

EPCA REFORM TO MAKE DISHWASHERS GREAT AGAIN

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INTRODUCTION

Improvements in technology have enabled consumer products such as household appliances to become faster and more efficient.¹ In an effort to protect the environment, however, government regulations have made simple tasks require more time, effort, and money.² The Energy Policy and Conservation Act of 1975 (EPCA) has created federal standards that limit the energy used by a single household appliance.³ Dishwashers are one type of household appliance whose energy usage is restricted by the EPCA.⁴ As a result, newer dishwashers require two or three times longer to do the job of older dishwashers.⁵

On March 21, 2018, the Department of Energy (DOE) received a petition from the Competitive Enterprise Institute (CEI) to define a new class of products for dishwashers under the EPCA.⁶ This would not create new regulations for current dishwashers; rather, it would create an entirely new product classification with its own regulations.⁷ The proposed class would cover dishwashers with a cycle time of less than an hour, from start to finish, and give consumers the opportunity to once again buy dishwashers that get

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¹ James Freeman, *The Dishwasher Rebellion*, WALL STREET JOURNAL (June 27, 2018, 12:28 PM), <https://www.wsj.com/articles/the-dishwasher-rebellion-1530116900>.

² *Id.*

³ *See generally* Energy Policy and Conservation Act of 1975, Pub. L. No. 94-163, 89 Stat. 871 (1975).

⁴ *Id.*

⁵ Freeman, *supra* note 1.

⁶ Energy Conservation Program: Energy Conservation Standards for Dishwashers, Notification of Petition for Rulemaking, 83 Fed. Reg. 17768 (proposed Mar. 21, 2018).

⁷ *Id.*

2018 *EPCA Reform to Make Dishwashers Great Again* 115

the job done quickly and efficiently.⁸ The proposed change would not backslide current energy standards, however, as the change would not apply to current models of dishwashers.⁹

The EPCA regulations and the proposed change introduced by the CEI are important and directly affecting consumers. When the petition was first introduced, over two thousand consumers took to an online comment board for federal regulations to voice their support.¹⁰ Consumers are tired of buying new, expensive dishwashers that do not work as well as old, inexpensive dishwashers. They do not want to wait two or three hours for the dishwasher cycle to finish, only to discover that all of the dishes on their top rack were not cleaned. Consumers want a return to the old standards where all of their dishes were fully cleaned in a reasonable amount of time, and the proposed change to the DOE's standards will give them just that.

This note will discuss why consumers are not currently protected by EPCA dishwasher provisions and takes the position that in order to protect consumers, the Department of Energy should accept the petition from the CEI and create a new class of dishwashers under federal regulations. Part I of this note will explore the history of the DOE and EPCA and the reasons for imposing regulations on consumers. Part II will address the insurance provisions Congress has adopted in order to combat some of the negative effects of the EPCA. Part III will look at the impact the EPCA has had on consumers. Part IV will analyze the petition from the CEI and Part V will examine its desired impact. Finally, Part VI will address additional ways in which consumers can change the EPCA to make simple tasks simple again.

I. HISTORY OF THE ENERGY POLICY AND CONSERVATION ACT OF 1975

In 1973, the United States experienced an oil crisis.¹¹ The U.S. economy was in upheaval, and many Americans began growing concerned about national energy use.¹² Until this point,

⁸ *Id.*

⁹ *Id.*

¹⁰ Freeman, *supra* note 1.

¹¹ Grey Myre, *The 1973 Arab Oil Embargo: The Old Rules No Longer Apply*, NAT'L PUBLIC RADIO (Oct. 16, 2013, 12:15 PM), <https://www.npr.org/sections/parallels/2013/10/15/234771573/the-1973-arab-oil-embargo-the-old-rules-no-longer-apply>.

¹² See William D. Smith, *Energy Crisis: Shortages Amid Plenty*, THE N.Y.

the federal government did not play a major role in formulating national energy policy.¹³ Since the New Deal era, basic government policy had been aimed at keeping energy costs as low as possible in order to stimulate the expanding use of energy “for the good of the people.”¹⁴ Times changed, but the policy did not. Senator Henry M. Jackson, who was considered the most informed and unbiased man in the capital on energy matters during the New Deal era, said, “the most difficult problem facing the nation today, either internationally or domestically, is the energy crisis.”¹⁵

The U.S. faced this energy crisis in the mid-1970s because of a lack of government planning and a growing demand for energy.¹⁶ The United States was living in an era of cheap and abundant energy, and the nation relied on the private sector to fulfill the nation’s energy needs.¹⁷ No inclusive energy policy existed and at the time as the private sector thought of fuels and technologies as compartmental categories, and not as one general energy category.¹⁸ One solution to the energy crisis was a simple reduction in the use of energy.¹⁹ This was favored by almost everyone, except oil companies’ marketing departments.²⁰ The general understanding was, “if the right decisions are made now, there should be no crisis over the long term.”²¹ As a result, the U.S. government took its first step toward creating a national energy plan and created a federal agency to target energy conservation.²²

On August 4, 1977, President Jimmy Carter signed legislation creating a Federal Department of Energy (DOE).²³ The DOE brought together two programmatic traditions that had previously existed within the federal government.²⁴ First, the

TIMES (Apr. 17, 1973), <https://www.nytimes.com/1973/04/17/archives/energy-crisis-shortages-amid-plenty-energy-paradox-of.html>.

¹³ *A Brief History of the Department of Energy*, DEP’T OF ENERGY OFFICE OF MGMT., <https://www.energy.gov/management/office-management/operational-management/history/brief-history-department-energy>. (last visited Oct. 12, 2018) [hereinafter *History of the DOE*].

¹⁴ Smith, *supra* note 12.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *History of the DOE*, *supra* note 13.

¹⁸ *Id.*

¹⁹ Smith, *supra* note 12.

²⁰ *Id.*

²¹ *Id.*

²² *History of the DOE*, *supra* note 13.

²³ David J. Bardin, *The Role of the New Department of Energy*, 10 NAT. RES. LAWYER 609, 633 (1978).

²⁴ *History of the DOE*, *supra* note 13.

department would continue to focus on defense responsibilities, such as nuclear weapon testing and construction.²⁵ Second, the department was a loose-knit amalgamation of various federal agencies that already existed within the government structure, such as the Federal Energy Administration, Federal Power Commission, and the Energy Research and Development Administration.²⁶ Since 1977, one of the focuses of the DOE has been energy efficiency, and the department works with universities to boost the efficiency of current technologies on the market.²⁷ Additionally, the DOE has the authority to create national energy standards for household appliances through the Energy Policy and Conservation Act of 1975 (EPCA).²⁸

The EPCA was created as a compromise between the President and Congress and was enacted for the purpose of serving the nation's energy demands while promoting conservation methods when feasibly obtainable.²⁹ The EPCA created the Energy Conservation Program for Consumer Products Other than Automobiles,³⁰ which was initially executed by the Federal Energy Administration.³¹ This administration, however, merged with other federal administrations when the DOE was created, leaving the DOE to execute the Energy Conservation Program for Consumer Products Other than Automobiles.³² The program enforces minimum energy conservation standards for appliances and equipment in the United States.³³ The program gives the DOE the authority to develop and implement test procedures and minimum standards for these appliances.³⁴ The program also requires that the standards be "technologically feasible and

²⁵ *Id.*

²⁶ Bardin, *supra* note 23.

²⁷ *Energy Efficiency*, DEP'T OF ENERGY, <https://www.energy.gov/science-innovation/energy-efficiency>. (last visited Oct. 12, 2018).

²⁸ Energy Policy and Conservation Act of 1975, Pub. L. No. 94-163, 89 Stat. 871 (1975).

²⁹ Charles Cicchetti, *National Energy Policy Plans – A Critique*, 16 PENN. STATE UNIV. PRESS 41, 45 (1976).

³⁰ Energy Policy and Conservation Act of 1975, Pub. L. No. 94-163, 89 Stat. 871 (1975).

³¹ Cicchetti, *supra* note 29.

³² *See History and Impacts*, DEP'T OF ENERGY OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY, <https://www.energy.gov/eere/buildings/history-and-impacts>. (last visited Oct. 12, 2018).

³³ Energy Policy and Conservation Act of 1975, Pub. L. No. 94-163, 89 Stat. 871 (1975).

³⁴ *Id.*

economically justified.”³⁵ Initially, the EPCA called for the program to create and set efficiency targets for household appliances.³⁶ Little progress was made to set those standards until the 1980s, and the EPCA has since been amended by a number of different acts.³⁷

In 1987, Congress enacted the National Appliance Energy Conservation Act (NAECA). NAECA amended the EPCA to include more stringent efficiency standards for many household appliances.³⁸ It also amended the EPCA to direct the DOE to conduct additional rulemakings to determine at regular intervals whether to amend its existing efficiency standards.³⁹ Finally, NAECA also included an anti-backsliding provision, which prohibits the DOE from issuing any future efficiency standards that increase the maximum allowable energy usage or decrease the minimum required energy efficiency of a covered product.⁴⁰

In 2007, Congress passed the Energy Independence and Security Act (EISA), which amended NAECA.⁴¹ EISA established a new process for the promulgation of new efficiency standards, changing the review cycle established by NAECA to a six-year interval for review, rather than a five-year interval.⁴² Every six years, the DOE must either publish a notice of a proposed rulemaking to amend the standards or publish a notice of determination indicating that the existing standards do not need to be amended and are still economically justified and technologically feasible.⁴³ With the amendments to the EPCA, the DOE is currently required to establish energy and water efficiency standards for twenty different categories of consumer products, such as dishwashers, refrigerators, and freezers.⁴⁴ The EPCA also gives the DOE broad authority to establish energy conservation standards for any other class of consumer products it considers

³⁵ *Id.*

³⁶ *History and Impacts, supra* note 32.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Energy Conservation Program: Energy Conservation Standards for Residential Dishwashers, 81 Fed. Reg. 90,072 (Dec. 13, 2016) (to be codified at 10 C.F.R. pt. 429).

⁴⁰ 42 U.S.C. § 6295(o)(1) (2016).

⁴¹ *See History and Impacts, supra* note 32.

⁴² Energy Independence and Security Act, Pub. L. No. 110-140, 121 Stat. 1492 (2007).

⁴³ 42 U.S.C. § 6295(m) (2016).

⁴⁴ Energy Policy and Conservation Act of 1975, Pub. L. No. 94-163, 89 Stat. 871 (2007).

2018 *EPCA Reform to Make Dishwashers Great Again* 119

covered under the act.⁴⁵ In addition, the DOE is permitted to establish different standards for different classes of covered products based on their performance-related features.⁴⁶ This provision allows the DOE to establish lower energy efficiency standards for these different types of classes. The relevant requirement for a product to be categorized in a different class than the original is that the product have a capacity or other performance-related feature which other products in that class do not have.⁴⁷

II. INSURANCE PROVISIONS

When Congress created and passed the EPCA, it understood that imposing energy standards on consumers could have a negative impact on them.⁴⁸ In efforts to ensure both energy conservation and product quality, Congress included a number of insurance provisions in the act itself and in future amendments to the act.⁴⁹ The EPCA states that energy conservation standards that are enacted must be “technologically feasible and economically justified.”⁵⁰ In addition, the conservation standards must actually result in a significant conservation of energy.⁵¹ Perhaps the most important consumer protection in the EPCA is the provision that all new standards must establish by a preponderance of the evidence that they will not result in the unavailability of any performance characteristics, including reliability, and features.⁵²

When Congress enacted NAECA, it sought to ensure that “energy savings are not achieved through the loss of significant consumer features.”⁵³ Congress included this insurance provision to ensure that an amended standard did not deprive consumers of product choices and characteristics.⁵⁴ This provision should preclude the DOE from creating a standard that manufacturers are only able to meet by adopting “engineering changes that

⁴⁵ *Id.*

⁴⁶ 42 U.S.C. § 6295(q) (2016).

⁴⁷ *Id.* § 6295(q)(1).

⁴⁸ Energy Conservation Program, *supra* note 6.

⁴⁹ *See* 42 U.S.C. § 6295 (2016).

⁵⁰ *Id.* § 6295(j)(3)(A).

⁵¹ *Id.* § 6295(o)(3)(B).

⁵² *Id.* § 6295(o)(4).

⁵³ JOHN DINGELL, NAT’L APPLIANCE ENERGY CONSERVATION ACT, H.R. Rep. No. 100-11, at 22 (1987).

⁵⁴ *Id.*

eliminate performance characteristics.”⁵⁵ In short, NAECA’s provisions serve to protect consumers by ensuring that efficiency standards will not lower the performance of household appliances.

III. HOW IS THE EPCA IMPACTING CONSUMERS?

Despite the insurance provisions enacted by Congress, consumers are not properly protected from the negative impact of the EPCA. It appears that dishwasher speed cycles have been “seriously impaired by the DOE standards and that many machines with shorter cycle times are no longer available to consumers.”⁵⁶ In its most recent rulemaking decision, the DOE estimated that the average dishwasher cycle time is about one hour, but that estimate is decades out of date.⁵⁷ In 1978, Consumer Reports found that the average dishwasher cycle time was an hour.⁵⁸ The average cycle time has not been close to an hour since 1983, which is before the DOE adopted any dishwasher energy efficiency standards.⁵⁹ More recently, dishwasher cycle times have hovered around the 2-3 hour mark, which has been directly caused by the DOE standards set for energy efficiency.⁶⁰

Given the insurance provisions put in place, the DOE is tasked with issuing energy efficiency standards for dishwashers with the objective that after the standards are enacted, dishwashers will clean just as well despite using less water and electricity. If the DOE enacts its standards properly, manufacturers should be able to design dishwashers in accordance with the standards without having to sacrifice any aspect of the dishwasher’s reliability or performance characteristics. If the standards enacted result in increased dishwasher times or dishwashers that do not clean properly or as well as old dishwashers, the standards are not in accordance with the policies set forth in the EPCA.

Current federal standards created by the DOE require that dishwashers use 4.25 gallons of water per cycle or fewer,⁶¹ which

⁵⁵ *Id.*

⁵⁶ Energy Conservation Program, *supra* note 6.

⁵⁷ *Id.*

⁵⁸ CONSUMER REPORTS, May Issue, 281 (1976).

⁵⁹ *Id.*

⁶⁰ Ed Perratore, *Why Do New Dishwashers Take So Long To Complete A Normal Cycle?*, CONSUMER REPORTS (Apr. 23, 2014, 4:15 PM), <https://www.consumerreports.org/cro/news/2014/04/why-does-my-new-dishwasher-take-so-long/index.htm>.

⁶¹ *Kitchen Appliances*, DEP’T OF ENERGY,

2018 *EPCA Reform to Make Dishwashers Great Again* 121

are much higher than standards pertaining to dishwashers used twenty years ago. For example, the average dishwasher purchased prior to 1994 used more than ten gallons of water per cycle,⁶² which is more than double what current standards allow. Manufacturers have struggled to meet this new standard while simultaneously keeping cycle times low.⁶³ As a result, most manufacturers have accomplished this by creating machines that run longer. With less water allowed per cycle, the machines spray the water longer with higher efficiency motors and pumps, thereby still achieving better energy efficiency than they would with older motors and pumps.⁶⁴

The DOE itself has acknowledged that dishwasher cycle times have become dramatically worse as a result of its regulations.⁶⁵ The Association of Home Appliance Manufacturers (AHAM) collected data from manufacturers that make up approximately ninety percent of the market and found that as energy use decreases, cycle time increases.⁶⁶ When new energy standards are adopted by the DOE, the result is an increase in cycle time. Despite this, it is likely that the DOE has not changed the efficiency standards because of the anti-backsliding provision in the EPCA, which prevents the DOE from issuing new standards that increase the allowed energy use. The EPCA was created to promote energy conservation, but the anti-backsliding provision is too rigid, as it does not allow for the DOE to correct its mistakes in situations such as this one. The DOE is required to review its standards every six-years, but it is not allowed to make its standards more lenient, which negatively impacts consumers.

Consumers are unhappy with the current state of their dishwasher cycle times and have taken to an online comment board to make their voices heard.⁶⁷ Sandra Guckian commented,

<https://www.energy.gov/energysaver/appliances-and-electronics/kitchen-appliances>. (last visited Oct. 12, 2018).

⁶² *Id.*

⁶³ Phillip Jang, *Why Newer Dishwashers Run for an Alarming Long Time*, TIMES COLONIST (June 24, 2014, 3:32 AM), <https://www.timescolonist.com/opinion/why-newer-dishwashers-run-for-an-alarmingly-long-time-1.2179982>.

⁶⁴ *Id.*

⁶⁵ See DEP'T OF ENERGY, FINAL RULE TECHNICAL SUPPORT DOCUMENT, at 3-28 (Nov. 22, 2016)

(noting that "To help compensate for the negative impact in cleaning performance associated with decreasing water use and water temperature, manufacturers will typically increase the cycle time.").

⁶⁶ Energy Conservation Program, *supra* note 6.

⁶⁷ *Energy Conservation Standards for Dishwashers*, REGULATIONS.GOV,

“[p]lease revise the regulations to allow for fast, efficient dishwashers. Today’s dishwashers have longer running cycles that are neither efficient nor effective as many times the dishes are still dirty and must be washed by hand.”⁶⁸ Many other consumers echoed her sentiments and asked that regulations be “loosened up” to allow for dishwashers to be “fast again” and “great again.”⁶⁹ Overall, consumers are not pleased with the current regulations that the DOE has set forth governing the water and energy use of dishwashers. The longer run times are creating hassles for consumers who may have to run the dishwasher every night to clean baby bottles, or those who have a large household and need the dishes cleaned from breakfast to dinner time. Other consumers do not mind the longer run times, but are tired of having to run the dishwasher two or three times to finally get clean dishes. These problems are leaving consumers dissatisfied with the current state of regulations and desperate for a change to bring back dishwashers of the past that cleaned dishes completely on the first cycle, and within an hour.

When Congress created the EPCA, it did so with the intention of protecting the best interests of consumers. Congress sought to protect the performance characteristics of all of the product classes covered under the EPCA, which is why it included insurance provisions limiting the power and scope of the DOE’s authority to create efficiency standards. Congress had the right intentions in creating the EPCA. Unfortunately, the act has not been enacted in accordance with Congress’ intentions, as it does not appear that the Department of Energy has followed the limitations placed in the EPCA.

The standards the DOE sets for efficiency are prohibited from being enacted if they create the unavailability of any performance characteristic of a product, including reliability.⁷⁰ When consumers consider the performance characteristics of dishwashers, cycle time and reliability are arguably two of the most important characteristics. When consumers shop for dishwashers, some may consider how energy efficient a certain machine is, but most consumers will consider how reliable the

<https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=EERE-2018-BT-STD-0005>. More than 2,000 consumers commented on the online comment board indicating their dissatisfaction with their dishwashers and supporting the petition from the CEI.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ 42 U.S.C. § 6295(o)(4) (2016).

2018 *EPCA Reform to Make Dishwashers Great Again* 123

dishwasher will be and how well it performs. Given that most consumers will consider the cycle time of a dishwasher and its reliability in determining whether or not to buy the machine, those two factors are undoubtedly performance characteristics that should be covered under the insurance provisions of the EPCA.

Unfortunately for consumers, these performance characteristics are being negatively impacted by the DOE standards. Under current DOE standards, it is not technologically feasible to create dishwashers that both meet the current standards and have cycle times of an hour or less.⁷¹ As such, the DOE should not have enacted these standards since consumers are being forced to give up a beloved characteristic of the dishwasher. The Department of Energy has caused dishwashers to lose their reliability,⁷² and consumers are not happy about it.⁷³ Congress promised consumers that their interests would be protected, but dishwashers with short cycle times that only need to be cycled once are no longer available to consumers.⁷⁴ As a result, consumers must buy machines with longer run times that often need to be cycled more than once. Despite the protections enacted in the EPCA and NAECA, energy efficiency and conservation standards are being achieved through the loss of significant consumer features. Consumers should not be dissatisfied with the reliability of their appliances if they have been promised satisfaction. As a result of the consumer dissatisfaction, the Competitive Enterprise Institute has set out to make a change, and the DOE should strongly consider the proposed new class.⁷⁵

IV. PETITION FROM THE COMPETITIVE ENTERPRISE INSTITUTE

The Competitive Enterprise Institute (CEI) is a non-profit public policy organization “dedicated to advancing the principles of limited government, free enterprise, and individual liberty.”⁷⁶ The CEI was founded in 1984 and has grown into an effective advocate for freedom on a range of different issues, including regulatory policy issues such as energy, environment, and food and

⁷¹ Energy Conservation Program, *supra* note 6.

⁷² See Energy Conservation Program, *supra* note 6.

⁷³ *Energy Conservation Standards for Dishwashers*, *supra* note 67.

⁷⁴ 42 U.S.C. § 6295(o)(4) (2016).

⁷⁵ Energy Conservation Program, *supra* note 6.

⁷⁶ *About*, COMPETITIVE ENTERPRISE INSTITUTE, <https://cei.org/about-cei>. (last visited Oct. 12, 2018).

drug regulation.⁷⁷ A main goal of the CEI is to promote public policy issues affecting consumers.⁷⁸

Underperforming dishwashers have been a problem for consumers, but anti-backsliding rules prevent a return to the old energy standards.⁷⁹ To address this issue, the CEI submitted a petition for rulemaking to define a new product class of fast dishwashers on March 21, 2018.⁸⁰ The proposed change would create a new product class of residential dishwashers with a cycle time of less than one hour from washing through drying.⁸¹ The CEI created this petition to encourage the DOE to listen to consumers and create standards that would mark a return to the days when dishwashers would wash and dry in an hour.⁸² The CEI did not propose specific energy or water requirements for the new product class, as it suggested that those standards could be determined during the course of the rulemaking.⁸³

As discussed previously, the EPCA has an anti-backsliding provision incorporated in the act that prohibits the DOE from changing its regulations in a manner that makes them more lenient, meaning changing them to allow for increased energy usage.⁸⁴ As a result, the CEI could not petition the DOE to simply rethink its current dishwasher regulations to allow for the creation of dishwashers that could be manufactured to complete a cycle in an hour. CEI, however, found a loophole that would allow the DOE to consider a rule change that could lead to the creation of fast, reliable dishwashers. The proposed change would not create backsliding for current energy standards, as the change would not apply to current models of dishwashers.⁸⁵

The CEI petition relies on a provision in the EPCA that allows the DOE to consider creating a new class of product.⁸⁶ Under the EPCA, the DOE can create a higher or lower standard for a certain type of product that has a performance-related feature which other products within the general product class do not have.⁸⁷ This provision specifically allows the DOE to single out

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ 42 U.S.C. § 6295(o)(1) (2016).

⁸⁰ Energy Conservation Program, *supra* note 6.

⁸¹ *Id.*

⁸² CONSUMER REPORTS, May Issue, 281 (1976).

⁸³ Energy Conservation Program, *supra* note 6.

⁸⁴ 42 U.S.C. § 6295(o)(1) (2016).

⁸⁵ Energy Conservation Program, *supra* note 6.

⁸⁶ *Id.*

⁸⁷ *Id.*

2018 *EPCA Reform to Make Dishwashers Great Again* 125

one-hour cycle time dishwashers as a specific type of dishwasher product, since cycle time is a performance-related feature. Once the one-hour dishwasher is considered its own product class, apart from general dishwashers, the DOE can create standards for those specific types of dishwashers. The anti-backsliding provision will not be violated by these new standards even though they will be increasing the allowable energy use for dishwashers, because the one-hour dishwashers will be considered a separate product class under the EPCA. The DOE will not have to change the current standards in place for residential dishwashers, as that would be a separate class from the dishwasher class proposed in this petition from the CEI.

V. POTENTIAL IMPACT OF CEI PETITION ON CONSUMERS

The CEI has petitioned the DOE to create this new class of products under the EPCA to address the dissatisfaction of consumers. If the DOE grants the CEI's petition, the DOE will play a large role in restoring the functionality of household appliances that once existed. If manufacturers are given the authority to create efficient, one-hour cycle time dishwashers consumers will save both time and money. First, consumers will save time because they will no longer have to wait two to three hours for a load of dishes to wash and dry, only to open the dishwasher to find out that the dishes were not cleaned properly and the dishwasher needs to be run again. If dishwashers can clean dishes well in one-hour, consumers will also save time by not running the same load of dishes a second time to achieve cleanliness. Second, consumers will save money on their electricity and water bills in the long run. The current standards were promulgated to create energy efficient machines that would lower electricity bills, but if the dishwasher does not work properly the first time and consumers have to run the machine a second time, the benefit that comes from having an energy efficient machine is effectively cancelled out. From an economic point of view, it is preferred for a consumer to run a one-hour dishwasher once and use slightly more energy than the current energy star models than to run the energy star model twice and end up using more energy than the proposed one-hour dishwasher would use in one cycle. To the same point, even if the one-hour dishwasher uses seven to eight gallons of water per cycle, that is still better for a consumer's finances than running a dishwasher that uses four and a half

gallons a cycle twice.

Consumers want dishwashers that are energy efficient, but they also want dishwashers that clean better, clean quicker, and clean quieter.⁸⁸ Due to the backsliding provision in the EPCA, energy efficiency standards for the current class of dishwashers will not change. Therefore, consumers who prioritize energy efficiency will still be able to purchase machines aimed at that goal. For consumers who prefer one of the other desires, the new class of one-hour dishwashers will allow them to have a dishwasher aimed at meeting their goals as well. Overall, the CEI petition is aimed at addressing the dissatisfaction with dishwasher speed that has been discussed by over two thousand consumers.⁸⁹ The petition was created to promote the desires of all consumers, which is an improvement from the current state of dishwasher regulations. Due to the alarming consumer dissatisfaction with current DOE regulations for dishwashers, the Department of Energy should accept the CEI's petition and begin the rulemaking process to define a new class of dishwashers that will satisfy and protect the interests of consumers.

VI. OTHER WAYS CONSUMERS CAN CHANGE THE EPCA

The EPCA was created in the wake of the 1970s energy crisis to address energy conservation concerns in the United States. Congress took steps to ensure that consumers would be protected and that product performance would not suffer as a result of the DOE regulations set forth for energy efficiency. The dishwasher regulations and the dissatisfaction that has followed only marks the beginning of the EPCA's problems. Consumers should not be forced to settle for underperforming appliances, such as dishwashers that do not properly clean, but the problem lies deeper than the energy efficiency regulation itself. The true problem lies in the NAECA's added provision to the EPCA, which is the anti-backsliding provision.

The first step for consumers who are dissatisfied with their dishwashers is to support the petition by the CEI to define a new class of products, and the second step is to call for a reform of the EPCA. Specifically, consumers should petition Congress to remove the anti-backsliding provision from the EPCA. Removing this provision would allow Congress to create standards that increase

⁸⁸ *Id.*

⁸⁹ *Energy Conservation Standards for Dishwashers, supra note 67.*

2018 *EPCA Reform to Make Dishwashers Great Again* 127

maximum energy usage in certain product classes when Congress finds that the set standards are a clear burden on consumers. This would alleviate the need to create new classes of products that further complicate regulations. This improvement would also allow the DOE to monitor its changes and make adjustments as necessary, if it finds that its regulations are not having the intended effect or are not being implemented properly. The anti-backsliding provision assumes that Congress will enact a perfect law the first time and leaves no room for error, which places consumers in situations like this one in which they are dissatisfied with their household appliances. Consumers who are dissatisfied with their household appliances should be proactive and make efforts to petition Congress to change the law in order to give consumers a stronger voice in the efficiency standards process. Currently, the government gets to decide how much energy consumers can use with their household appliances, but it should be up to consumers to decide whether or not they want to use energy efficient products.