposed rules are finalized, Congress will have the opportunity to use resolutions of disapproval under the Congressional Review Act to stop them.

So far, most of the attention has been on the impacts of appliance regulations on consumers, but this hearing adds a much-needed focus on the equally-concerning impacts of such regulations on small businesses, and I welcome this committee’s attention to it. As with homeowners, small business owners already face a long list of hardships – from persistently high gasoline prices to rising interest rates to other costly regulations – and the last thing they need is a bunch of new appliance mandates they didn’t ask for.

Let’s start with stoves, and particularly DOE’s proposed efficiency standard and its bias against gas stoves in favor of electric ones. Although the rule is specific to consumer cooking products and not the commercial-grade models that are separately regulated, we all know that these consumer stoves are also used by many small businesses. This includes a large number of catering businesses run out of many people’s homes, many of which make cuisine styles in which cooking with gas is absolutely indispensable. However, proposed efficiency mandates would eliminate some of the features that give gas stoves an advantage, such as the very high heat settings needed for such tasks as searing and stir-frying, and this is simply unacceptable for many in the restaurant and catering business.

I would also note that the DOE stove rule is a part of the Biden administration’s larger war on natural gas use in favor of the electrification of everything for the sake of climate change. And this agenda is very bad news for many small businesses that rely on natural gas for cooking, heating, or any other purpose. DOE itself admits that gas is three times cheaper than electricity on a per unit energy basis, even as it advances appliance regulations that tilt the balance towards electric versions.²

Of course, problematic proposed stove regulations are merely one example. I’ll leave to the small business witnesses to describe some of the challenges posed by other proposed rules for appliances and equipment, but suffice it to say that many small businesses will be adversely impacted by not just one but multiple DOE measures. And in virtually every one of these regulations, DOE uses climate change as a finger on the scale justifying more stringent requirements.

Enterprise Institute and Michael Mannino on Department of Energy Conservation Standards for Residential Clothes Washers, May 17, 2023, <https://cei.org/wp-content/uploads/2023/05/DOE-ClothesWashers-5-18-2023.pdf>; Brief Amicus Curiae of the Competitive Enterprise Institute and FreedomWorks, in Louisiana v. United States Department of Energy, United States Court of Appeals for the Fifth Circuit, No. 22-60146, July 9, 2022, https://cei.org/wp-content/uploads/2022/07/Dishwasher-Amicus-Final_FILED.pdf.

² Department of Energy, “Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy,” 88 FR 58,575 (August 28, 2023), Table 1, <https://www.govinfo.gov/content/pkg/FR-2023-08-28/pdf/2023-18532.pdf>.

Of course, it isn't just the impact on small businesses that rely on these appliances and equipment. These rules also affect small entities that manufacture them as well. We all know the tendency for federal regulations to pose disproportionate hardships on small businesses, especially small manufacturers, and that includes past and pending appliance regulations. Unfortunately, statutes like the Regulatory Flexibility Act have not been able to prevent it. Either the agency concludes that an appliance rule does not have a significant economic impact on a substantial number of small entities, and/or it only looks at the most direct of impacts and ignores all others. Perhaps RFA reforms broadening the applicability of the RFA would be a useful step.³

But the best reform is to sunset DOE's standard setting authority entirely. Doing so would have no downside, only upside for small businesses. Any business owner who actually wants to use the kinds of appliances favored by DOE will always be free to do so, with or without these regulations. The only thing federal mandates do is force government's particular preference on everyone. In the meantime, I would urge Congress to consider using its authority, including that under the Congressional Review Act, to take on each and every one of these rules that poses hardships on small businesses.⁴

Thank you.

³ Matthew Adams, "Regulatory Reform in the 118th Congress: Small Business Regulatory Flexibility Improvements Act," Competitive Enterprise Institute, April 24, 2023, <https://cei.org/blog/regulatory-reform-in-the-118th-congress-small-business-regulatory-flexibility-improvements-act/>.

⁴ Ben Lieberman, "5 Bad Appliance Regulations Congress Should Reject With the Congressional Review Act," Competitive Enterprise Institute, November 2, 2023, <https://cei.org/blog/5-bad-appliance-regulations-congress-should-reject-with-the-congressional-review-act/>.