

**BURDENSOME REGULATIONS: EXAMINING THE
EFFECTS OF DEPARTMENT OF ENERGY
REGULATIONS ON AMERICA'S JOB CREATORS**

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS

UNITED STATES

HOUSE OF REPRESENTATIVES

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CONTENTS

OPENING STATEMENTS

	Page
Hon. Roger Williams	1
Hon. Nydia Velázquez	2

WITNESSES

Mr. Marlo Lewis, Senior Fellow, Competitive Enterprise Institute, Washington, DC	4
Ms. Alicia Huey, President, AGH Homes, Inc., Birmingham, AL	6
Mr. Jeff Bauman, Manager of Regulatory Affairs, National Refrigeration & Air Conditioning Products, Inc., Bensalem, PA	7
Prof. Emily Hammond, Professor of Law, The George Washington University, Washington, DC	9

APPENDIX

Prepared Statements:	
Mr. Marlo Lewis, Senior Fellow, Competitive Enterprise Institute, Washington, DC	32
Ms. Alicia Huey, President, AGH Homes, Inc., Birmingham, AL	35
Mr. Jeff Bauman, Manager of Regulatory Affairs, National Refrigeration & Air Conditioning Products, Inc., Bensalem, PA	43
Prof. Emily Hammond, Professor of Law, The George Washington University, Washington, DC	46
Questions for the Record:	
None.	
Answers for the Record:	
None.	
Additional Material for the Record:	
Appliance Standards Awareness Project Letter	52
Manufactured Housing Institute (MHI)	61

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WEDNESDAY, NOVEMBER 8, 2023

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 10:20 a.m., in Room 2360, Rayburn House Office Building, Hon. Roger Williams [chairman of the Committee] presiding.

Present: Representatives Williams, Stauber, Meuser, Van Duyne, Mann, Molinaro, Alford, Bean, Velázquez, Golden, Landsman, McGarvey, Gluesenkamp Perez, Scholten, Thanedar, and Chu.

Chairman WILLIAMS. Good morning, and I want to apologize for being late to both my democratic colleagues and Republican colleagues.

Before we get started, I want to recognize Representative Bean here to lead us in the pledge and prayer.

Okay. I will do that if you all stand, please.

I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

Please bow your heads.

Heavenly Father, God of all people, thank you for allowing us to be here today to talk about the greatness of our country and how both sides can do everything we can in your name to improve, but we have the opportunity to do so with. We appreciate our witnesses coming today. In your name we pray. Amen.

I now call the committee on small business to order. Without objection, the Chair is authorized to declare a recess of the committee at any time.

I now recognize myself for my opening statement.

Good morning to all of you again. Thank you for being here, and welcome to today's hearing which will focus on examining the detrimental effects of the Department of Energy's regulations on our nation's job creators.

First I want to thank our witnesses for joining us today, and I know you traveled to be with us this morning. We appreciate, again, all of you taking time to do so.

The Biden administration seemingly has it out for Main Street America. Through their misguided economic policies and increased

regulatory requirements, small businesses are finding it harder to make ends meet.

Rather than looking for growth opportunities, small businesses are forced to play defense in order to deal with a whole host of new regulations coming down the pipeline.

President Biden's Energy Department has been especially active in the past few years in passing new rules that have dramatic repercussions on small businesses. By implementing tighter energy-efficient standards, manufacturers are being forced to change significant portions of their operations.

This is increasing the cost of producing this equipment which is ultimately passed along to businesses and the American people. The actions are forcing Main Street America to foot the bill for this administration's radical climate agenda.

Inflation remains a top concern for job creators, yet the DOE's new regulations on gas stoves, ceiling fans, and transformers are increasing costs for businesses and consumers alike.

Not only are these new standards forcing businesses to purchase updated equipment, but they are reducing consumer choice in the marketplace. Competition and consumer preference should be what determines what is produced, not government mandates.

These policies provide minimal benefit to our small businesses and only make it harder for them to operate. So while small businesses suffer under this administration, their concerns continue to be ignored.

It is the job of this committee to be main street's voice in Washington, and we are proud to have this hearing to shine a light on the devastating effects of these new actions taken by the Biden administration.

And if we want to ensure America continues to have a thriving small business economy, our agencies must do better by listening to main street—repeat, listening to main street—throughout the rulemaking process and limit the negative impacts of new regulations.

The government should be in the business of ensuring the economy works for Americans and guaranteeing regulations aren't hamstringing job creators. This committee's goal is to ensure Main Street America is given a fair shot at the American Dream.

Our nation's job creators have been forced to endure profound challenges over the past—last couple of years, and I hope this hearing helps spotlight some of the detrimental consequences of this administration's regulatory policies and will help us come up with solutions to support our nation's small businesses.

Again, I want to thank you all for being here today with us. I am looking forward to today's conversation.

With that, I want to yield to our distinguished Ranking Member from New York, Ms. Velázquez, for her opening remarks.

Ms. VELAZQUEZ. Thank you, Chairman Williams. As Members of the Small Business Committee, we understand that complying with federal, state, and local regulations can be burdensome for small business owners, and that is why Congress created the Office of Advocacy to ensure that federal agencies are taking the views of small businesses into consideration throughout the rule-writing process.

In our oversight role, we can send letters, hold hearings, and request meetings in an effort to hold agencies accountable to the Regulatory Flexibility Act.

The Department of Energy is required, under the bipartisan Energy Policy and Conservation Act, to establish energy conservation standards for approximately 60 consumer products and reevaluate them every 6 years.

Unfortunately, the previous administration violated the law and missed 26 deadlines, including one for distribution transformers.

Don't be fooled by some of the rhetoric you may hear today. The Trump DOE was sued, and as part of a court settlement, the Biden administration is required to review these long overdue standards. This isn't a case of federal overreach.

The reality is, the Trump delays hurt small businesses, costing them more to do business. Since taking office, the Biden administration has issued efficiency standards for more than 20 product categories, saving Americans \$570 billion and reducing greenhouse gas emissions by more than 2.4 billion metric tons over 30 years.

That translates into significant energy savings for small businesses.

Today I hope to have a productive discussion about energy conservation standards that lower energy bills for small businesses, and I would like also to learn more about the steps that the Department of Energy is taking to consider small businesses throughout the rule-writing process.

Maybe in the near future we can bring the federal agencies to hear directly from them, and to give them an opportunity to explain their thinking.

I would like to request that the written testimony of Andrew deLaski, the Executive Director of the Appliance Standards Awareness Project be entered into the record.

Chairman WILLIAMS. So ordered.

Ms. VELAZQUEZ. Thank you, and I yield back.

Chairman WILLIAMS. Thank you. And I will now introduce our witnesses. Unfortunately, our original witness, Mr. Ben Lieberman is sick and unable to testify. So, Mr. Marlo Lewis, we have gone to the bullpen and brought you out, and we appreciate you being here today on such short notice.

So Mr. Lewis is a senior fellow at the Competitive Enterprise Institute located here in Washington, D.C. Mr. Lewis specializes in energy and public policy issues, and previously he served as the director of external relations at the Reason Foundation Los Angeles and the staff director of the House Government Reform Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs.

Mr. Lewis, thank you for being with us again today, and we look forward to hearing your conversation with us.

Our next witness here today is Ms. Alicia Huey. Ms. Huey is president of AGH Homes located in Birmingham, Alabama. AGH Homes is a custom homebuilding company which specializes in high-end custom homes for buyers on individual lots.

Ms. Huey has also been an active Member of the National Association of Home Builders and is currently serving as the Chairman of the Board of Directors.

And while attending the University of Montevallo and volunteering for Habitat for Humanity, she decided to switch careers from early childhood education to homebuilding.

Ms. Huey, thank you for being here today, and we look forward to this important conversation ahead.

Our next witness here with us today is Mr. Jeff Bauman. Mr. Bauman is manager of regulatory affairs at National Refrigeration located in Pennsylvania. Mr. Bauman has been with National Refrigeration, a full-service HVAC and plumbing mechanical contractor since 2008.

Prior to working at National Refrigeration, he spent 21 years as director of the engineering at Victory Refrigeration. Mr. Bauman attended Drexel University where he received his bachelor of science in mechanical engineering.

Mr. Bauman, thank you for being here today, and we look forward to your testimony.

And now I recognize the Ranking Member from New York, Ms. Velázquez, to briefly introduce our last witness appearing before us today.

Ms. VELÁZQUEZ. Thank you. It is my pleasure to introduce Professor Emily Hammond who is a nationally recognized expert in energy, environment, and administrative law. Professor Hammond's research on policy work has focused on transparency and public participation in the regulatory processes. She has served as the Deputy Counsel for litigation, regulations, and enforcement at the Department of Energy as well.

Welcome, Professor, and thank you for being here with us today.

Chairman WILLIAMS. Thank you. And we appreciate, again, all of you being with us on this date.

So before recognizing the witnesses, I would like to remind them that their oral testimony is restricted to 5 minutes in length. If you hear me do this, you need to shut it down. Okay?

And if you see the light turn red in front of you, it means your 5 minutes has concluded and you should wrap up your testimony.

So with that, I now recognize Mr. Lewis for his 5-minute opening remarks.

STATEMENTS OF MARLO LEWIS, SENIOR FELLOW, COMPETITIVE ENTERPRISE INSTITUTE; ALICIA HUEY, PRESIDENT, AGH HOMES, INC.; JEFF BAUMAN, MANAGER OF REGULATORY AFFAIRS, NATIONAL REFRIGERATION & AIR CONDITIONING PRODUCTS, INC; AND EMILY HAMMOND, PROFESSOR OF LAW, THE GEORGE WASHINGTON UNIVERSITY

STATEMENT OF MARLO LEWIS

Mr. LEWIS. Chairman Williams, Ranking Member Velázquez, and Committee Members, thank you for the opportunity to testify. I am Marlo Lewis, a senior fellow at the Competitive Enterprise Institute, and as you have heard, I am filling in today for my colleague, Ben Lieberman, who is ill and can't be here, but he sends his regrets, and I want to thank the committee for understanding these last-minute circumstances.

Appliance overregulation has been a problem for years, and things have gotten worse since January 2023. The year began with

the Chair of the Consumer Product Safety Commission telling the media that a ban on gas stoves is a real possibility.

That sparked a powerful public backlash, followed by strenuous denials from the Biden administration that any such ban was under consideration.

And then only weeks later, the Department of Energy opened a second regulatory front against gas stoves. While DOE did not propose an outright ban, compliance stoves would have to sacrifice product features that have helped make gas the choice of 38 percent of homeowners and the strong preference of many serious cooks—and all for the energy savings that DOE estimated at \$1.51 per year.

Other DOE efficiency rulemakings in 2023 target dishwashers, water heaters, ceiling fans, furnaces, and washing machines.

Each proposed or final rule likely entails higher appliance prices, compromised performance, and reduced choices.

With a regulatory agenda so out of touch with what most people want, it is not surprising that Congress is pushing back with legislative initiatives to repeal specific appliance regulations, defund their implementation, or reform the entire program.

So far most of the attention has been on the adverse consumer impacts. This hearing adds a much needed focus on the equally concerning small business impacts. As with homeowners, small businesses already face hardship and risk from high gasoline prices, rising interest rates, and regulatory campaigns to transform America's motor vehicle electricity and financial sectors.

The last thing small businesses need is a bunch of new appliance mandates that they didn't ask for.

I would note that DOE efficiency standards need not target commercial-grade equipment to hinder small businesses. For example, many catering businesses operate out of people's homes and use consumer stoves.

Many home-based chefs depend on the high heat setting of gas stoves for searing and stir-frying. So for them, an electrification mandate is simply unacceptable.

I should also note that DOE's stove and furnace rules are part of the Biden administration's climate policy plan to phase out natural gas usage and electrify everything. Yet DOE admits that electricity is three times more expensive than gas on a per-unit energy basis.

The electrification agenda disfavors small businesses that rely on natural gas for cooking, heating, and other purposes.

DOE's efficiency standards also impose costs on small businesses that manufacture appliances. That topic deserves more attention and study.

And in general, I think we would all agree that small businesses already incur a higher per-employee regulatory costs than do large firms.

The best reform, it seems to me, is to sunset DOE's standard-setting authority entirely. Doing so would have no down side for small businesses, only an up side. Any business owner that actually wants to purchase or manufacture the kinds of appliances favored by DOE will always be free to do so, with or without such regulations.

The only thing that appliance efficiency mandates accomplish is to force government's particular preference on everyone, including the businesses that don't want them.

So we recommend—CEI recommends that Congress use the Congressional Review Act and other authorities to take on each and every rule that imposes hardships on small businesses.

Thank you very much, and I look forward to your questions.

Chairman WILLIAMS. Thank you very much, Mr. Lewis.

I now recognize Ms. Huey for her 5-minute opening remarks.

STATEMENT OF ALICIA HUEY

Ms. HUEY. Thank you, and I am pleased to appear before you today on behalf of the National Association of Home Builders to share our views on how the Department of Energy regulations are adding to the affordability crisis.

Access to safe, decent, and affordable housing is essential to the well-being of all Americans. While today's hearing is focused specifically on Department of Energy regulations, there are a vast array of regulatory burdens imposed on the homebuilding industry.

On average, regulations imposed by all levels of government account for nearly 25 percent of the price of a single-family home and over 40 percent of the cost of a typical multifamily development.

Government policies and regulations are making it harder for homebuilders and multifamily developers to build housing that is affordable. I would like to share three examples of how excessive regulations originating from the Department of Energy worsen the housing affordability.

Number one is the transformer standards. Soaring costs and shortages of electrical distribution transformers are delaying housing projects across the nation. Some projects face an 18- to 24-month wait for a transformer.

The administration is well aware of the shortages of electrical transformers, yet DOE is pursuing a regulatory change that will make the situation much worse.

Specifically, DOE is seeking to increase the energy efficiency of transformers by a mere one-tenth of a percentage point. This requirement would force manufacturers to retool production lines and worsen the historic backlog.

Transformers are an essential part of the electrical grid, and homes cannot be sold unless a transformer is installed and working.

DOE's proposal will have little impact on energy efficiency and will exacerbate the current transformer shortage. This is why NAHB supports the Protecting America's Distribution Transformer Supply Chain Act.

The legislation would prohibit the Secretary of Energy from changing energy conservation standards for distribution transformers for a period of 5 years, which would allow time for the market to stabilize and so manufacturers could catch up with the demand.

The next DOE regulation concerns gas stoves. DOE has proposed a rule that would ban the sale of most current gas cook top models sold in the United States.

Currently more than 187 million Americans use natural gas appliances, saving them an average of \$1,068 each year.

Each American deserves to live in a home of their choice, in a location of their choice, and fueled by the energy type of their choice. Neither DOE, nor the administration, should take these options away.

And finally the Building Energy Codes. The Inflation Reduction Act included \$1 billion in grants to States that adopt updated Energy Codes, specifically, the 2021 Energy Code.

Adoption of the 2021 Code adds as much as \$31,000 to the price of a new home.

NAHB understands the importance of energy efficiency, but the savings from the 2021 Code can take a homeowner as long as 90 years to see payback. That is not a reasonable trade-off.

If you want to make a difference on energy efficiency, we must focus on existing housing, particularly older homes built before the introduction of modern Energy Codes.

According to the National Renewable Energy Laboratory, upgrades to the existing housing stock could yield a projected reduction of 5.7 percent of the total annual U.S. electricity consumption by 2030.

Given this potential, upgrading the existing housing stock must be the primary focus if the nation is going to make measurable progress.

That billion dollars could have been spent smarter by focusing on upgrading older homes versus making new, already energy-efficient housing unaffordable for many American families.

Improving the nation's housing supply and easing housing affordability challenges will take a coordinated and concerted effort at all levels of government. Let's begin by fixing the broken regulatory process.

Congress should pass legislation such as the Small Business Regulatory Flexibility Improvement Act to ensure that all regulations are designed with small businesses in mind, that regulatory rule-making agencies are required to consider the true cost of regulations on small businesses, and that agencies comply with the letter and intent of the law in crafting new legislation.

Thank you again for the opportunity, and we look forward to working with you.

Chairman WILLIAMS. Thank you, Ms. Huey.

And now I want to recognize Mr. Bauman for his 5-minute opening remarks.

STATEMENT OF JEFFREY BAUMAN

Mr. BAUMAN. Thank you, Chairman Williams, Ranking Member Velázquez, and distinguished Members of the Committee. My name is Jeffrey Bauman. I am the manager of regulatory affairs for National Refrigeration and Air Conditioning Products, which embodies Continental Refrigerator and National Comfort Products.

I am truly thankful and honored for the opportunity to discuss the impact of Department of Energy regulations on small businesses like ours.

I have worked in the commercial, food service equipment industry for over 34 years, including the past 15 years with Continental where I previously held the position of engineering manager.

Approximately 2 years ago our company made the decision that a new full-time position was needed to help manage the barrage of multiple regulatory actions that continue to confront our companies, and I took over that role.

National Refrigeration and Air Conditioning Products is a small, domestic manufacturer that represents approximately 250 high quality manufacturing jobs in Bensalem, Pennsylvania.

Continental Refrigerator is a leading manufacturer of commercial refrigeration equipment, offering over 2,500 different model configurations. We design, build, and certify all of our products to provide superior performance, to maintain safe food temperatures in the harsh environments of commercial kitchens.

Our products must comply with numerous regulations for safety and sanitation as well as DOE energy regulations. The refrigerants and foam insulations that are critical components of these products, must comply with EPA global warming potential, or GWP, limits.

Our company has made significant investments in research and development, and production changes over the past 6 years to transition to extremely low GWP insulation and convert over 99 percent of our products to self-contained R-290 refrigerant, with the lowest GWP available for these types of products.

Multimillion dollar capital expenditures made for new production equipment, including new temperature-controlled foam fixtures to address flow issues with the new low-GWP foams, and new charging stations required for flammable refrigerants.

We also built in-house, state-of-the-art, laboratory-grade test chambers. These labs continue to run around the clock 7 days a week to evaluate product performance and manage the multitude of energy testing required for regulatory compliance.

As a small manufacturer in a heavy regulated industry, Continental is particularly challenged by continual changes in regulations while working to control rising costs and develop innovative products in a highly competitive market.

In 2017, we discontinued a line of horizontal freezers that could not economically meet new DOE energy standards. We compete with numerous, low-cost, imported products from foreign manufacturers who benefit from government subsidies.

Despite our resource limitations, Continental is an active member of industry associations, including AHRI, NAFEM, ASHRAE, ASTM, and the NSF Standards Task Force. We hold positions on numerous committees that are critical to developing robust and reliable industry test methods and standards.

Our company actively works to engage with the Department of Energy and the EPA in rulemaking. We analyze and regularly submit comments in response to Requests for Information and proposed rules.

This effort is critical to our business because compliance with excessive regulations significantly impedes our ability to develop new products, which have been a keystone to the successful growth of our business.

We also work with the Small Business Administration Office of Advocacy and helped initiate a small business roundtable to discuss concerns in the commercial refrigeration industry that we participated in last year with other stakeholders.

On October 10th of this year, DOE published a Notice of Proposed Rulemaking in regards to energy conservation standards for commercial refrigerators and freezers. Our company, along with other manufacturers and industry associations, are extremely concerned with DOE's unrealistic proposals in this notice.

Analysis of the proposed standard level shows extremely excessive reductions that are up to 60 percent lower than currently allowed. We have been unable to identify any potential paths to these types of extraordinary cuts.

DOE's consultants conducted manufacturing interviews that we participated prior to this proposed rule, but it appears the information was not thoroughly evaluated for this rulemaking.

Technology options that DOE indicates would reduce energy consumption in the near future, such as fan controls and high efficiency fans motors, are already in use.

Other proposed technologies, such as microchannel condenser coils, have so far proven to be impractical for many applications. Proposed technologies, such as variable-speed compressors, have shown some promise in reducing energy consumption but have not proven to be economically viable options for many of our products over the next few years.

Increasing our costs to adopt this technology would impede our ability to compete against other products, particularly those from foreign manufacturers.

A review of information in DOE's Compliance Certification Database indicates that more than 85 percent of self-contained products currently certified would fail to meet the new standards.

Manufacturers would have to redesign almost every product to significantly reduce energy consumption in a very short period of time, using proposed technologies that are not proven.

Another example of what we believe is DOE overreach is DOE adding refrigerated chef bases to the scope. There is no test procedure for this product that has been proven to be tested, and DOE is proposing new standards for products that have not been evaluated properly.

Thank you again for this opportunity to share the information about our company, and the significant burden presented by DOE regulations on small businesses like ours. We look forward to working with Congress to address these concerns and will continue to engage with regulatory agencies.

Chairman WILLIAMS. Thank you, Mr. Bauman.

I now recognize Professor Hammond for her 5-minute opening remarks.

STATEMENT OF EMILY HAMMOND

Ms. HAMMOND. Thank you, Chairman Williams, Ranking Member Velázquez, and distinguished Members of the Committee for the opportunity to testify today.

I will be testifying concerning the Department of Energy's approach to rulemaking for its Energy Conservation Standards Pro-

gram, how the process is structured to ensure that the voices of small businesses are heard and how these standards benefit small businesses.

As you noted, I am a professor of law, and I previously served at the Department of Energy, but the testimony I offer today is my own, and I don't represent or speak for any party.

Before I speak about the legal requirements DOE must follow to complete its standards, I want to emphasize that my experience with the Agency revealed a committed group of professionals, whether lawyers, engineers, or economists, who did not treat these legal requirements as boxes to check but rather thoughtfully carried out both the letter and the spirit of these laws in service of good governance.

I will begin with the Energy Policy and Conservation Act, or EPCA. As you know, Congress passed EPCA in 1975 at a time when consumer energy costs were rising and there was a scarcity of energy resources to meet rising demand.

Congress, itself, set the first energy efficiency standards, and it directed DOE to periodically reassess those standards and update them using a detailed set of criteria.

The standards must achieve the maximum improvement in energy efficiency that are technologically feasible and economically justified, and the standards must result in a significant conservation of energy.

Congress explicitly instructed the agency to consider seven factors for this analysis, which include economic impact of the standards on manufacturers as well as consumers.

DOE always sets forth its methodology for evaluating these factors in its proposed and final rules, and that methodology allows it to hone in on costs and benefits to small businesses.

In formulating these standards, DOE offers far more opportunities to participate than required by the Administrative Procedure Act or EPCA, and indeed it will even interview small business owners to ensure that it is fully considering their interests.

This process also helps the agency ensure that it complies with the Regulatory Flexibility Act, the analysis for which is detailed in every proposed rule. That offers further opportunities for engagement with the Agency before the rule is final.

Once a standard is adopted, there is usually a 3- to 5-year time-frame before compliance is expected, and under EPCA, small businesses can seek an additional 2-year exception.

Moreover, DOE offers guidance to small businesses in plain language on the website, complete with real phone numbers to call, and a searchable FAQ section. So small businesses can easily learn how to seek an exception or to get assistance in understanding their obligations.

It bears emphasis that this program brings concrete benefits on householders, small businesses, and other commercial enterprises in the form of real and meaningful savings.

For example, one recent study concluded that energy conservation standards saved businesses almost \$23 billion nationwide.

Each proposed and final rule also documents these kinds of savings, like the \$9 billion that consumers will save under the proposed battery charger standards.

These consumers are small businesses themselves, and also the owners and employees of these small businesses whose financial pressures at home are diminished when their bills are lower.

There are other benefits too. By reducing energy use, these standards reduce air pollution, which brings health benefits and avoids lower worker productivity and lost work days.

Those kinds of disruptions are especially hard on small businesses, which are already feeling the strain of labor supply shortages.

And as climate disruption presents even more risks to the economy and worker well-being, this important program's additional benefits should not be understated.

Reduced energy reliance translates to grid resiliency, and of course reduced cost to consumers alleviate the burdens of those who are most impacted by climate disasters.

DOE values its avoided greenhouse gas emissions and the billions of dollars for its major rules, and these benefits extend to small businesses too.

Thank you again for the opportunity to testify today, and I look forward to your questions.

Chairman WILLIAMS. Thank you very much, and we will now move to the Member questions under the 5-minute rule. I recognize myself for 5 minutes.

The Department of Energy is not typically thought of as a regulatory entity. However, it appears the Biden administration is working to undo these norms.

Mr. Lewis, in your testimony, you highlight that you believe the best thing that Congress could do to protect small business and consumers is to take away DOE's standard-setting authority entirely.

So, question, can you expand on why you feel this is an important step and why DOE should not be the one responsible for setting these standards?

Mr. LEWIS. Well, these standards have been developed over decades—

Chairman WILLIAMS. Microphone.

Mr. LEWIS. Oh, I am sorry. DOE has been setting these standards ever since EPCA was adopted—and perhaps parts of the federal government even before that—and EPCA was enacted in 1975.

So we have had literally decades of mandatory increases in energy efficiency of appliances, and we have, I think, long passed the point of capturing all the low-hanging fruit.

And so we had an example that was mentioned before of improving energy efficiency by one-tenth of 1 percent, and it is really hard to believe that that translates into gigantic net savings to small businesses or the economy.

At a certain point, you have to, I think, trust that there are—that consumers are—have the primary interest in looking out for what is best for them and that they can make their own choices, and that DOE doesn't need to continually put its thumb on the scales.

So I think, you know, DOE should just declare a victory, say that, yes, you know, mission accomplished and now it is up to competitive forces and the economy to determine to what extent we

prioritize energy efficiency versus other product features, qualities, and consumer choices.

Chairman WILLIAMS. Competition always works.

Ms. Huey, I am concerned that the Department of Energy is prioritizing expensive and burdensome energy efficiency standards, while providing meager efficiency benefits.

Distribution transformers you have talked about are a clear example of this. The critical devices are already 99.5 percent efficient, and they are hard to come by due to supply chain pressure.

So, question, please tell us how this new rule would impact homebuilders and hurt your industry.

Ms. HUEY. We have several areas that have houses that are sitting waiting on transformers. I believe in one area of the country, we have over 4,000 homes that are ready, but—and also time is money, so those houses are costing more. As they are sitting there, builders and developers, are paying interest.

And then ultimately it comes down to the American consumer having to wait to buy the American Dream.

Chairman WILLIAMS. Bad timing right now with interest, right?

Ms. HUEY. Yes, sir.

Chairman WILLIAMS. Let me follow-up on that. Given the challenges you just outlined, do you think the Department of Energy appropriately balanced consumer needs and energy efficiency when drafting this rule?

Ms. HUEY. No, sir, I don't think so. With the efficiency that there already is, if we could just put a pause on increasing the efficiency right now until we can narrow down the backlog, get rid of the 18- to 24-month waiting period, and then look at the energy efficiency again.

Chairman WILLIAMS. Okay. With what I have remaining, Mr. Bauman, a few years ago, your company created a new position to help manage the regulatory burden by the federal government. Please share with us what led your company to make that decision.

Mr. BAUMAN. Our company primarily does commercial refrigeration equipment. We have had new standards that came out in 2014, additional new standards that have been—or first comes the test procedures, and we—when we looked at what the test procedures, as I mentioned in my testimony, that we are involved in, which did not—not a lot of small businesses are able to do, that we are involved in those many organizations that I mentioned because those are the organizations that write the test procedures.

And we have seen test standards that came out previously that were excessive that just, when it came down to it, we had to shut down production and development, we had to shut down other programs, and we realized a need to really dedicate a lot of resources to that effort to get the regulations.

Chairman WILLIAMS. Okay. Quickly, regulatory compliance is expensive, and can you describe quickly what endeavors your business has had to forego so that you can keep up with changing regulatory standards.

Mr. BAUMAN. We had a line of freezers that we had to discontinue. We also have to annually recertify all of our products with the Department of Energy.

We also have, as I mentioned, we built a new test lab, and that was primarily because of the onslaught of numerous energy regulations that we had to comply with, and that lab is running continuously primarily doing energy testing.

Chairman WILLIAMS. All right. Thank you for that, and I now recognize the Ranking Member for 5 minutes of questions.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Mr. Bauman, I heard you mention that you have worked with the Office of Advocacy. Is that true?

Mr. BAUMAN. Yes, we have.

Ms. VELAZQUEZ. Okay. How has that experience been?

Mr. BAUMAN. I would say we have had conversations. In all honesty, we—

Ms. VELAZQUEZ. Good? Bad?

Mr. BAUMAN. Good conversations with some, I will say, some of the previous staff. We have had less responses back in recent months.

Ms. VELÁZQUEZ. Okay. This week, we are debating the SBA funding on the floor, and Republicans cut the Office of Advocacy budget by \$800 million, yet right now we are discussing how regulations affect small firms.

Does it make sense to cut the budget of an office that exists to monitor federal agency regulatory small business compliance, and advocate for small firms? It seems disingenuous to me.

Professor Hammond, how many years does the Department of Energy typically give small businesses to transition to new standards?

Ms. HAMMOND. It gives typically 3 to 5 years with the opportunity for an exception for up to an additional 2 more.

Ms. VELAZQUEZ. So there is an extension allowed?

Ms. HAMMOND. That is right.

Ms. VELAZQUEZ. And have small firms utilized this extension?

Ms. HAMMOND. Yes. And those are all published in the Federal Register.

Ms. VELÁZQUEZ. Is this enough time to comply, in your opinion?

Ms. HAMMOND. Yes.

Ms. VELAZQUEZ. Do any standards apply retroactively?

Ms. HAMMOND. No. They all apply in the future.

Ms. VELÁZQUEZ. Okay. Professor, the Energy Policy and Conservation Act allows DOE to adopt consensus standards that were negotiated by the industry and energy efficiency experts. Could you please discuss this option.

Ms. HAMMOND. Yes. The agency convened a federal advisory committee to enable negotiated rulemaking, which is an alternative to typical notice-and-comment procedures that allows for a consensus-based process, promoting deeper collaboration between the Agency and stakeholders.

Ms. VELAZQUEZ. So, the industry is part of the negotiations and at the table?

Ms. HAMMOND. Yes.

Ms. VELAZQUEZ. Correct?

Ms. HAMMOND. [Nonverbal response.]

Ms. VELÁZQUEZ. Mr. Lewis, CEI's testimony failed to mention that DOE was presented with a private consensus agreement for a proposed final standard for gas stoves in September 2023. Yes or no, are you aware of this agreement?

Mr. LEWIS. No, I am not.

Ms. VELÁZQUEZ. Okay. Would you support it?

Mr. LEWIS. I would have to look at it first.

Ms. VELÁZQUEZ. Okay. Professor Hammond, can you discuss the previous administration's failure to meet the statutory deadlines under the Energy Policy and Conservation Act and why DOE is issuing standards more frequently?

Ms. HAMMOND. Yes. Congress instructed the agency to reconsider these standards every 6 years, and the Trump administration didn't do what Congress instructed, and it got sued. So now DOE is operating under a consent decree where it has to play catch-up, and it has to maintain its regular rhythm of review that Congress has set forth.

Ms. VELÁZQUEZ. Professor, there is a tremendous amount of misinformation circulating about DOE's appliance standards. Can you discuss the benefits of the new energy efficient standards for small firms?

Ms. HAMMOND. Yes. Small firms save in a number of ways, and a number of these ways are itemized in the rulemaking record. They save on energy, and then of course they also save on the indirect benefits like the health benefits from reduced air pollution.

Ms. VELÁZQUEZ. Thank you. And knowing that small manufacturers may be disproportionately impacted by the new standards, how does DOE seek out the input of the smallest of small firms?

Ms. HAMMOND. It does a significant amount of research on the front end to make sure it has identified all of the small businesses that might be impacted, and among other things, it reaches out to them individually and offers the opportunity for a conversation.

Ms. VELÁZQUEZ. Thank you.

Ms. Huey, the DOE standards apply to new products and give small firms 3 to 5 years to comply. Moreover, DOE's process allows small manufacturers, advocates, and states to work together to jointly recommend regulations.

Given the flexibility built into the process, why doesn't NAHB work collaboratively with the agency rather than opposing regulations that can lower energy bills for homeowners?

Ms. HUEY. I wouldn't say that we were against the regulation. We just have such a backlog now that we would like to catch up before we implement any new energy efficiency standards for the transformers.

Ms. VELÁZQUEZ. I yield back, Mr. Chairman.

Chairman WILLIAMS. Okay. Thank you very much.

And I now recognize Representative Stauber from the great State of Minnesota for 5 minutes.

Mr. STAUBER. Thank you very much, Mr. Chair and Ranking Member Velázquez, for holding this hearing today, and thank you to our witnesses for taking time away from your busy schedules to help shed light on this important topic.

Today we are here to talk about the devastating effects of the DOE's efficiency standards on small businesses and families in our districts.

These standards are designed to reduce energy consumption in our homes and businesses. However, they have had the unintended consequence of making our homes less affordable and more expensive to build.

Ms. Huey, you mentioned in your testimony that you think federal regulatory agencies should include the, quote, true, end quote, cost of the regulations in the rulemaking process. Can you expand a bit what you mean by the "true cost"?

Ms. HUEY. Yes, sir. Thank you for the question. What I have come to learn in the regulatory rulemaking process here in Washington is that agencies are only required to consider the direct cost of crafting new regulations. They don't take into consideration sometimes just the waiting time. Time is money.

Time that I have to spend waiting for water taps to be installed, waiting for zoning approval, waiting for permitting, all of those sorts of things need to be taken into consideration as well.

Mr. STAUBER. So when we talk about gas furnaces, the Department of Energy wants to get rid of gas furnaces or change the way they operate.

Water heaters. A new water heater, their recommendation is to get water heaters that reduce energy. To replace a water heater is \$2,800.

Ms. HUEY. And that is just the water heater. That doesn't include installing the electrical plug for it.

Mr. STAUBER. Exactly right.

Dishwashers—

Ms. HUEY. Yes, sir, same.

Mr. STAUBER.—\$225 more.

Gas stoves, between \$800 and \$3,200 it is going to cost the American people. Light bulbs, \$140 more. Washers, \$200. Air conditioners, pushing \$2,000.

And would you believe our federal government wants to regulate ceiling fans? Think about the overreach by this federal government.

Ms. Huey, these aren't my numbers. These are administration's numbers. \$320 billion—that is with a B—\$320 billion of additional regulations on American small businesses and manufacturers.

What do you—give us an estimate of the cost per household if these changes were made. Can the American people afford this?

I mean, the government wants to be in every part of our lives—ceiling fans, dishwashers, water heaters, light bulbs. It is unbelievable. Give us a cost from the builders, and what is their sense?

Ms. HUEY. And, you know, we are talking about costs for small businesses, but in my business it is ultimately passed down to the consumer.

With the new Energy Codes, the 2021 Energy Codes, that is an additional cost of \$31,000 to a new home. That is something that a teacher or a firefighter or a nurse cannot afford.

Mr. STAUBER. Or a police officer like myself?

Ms. HUEY. Or a police officer, yes, sir.

Mr. STAUBER. I just—Mr. Chair, Mr. Chair, \$31,000 these bureaucrats put on somebody that wants to build a new home, not

through Congress, through these three-letter agencies, unaccountable, nonelected, to put on the American people.

And this is just what you are talking about—\$31,000. The median income in the district that I represent is 60-ish-thousand dollars. This is unbelievable.

And the interest rates right now, it is simply—it is simply unacceptable. I can't imagine what folks are thinking when the government is telling us what type of water heaters we can use or gas furnaces we need to change, gas stoves—banning gas stoves.

My 90-year-old father says, what am I going to cook at the hunting shack with? It is a gas stove. He has been doing it for 60 years.

This is overreach, Mr. Chair, by our federal government, in every aspect of our lives, complete overreach, and it is unacceptable. I think the American people have had it, and I yield back.

Chairman WILLIAMS. Thank you very much.

I now recognize Representative Golden from the great State of Maine for 5 minutes.

Mr. GOLDEN. Thank you, Mr. Chair.

Professor Hammond, I really only have two questions, I believe. I reserve the right for follow-ups, but by all means, take your time and answer them as best you can.

You mentioned in your opening testimony that the Agency does a good job of speaking in very plain terms to businesses to help them understand new regulations and compliance, and I am hoping you can treat the committee the same way here and not assume that we are deep in the weeds.

If you were to hand us some kind of blueprint, like a one-pager, that would tell us a little bit about the process that DOE conducts to do outreach to small businesses as part of the rulemaking process, what would it show us? What concrete steps? If you could be, you know, detailed.

Ms. HAMMOND. It would show a very—a years' long process to not only develop the standards themselves but also the test procedures that come before the standards.

These begin with Requests for Information—which are widely extended and as well as published in the Federal Register—the development of technical support documents, webinars, and then specific research to identify particular small businesses who may be impacted, to seek them out directly. And that is all before a rulemaking is even proposed.

Once it is proposed, it goes through that process again. It works with the Office of Advocacy as well to make sure that it is properly considering the interests of small businesses, and again—

Mr. GOLDEN. You bring specific industry, small business owners in and actually sit around the table with them?

Ms. HAMMOND. Well, yes. For example, I am aware that yesterday DOE hosted a public meeting on the commercial refrigeration standards.

Mr. GOLDEN. Okay. And how—could you describe, like, attendance? What is the update?

Ms. HAMMOND. I haven't checked on the attendance yesterday. The ones that I previously participated in were very well attended.

Mr. GOLDEN. Thank you. So kind of moving on from there, how often do you think that input is received and then acted upon such

that between a proposal and a final rule, changes are actually made that incorporate what small businesses have given back to DOE?

Ms. HAMMOND. Very often. It is extremely common for the Agency to adjust its final rule in response to all of the input it received during the proposed rule.

And I should note that a number of the standards we are talking about today are proposed standards, so there is still an opportunity for lots of engagement with the Agency, and it indeed will address those comments.

Mr. GOLDEN. Are there any specific examples that you can recall in your own time in the Department where you saw that process play out and changes made and incorporated?

Ms. HAMMOND. I—yes. And of course I was serving as counsel, so I—I will maybe not be quite as detailed, but I will say an example is for the general standard—the general service lamp, the light bulb standard which, of course, Congress directed the agency to undertake.

And the Agency considered all of the feedback of businesses, and it developed a different enforcement timeline to provide even further a glide path to make sure that people had a chance to be ready for the standard going into effect.

Mr. GOLDEN. Sure. And finally in your testimony you mentioned Congress built in a relief valve for small businesses. Can you talk a little bit about the flexibility that that affords the Agency and small businesses? And can you think of any examples where that has actually been utilized?

Ms. HAMMOND. I don't have a concrete example right at hand, but essentially this is written into the statute, and the Department has very clear guidance on its website about what a small business would need to do.

Once a small business does present a request, then that is published in the Federal Register, and assuming it is granted, that is also published in the Federal Register. So it is—

Mr. GOLDEN. Is that like a specific waiver request from one business or is it—

Ms. HAMMOND. That is right.

Mr. GOLDEN. Okay. So it is not a broad waiver across an entire industry?

Ms. HAMMOND. That is right. A small business can take advantage of that.

For the test procedures, there is also a waiver process available, and that relates to the procedures themselves and the technology.

Mr. GOLDEN. All right. Thank you. I yield back.

Chairman WILLIAMS. The gentleman yields back.

I now recognize Representative Alford from the great State of Missouri for 5 minutes.

Mr. ALFORD. Thank you, Mr. Chair, and thank you, Ranking Member Velázquez. Thank you to all of our witnesses here today. I know you come here on your own dime and own time, and we really appreciate that.

Hey, this is a very important hearing for us for a couple of reasons. You know, the past few months, we have all seen the news about the Department of Energy—or I think I am going to rename

it the department of encroachment now—and their new energy efficiency rules.

And now we are really learning the impact that it is going to have on our businesses and our American families.

The Biden-Harris administration time and time again, I think, fails to consider the impact of these erroneous over-regulations, what it is going to have on our homebuilders, our families, and our businesses.

If we do not champion main street interests, then we will lose the small businesses that are part of the fabric of America, and a contributing factor to the closure of small business is the current regulatory environment.

Ms. Huey, I want to start with you if I can, ma'am.

In your testimony you said regulatory burdens account for 25 percent of the cost of a typical newly built home. I just gave up my real estate license, sold new homes actually in the Kansas City area for many years.

The average or median price there for a home is \$270,000. That would bump it up to \$337,500. And when you consider the interest rates now that, especially younger folks, new families are trying to get into homes, it seems like the Biden administration does not believe in the American Dream.

It is trying to kill the American Dream, the American Dream of homeownership, moving our society from owners into renters.

I have had conversations with Will Ruder, the president of our local Home Builders Association there in Kansas City. He says the exact same thing, that this 25 percent increase is going to drive people out of the Kansas City area and into places that are not having to conduct, because of other regulations—the Kansas City Council is imposing on Building Codes there, but it is a monstrous really burden that people are having to pay to get into the American Dream of homeownership.

How do you see this playing out long-term for builders? How did they keep building when the Biden administration keeps putting a foot on their neck?

Ms. HUEY. It does make it extremely more difficult because we have federal, state, and regulations all to follow.

It is noted that NAHB illustrates that for every \$1,000 increase in the price of a median home, which is about \$425,700, that prices out 140,436 households out of the market—for every \$1,000 increase in the price of a house.

Mr. ALFORD. Well, when you consider this—and this is getting off into another topic, I realize it, but investment companies like BlackRock that are also investing in build-to-rent communities—we have seen that in the Kansas City area—where they are building entire neighborhoods of rental homes that look like regular, single-family homes, and they are, but they are like apartments.

And you know what else, it is a lot easier to get people into rentals and apartments especially. You can ballot harvest a lot easier in an apartment than you can walking a single-family neighborhood.

It is scary what is happening to the American Dream, and I applaud you and the homebuilders of America who are trying to make

that dream possible and affordable for the American people. I am running out of time.

Mr. Lewis, in your testimony, you mentioned the RFA's and lack of Agency's willingness to take it seriously. Please talk about how we can better utilize or improve the RFA so we can use it as effective tool rather than just a check box.

Mr. LEWIS. Yes. Well, one thing that—oh, sorry, the mike again. Yeah. I mean, the agencies have flexibility—they get flexibility in determining what is a significant impact or what is a substantial number of small entities.

So I would think that maybe tightening up or clarifying those definitions. Like I was just trying to think—I was talking to my colleague on the way over here and kicking some ideas around, and what is a significant impact, it seems to me, would be relative to the profit margin of the business that is affected.

And so maybe there could be some standard that will be adopted that would say, you know, for the industrywide average—

Mr. ALFORD. Sir, we are out of time. I am sorry.

Mr. LEWIS. Okay.

—the regulation cannot cost more than, say, 3 percent of your profit margin. I mean, that might be an idea.

Mr. ALFORD. I like that idea.

Mr. Chairman, I yield back.

Chairman WILLIAMS. The gentleman yields back.

I now recognize Representative McGarvey from the great State of Kentucky for 5 minutes.

Mr. MCGARVEY. Thank you, Mr. Chairman. Thank you all for being here today.

Thank you, Professor Hammond. I want to especially thank you for highlighting some of the contributions of our civil servants who do a really good job in trying to do the best they can for all of us in this country.

I am going to repeat a little bit of myself from one of the previous hearings we had in this committee, and that is, we are here to talk about regulations. We care about how regulations impact people and how they impact businesses.

And that well written and well executed regulations are important—they save lives. They save money. They save money for our government. They save money for our consumers. They also can save our planet—and I want to go to these specific standards as an example of that.

The American Council for an Energy-Efficient Economy estimates that efficiency standards for appliances and lighting would save the average Kentuckian, where I am from, an estimated 15 percent of their annual bill.

This isn't surprising. I see in my own home, which was built in the late 1920s, early 1930s, the importance of having energy-efficient items.

The DOE estimates that by 2030, cumulative savings from all standards in effect since 1987 will reach nearly \$2 trillion.

So I want to go back and, Professor Hammond, I want to start with you, in part because I am a recovering lawyer and I have always wanted to ask a law professor a question instead of having them ask me a question.

But the administration is required by law to issue these regulations, correct?

Ms. HAMMOND. That is right.

Mr. MCGARVEY. And it is a result of a court decision from the Trump administration not issuing these regulations that is requiring them to not just issue the regulations but to have to play catch-up for what the Trump administration didn't do in the 4 years it was in office?

Ms. HAMMOND. That is right.

Mr. MCGARVEY. Okay. So these are required by law, and obviously this committee is not suggesting that the administration break the law. So let's talk about what these standards are doing.

And it has been shown that the standards we are examining today will help benefit small businesses and save them money in the long run.

Again, we care about small businesses. Small businesses are the backbone of my community in Louisville, Kentucky. We want them to succeed and thrive and do well.

So how do these standards benefit the broader economy and the country, including small business, small business employees, and those who do business with them?

Ms. HAMMOND. In a number of ways. There is, of course, the direct benefit, which is lower energy bills, and I should note, lower water bills too for some of the standards.

So that is a direct impact that is true for a business that is using any of these appliances or equipment, as well as the homeowners or householders who also use them in the house and also work at small businesses.

Then of course there are the broader impacts, like the health benefits and the climate benefits that I mentioned.

Mr. MCGARVEY. Thank you. Okay. So kind of just reframing this again, the court has said the administration has to issue these. They have to issue more because the Trump administration didn't do it.

They can be helpful, but we want to make sure they are helpful to small businesses. Is there a process by which the administration is considering the needs of small businesses? Do they have community engagement sessions? Must they take into consideration any of these comments in the proposed rule?

Ms. HAMMOND. Yes. First of all, to answer your final question, they are required by law to respond—not just consider but respond—to significant comments raised, and of course the overall process is very much designed to consider interests of all stakeholders but particularly small businesses.

Mr. MCGARVEY. Thank you. And when they find a legitimate concern, how do they work to address it?

Ms. HAMMOND. They work first to just understand what it is and make sure that they have thoroughly considered the issue. They look to see whether there are adjustments to be made and how those trade off against the other factors that Congress required the Agency to consider.

So it is very much a case-by-case decision, but those comments do have an impact.

Mr. MCGARVEY. Thank you, Professor, I appreciate that because, again, we want to make sure that our small businesses are being heard, that they are being represented, that these regulations make sense for them. So I appreciate that very much.

Mr. Chairman, I yield back.

Chairman WILLIAMS. The gentleman yields back.

I now recognize Representative Van Duyne from the great State of Texas for 5 minutes.

Ms. VAN DUYNE. Thank you very much, Mr. Chairman.

This hearing today is one of tremendous importance. With Americans suffering under 3 years of disastrous policies from the Biden administration that have been painfully driving up cost of living.

It has made food, electricity, housing, and transportation impossible to afford, and it has made new homeownership an impossibly distant dream for many young Americans.

Now we need to deal with a reckless agenda from the Department of Energy, pushing overreaching energy-efficiency rules that will burden small manufacturers.

Earlier this year, this committee passed my bill, the Small Business Regulatory Reduction Act, which requires the Small Business Administration to ensure, for each fiscal year, the cost to small businesses of the administration's rulemaking is not greater than zero, and while also requiring the SBA to issue a report on any regulations issued by other federal agencies that impact small businesses.

And I am looking to expand this to obviously the Department of Energy now, and I think it is a perfect place to start.

This hearing is a great example of why my bill is necessary, and which is to ensure Congress is reigning in the power of out-of-control, regulatory, glutton executive branch. And I look forward to continuing to work with the committee to see my bill move forward and to work to strengthen small businesses across the country.

We just heard testimony on, in answers to some of the questions, that said that these regulations benefit small businesses.

Mr. Bauman, I want to ask you—you work for a small business—how often do you guys Go, Oh, goody, we got more regulations, these are going to benefit us?

Mr. BAUMAN. We don't—it hurt us, as I said, from the product side, our competitiveness and ability to offer—innovate products and work along those lines versus we are taking time to address regulations to meet with and—as Ms. Hammond mentioned, we were in a meeting yesterday with DOE in regards to commercial refrigeration equipment, and I was there. I was basically the only small business. There were a few others, there were a handful, but a lot of small businesses don't have the opportunity like we have invested in to do that. So it has absolutely been a burden. And the other—

Ms. VAN DUYNE. So this is going to cost small businesses money?

Mr. BAUMAN. Yes, yes.

Ms. VAN DUYNE. But we just heard about all of these cost savings that they were going to have. Do you actually see that? I mean, there is one thing to say that that is going to happen on paper, but in reality do you see that that is happening?

Mr. BAUMAN. We do not see that happening. It continues to be a burden on our sales and on our manufacturing.

Ms. VAN DUYNE. So you have got increased inflation as well, and that is being coupled with increased federal regulations. Has that made it more difficult for your business to grow?

Mr. BAUMAN. Yes, it has. We are privately owned. We are very short-term borrowers. We try to not do a lot of investments that we can't afford to invest ourselves. But, yeah, there is all different types of capital expenditures that are harsh on our business.

Ms. VAN DUYNE. And, Ms. Huey, I am going to ask you the same question. I mean, do your home builders—are they excited with these new regulations? Do they see all of the cost savings that we have heard are going to come? Are they actually seeing that in reality?

Ms. HUEY. Yeah, no. Thank you for the question.

As I talked about earlier, one-quarter of the cost of new construction of a single-family home is government regulations, and that is at all levels. For me I looked back at a house I built recently. I spent \$35,000 before I ever started building the house. That was permit—building permit, land disturbance permit, water tap, sewer tap, driveway permit, gravel, silt fence. All of those add up before I ever really started building the house.

Ms. VAN DUYNE. What State?

Ms. HUEY. Alabama.

Ms. VAN DUYNE. In Alabama. So be happy that you are not building in California because pre-pandemic it was 40 percent regulatory costs.

Ms. HUEY. Yes, ma'am.

Ms. VAN DUYNE. But, you know, have you found that in your increased inflation as well, coupled with increased regulations, has that made it difficult for you to grow your business?

Ms. HUEY. It has. And it is difficult for the consumers. They don't understand that when I give them a price of what—that estimate of what their house is going to be and then when those estimates grow because of things like fuel surcharge, you know, in the last couple of years that we have had. Now I understand the fuel prices are down, but in the last couple of years they were up. So it is things like that that added on to the top that we didn't expect.

Ms. VAN DUYNE. So you are saying that not only are these regulations overburdensome and harmful to small businesses, but you are saying actually people who want to buy homes are also affected negatively by this?

Ms. HUEY. Absolutely.

Ms. VAN DUYNE. So how much more have homes cost in the last 3 years, if you could, in Alabama or anywhere in the country?

Ms. HUEY. I know that in the last couple of years, one point of reference I have is during the pandemic—and I know that we are not talking about lumber prices, but our lumber package went from \$35,000 to \$125,000, and it settled somewhere around \$75,000.

Ms. VAN DUYNE. Well, I would look forward to hearing if you guys have any solutions. I know typically what I hear is we just want the government to stay out of our business. That was the best way to help it grow.

I appreciate you guys being here. And I yield back.

Chairman WILLIAMS. The gentlelady yields back.

I now recognize Representative Chu from the great State of California for 5 minutes.

Ms. CHU. While those on the other side of the aisle are trying to make it sound like the Biden administration decided to just do rulemaking on its own, but let me emphasize this is the law. And the Department of Energy is required by law to evaluate energy efficiency standards for various products and appliances every 6 years. Once an updated standard is published, small businesses get 3 years to comply and get an extra 2 years' grace period before they have to come into compliance. So that is 5 years total to do so. And let's not forget that these standards only apply to newly manufactured products, not to existing products that consumers already owned.

We also heard from Professor Hammond's testimony that there is ample opportunity for small businesses' and small manufacturers' concerns to be considered at every step of the department's process when they decide how to update a particular standard. And, in fact, she said that the department even goes further than what is required, offering webinars and conducting other types of direct outreach to small business stakeholders. So, actually, the Biden administration is going above and beyond to consider small business voices in the rulemaking.

Actually, we are in this situation because the previous administration missed scores of deadlines violating the requirements in the law. And, in addition, there was a lawsuit over the previous administration's failure to meet the standards. It was settled, and the settlement was that the DOE was required to review these regulations.

So, Professor Hammond, can you explain why the Department of Energy is being required to issue so many new standards now and give an example of how this benefits small businesses?

Ms. HAMMOND. Sure. As you described, it is required to do so many now because it has its existing statutory obligations, plus the backlog that now a court is enforcing that it has to comply with.

And then in terms of the kinds of benefits, these benefits can be for all kinds of small businesses. We are not just talking about manufacturers here. We are talking about all small businesses. It is the convenience store owner. It is the person who has the restaurant or cooks out of their home. Any number of businesses who use appliances are going to be saving on their bills because of these standards.

Ms. CHU. Well, let's talk about one particular appliance because there is so much misinformation about the proposed gas stove standards. The Department of Energy is not proposing to ban gas cooking products any more than it is trying to ban light bulbs.

Does the DOE even have the authority to ban gas stoves?

Ms. HAMMOND. No, it doesn't.

Ms. CHU. When would these proposed standards for gas stoves go into effect? And, by the way, can you explain what the standard is now?

Ms. HAMMOND. Well, I will mention that the proposed rules, they are not even finalized yet, so they will still benefit from input, the types of which we are hearing today. The proposed rules are

not just for gas stoves. They are for gas and electric stoves as the department is required to do. And they will go into effect, I think it is 3 to 5 years from when the rule is final. I just want to note, those are future-looking for new stoves. It has nothing to say about what happens for people who already have gas stoves.

Ms. CHU. And, in fact, the DOE does not have the authority to take products out of consumers' homes or small businesses. Is that correct?

Ms. HAMMOND. Absolutely.

Ms. CHU. Now, can you also give us an example of where the DOE did a review and maybe cite a standard that the DOE decided not to update because it did not meet the criteria?

Ms. HAMMOND. One that comes to mind is space heaters. DOE decided not to set efficiency standards for those. So it does look at these and decide whether it is called for under the statutory requirements.

Ms. CHU. So the process works, and the DOE is not overreaching. Correct?

Ms. HAMMOND. That is right.

Ms. CHU. And let me ask also about the particular savings that the average American household is saving, because it is not just small businesses. It is every American that is saving on their utility bills. Can you talk more about that?

Ms. HAMMOND. Sure. And that is true. All of these rules have to be cost justified. That means the costs have to be outweighed by the benefits, and DOE published those transparently for everyone to see. The deLaski and Mauer study that I cite in my written testimony provides State-by-State analyses of benefits not just to businesses but also to consumers.

Ms. CHU. Thank you.

I yield back.

Chairman WILLIAMS. The gentlelady yields back.

I now recognize Representative Meuser from the great State of Pennsylvania for 5 minutes.

Mr. MEUSER. Thank you, Chairman. I appreciate it very much. Thank you very much to our witnesses.

So we just heard—and I say this in all due respect—how wonderful the DOE's regulations and rulemaking is and how positive it must be for small business.

Mr. Lewis, do you find that from gas stoves to other rules being made that that has been beneficial to the industry that you are familiar with?

Mr. LEWIS. Well, I don't have much industry specific experience, but I will say that—mike. Oh, sorry, the mike.

I can't—

Mr. MEUSER. Well, Competitive Enterprise Institute, you must—that deals with businesses. Right?

Mr. LEWIS. Yes, that's right. But, in other words, we don't—we are not spokespersons for any particular industry. My colleague, Ben Lieberman, who was supposed to testify, actually does have much more contact with industry experts. I wish he were here.

Mr. MEUSER. And I will move on down the line. Ms. Huey.

Mr. LEWIS. But if I could—

Mr. MEUSER. Yeah, go ahead.

Mr. LEWIS. Yeah. But if I could mention, you know, some of these costs are in the form of degraded performance. Like many people complain that the dishwasher has to be run twice in order to get the dishes clean, that clothes washers now, they are so efficient in their use of, say, water that you have to wash the clothes twice.

Mr. MEUSER. Right.

Mr. LEWIS. And we actually had an ad back a few years ago which was billed "Send Your Underpants to the Undersecretary," because a lot of people were complaining that they had to run the same load twice.

So those are costs that the agency is really not terribly concerned about.

Mr. MEUSER. Good. Great points.

And if they actually were to talk with stakeholders, as we are hearing, that the overreach is just phenomenal—you know, I was in business for nearly 25 years. And, Mr. Bauman, I want to ask you, when you all have improved air-conditioners, when you make air-conditioners more efficient, you make them less cost, you make them utilize less energy, did any of that come from a mandate or a rule from the government?

Mr. BAUMAN. No. We—

Mr. MEUSER. It is laughable. Right?

Mr. BAUMAN. Yeah. We look at what the regulations are, but in the air-conditioning and on the refrigeration side, we are because of the competitive market—

Mr. MEUSER. You make it better?

Mr. BAUMAN. Right.

Mr. MEUSER. So your customers—so it costs them less, so they are using less fuel, so as they are cooling the area in the best manner and most effective way possible. It is called American innovation. It is called entrepreneurship. Would you call it government rulemaking and mandates?

Mr. BAUMAN. I would say the innovation is where we—not the mandates, but having products that are innovative and, again, primarily that are providing refrigeration for safe food or those that really are providing safety and comfort.

Mr. MEUSER. And, Chairman, I am sorry I sound a little sarcastic, but it is a little hard to take.

So, Ms. Huey, I would like to ask you a couple of questions on the transformer issue that you spoke about in your testimony and the shortage that exists and the Department of Energy now submitting that it needs to have some new standards for these transformers, and yet they have gone through all kinds of efficiency measures over the last several years.

Do you want to just speak on that a little bit further, please?

Ms. HUEY. Yes. So as we have talked about, they are already, you know, like 97.9 percent energy efficient, and we are only increasing the efficiency by 1/10 of a percent while we have an 18- to 24-month backlog of people that need them, the houses that are sitting. I think it is in the Houston area there is about 4,000 houses that are sitting. And then recently the tornadoes that ripped through Mississippi, I think there was about 400 trans-

formers that were torn out there. So it only adds to the backlog and the time.

Mr. MEUSER. Sure. Has your industry been in—has the DOE been in contact with you folks and said, Hey, what do you think about this action? Give us some input. We are very interested in whether or not we should pursue this.

Ms. HUEY. We did participate in the SBA's advocacy. We had over 60 of our builders that were part of a round table discussion, and they expressed all of their concerns. It will be very interesting to see if the DOE will heed those concerns.

Mr. MEUSER. Okay. So you haven't had a response yet?

Ms. HUEY. No.

Mr. MEUSER. You have only had the original rule, so nothing has been affected or changed as of yet?

Ms. HUEY. That is my understanding, yes.

Mr. MEUSER. Okay. Well, maybe we can help you follow up on that with them and see because, in the end, we are interested in reasonable initiatives. However, at this point in time, you think the current rule is quite unreasonable for your industry?

Ms. HUEY. Right now because we have a backlog I do believe that it is, yes.

Mr. MEUSER. Okay.

Ms. HUEY. When you think about the energy efficiency that we already have in homes right now and in the transformers, to go another step when we have such a backlog and the American dream is unaffordable and unattainable for so many.

Mr. MEUSER. All right. Thank you very much.

I yield back, Mr. Chairman.

Chairman WILLIAMS. The gentleman yields back.

I now recognize Representative Scholten from the great State of Michigan for 5 minutes.

Ms. SCHOLTEN. Thank you so much, Mr. Chair. And thank you to all of our witnesses for coming here today. Your testimony is incredibly enlightening. This is such an important topic.

My district is home to a very large portion of the Grand River Watershed, the largest river in the State of Michigan. And we also represent miles of beautiful Lake Michigan shoreline, the Great Lakes region multibillion dollar economy. I am very serious about protecting these natural resources, not only for their inherent worth, but what they contribute to our economy.

That being said, there is nothing more frustrating to a west Michigan small business owner than regulations that do nothing and just stand in their way, impede their business and don't even do what they purport to do.

My colleagues on this committee know that I have been the first among Democrats many times to push back against unnecessary regulations. But one of the things that I want to talk about today is the process that the department goes through to make sure that these regulations are doing what they intend to do.

And so I have two questions for you, Professor Hammond. I am wondering if you can explain how the Department of Energy's current rulemaking process takes into consideration the priorities of small businesses and consumers and what DOE does to ensure that

regulations are cost-effective and not overly burdensome for consumers—or for businesses. Excuse me. Yeah, thank you.

Ms. HAMMOND. Sure. So the process itself has that seven-factor analysis that Congress required, and that looks at both costs and benefits to consumers, to manufacturers. And then, of course, DOE further evaluates specifically the interests of small businesses in that process. It always has to be cost justified.

And then further—I am sorry. Could you just remind me of your second question?

Ms. SCHOLTEN. Yeah. So how is the DOE ensuring that these regulations are cost-effective and not overly burdensome for small businesses? What is the process beyond maybe those seven steps?

Ms. HAMMOND. It also complies, of course, with Executive Order 12866, and it does a cost-benefit analysis that is reviewed both by OIRA. It collects interagency comments on, again, not just the proposed rules but also the final rules, and for many of the standards we are talking about today, they are still just proposed.

Ms. SCHOLTEN. Okay. Thank you so much.

And what's your impression of that process, the feedback loop that happens and the consideration that is taken in? You know, are small businesses being heard when they weigh in about how that would impact their business?

Ms. HAMMOND. They are. My experience is that the agency takes small business feedback very seriously and thinks long and hard about how these standards will affect those businesses.

Ms. SCHOLTEN. Thank you.

My second question is, you know, I hear so much from constituents who regard regulations as unnecessary government intervention in the market. Can you explain how regulations around energy conservation standards actually serve to bolster innovation and positively impact the economy?

Ms. HAMMOND. Sure. And I want to say maybe two things about the EPCA standards. The first is that these are national standards to avoid additional costs that manufacturers would have to comply with if they had to go State by State for various standards. So there is an efficiency built in right there. And they push innovation. Typically the standards do apply in a way that already there are existing products on the market, but it allows new entrants to the market and invites innovation to even push forward.

Ms. SCHOLTEN. Thank you so much.

Yield back the remainder of my time.

Chairman WILLIAMS. The gentlelady yields back.

I now recognize Representative Molinaro from the great State of New York for 5 minutes.

Mr. MOLINARO. Thank you, Mr. Chairman. Although great State of New York, it may not be the right moniker for the purposes of this hearing as New York has created—made a science and art form of overregulating even the most basic behaviors.

I came at the right moment. I take no—I don't want to take much issue, but, you know, uniformity of regulation is nice and efficiencies to achieve that. It might come out of uniformity of regulation, but we live in a Republican democracy, and in that form of government, the States have certain responsibilities, the federal government has certain responsibilities. And we are not supposed

to tread on those. And small businesses in particular, they understand the burden, the challenge of overregulation.

I have often said, having spent the last 30 years in both State and local government, that when it comes to federal regulation or federal government, not only doesn't the federal government know what the left—the right hand doesn't know what the left hand is doing. In the federal government, sometimes the left hand doesn't even know there is a right hand.

And that overburdensome bureaucracy, if you will, that labyrinth of regulation adds enormous burden, pressure, compliance concerns, and costs to small businesses. And so I happen to think that we ought to expect greater consolidation of regulation. We ought to demand greater transparency, and there needs to be better understanding by the small business owners in particular as to what regulation they are to follow, when, how, and what the impact is to them.

And so to that end, I joined in introducing the POST It Act which requires federal agencies to post guidance on rules that will have significant impact on small businesses. I represent small communities all across Upstate New York. Small business is, as it is across America, the engine of economic opportunity in our community. 70 percent of new jobs created by existing small business, they are overburdened.

To that end, Mr. Marlo Lewis, I want to just get your take and opinion on the necessity of the POST It Act, the benefit it might provide, and how small businesses might be helped should it be adopted.

Mr. LEWIS. Yes. This is a straight-up transparency and accountability reform. It is almost unbelievable that anyone would oppose this or that the access to regulatory guidance wasn't already readily available. It was for a period under the Trump administration that we have heard so much about, but the Biden administration, one of its first moves in the regulatory sphere was to repeal the requirement that every agency provide a portal with a database, a searchable database so that businesses could find out what guidance documents—and there are literally thousands of them—apply to them and that they must know in order in turn to comply with regulations.

So we are all behind your bill. We think it is great and it is long overdue. And we are also flabbergasted that it is even necessary.

Mr. MOLINARO. Yeah, I thought you might say that. And not only is it important for transparency purposes, but the lack of transparency allows the federal government and, by extension, State governments to enforce without either understanding or the ability by small businesses to effectively react or even prevent such enforcement.

Ms. Huey, I wanted to—because I only have a minute left. I just wanted to acknowledge, in your testimony you talk a little bit about recent efforts by the DOE to use the rulemaking process to limit consumer access to residential gas stoves. New York has already taken such an action, which for me, you know, I come from a part of the country where, by the way, the modern day environmental movement was born in the Hudson River Valley. I get it. We understand the value of both environmental protection and ad-

dressing climate change. However, the policy is misguided, and it does focus a heavy bureaucracy on a fragile industry and overtaxed individuals. And I did join in opposing Governor Hochul's proposed ban and requiring the federal government to evaluate the actual costs of such a ban to small businesses.

Could you just speak quickly about how the DOE's proposed rule on gas stoves might affect your business and, by extension, customers?

Ms. HUEY. Yes, sir. Thank you for the question.

I recently built a home for a customer that cooked, loved to cook. When we walked through the house at the rough-in, she said, I guess we need to add an electrical plug because they are going to come and take my gas stove. She really said that to me. And she said, And I guess we need to put one upstairs for the hot water heater too. And I said, No, ma'am, they are not going to come take it out of your house.

Mr. MOLINARO. Mr. Chairman, I just would add, this is precisely why we need the transparency. I yield with we have consumers that are unduly burdened and worried that the federal government is looking around their kitchen tables.

Chairman WILLIAMS. Thank you very much. The gentleman yields back.

I now represent Representative Gluesenkamp from the great State of Washington for 5 minutes.

Ms. GLUESENKAMP PEREZ. Thank you, Mr. Chair.

And I think I know the answer to this. And I want to say I sincerely appreciate the witnesses. I know you all pay your own way to be here. I really appreciate that you are here. But do any of you—have any you of you—none of you currently work as technicians fixing appliances. Correct? Have any of you been technicians?

Okay. Thank you to the committee staff who ensured that someone on the panel has worked actually fixing appliances, because I think that is a critical piece that has been missing from this discussion.

I want to say that I appreciate the department's statutory obligation to review the standards, but I am deeply concerned why these washing machines can play Tchaikovsky, but they only last 2 years now. And it is something that—you know, they say there is lies, damn lies, and statistics. And I am very concerned about the horizon.

So, Professor Hammond, I don't know if you know the answer to this, but when they do these cost-benefit analysis, like, how do they reflect back the durability of an appliance? And what's the horizon that they are expected to last?

Ms. HAMMOND. They do consider the lifetime of the appliance. And, of course, that varies by appliance. I will say they also consider the efficacy. I know they just did a test procedure for dishwashers to ensure that there is a washability standard there too.

Ms. GLUESENKAMP PEREZ. Do you know what the timeline—like, how many years are they expected to last?

Ms. HAMMOND. I would have to go look for which specific appliances we are talking about, but sometimes, you know, 10 to 12 years.

Ms. GLUESENKAMP PEREZ. Because every time I am driving around I see these front-loading washing machines out on the street, you know, and it is a huge environmental impact, and it is a huge cost to consumers and small businesses to have appliances that do not last anymore. Like, my washing machine is from 2003. My fridge is from 1997. You know, like, the old stuff can last if we support it. But often we are seeing a huge explosion in the number of chips involved in any given appliance. Everything is made out of plastic now. I, you know, work on cars. Right? Like, the quality of parts is very, very concerning to me, of components within them. And so that is what I am—you know, I think these standards can be useful, but I am very, very concerned the horizon under which they are considered.

So I had a question for Mr. Bauman. I understand that you have an obligation to abide by these standards, and you have expressed concerns today about this process and its impact on your business. But I am also curious and thinking about how we make sure that manufacturers, like, are prioritizing durability.

What is the thing—like, what can we do to put more pressure on increasing the life cycle and the durability? Why do some brands, like—you know, I probably shouldn't say this—Speed Queen still pretty good. Right? But a lot of these things have just gone through the floor.

Mr. BAUMAN. Thank you for the question.

And I personally have very similar home appliances, our front-loading washing machine, we have had to replace our refrigerator where we had refrigerators that lasted, you know, 20 years. I think trying to regulate that, I think that is really a market control issue, because one of the things on our refrigeration side particularly—and, again, we always talk about on that side of it—is that in commercial refrigeration, those are the harshest. I mean, your kitchen is harsh, but your commercial kitchen is many times even more harsh. And, competitively, that is what we promote in our products. That has always been our kind of baseline is making sure we have safe temperatures. We use heavier gauged materials and such than others. And I have to say that, unfortunately, with meeting, again, very aggressive energy standards like the Department of Energy is actually proposing actually hurts that because we have to take out materials in other areas to try to—

Ms. GLUESENKAMP PEREZ. But, like, any technician can look at something and say what is trash and what is going to last, you know. Like, you can—you know, mechanical engineers I don't think have that brain necessarily, but—

Mr. BAUMAN. I'm both.

Ms. GLUESENKAMP PEREZ. But do you see any way that you can implement or is this going to be more regulation?

Mr. BAUMAN. Because of the complexity, again, as you get into electronic controls, fan speeds, a number of the things I mentioned as far as, again, talking about commercial refrigeration and also on the air-conditioning side with the new refrigerants that are required, they all required a lot more electronics, a lot more things that all—additional components that break down and reduce the overall life of the product as it is used, again, in very harsh conditions.

Ms. GLUESENKAMP PEREZ. Okay. Well, thank you sincerely to all of our witnesses for being here today.

I yield back.

Chairman WILLIAMS. The gentlelady yields back.

I would like to—we are right on time. I would like to thank our witnesses for their testimony today and for appearing here.

Without objection, the Members have 5 legislative days to submit additional materials and written requests, questions for the witnesses to the Chair which will be forwarded to the witnesses. I ask the witnesses to please respond promptly.

If there is no further objection, without objection, the committee is adjourned.

[Whereupon, at 11:50 a.m., the committee was adjourned.]

A P P E N D I X

**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 Marlo Lewis
Senior Fellow, Center for Energy and Environment
Competitive Enterprise Institute**

Chair Williams, ranking member Velazquez, and members of this committee, thank you for the opportunity to testify today.

My name is Marlo Lewis 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 related issues.

I’m filling in today for my colleague Ben Lieberman who is sick and unable to make it. Ben regrets he is not able to be here today, but we thank the committee for their understanding.

Appliance overregulation has been an issue for years now, and things have only gotten worse since the start of this year. 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 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

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.

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

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>.

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/>.



Testimony of Alicia Huey

**On Behalf of the
National Association of Home Builders**

**Before the
House Small Business Committee**

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

November 8, 2023

Introduction

Chairman Williams, Ranking Member Velázquez and members of the committee, I appreciate the opportunity to appear before you today on behalf of the National Association of Home Builders (NAHB) to share our views on how burdensome government regulations and mandates impact our industry's ability to increase the production of quality, affordable housing. My name is Alicia Huey, and I am NAHB's 2023 Chairman of the Board of Directors and a custom home builder and developer from Birmingham, Ala.

NAHB represents more than 140,000 members who are involved in building single-family and multifamily housing, remodeling and other aspects of residential and light commercial construction. NAHB's members, most of whom build 10 or fewer homes per year, construct approximately 80% of all new housing in the United States each year.

As a small business owner operating in a heavily regulated industry, I understand how difficult and often costly it can be to comply with the myriad government regulations that apply to my day-to-day work. While today's hearing is focused specifically on Department of Energy (DOE) regulations, it would be impossible to offer this testimony without noting the vast array of regulatory costs imposed on the home building industry by any combination of federal, state and local governments. These costs include those associated with complying with federal labor and environmental regulations, building codes and standards, local zoning ordinances, as well as fees imposed at different stages of the development and construction process. And these costs are not insignificant.

An NAHB study on regulatory burdens shows that nearly 25% of the price of a typical newly-built single-family home is due to the broad set of regulatory burdens imposed by state, local and federal governments. Moreover, between 2011 and 2016, such costs increased by 29%, faster than inflation and economic growth. Such burdens are high for apartment construction as well, as an updated joint study by NAHB and the National Multifamily Housing Council conducted in June 2022 found that up to 41% of apartment development costs are due to regulations.¹ These burdens are particularly noteworthy in an industry where margins are so thin and consumers' sensitivity to price fluctuation is so acute.

Regulatory costs have a direct and negative effect on housing affordability. NAHB's "Priced Out" Estimates for 2022 show that 117,932 households would be priced out of the housing market if the median U.S. new home price rises by \$1,000.² As a benchmark, 87.5 million households (roughly 69% of all U.S. households) are not able to afford a median-priced new home. Similarly, an analysis using 2018 data found that a \$1,000 increase in the cost of building a new rental unit will price out almost 20,000 renters for that apartment.³

The nation is experiencing a housing affordability crisis and there already are significant challenges to addressing that concern. Home builders understand and appreciate that addressing the effects of climate change is a top priority of the DOE; however, conversations such as we are having today in this committee will be helpful in better understanding how further regulating the home building industry will

¹ <https://www.nahb.org/news-and-economics/press-releases/2022/06/new-research-shows-regulations-account-for-40-point-6-percent-of-apartment-development-costs>. <https://www.nahb.org/news-and-economics/press-releases/2022/06/new-research-shows-regulations-account-for-40-point-6-percent-of-apartment-development-costs>.

² <https://www.nahb.org/-/media/05E9E223D0514B56B56F798CAA9EBB34.ashx>.

³ Based on the 2018 median rent of \$2,189, a \$1000 increase in the cost of building a new apartment unit would price out 19,617 renters.

add more uncertainty, delays and costs to the home building process and thereby undermine the ability of the Biden administration to meet its housing goals.

Housing Affordability and the Need for Additional Supply

Safe, decent, and affordable housing provides fundamental benefits that are essential to the well-being of families, communities, and the nation. For these reasons, housing affordability is NAHB's top advocacy issue. NAHB's research shows that housing affordability in the single-family market is at its lowest level since NAHB began tracking it on a consistent basis in 2012. According to the NAHB/Wells Fargo Housing Opportunity Index (HOI), just 40.5% of new and existing homes sold between the beginning of April and the end of June 2023 were affordable to families earning the U.S. median income of \$96,300.⁴ Clearly, owning or renting a suitable home is increasingly out of financial reach for many households. According to Harvard's Joint Center for Housing Studies, in 2020, the nationwide share of cost-burdened households paying more than 30% of their incomes for housing stood at 30%. Moreover, 14% of all households were severely burdened and were spending more than one-half of their incomes on shelter.⁵

As a nation, we can and must do better. All home buyers and renters in America should have a choice in securing safe, decent and affordable housing where they want to live. America's workforce families, including members of the armed forces, teachers and first responders, should be able to afford to live in homes or apartments in the communities they serve. NAHB strongly believes that increasing the inventory of new single-family and multifamily housing is key to improving housing affordability. However, the lack of housing supply is not the only factor impacting housing affordability. Government policies and regulations are making it harder and harder for home builders and multifamily developers to build housing that is affordable.

DOE Mandates and Programs Impacting the Home Building Industry

Residential construction is one of the most heavily regulated industries in the country. The time and cost invested in complying with regulations impacts a business's ability to thrive and grow; they also can negatively affect housing affordability and stifle economic development. As noted above, in these challenging economic times, the decrease in housing production and increase in price clearly indicate the need to reduce the regulatory burden on the housing industry.

Residential construction is one of the few industries in which a government-issued permit typically is required for each unit of production. Additional rules create a constricting web of regulatory requirements that affect every aspect of the land development and home building process and add substantially to the cost of construction. The breadth of these regulations is largely invisible to the home buyer, the public, and even the regulators themselves. Nevertheless, they have a profound impact on housing affordability and prevent many families from becoming homeowners.

While onerous building regulations stem from an alphabet soup of agencies including among others the Environmental Protection Agency (EPA), the Department of Labor (DOL), the Occupational Safety and

⁴ <https://www.nahb.org/news-and-economics/press-releases/2022/11/housing-affordability-falls-to-more-than-10-year-low-as-rising-interest-rates-take-a-toll>. <https://www.nahb.org/news-and-economics/press-releases/2022/11/housing-affordability-falls-to-more-than-10-year-low-as-rising-interest-rates-take-a-toll>.

⁵ https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf. https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf.

Health Administration (OSHA), and United States Department of Housing and Urban Development (HUD), the following regulations and programs overseen by DOE are particularly concerning to home builders:

- Transformer Standards

DOE has recently proposed a new rule to increase the energy efficiency standards for distribution transformers. The timing of this proposed rule could not be worse and is certain to make an already bad situation worse. If finalized as proposed, manufacturers will be forced to retool production lines to produce new transformers instead of addressing the historic backlog that is hampering development across the country. As such, NAHB supports H.R. 4167, the *Protecting America's Distribution Transformer Supply Chain Act*, that prohibits the Secretary of Energy from changing energy conservation standard for distribution transformers for a period of five years.

Transformers are an essential part of the electrical grid bringing power to homes and businesses. Homes cannot be sold unless a transformer is installed and working, and power is being sent to the home. For the past few years, lead times to obtain transformers have remained stubbornly long, ranging anywhere from 18 to 24 months as global supply chains continue to heal in the wake of the COVID-19 pandemic. Delays in transformer availability and installation are completely halting home building projects in many areas and frustrating recovery efforts in those affected by natural disasters. In addition, for the home building business, delays result in additional costs.

DOE's proposed rule is particularly troubling because it would dictate that manufacturers increase the efficiency of distribution transformers by a mere one-tenth of a percentage point even though the agency *already* mandates distribution transformers be manufactured to incredibly high efficiency standards. Importantly, due to the intricate ways transformers are designed and assembled, increasing their efficiency even by a fraction of a percentage point could add months to an already lengthy order-cycle. Additionally, the proposed rule would require manufacturers to transition to a different type of steel, which is largely untested, less flexible and more expensive. The existing supply of this alternative steel is very limited and mostly foreign-sourced.

Energy efficiency standards play an important role in reaching decarbonization benchmarks while transitioning our nation to a clean and increasingly electrified economy. However, as proposed, the rule would delay the realization of these benefits while at the same time exacerbating the current distribution transformer shortage crisis at the expense of housing affordability.

- Electrification and Gas Stoves

Concerns about the impacts of climate change have compelled policymakers at all levels to look for ways to cut greenhouse gas emissions (GHG) across all sectors of the U.S. economy. These efforts are concerning for several reasons. First, because new construction is already significantly more energy efficient than the existing housing stock, any GHG emissions reductions gained through electrifying new construction would be far less than reductions gained by improving the energy efficiency of existing homes.

Second, although electrification may provide benefits in certain applications, electrification mandates can be costly and infeasible in some areas of the country and create challenges for builders, homeowners and consumers. For example, due to performance limitations of electric heat

pumps in colder climates, the continued use of fossil fuel may be the only feasible option in certain circumstances and locations. Likewise, because electrification can result in both increased initial costs and higher utility bills, electrification may place additional burdens on the consumer. A study conducted by the Home Innovation Research Labs in 2021 found that the additional up-front cost to build an all-electric house (as compared to a house with natural gas equipment and appliances) ranged from \$3,832 to \$15,100 depending on the climate zone.⁶ Importantly, these estimates do not include fees for upgrading electric service or providing community electric infrastructure, which can be substantial.

Finally, electrification policies can adversely impact consumer choice. DOE's current proposed rule, *Energy Conservation Standards for Consumer Conventional Cooking Products*, would ban the sale of most current gas cooktop models sold in the United States. As home builders, we believe our customers have a right to choose the appliances and energy sources used in their homes. Over 187 million Americans currently use natural gas appliances, saving them an average of \$1,068 each year.⁷ Gas stoves are used in nearly 40 million homes nationwide and have proven to be a safe, efficient and affordable appliance choice for families for well over a century. The proposed rule would drastically limit the availability of gas stoves across the country, as it will take manufacturers time to develop and produce appliances that meet these new requirements. The appliance production delay in combination with ongoing nationwide supply chain issues will result in consumers paying more for both electric and gas stoves in the coming years.

- **Building Energy Codes**

Although referencing building codes in federal legislation and regulatory programs is not new, over the past few years there has been growing concern over the breadth of programs and issues for which building codes, and in many cases more stringent building codes for new homes, are purported to be the answer. This approach unfairly burdens new construction and often will do little to meet the intended goals. For example, requiring new homes to meet stringent energy efficiency goals price many would-be home buyers out of the market and compel them to stay in older, less efficient homes. At a minimum, any federal policies and programs need to provide sufficient flexibility and incentives so that the intended results can be met with minimal negative impacts.

Inflation Reduction Act Funding

The Inflation Reduction Act provided \$1 billion in grants for state and local governments to adopt costly and restrictive energy codes, such as the 2021 International Energy Conservation Code (IECC). This funding is overseen by DOE's Office of State and Community Energy Programs, which issued guidance on September 19, 2023, regarding the adoption, implementation, training, enforcement and measurement of compliance rates of specified building energy codes. While NAHB supports the adoption of cost-effective, modern energy codes, we oppose any federal funding that prohibits jurisdictions from adopting amendments to the energy code to accommodate local conditions and address cost-effectiveness concerns.

⁶ Home Innovation Research Labs, *Cost and Other Implications of Electrification Policies on Residential Construction*, February 2021. <https://www.nahb.org/-/media/NAHB/nahb-community/docs/committees/construction-codes-and-standards-committee/home-innovation-electrification-report-2021.pdf>.

⁷ <https://www.aga.org/research-policy/resource-library/energy-insights-comparison-of-home-appliance-energy-use-operating-costs-and-carbon-dioxide-emissions/>.

The energy codes developed through the International Code Council and ASHRAE consensus processes have increased the efficiency of new residential buildings by 40 to 50% over the last 20+ years. In other words, modern energy codes are energy efficient. Unnecessarily forcing the adoption of costly and restrictive energy codes to qualify for these grants will exacerbate the current housing affordability crisis and limit energy choice for consumers. Adoption of the 2021 IECC can add as much as \$31,000 to the price of a new home yet can take as long as 90 years for the homeowners to see a payback from this investment. In addition, these increased requirements and higher costs can result in a decrease in production and longer permitting and construction times, which will further exacerbate housing affordability challenges. In the end, implementation of these grants will result in fewer families being able to achieve the American dream of homeownership.

It is not just the lure of federal funding that is being used to force the implementation of costly and unnecessary energy codes, as the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture (USDA) are considering requiring the 2021 IECC for virtually all new construction supported by HUD and USDA. Such mandates will have an especially negative impact on historically underserved communities and first-time home buyers, two of the very groups these agencies seek to support and who are highly sensitive to price fluctuations at the low- to mid-price range of the housing market. Builders will also face major hurdles under this proposal, including finding qualified inspectors and complying with a patchwork of building requirements.

Finally, focusing on initiatives that will increase costs for new housing and buildings while ignoring the existing older structures, which constitute more than 80% of the U.S. building stock and are responsible for an even greater portion of greenhouse gas emissions and energy consumption, makes little sense as a policy matter. Because new homes are built to modern energy codes and account for a small share of the total housing inventory, they use only a small share of the annual energy consumption attributed to the residential sector. Therefore, any efforts to reduce overall energy consumption must recognize and address the glaring disparity between the new and existing housing stock.

National Model Building Code Development

In addition to promoting and funding the adoption of increasingly restrictive and costly building energy codes, DOE staff regularly participate in the development of the model energy codes and standards. But instead of serving as impartial technical advisors and a resource for those looking to construct energy efficiency structures, they aggressively advocate for and support proposals, including many that have nothing to do with efficiency, such as requirements to install electric vehicle chargers or whole-home electrification. Further, while they may give consideration to the practicality or cost of implementing certain code proposals, the formulas and methodologies they use to determine and promote energy savings remain elusive, thereby denying other stakeholders from fully understanding how or why calculations were made or having an opportunity to refute the agency's claims. Further, the imprimatur of DOE oftentimes pervades the vote and unduly influences the outcome. Rather than focusing on further (and unnecessary) improvements to the energy efficiency of newly constructed homes, DOE should focus on creating initiatives and programs that foster market solutions for upgrading the existing housing stock.

Existing Housing Stock

The American housing stock continues to age, and due to the recent decrease in production, there is increasing pressure to keep existing homes in service longer – homes that may not perform as well or be as efficient as newer homes. One hundred and thirty million homes out of the nation's housing stock of 137 million were built before modern buildings took effect in 2010. Equally problematic, the latest Census statistics show the number of homes built before 1970 that are taken out of commission is only about six out of every 1,000 being retired per year. These low rates of replacement mean that the built environment in the U.S. will change slowly and continue to be dominated by structures that are at least several decades old.

Many Older Homes are In Need of Upgrades

Older homes are less energy efficient than new homes. They were not built to the stringent requirements contained in modern codes, use (and lose) more energy, and often have less insulation and inefficient heating and air conditioning systems. According to NAHB research, even though newer homes are larger, their average site energy consumption is often lower as a result of higher energy efficiency. While a typical U.S. household consumes 77.1 million BTU per year, households occupying units built since 2010 use 67 million BTU per year. Clearly, improvements in construction practices and building codes have made significant strides in reducing the energy use in new construction. However, the most cost-effective improvements have already been made and further gains will be difficult and costly.

In order to meet our national energy efficiency goals, many have recognized improvements must be made in all sectors and that retrofitting the existing building stock will be necessary. According to the National Renewable Energy Laboratory, upgrades to the existing housing stock could yield a projected reduction of 5.7% of the total annual U.S. electricity consumption in 2030. Given this potential, coupled with the array of options and opportunities that exist to do so (e.g., replace/repair doors, windows, insulation, lighting, appliances; install energy management systems, heat pump, solar photovoltaics; glaze windows, install window treatments, etc.) upgrades to the existing housing stock must be a primary focus if the nation is to make measurable progress.

Incentives are Vital

Incentive programs that offset the costs associated with energy efficiency improvements are an important tool to reduce the barriers that many homeowners face and encourage them to invest in home modernization. For example, due to the high initial costs associated with purchasing and/or installing certain features to increase their home's efficiency, many homeowners are unable to finance desired or necessary upgrades and, without assistance, would likely forego the improvements. Incentives that are available at the federal and state levels, as well as those that could be offered through the real estate valuation and transaction processes, can address this issue, produce results and have proven to be attractive alternatives to mandates.

Importantly, to be even more effective, the value of energy efficiency must be better recognized and monetized to further promote its impact and benefits. For example, making modifications to property valuation and financing protocols and ensuring loans, grants and other federal funding programs are accessible and widely applicable can send strong messages to homeowners that they will receive a return on their efficiency-related investments.

While this administration has made a number of funding streams and incentives available to boost the efficiency of existing structures, such upgrades are not always that easy. Oftentimes little is known about the building or its structural soundness, limited funding levels may hinder needed work, challenging and lengthy application processes and regulations may stifle progress and a lack of workers to conduct the remodeling or upgrade projects may hinder the feasibility of completing said work. Last month, the Biden administration announced \$100 million in funding to make 1,500 low-income homes in the U.S. more energy efficient and resilient to climate change. This calculates into \$66,000 for each home – an eye-opening sum that further demonstrates and validates the financial challenge that energy efficiency upgrades pose for those who own older homes.

NAHB Urges Action

Increased regulations and building code requirements, among other things, add significant costs to homes and further harm housing affordability. To mitigate this housing affordability crisis, NAHB continues to urge both Congress and the Biden administration to address the primary factors limiting builders' ability to increase the supply and affordability of new housing. These factors can be summarized as the five L's: lack of labor, lack of lots and land, lumber and materials shortages, lending challenges, and finally and most importantly for today's proceeding - laws and regulatory burdens. While there is no silver bullet, NAHB has long held the only sure way to safeguard against future bad regulation is to fix the broken regulatory rulemaking process. Accordingly, NAHB urges Congress to pass legislation such as H.R. 358, the *Small Business Regulatory Flexibility Improvements Act*, to ensure that all regulations are designed with small businesses in mind, that regulatory rulemaking agencies are required to consider the true cost of regulations on small businesses, and that regulatory rulemaking agencies comply with the letter and intent of the law in crafting new regulations.

Conclusion

Thank you, Chairman Williams and Ranking Member Velázquez for convening this important hearing and allowing NAHB to share our views on the effects of DOE regulations on our industry's ability to increase the production of quality, affordable housing. These are important conversations and NAHB stands ready to work with you and members of the committee to reform our broken regulatory rulemaking process and expand the availability of affordable housing for all Americans.

Written Testimony before the
U.S. House of Representatives,
Committee on Small Business
Hearing Entitled:
“Burdensome Regulations: Examining the Effects of
Department of Energy Regulations on America’s Job Creators”

Jeffrey Bauman
Manager of Regulatory Affairs
National Refrigeration & Air Conditioning Products, Inc.
Divisions: Continental Refrigerator & National Comfort Products

November 8, 2023

Chairman Williams, Ranking Member Velazquez, and distinguished members of the committee, my name is Jeffrey Bauman. I am the Manager of Regulatory Affairs for National Refrigeration & Air Conditioning Products, Incorporated, which embodies Continental Refrigerator and National Comfort Products. I am truly thankful and honored for the opportunity to discuss the impact of Department of Energy (or “DOE”) Regulations on small businesses like ours.

I have worked in the commercial food service equipment industry for over 34 years, including the past 15 years with Continental, where I previously held the position of Engineer Manager. Approximately two years ago, our company made the decision that a new full-time position was needed, to help manage the barrage of multiple regulatory actions that continue to confront us, and I took over that role.

National Refrigeration and Air Conditioning Products is a small domestic manufacturer that, through our divisions of Continental Refrigerator and National Comfort Products, represents approximately 250 high-quality manufacturing jobs in Bensalem, Pennsylvania, a suburb of Philadelphia in Pennsylvania's 1st Congressional District.

Continental Refrigerator is a leading manufacturer of commercial refrigeration equipment, offering over 2500 different model configurations. We design, build, and certify all of our products to provide superior performance to maintain safe food temperatures in the harsh environments of commercial kitchens. Our products must comply with numerous regulations for safety and sanitation, as well as DOE energy efficiency. The refrigerants and foam insulation that are critical components of these products must comply with EPA Global Warming Potential (or “GWP”) limits for the phasedown of Hydrofluorocarbons (also known as “HFCs”).

Our company has made significant investments in research, development, production changes and training over the past six years to transition to extremely Low-GWP foam insulation and convert over 99% of our self-contained products to R290 refrigerant, with the lowest GWP available for these units. Multi-million-dollar capital expenditures were made for new

production equipment, including new temperature-controlled foam fixtures to address flow issues with Low-GWP foam and new charging stations required for flammable refrigerants. We also built in-house state-of-the-art laboratory-grade test chambers. These labs continue to run around the clock, seven days a week, to evaluate product performance and manage the multitude of energy testing required for regulatory compliance.

As a small manufacturer in a heavily regulated industry, Continental is particularly challenged by continual changes in regulations, while working to control rising costs and develop innovative products in a highly competitive market. In 2017 we discontinued a line of horizontal freezers, that could not economically meet new DOE Energy Standards. We compete with numerous low-cost imported products from foreign manufacturers who benefit from government subsidies.

Despite our resource limitations, Continental is an active member of industry associations, including the Air-Conditioning, Heating, and Refrigeration Institute ("AHRI"), the North American Association of Food Equipment Manufacturers ("NAFEM"), the American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE"); the American Society for Testing and Materials ("ASTM"), and the National Sanitation Foundation ("NSF") Standards Task Force. We hold positions on numerous committees, that are critical to developing robust and reliable industry test methods and standards.

Our company actively works to engage with the Department of Energy (DOE) and the EPA in rulemaking activities. We analyze and regularly submit comments in response to requests for information and proposed rules. This effort is critical to our business, because compliance with excessive regulations significantly impedes our ability to develop new products, which have been a keystone to the successful growth of our business.

We also work with the Small Business Administration Office of Advocacy and helped initiate a small business roundtable to discuss concerns from the commercial refrigeration industry, that we participated in last year with other stakeholders.

On October 10, 2023, DOE published a Notice of Proposed Rulemaking in regards to Energy Conservation Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers. Our company, along with other manufacturers and industry associations, are extremely concerned with DOE's unrealistic proposals in this Notice.

Analysis of the proposed standard levels shows extremely excessive reductions, that are up to 60% lower than currently allowed. We are unable to identify any potential paths to these types of extraordinary cuts.

DOE's consultants conducted manufacturer interviews that we participated in prior to this proposed rule. But it appears this information was not thoroughly evaluated for this rulemaking. Technology options that DOE indicates would reduce energy consumption in the near future, such as fan controls and high efficiency fan motors, are already in use. Other

proposed technologies, such as microchannel condenser coils, have so far proven to be impractical for many applications. Proposed technologies, such as variable speed compressors, have shown promise in reducing energy consumption, but have not proven to be an economically viable option for many of our products over the next few years, due to added costs and complexity. Increasing our prices to adopt this technology would impede our ability to compete against other products, particularly those from foreign manufacturers who benefit from government subsidies.

A review of information in DOE's public Compliance Certification Database indicates that overall, more than 85% of self-contained products currently certified would fail to meet the new standards. For the most common product types that we offer, solid-door self-contained refrigerators, over 94% of currently listed models would not meet the proposed standards. Manufacturers would have to redesign almost every product to significantly reduce energy consumption in a very short period of time, using proposed technologies that have not proven to be practical.

Another example of what we believe is DOE overreach in this standards rulemaking is illustrated in their proposal to add refrigerated chef bases to the scope. On September 26, 2023 DOE published a Final Rule that introduced a brand-new Test Procedure for these products. While we agree that the proposed method is suitable for chef bases, we are not aware of any published data using DOE's method. DOE is proposing new standards that we believe have never been evaluated through testing.

Thank you again for this opportunity to share information about our company and the significant burden presented by DOE regulations on small businesses like ours. We look forward to working with the Congress to address these concerns and will continue to engage with regulatory agencies.

**TESTIMONY OF EMILY HAMMOND
GLEN EARL WESTON RESEARCH PROFESSOR OF LAW
THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL
BEFORE THE HOUSE COMMITTEE ON SMALL BUSINESS
NOVEMBER 8, 2023**

Thank you, Chairman Williams, Ranking Member Velázquez, and distinguished Members of the Committee, for the opportunity to testify today. I will be testifying concerning the Department of Energy's approach to rulemaking for its energy conservation standards program, and specifically, how the process is structured to ensure that the voices of small businesses are heard.

I am a Professor of Law at The George Washington University Law School, and am currently serving as a Visiting Professor of Law at Georgetown University. I am a member-scholar of the not-for-profit regulatory think-tank, the Center for Progressive Reform, and I have previously served as Deputy General Counsel for Litigation, Regulation, and Enforcement at the Department of Energy, with responsibility for the energy conservation standards rulemakings that are the topic of today's hearing. I am testifying today, however, on the basis of my expertise and not as a partisan or representative of any organization, nor do I speak for the agency. My expertise relates to administrative law, energy law, and environmental law. My work is published in the country's top scholarly journals as well as in many books and shorter works, and I regularly speak on these topics. Among my areas of research is the administrative rulemaking process, particularly in areas with scientific and technical complexity.

When I arrived at DOE in June 2021, I was immediately impressed to see that across the many professional experts who develop these rules, there is a deep commitment not only to the letter of the law, but to its spirit, which includes a commitment to good governance. Although much of my testimony outlines the legal constraints on the agency, I want to emphasize that these professionals do not merely check legal boxes in carrying out the agency's work; they are dedicated to carefully considering all the facets of these rules, and to assisting with compliance once the rules are complete. In my testimony today, I will begin by outlining how the Energy Policy and Conservation Act (EPCA) works to ensure that manufacturers' interests—including those of small businesses—are deeply engaged in every DOE rulemaking for energy conservation standards. Next, I will describe how DOE complies with the Regulatory Flexibility Act to provide an additional layer of protection for small businesses. Third, I will detail how DOE works to provide guidance and support to small businesses. Finally, I will share how DOE's efficiency standards work in multiple ways to benefit small businesses' bottom lines.

I. The Energy Policy and Conservation Act

As you know, Congress passed EPCA in 1975 at a time when consumer energy costs were rising and there was a scarcity of energy resources to meet rising demand. Congress itself set the first energy efficiency standards for consumer appliances and certain industrial

equipment,¹ and it directed DOE to periodically assess the standards and update them, using a detailed set of criteria.² The agency must set standards that achieve the “maximum improvement in energy efficiency” that are “technologically feasible and economically justified.”³ In addition, the standard must result in a significant conservation of energy.⁴ Congress then explicitly instructed the agency what to consider:

In determining whether a standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—

- (I) the **economic impact of the standard on the manufacturers and on the consumers** of the products subject to such standard;
- (II) the **savings in operating costs** throughout the estimated average life of the covered product in the type (or class) **compared to any increase in the price** of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;
- (III) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;
- (IV) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;
- (V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
- (VI) the need for national energy and water conservation; and
- (VII) other factors the Secretary considers relevant.⁵

In each proposed and final rule, DOE sets forth its detailed methodology and consideration of each of these seven factors.

Given this hearing’s focus on small businesses, I highlight that in the first factor—determining the impact of the proposed standard on manufacturers—DOE brings both quantitative and qualitative approaches to bear. These approaches are designed to identify how the proposed standards would “affect manufacturing employment, capacity, and competition, as

¹ This discussion cites to the provisions for consumer appliances but note that Congress similarly directed DOE to maintain efficiency standards for industrial equipment (which includes many commercial-scale equipment), 42 U.S.C. § 6313 (commercial); and for distribution transformers, 42 U.S.C. § 6317.

² See *generally* 42 U.S.C. § 6295 (setting forth initial standards and criteria for updating standards for consumer appliances).

³ *Id.* § 6295(o)(2)(A). There are similar standards for water efficiency.

⁴ *Id.*

⁵ *Id.* § 6295(o)(2)(B)(1)(I – VII) (emphasis added); see also 42 U.S.C. § 6313(3)(B)(ii) (similar for industrial equipment including commercial equipment).

well as how standards contribute to overall regulatory burden” and whether they would cause “any disproportionate impacts on manufacturer subgroups, including small business manufacturers.”⁶ And they include both computer modeling and actual interviews with small business owners.⁷ Moreover, in the analysis of economic impacts to consumers, where relevant, DOE specifically sets forth its assessment of costs and payback periods for small businesses, as compared to consumers as a whole.⁸

To gather the information needed to undertake its seven-factor analysis, DOE offers far more participatory opportunities than the Administrative Procedure Act requires.⁹ Not only does EPCA itself provide these opportunities, but the agency on its own initiative undertakes to offer webinars, field questions from stakeholders, and conduct outreach to stakeholders—all including small businesses—to ensure that they have opportunities to offer their expertise and insights. Indeed, the standards are developed in a phased process with multiple opportunities for participation,¹⁰ and all related material is posted in the rulemaking docket which is publicly available online.¹¹ Ultimately, the agency conducts a sophisticated analysis of the factors set forth above and publishes those in its proposed rule (in both a preamble and a technical support document); and it updates this analysis in response to comments in its final rules.¹²

⁶ 88 Fed. Reg. at 70,245.

⁷ *E.g.*, *id.* at 70,246.

⁸ *E.g.*, *id.* at 70,272.

⁹ See 42 U.S.C. § 6306 (a) (in addition to notice-and-comment rulemaking provisions of APA § 503, the Secretary must “afford interested persons an opportunity to present written and oral data, views, and arguments with respect to any proposed rule”); *id.* §(b) (specifying that for consumer appliance standard-setting, in informal presentations, interested persons may question others who have made oral statements, including DOE employees concerning factual information). Note that DOE also works with the Appliance Standards and Rulemaking Federal Advisory Committee which permits negotiated rulemaking. See DEP’T OF ENERGY, APPLIANCE STANDARDS AND RULEMAKING FEDERAL ADVISORY COMMITTEE, at <https://www.energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee>.

¹⁰ The recently proposed standards for commercial refrigeration equipment provide an example. There, the agency issued a Request for Information in 2021, which initiated an early comment period. Thereafter, in 2022 the agency conducted a webinar and published a preliminary technical support document, again offering a comment period. The 2023 proposed rule offers yet another comment period, webinar, and opportunity to participate. These actions and dates are set forth in docket number EERE-2017-BT-STD-0007.

¹¹ See, *e.g.*, Rulemaking Docket, Energy Conservation Standards for Battery Chargers, EERE-2020-BT-STD-0013, at [regulations.gov](https://www.regulations.gov).

¹² See, *e.g.*, Proposed Rule, Energy Conservation Program: Energy Conservation Standards for Battery Chargers, 88 Fed. Reg. 16,112 (Mar. 15, 2023). Note that because of DOE’s numerous opportunities for public comment *before* publication of proposed rules, even the proposed rules engage with comments previously received. See, *e.g.*, Proposed Rule, Energy Conservation Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers, 88 Fed. Reg. 70,196, 70,05-07 (Oct. 10, 2023) (describing and responding to general comments); *id.* at 70,212 (describing and responding to definitional comments); *id.* at 70,215 (describing and responding

In addition to building considerations for small businesses into the seven-factor analysis, moreover, Congress established a relief valve specifically for small manufacturers: if the Secretary finds after consulting with the Attorney General that the new standard would decrease competition, she may grant an exemption to small manufacturers for up to two years.¹³ DOE maintains guidance on its website for how to seek such exemptions, all of which are published in the Federal Register.¹⁴

A final note about DOE's standards. The agency sets performance standards for manufacturers to meet, rather than imposing prescriptions for how they should meet the standards. This approach gives manufacturers flexibility to determine how best to meet the standards and encourages innovation—which creates opportunities for new small businesses to enter the market and existing ones to become more competitive.¹⁵

II. The Regulatory Flexibility Act

In addition to complying with the detailed analytical and procedural requirements described above, DOE complies with the Regulatory Flexibility Act, which expressly requires considering how a proposed rule with significant economic impact would impact small businesses.¹⁶ The analysis must be posted for public comment, and in the final rule, DOE responds to these comments. DOE's research in this regard is detailed and careful. It relies on databases of product manufacturers, state and trade association resources, and even marketing materials to identify small businesses. Next, it considers whether these small businesses would be required to undertake costs to convert their manufacturing processes to account for new standards, and it even invites individual interviews with small manufacturers to ensure its information is as accurate as possible. An overview of this analysis, and an overview of the process, can be found in every proposed and final rule to which this analytical requirement

to comments regarding equipment classes); *id.* at 70,235 (describing and responding to comments regarding manufacturing costs)

¹³ 42 U.S.C. § 6295(t). For purposes of this analysis, small manufacturers are those whose annual gross revenues do not exceed \$8 million for the prior year.

¹⁴ See 10 C.F.R. §§ 430.50 - .57 (setting forth requirements).

¹⁵ See OFF. OF INFO. & REG. AFFAIRS, U.S. OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, GUIDANCE ON ACCOUNT FOR COMPETITION EFFECTS WHEN DEVELOPING AND ANALYZING REGULATORY ACTIONS 4-5 (Oct. 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/10/RegulatoryCompetitionGuidance.pdf> (“changing a regulation based on a specific design standard to one based on a general *performance* standard may increase competition by allowing firms to produce products with innovative designs that meet or exceed that performance standard but have lower costs.”) (emphasis original).

¹⁶ 5 U.S.C. § 601.

applies.¹⁷ As described next, moreover, DOE offers guidance to small businesses for understanding and participating in the energy conservation standards program.

III. Transparent DOE Procedures and Guidance for Small Businesses

In accordance with Executive Order 13,272, DOE in 2003 published its procedures for implementing the Regulatory Flexibility Act.¹⁸ In addition, the agency developed a guidance document *Small Entity General Compliance Guide*, which is available on its website.¹⁹ This document uses plain language to describe the efficiency standards program, the ways that small businesses can participate, each step small businesses can take to ensure that they are in compliance with the standards, and the options for getting exceptions from the standards. The document also has a list of resources—including email addresses and phone numbers—that are available for any questions small businesses (or others) might have.

IV. Energy Conservation Standards Benefit Small Businesses' Bottom Lines

As described above, DOE ensures that its energy conservation standards are developed in a transparent, participatory process that is open to all stakeholders, with a special focus on the interests of small businesses. What is special about this program, however, goes beyond the agency's careful effort developing rules: This program brings concrete benefits to householders, small businesses, and other commercial enterprises in the form of real and meaningful savings.

According to one study, for example, DOE's conservation standards are projected to save households an average of \$840 a year in 2030.²⁰ Businesses saved even more: almost \$23 billion dollars in utility bills nationwide.²¹ In recent rulemakings, DOE has emphasized benefits from energy conservation to the tune of billions of dollars. For instance, DOE estimates that its proposed energy conservation standards for battery chargers will save consumers, which includes small businesses, up to \$9 billion in energy costs.²² And in its proposed standards for commercial refrigeration equipment, DOE estimates that consumers—again, including small businesses—will save up to \$7.1 billion in energy costs.²³ These, of course, are proposed rules, so they will still benefit from the further refinement that the notice-and-comment period provides. Even at this stage, it bears emphasis that with electricity prices now higher than before in many states,

¹⁷ See, e.g., 88 Fed. Reg. at 16,162-163 (describing analysis for proposed battery charger standards and inviting comment on all facets of analysis); 88 Fed. Reg. at 70,296-299 (same for proposed commercial refrigeration standards).

¹⁸ 68 Fed. Reg. 7990 (Feb. 19, 2003).

¹⁹ DEP'T OF ENERGY, APPLIANCE STANDARDS PROGRAM AND TEST PROCEDURES: SMALL ENTITY <https://www.energy.gov/sites/default/files/2023-07/sbrefa-general-compliance-guide.pdf>

²⁰ Andrew deLaski & Joanna Mauer, *Energy-Saving States of America: How Every State Benefits from National Appliance Standards*, at 2 (Feb. 2017), at <https://appliance-standards.org/sites/default/files/Appliances%20standards%20white%20paper%202%20202-14-17.pdf>.

²¹ *Id.* at 6.

²² 88 Fed. Reg. 16,115 (using a three-percent discount rate).

²³ 88 Fed. Reg. at 70,0199 (using a three-percent discount rate).

these rules will promote even greater savings for residential consumers and small businesses alike.²⁴

There are other benefits, too. For example, lowering electricity use means lowering emissions of harmful pollutants like sulfur dioxide and nitrogen oxides. To demonstrate the point, DOE estimates that its proposed energy conservation standards for commercial refrigeration equipment will generate up to nearly \$6 billion in public health benefits associated with reductions in sulfur dioxide and nitrogen oxide emissions.²⁵ Numerous studies have demonstrated that air pollution reductions mean better health for workers, translating into fewer days of lost work.²⁶ Such disruptions in staffing are especially burdensome for small businesses, which, as the National Federation of Independent Businesses has noted, are already feeling the strain from labor supply shortages.²⁷

And as climate change disruption even further presents risks to the economy and worker wellbeing, this important program's additional benefits should not be understated. Reduced greenhouse gas emissions associated with energy savings directly support climate change mitigation. Reduced energy reliance also translates to grid resiliency; and of course, reduced costs to consumers alleviate the burdens of those who are most impacted by climate disasters. Not all of these avoided costs are fully quantified, but those that are quantified are significant. For instance, DOE estimates its proposed battery charger standards will avoid climate costs of up to \$2.1 billion.²⁸ And the proposed commercial refrigeration standards are estimated to avoid climate costs of over \$3 billion.²⁹ These benefits extend to small businesses and should not be overlooked.

Thank you again for the opportunity to testify today. I look forward to your questions.

²⁴ DOE employs a sophisticated approach to energy cost estimates that accounts for a number of variables, including region, seasonal variability, building size, and sector. *See, e.g.*, 88 Fed. Reg. at 70,239 (describing methodology).

²⁵ 88 Fed. Reg. at 70,200 (using a three-percent discount rate); *see also* 88 Fed. Reg. at 16,115 (health benefits of the proposed battery charger rule of \$3.8 billion (3% discount rate)).

²⁶ *E.g.*, Org. for Econ. Cooperation & Dev't, *The Economic Consequences of Outdoor Air Pollution* (June 2016); Matthew Neidell & Nico Pestel, *Air Pollution and Worker Productivity*, IZA World of Labor 2023 (synthesizing studies).

²⁷ Nat'l Fed. of Indep. Bus., *Small Businesses Continue to Struggle with Labor Shortages and Inflation*, Feb. 15, 2023, <https://www.nfib.com/content/analysis/economy/small-businesses-continue-to-struggle-with-labor-shortages-and-inflation/> (last visited Nov. 6, 2023).

²⁸ Energy Conservation Standards for Battery Chargers, 88 Fed. Reg. at 16115 (using a three-percent discount rate).

²⁹ 88 Fed. Reg. at 70,200 (using a three-percent discount rate).

Testimony of Andrew deLaski
Executive Director
Appliance Standards Awareness Project

U.S. House of Representatives
Committee on Small Business
Hearing on

“Examining the Effects of Department of Energy Regulations on America’s Job Creators”

November 8, 2023

Thank you, Chairman Williams, Ranking Member Velázquez, and Members of the Committee, for the opportunity to provide this written testimony for the record.

My name is Andrew deLaski and I am the executive director of the Appliance Standards Awareness Project (ASAP). ASAP is housed within the American Council for an Energy-Efficient Economy (ACEEE), a nonprofit 501(c)(3) organization focused on leading and advancing energy efficiency policies, programs, and technologies across the nation. We advocate for appliance, equipment, and lighting standards that save energy and water, reduce economic and environmental burdens for low- and moderate-income households and cut planet-warming emissions and other air pollution. **These standards also save large amounts of money for small businesses.**

I have worked at ASAP since 1999, co-chaired the Department of Energy’s (DOE) Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) from 2013 – 2018, and have deeply engaged in dozens of DOE rulemaking dockets across five presidential administrations.

As directed by the Energy Policy and Conservation Act (EPCA), DOE sets minimum efficiency or maximum energy and water usage standards for products manufactured or imported for sale in the United States. **These standards have done more to reduce energy waste in buildings in the United States than any other federal effort.** They save consumers and businesses money, help make our energy systems more resilient and reliable, and cut emissions that endanger human health and the environment. Product efficiency standards directly affect two overlapping sets of small businesses: those that manufacture the affected products and those that use them.

In this testimony, I will address four topics:

- Cost savings for the consumers and businesses that use affected products;
- How DOE’s rulemaking process protects small businesses interests;
- How the national standards program provides a predictable, national marketplace; and,

- How the appliance standards program enhances the economic competitiveness of U.S. small businesses.

I urge Congress to protect DOE's appliance standards program and support the agency's efforts to finalize robust efficiency standards that will save small businesses money and enhance American economic competitiveness.

DOE's appliance standards program delivers very large utility bill savings for consumers and businesses, including small businesses.

For most products covered by the federal appliance standards program, Congress established initial standards and, in recognition of the need to keep pace with technological progress and continuously reduce energy waste, directed DOE to review and strengthen those standards periodically. By law, DOE must update standards to the highest level that is technologically feasible and economically justified, provided that level results in significant energy (or water) savings. Congress enacted initial legislation in the 1970s, and, on a bipartisan basis, updated and expanded the law in 1987, 1988, 1992, 2005, 2007 and 2012. Standards on the books today have improved the efficiency of a wide range of consumer and business products ranging from household refrigerators to commercial rooftop air conditioners to industrial electric motors. In total, U.S. efficiency standards cover about sixty household and commercial product categories.

The economic savings from already existing appliance standards are very large. Accounting only for standards adopted before 2020, **the average US household spends about \$500 less per year on utilities because of existing standards.**¹

These utility bill savings are especially important for low- and moderate-income households, many living paycheck to paycheck. They spend more on their energy bills as a proportion of their income than wealthier households. For families that have to regularly make painful choices between essentials like housing, food, and medicine, hundreds of dollars of annual savings on utility bills makes a real difference.

Businesses also save big. According to our analyses of DOE rulemaking documents and past studies, **total bill savings for businesses will reach more than \$47 billion annually by 2030.**² Since 99.9 percent of businesses in the U.S. are small businesses, they see much of these savings.

For example, small businesses like convenience stores and restaurants benefit from standards that have dramatically boosted efficiency for products such as commercial refrigerators, walk-in coolers, and lighting. Standards for commercial air conditioners and office lighting products have cut bills for office building occupants and owners. National standards for electric motors save energy in motor-driven equipment (e.g., fans and pumps), which are used in HVAC systems found in commercial buildings and by manufacturers, many of which are small businesses.

¹ Report available at <https://appliance-standards.org/document/white-paper-overview>

² Ibid.

These savings accrue to businesses in every single state. The table below shows the state-by-state savings for consumers and businesses from existing standards. For example, Texas businesses will save nearly \$4 billion annually by 2030 and New York businesses will save a similar amount. (Texas consumers will save about \$8.8 billion annually; New Yorkers will save about \$8 billion.) In general, state-level savings scale with the size of a state but are also affected by energy prices and factors such as air conditioning and heating loads.

Table 1. Total consumer and business economic savings

	Annual utility bill savings in 2030 (million 2015\$)		
	Consumer	Business	Total
Alabama	1,602	834	2,436
Alaska	238	167	405
Arizona	2,413	787	3,200
Arkansas	810	440	1,250
California	10,589	5,373	15,961
Colorado	1,298	552	1,851
Connecticut	1,335	577	1,912
Delaware	332	157	489
District of Columbia	247	288	535
Florida	7,202	2,636	9,838
Georgia	3,172	1,465	4,637
Hawaii	720	316	1,037
Idaho	348	166	514
Illinois	3,714	1,853	5,568
Indiana	1,895	1,094	2,989
Iowa	821	380	1,201
Kansas	787	416	1,203
Kentucky	1,105	561	1,666
Louisiana	1,249	815	2,065
Maine	450	163	613
Maryland	2,147	1,034	3,181
Massachusetts	2,415	1,196	3,610
Michigan	2,990	1,528	4,518
Minnesota	1,441	688	2,129
Mississippi	919	468	1,387
Missouri	1,738	816	2,554
Montana	243	142	384
Nebraska	454	260	714
Nevada	820	305	1,125
New Hampshire	481	195	676
New Jersey	3,160	1,820	4,979
New Mexico	562	260	822

	Annual utility bill savings in 2030 (million 2015\$)		
	Consumer	Business	Total
New York	7,922	4,041	11,963
North Carolina	2,947	1,282	4,229
North Dakota	171	166	338
Ohio	3,661	1,885	5,546
Oklahoma	1,022	544	1,566
Oregon	946	487	1,434
Pennsylvania	4,344	1,767	6,111
Rhode Island	382	165	547
South Carolina	1,595	750	2,345
South Dakota	213	114	327
Tennessee	1,632	888	2,520
Texas	8,578	3,994	12,572
Utah	625	291	916
Vermont	218	86	304
Virginia	2,450	1,169	3,618
Washington	1,485	830	2,315
West Virginia	515	283	797
Wisconsin	1,999	1,066	3,065
Wyoming	138	136	274
United States	98,540	47,693	146,233

Source: Table C2. "Energy Saving States of America: How Every State Benefits from National Appliance Standards."

Combined total U.S. consumer and business savings will reach more than \$146 billion per year by 2030. On a cumulative basis, savings will reach \$2.4 trillion by 2035.

Recently issued new standards and pending updates will add billions of dollars in savings.

When the current administration took office in January 2021, DOE had already missed 28 legal deadlines for reviewing efficiency standards. The efficiency standards for many products, including refrigerators, clothes dryers and water heaters, have not been updated in more than a decade.

DOE has been working to catch up on the many missed legal deadlines. Since 2021, DOE has determined or proposed to determine that 13 standards do not need to be strengthened. For another 30 products, DOE has found that technological change has opened the door for improvement and proposed new standards. About a dozen standards have been finalized in the past 18 months such as new standards for commercial water heaters, several types of commercial air conditioning equipment, room air conditioners and pool heaters. Many more are scheduled for the months ahead.

The table below shows the annualized national bill savings from these standards as reported in DOE rulemaking documents. For example, DOE estimates that households will save nearly \$1.5 billion on an annualized basis from the recently published new standards for home furnaces.

Businesses will save about \$740 million on an annualized basis if DOE adopts commercial refrigerator standards equivalent to those proposed earlier this year.

Table 2. Utility bill savings from recent final and proposed standards

	Annualized Operating Cost Savings (million \$/year)
Final Standards	
General Service Lamps (backstop)	2,955.1
Room Air Conditioners	815.8
Air Cleaners	689.7
Pool Heaters	252.7
Microwave Ovens	23.5
Electric Motors	463.6
Commercial Water Heaters	149.0
Dedicated-Purpose Pool Pump Motors	738.0
Furnaces	1,467.0
Subtotal	7,554.4
Proposed Standards	
Clothes Dryers	1,313.0
General Service Lamps	1,521.4
Circulator Pumps	189.9
Distribution Transformers	1,528.9
External Power Supplies	47.3
Cooking Products	130.7
Refrigerators and Freezers	1,878.6
Residential Clothes Washers	1,598.0
Battery Chargers	500.0
Miscellaneous Refrigeration Equipment	123.1
Automatic Commercial Ice Makers	51.0
Dishwashers	167.8
Refrigerated Beverage Vending Machines	20.0
Ceiling Fans	369.3
Water Heaters	11,357.0
Boilers	188.0
Walk-In Coolers and Freezers	260.0
Commercial Refrigeration Equipment	737.7

Subtotal	21,981.7
GRAND TOTAL	\$29.5 billion

Sources: DOE rulemaking documents.

Combined, businesses and consumers will save nearly \$30 billion per year on an annualized basis from recently completed and pending standards. **For small businesses, these are savings that go right to the bottom line.**

Utility bill savings are not the only benefits that businesses get from improved standards: improved grid reliability and energy system resilience reduce risk for businesses. Standards reduce peak electric system demand, decreasing the probability of electric outages during extreme weather events that can strain utility reliability (as well as reducing demand charges or peak rates for commercial customers). In 2020, we estimated that standards with upcoming reviews could reduce summer peak electricity demand by almost 90 gigawatts by 2050, an amount equal to 13% of current total peak demand.³ For businesses, electric outages can be devastating, forcing them to shut down production or turn customers away and send workers home. Efficiency standards that trim peak demand make those outages less likely.

DOE's rulemaking process protects small businesses interests.

When DOE periodically reviews standards to determine whether improved efficiency levels are technologically feasible and economically justified, the agency considers pocketbook impacts for consumers and businesses, the costs to manufacturers, and competitive effects (42 U.S.C. 6295(o)(2)(B)). DOE accounts for impacts on utilities, employment, and the environment. (10 CFR Part 430, Appendix A to Subpart C). DOE may only adopt standards that result in significant energy or water savings (42 U.S.C. 6295(o)(3)(B)).

By statute, standards must be set at levels that ensure that the features product purchasers (consumers and businesses) value remain available (42 U.S.C. 6295(o)(4) and 6295(q)). Products that use different fuel types (for example, electricity or gas) are regulated separately, and DOE may not and has not set a standard that prohibits all products that use any particular fuel (42 U.S.C. 6295(q)).

To be perfectly clear, DOE rules affect the minimum efficiency of new products available for sale: **they do not require any household or business to replace any appliance or equipment.**

In each of the rulemaking dockets, DOE carefully evaluates the impact of improved efficiency on product prices, including purchase price and any changes to installation and maintenance costs. DOE considers a range of improved efficiency level options but has only adopted levels where any cost increase pays for itself in lower utility bills.

³ Report available at <https://appliance-standards.org/document/report-overview-powerful-priority-how-appliance-standards-can-help-meet-us-climate-goals>

Under a 2007 law enacted on a bipartisan basis and signed by President George W. Bush, DOE must review each product once every six years to determine if an improved standard is warranted. If the agency finds that improved standards would save a significant amount of energy and are technologically feasible and economically justified, DOE must propose new standards. If not, DOE proposes and may finalize a determination to leave the standard unchanged. (As noted above, the current administration has found that 13 standards do not need strengthening.) If DOE proposes a new standard, a final rule amending the standard is due two years later – eight years after the previous standard.

The rulemaking process typically takes three to four years during which DOE and its contractors conduct in-depth analyses. DOE typically provides at least three opportunities for public comment and revises its analyses in response to the comments received and the agency's own research and investigation. DOE's process is open, transparent and predictable.

DOE pays special attention to small businesses, including businesses that use and manufacture the affected products.

For commercial products, DOE will typically conduct a subgroup analysis focused particularly on the benefits and costs for small businesses. For example, DOE conducted an in-depth consumer subgroup analysis for small businesses as part of the analysis for the commercial refrigeration proposed rule (88 Federal Register 70272).

For small business manufacturers, DOE conducts an in-depth analysis of how standards affect them as part of its manufacturer impact analysis and regulatory flexibility analysis. For example, for the proposed commercial refrigerator rule, DOE identified 25 small business manufacturers and estimated the proposed rule's impact for each (88 Federal Register 70283). Other rules that affect small business manufacturers include similar analyses to inform DOE decision making.

DOE provides descriptions of how it gathers detailed information on small businesses and evaluates small business impacts in its rulemaking documents and its [procedures for and policies](#) under the Regulatory Flexibility Act. This process includes interviews with small business manufacturers.

DOE's appliance standards provide a consistent and predictable national marketplace for manufacturers.

The alternative to national appliance, equipment and lighting standards is state-by-state regulation. Historically, California has set standards and other states have copied them or set their own as the states try to manage the reliability and resilience of their energy systems, reduce household and business costs, and cut emissions. In just the past five years, 13 states have enacted efficiency standards covering a range of consumer and business products.

Manufacturers have told us that they generally prefer national standards to state-by-state regulation because of the complexity and cost of complying with different rules in different

states. They also report that their markets and distribution networks are typically not organized along state lines.

Federal standards are generally preemptive of state standards (42 U.S.C. 6297). Therefore, another benefit of the national standards program for small business manufacturers is the creation of a consistent national market.

DOE's appliance standards program enhances the economic competitiveness of US small business in the global marketplace.

Appliance efficiency standards enhance the global economic competitiveness of small businesses in two ways. First, as described above, appliance efficiency standards lower utility bills for small businesses that use covered products. Lower utility bills make businesses more competitive. Second, the effects of improved efficiency on electric grid reliability and resilience (also discussed above) can reduce the risk of costly business downtime.

The third way that appliance efficiency standards improve economic competitiveness is by driving innovation. As the global marketplace continues to increase demand for energy-efficient appliances and equipment, both small and large U.S. manufacturers will be left behind if U.S. regulations do not keep up. In addition, many suppliers to U.S. appliance and equipment manufacturers are small businesses. They benefit when their innovative designs and componentry (e.g., controls, motors, insulating technology, etc.) help larger manufacturers improve finished product efficiency.

Each time DOE updates a standard, innovative manufacturers and their suppliers put their engineers to work on developing cost-competitive products to meet the new standard and on developing the next generation of even more efficient products to distinguish themselves in the marketplace. For example, after new washer standards adopted in 2012 took effect in 2018, the best top loaders got better. The most-efficient top-loading washers on the market today are 35% more efficient than the very best top-loading washer DOE identified in 2012 and many excel in cleaning performance tests.

And while sometimes we hear doom and gloom from manufacturers about proposed new standards, the record shows that innovation driven in large part by regulatory change keeps on bringing the cost to improve efficiency down and opening up even larger savings opportunities for consumers. Academic [studies](#) have shown this effect.

U.S. business thrives when it innovates and leads the world. Innovation helps the U.S. to remain cost-competitive compared to countries with lower wage structures. It also enables U.S. businesses to build export markets, particularly as other economies seek to reduce energy waste.

Summary

Existing appliance standards are delivering billions of dollars of annual utility bill savings for consumers and businesses, including small businesses. Recently adopted and pending standards can add billions in additional utility bill savings, contributing to improved profitability for small businesses. DOE's rulemaking process pays particular attention to the impacts of any new standard on small businesses, ensuring that both small business users' and manufacturers' interests are taken into account. Finally, the national standard program preempts state standards, providing the consistent national marketplace that manufacturers prefer in place of state-by-state regulation, and the global economic competitiveness of U.S. small businesses.



Statement for the Record

The Manufactured Housing Institute

Before the:

U.S. House of Representatives Small Business Committee

Hearing Entitled:

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

November 8, 2023

Manufactured Housing Institute
November 8, 2023
Page 2

The Manufactured Housing Institute (MHI) is pleased to submit this statement for the record for the November 8, 2023, House Small Business Committee Hearing on “Burdensome Regulations: Examining the Effects of Department of Energy Regulations on America’s Job Creators.”

MHI is the only national trade association that represents every segment of the factory-built housing industry. Our members include home builders, suppliers, retail sellers, lenders, installers, community owners, community operators, and others who serve the industry, as well as 48 affiliated state organizations.

In 2022, our industry produced nearly 113,000 homes, accounting for approximately 11 percent of new single-family home starts.

Unfortunately, the significant levels of job creation, economic activity, and homeownership affordability created by manufactured housing is currently at risk because of unbalanced Department of Energy (DOE) energy standards for new manufactured homes released a year ago in May.

Those DOE standards epitomize what this hearing’s title refers to as “burdensome regulations.” The DOE energy standards would: (1) increase the cost of each new manufactured home by an average of around \$5,000 a home, (2) cause many prospective manufactured home buyers to no longer qualify for a mortgage because of the higher Debt to Income (DTI) ratio, and (3) impose higher annual costs on homebuyers that, according to our calculations, exceed the purported energy savings under the DOE standards.

The DOE standards are not just burdensome – they are unnecessary. MHI, our manufacturer members, and in fact all our members support the objective of manufactured home energy efficiency. In fact, more than 30 percent of new manufactured homes are Energy Star certified and even more are built to meet or exceed those standards.

However, the right forum to update energy standards for manufactured homes is through HUD, which for almost 50 years had exclusive jurisdiction over the establishment of manufactured home construction and safety standards – which include energy standards - through the HUD Code. MHI has been urging HUD to update energy standards under the HUD Code for some time and HUD started that process last fall, through initial consideration by the HUD Manufactured Housing Consensus Committee (MHCC), a non-partisan panel of experts in the field of manufactured housing engineering.

Unfortunately, the development by DOE of parallel – but substantially different – energy standards would impose a significant compliance, cost and time burden on the construction of manufactured homes. The impact would be simple: fewer manufactured homes, fewer jobs in the manufactured home sector, and fewer affordable homeownership opportunities for low- and moderate-income families.

Why is that important? Because manufactured housing is our nation’s most affordable homeownership option. In 2022, the average price of a manufactured home was \$127,250, while the average price of a site-built home was \$413,000. And, the average income of a manufactured home buyer was around \$35,000, while the average income of a site-built homebuyer was over \$100,000.

Finally, the DOE manufactured home energy standards are not just burdensome and unnecessary – they also contain a number of critical flaws in their design and implementation.

First, the DOE standards incorporate standards from building codes, which are used for site-built homes, which are incompatible with manufactured homes.

Manufactured Housing Institute
November 8, 2023
Page 3

Second, DOE standards do not include a testing, compliance, or enforcement regime. This potentially fatal flaw not only undermines the objectives of having energy standards in the first place, but it also potentially delays the implementation of much needed updates to manufactured home energy standards, due to confusion and unresolved issues resolving compliance and enforcement.

Finally, the DOE manufactured home energy standards were adopted without any effective consultation with HUD, even though this was required by statute and even though HUD is the acknowledged authority both on manufactured home construction and safety standards and on housing affordability. This failure to consult with HUD was a major contributing factor to the fundamental flaws in the DOE standards.

But don't just take MHI's word for this. Last fall, when HUD's Manufactured Housing Consensus Committee (MHCC) considered the DOE standards, the MHCC found numerous problems with the standards, including a failure by DOE to consider the unique characteristics of manufactured homes.

For all these reasons, MHI urges the DOE to defer to HUD in the final establishment of updated manufactured home energy standards – trusting the HUD CODE process, which includes the work of experts in the MHCC and the perspective of HUD as the federal agency charged not just with these standards but with adopting standards that reflect the critical perspective of affordable housing. The final result should be one uniform nationwide set of manufactured home energy standards, finalized by the HUD MHCC and by HUD.

However, barring such deference on the part of the DOE, MHI believes that Congress should act. Last week, the House adopted an amendment to the FY 2024 Department of Energy Appropriations bill barring any DOE funds from being used to implement the flawed DOE manufactured home energy standards. This provision should be retained in the final conference report.

Additionally, a few weeks ago the Energy, Climate, and Grid Security Subcommittee of the House Energy Committee approved the *"Affordable Housing Over Mandating Efficiency Standards Act,"* which would repeal Section 413 of the 2007 "Energy Independence Security Act," which gave DOE authority to establish its own different set of energy standards for manufactured housing. This bill would re-instate HUD's longstanding and sole jurisdiction over manufactured housing construction and safety standards, and would eliminate the flawed DOE standards, which are a threat to job creation and homeownership affordability.

In closing, MHI commends the Small Business Committee for its focus on burdensome regulations that harm America's job creators, and urges the Committee to give its support to the efforts in other House Committees to reign in these DOE energy standards that undermine job creation and homeownership affordability.