Appliance Standards Awareness Project
American Council for an Energy-Efficient Economy
Ceres
Consumer Federation of America
Earthjustice
National Consumer Law Center, on behalf of its low-income clients
Natural Resources Defense Council

July 15, 2025

Mr. David Taggart
U.S. Department of Energy
Office of the General Counsel, GC-1
1000 Independence Avenue SW
Washington, DC 20585

RE: EERE-2025-BT-STD-0017: Energy Conservation Standards for Battery Chargers

Dear Mr. Taggart:

This letter constitutes the comments of the Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEEE), Ceres, Consumer Federation of America (CFA), Earthjustice, National Consumer Law Center, on behalf of its low-income clients (NCLC), and Natural Resources Defense Council (NRDC) on the notice of proposed rulemaking (NOPR) for standards for battery chargers. 90 Fed. Reg. 20868 (May 16, 2025).[1] We appreciate the opportunity to provide input to the Department.

1. About the signatories

ASAP advocates for appliance, equipment, and lighting standards that cut planet-warming emissions and other air pollution, save water, and reduce economic and environmental burdens for low- and moderate-income households. ASAP's steering committee includes representatives from environmental and efficiency nonprofits, consumer groups, the utility sector, and state government.

ACEEE, a nonprofit research organization, develops policies to reduce energy waste and combat climate change. Its independent analysis advances investments, programs, and behaviors that use energy more effectively and help build an equitable clean energy future.

Ceres builds a cleaner and more resilient economy by working alongside over 80 major businesses to support clean energy policies at the state and national level.

[1] Relevant excerpts of documents cited below, except for statutes, regulations, published judicial decisions, and Federal Register notices, are provided in an appendix to these comments.

CFA is an association of more than 250 non-profit consumer and cooperative groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education.

Earthjustice is the premier nonprofit public interest environmental law organization, wielding the power of law and the strength of partnership to protect people's health, to preserve magnificent places and wildlife, to advance clean energy, and to combat climate change.

NCLC has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. since 1969 through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. Throughout its history, NCLC has advocated for policies and programs that increase energy efficiency in the homes of low-income consumers and that, therefore, reduce their energy bills.

NRDC is an international, non-profit environmental organization with more than three million members and online activists. NRDC advocates to reduce greenhouse gas emissions that cause climate change, increase the resilience of communities to the unavoidable impacts of climate change, and safeguard human health for all. NRDC advocates for clean energy policies that will build the U.S. economy, reduce air pollution, help keep electricity prices affordable and strengthen the electricity grid.

2. Introduction

Energy and water conservation standards save consumers significant amounts of money by reducing utility bills. According to DOE, efficiency standards reduced Americans' utility bills by $105 billion in 2024 alone, with a typical household saving $576.[2] Efficiency standards also saved 6.0 quadrillion Btus ("quads") of primary energy in 2024, which is equivalent to 6.5% of total U.S. annual energy consumption, and 1.7 trillion gallons of water, which is equivalent to approximately 12% of the annual water withdrawals for public supply in the United States in 2015.[3] These tremendous savings can help avoid costly buildout of new infrastructure like power plants, power lines, and water treatment facilities, which would further increase energy and water prices.

In the NOPR, DOE is proposing to rescind the energy conservation standards for battery chargers in their entirety. This action does not stand on its own. It is one of 17 proposals issued the same day to roll back efficiency standards.

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[2] U.S. Department of Energy, Office of Energy Efficiency & Renewable Energy, Appliance Standards Fact Sheet (March 2025). www.energy.gov/sites/default/files/2025-03/Appliance%20Standards%20Fact%20Sheet-02.pdf.

[3] Lawrence Berkeley National Laboratory, Energy and economic impacts of U.S. federal energy and water conservation standards adopted from 1987 through 2024 Report (January 2025). eta-publications.lbl.gov/sites/default/files/2025-01/standards_1987-2024_impacts_overview3.pdf. p. 4.

On his first day in office, President Trump issued an Executive Order "Declaring a National Energy Emergency." That order focused on the "active threat to the American people from high energy prices," highlighted the "high energy prices that devastate Americans, particularly those living on low- and fixed-incomes," and described "our Nation's inadequate energy supply." Weakening efficiency standards would only exacerbate these issues. If less efficient appliances are allowed to enter the market, consumers will end up using more energy and spending more money, worsening the "Energy Emergency" described in President Trump's order.

Below we describe how DOE's proposal would raise costs for consumers; increase energy waste and strain the electric grid; increase emissions that harm human health and the environment; and undermine manufacturer investments. We also outline the numerous reasons why DOE's proposal is unlawful. DOE should therefore withdraw the proposed rule.

3. DOE's proposal would raise costs for consumers. Energy conservation standards for battery chargers play an important role in protecting consumers from energy-wasting devices. Unlike most other covered products, battery chargers are typically embedded within or paired for sale with another device—the end-use product.[4] The relative invisibility of battery chargers in such packages puts a premium on DOE's standards, which free consumers from having to weigh charger efficiency against the energy efficiency of the end-use product.

While the per-unit savings for many battery chargers are modest,[5] the savings add up over the nearly 700 million units that are sold each year.[6] In the June 2016 final rule, DOE found that the standards will net consumers between $0.7 and $1.4 billion in discounted operating cost savings over 30 years of product sales.[7] Taking into account the additional upfront cost, DOE found that the standards will provide net present value (NPV) savings for purchasers of between $0.6 and $1.2 billion.[8] In other words, rescinding the standards for battery chargers could cost consumers hundreds of millions of dollars over the coming decades.

These higher costs for consumers would come at a time when both electricity prices and bills are rising. The U.S. Energy Information Administration's (EIA's) forecast shows

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[4] *See* 81 Fed. Reg. 38,266, 38,282 (June 13, 2016) (explaining that "battery chargers are nearly always bundled with, or otherwise intended to be used with, a given application; therefore, the demand for applications drives the demand for battery chargers")*; see also* 42 U.S.C. § 6291(32) (EPCA's definition of "battery charger," which includes "battery chargers embedded in other consumer products").

[5] The average life-cycle cost savings range from $0.07 to $51.06 depending on the product class. 81 Fed. Reg. 38,268 (June 13, 2016).

[6] DOE, Battery Chargers, March 2023 Proposed Rule Technical Support Document (TSD), p. 9-5. www.regulations.gov/document/EERE-2020-BT-STD-0013-0025.

[7] 81 Fed. Reg. 38,269 (June 13, 2016).

[8] 81 Fed. Reg. 38,340. NPV = present value of operating cost savings – present value of total incremental installed costs; range corresponds to 7% and 3% discount rates, respectively.

average residential electricity prices rising by 13% in 2025 and 18% in 2026 relative to 2022 prices.[9] Some regions of the country are experiencing even larger increases in electricity prices, with the EIA forecast showing electricity price increases of 19% between 2022 and 2025 for New England and the Middle Atlantic and an increase of 26% for the Pacific region in the same period.[10] Rising prices are resulting in higher bills; the average U.S. household spent about $1,750 on electricity costs in 2023, hundreds of dollars more than the average of about $1,500 in 2020.[11] These high costs hurt families, with one in five American households (nearly 25 million families) foregoing necessary expenses, such as food or medicine, to pay their energy bills in 2020.[12] Repealing the standards for battery chargers would further increase electricity costs and strains on household budgets.

4. DOE's proposal would increase energy waste and strain the electric grid unnecessarily. In the June 2016 final rule, DOE found that the standards for battery chargers will save 0.17 quads of energy over 30 years of product sales.[13] DOE's proposal threatens those savings. DOE further found in the June 2016 final rule that the standards will reduce electricity consumption by 622 gigawatt-hours (GWh) in 2030 and 662 GWh in 2040 and lower total installed generation capacity by 169 megawatts (MW) in 2030 and 209 MW in 2040.[14] By rescinding the standards for battery chargers, DOE's proposal would increase electricity demand at a time when the electric grid is already challenged by increased demand from data centers, growing domestic manufacturing, and other factors.

A recent report estimates that U.S. electricity demand will grow 25% by 2030 and 78% by 2050 relative to 2023 levels, with peak demand growing 14% by 2030 and 54% by 2050.[15] Greater electricity demand means increased spending on generation, transmission, and distribution infrastructure, which translates to higher electricity bills for consumers. The same recent report projects that rising electricity demand could result in residential retail electricity rates increasing by between 15% and 40% by 2030, with electricity rates doubling for some utilities by 2050.[16] Repealing the current standards for battery chargers would further exacerbate these trends.

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[9] U.S. EIA, Today in Energy. U.S. electricity prices continue steady increase (May 2025). www.eia.gov/todayinenergy/detail.php?id=65284.

[10] *Id*; see also Federal Reserve Bank of St. Louis, Average Price: Electricity per Kilowatt-Hour in U.S. City Average (May 13, 2025), fred.stlouisfed.org/series/APU000072610.

[11] U.S. EIA, Today in Energy. U.S. electricity prices continue steady increase (May 2025). www.eia.gov/todayinenergy/detail.php?id=65284.

[12] U.S. EIA, RECS 2020, Table HC11.1. Household energy security, 2020. www.eia.gov/consumption/residential/data/2020/hc/pdf/HC%2011.1.pdf.

[13] 81 Fed. Reg. 38,268 (June 13, 2016).

[14] DOE, Battery Chargers, June 2016 Final Rule TSD, p. 15-9. www.regulations.gov/document/EERE-2008-BT-STD-0005-0257. DOE adopted TSL 2.

[15] ICF, Rising current: America's growing electricity demand. www.icf.com/-/media/files/icf/reports/2025/energy-demand-report-icf-2025_report.pdf?rev=c87f111ab97f481a8fe3d3148a372f7f. p. 3.

[16] *Id*.

5. DOE's proposal would increase emissions that harm human health and the environment. In the April 2023 final rule, DOE found that the standards will result in cumulative emissions reductions over 30 years of sales of 10.79 million metric tons of carbon dioxide, 6.58 thousand tons of sulfur dioxide, 18.83 thousand tons of nitrogen oxides, 43.6 thousand tons of methane, 0.136 thousand tons of nitrous oxide, and 0.024 tons of mercury.[17] In other words, rescinding the standards for battery chargers would increase emissions of these harmful pollutants.

6. DOE's proposal would undermine manufacturer investments. Manufacturers have been required to comply with the standards in the 2016 final rule since June 2018. To meet the standards, manufacturers likely incurred conversion costs including capital costs (one-time investments in plant, property, and equipment) and product conversion costs (research and development, testing, and marketing costs). DOE estimated that manufacturers would incur total conversion costs of $19.6 million to comply with the current standards for battery chargers.[18] These investments would be undermined by DOE's proposal to rescind the standards. Furthermore, absent standards, rather than focusing on technological innovation and improved performance, domestic manufacturers may instead focus on cost cutting to avoid being undercut by manufacturers currently serving other markets.

7. Efficient batter chargers perform better. Efficient battery chargers can safely deliver power to batteries more quickly without overheating, minimizing downtime for devices. Less heat generation while charging also improves safety and helps minimize wear and tear on the charger and battery, improving reliability and longevity of the charger and the equipment it powers.

8. DOE does not have the authority to rescind standards. The proposed rule repeatedly states that DOE is proposing to "rescind" the energy conservation standards for battery chargers. EPCA authorizes DOE to promulgate new standards and to prescribe amended standards.[19] But no provision in EPCA authorizes DOE to rescind or repeal existing standards.[20]

The NOPR claims that DOE is engaging in a "reevaluation of the battery charger standards, pursuant to the authority in 42 U.S.C. 6295(u)(1)(E)(i)(II)," but nothing in the cited provision authorizes DOE to rescind the battery charger standards. That provision directed DOE, by July 2011, either to prescribe a final rule setting energy conservation standards for battery chargers or to determine that "no energy conservation standard is technically feasible and economically justified." The authority that provision gave DOE to decline to regulate

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[17] 81 Fed. Reg. 38,268 (June 13, 2016).

[18] Tables V-29 to V-42. 81 Fed. Reg. 38,315 to 38,320 (June 13, 2016). Calculated by summing the "Total Investment Required" for each Product Class/Product Class Group. DOE adopted TSL 2.

[19] 42 U.S.C. § 6295(a)(2), (*l*), (m), (n), (o), & (p).

[20] *See also NRDC v. Abraham*, 355 F.3d 179, 202 (2d Cir. 2004) (holding that under EPCA DOE lacks any "inherent power to reconsider a final rule following its announcement in the Federal Register.").

battery chargers was quite plainly an authority to make that determination in the first instance – and indeed to do so by July 1, 2011. DOE completed its obligation under 42 U.S.C. 6295(u)(1)(E)(i)(II) when it issued energy conservation standards for battery chargers in 2016.

It appears that what DOE is proposing to do is not to rescind the standards, but to amend them. Indeed, throughout the proposed rule DOE appears to accept that it is amending a standard and that its action is subject to 6295(o) and (p). If DOE wishes to clarify that it is *amending* its existing standards for battery chargers, it must identify the section of EPCA that it believes it is relying on and explain how it has complied with the requirements of that provision.

9. DOE's proposed change to the battery charger standards violates EPCA's anti-backsliding provision. Section 6295(o)(1), referred to as the "anti-backsliding" provision, states that the "Secretary may not prescribe any amended standard which increases the maximum allowable energy use . . . or decreases the minimum required energy efficiency, of a covered product." The U.S. Court of Appeals for the Second Circuit has explained that "subsection (o)(1), read in the greater context of [42 U.S.C. § 6295] and in light of the statutory history of that section of the EPCA, admits to only one interpretation: that Congress, in passing the provision, intended to prevent DOE from amending efficiency standards downward once they have been published by DOE as final rules as required by the other provisions of [42 U.S.C. § 6295]."[21]

The only rational interpretation of the anti-backsliding provision is that it applies not only to DOE actions that amend the numerical level of a standard, but also to actions that would purport to remove a standard entirely. An action that exempts products from a standard "prescribe[s] [an] amended standard which . . . decreases the minimum required energy efficiency, of a covered product."[22] It is not plausible that when it prohibited DOE from prescribing "any amended standard which . . . decreases the minimum required energy efficiency, of a covered product," Congress nevertheless intended to permit DOE the discretion withdraw coverage and thereby exempt products from standards entirely. As the Second Circuit has explained, the anti-backsliding provision must be interpreted in light of "the appliance program's goal of steadily increasing the energy efficiency of covered products" and Congressional intent to provide a "sense of certainty on the part of manufacturers as to the required energy efficiency standards."[23] Allowing DOE the discretion to exempt products from standards entirely "would completely undermine any sense of certainty on the part of manufacturers as to the required energy efficiency standards" for any particular product.[24] "Finally, and most importantly, such a reading

[21] *NRDC v. Abraham*, 355 F.3d 179, 199 (2d Cir. 2004).
[22] 42 U.S.C. § 6295(o)(1).
[23] 355 F.3d at 197.
[24] *Id.*

would effectively render section 325(o)(1)'s 'anti-backsliding' mechanism inoperative, or a nullity, in these circumstances."[25]

EPCA also makes clear that the anti-backsliding provision applies to any DOE action that purports, as here, to withdraw a prior final rule. In 42 U.S.C. § 6295(p)(4), Congress granted DOE the option, in limited circumstances, to take final action via "direct final rules," without first issuing a notice of proposed rulemaking. However, to the extent DOE receives adverse comment on a direct final rule and "determines that such adverse public comments . . . may provide a reasonable basis for withdrawing the direct final rule," DOE may do so.[26] In that event, the withdrawn rule "shall not be considered to be a final rule for purposes of [42 U.S.C. § 6295(o)]," the subsection of EPCA containing the anti-backsliding provision.[27] That Congress exempted an explicitly authorized withdrawal of final action from the anti-backsliding provision demonstrates that the provision is otherwise applicable to other actions that would withdraw final rules under EPCA.

Because the anti-backsliding provision otherwise prohibits DOE from amending standards by removing them, when Congress intended to allow DOE to exempt products, it specifically authorized that action. Consistent with the text of the anti-backsliding provision, EPCA provides expansive authority to DOE to increase the coverage of federal energy conservation standards and much more limited opportunities to create exemptions from standards. EPCA broadly authorizes DOE to classify additional consumer products and commercial equipment as covered products and equipment subject to energy conservation standards.[28] In contrast, the statute confers no similarly broad authority to terminate the coverage of a product and allows products to be exempted from standards only under specified circumstances. Of the many dozens of items EPCA covers, DOE is authorized to grant exemptions for only a few.[29]

Because the NOPR does not fit into one of the categories of exemptions DOE is statutorily authorized to create, the anti-backsliding provision renders DOE's action unlawful. Where a statute confers authority on an agency to create specific exemptions, broader authority

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[25] *Id*.
[26] 42 U.S.C. § 6295(p)(4)(C)(i).
[27] *Id*. § 6295(p)(4)(C)(iii).
[28] 42 U.S.C. §§ 6292(a)(20), (b), 6311(1)(L), 6312(b).
[29] *See* 42 U.S.C. § 6291(33)(B)(ii) (permitting DOE to exclude products from the definition of "commercial prerinse spray valve"); *id*. § 6291(35)(B)(iii) (same as to distribution transformers); *id*. § 6295(e)(5)(F) (DOE may exclude water heaters from EPCA's uniform efficiency descriptor); *id*. § 6295(u)(5)(B)(i) (DOE may exempt certain external power supplies); *id*. § 6313(b)(3) (authorizing DOE to grant exemptions for types or classes of electric motors); *id*. § 6291(30)(S)(ii)(II) (DOE may exclude from the term "medium base compact fluorescent lamp" any lamp that is "designed for special applications" and "unlikely to be used in general purpose applications"); *id*. § 6291(30)(E) (DOE may exclude from the terms "fluorescent lamp" and "incandescent lamp" any lamp as to which the Department makes "a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types").

to create other types of exemptions cannot be inferred. *See Law v. Siegel*, 571 U.S. 415, 424 (2014).

10. The anti-backsliding provision applies to battery chargers. In a single unelaborated sentence, the NOPR suggests two theories by which the anti-backsliding provision may not apply to battery chargers. It asserts mistakenly that battery chargers do not appear to be a covered product, and that only energy conservation standards codified in statute implicate the anti-backsliding provision. Neither theory holds water.

The anti-backsliding provision's prohibition on amended standards that "decrease[] the minimum required energy efficiency, of a *covered* product,"[30] does not limit the provision's application to battery chargers. EPCA declares that battery chargers are covered products. Battery chargers and several other products added to EPCA by the Energy Policy Act of 2005 were left off the list of "covered products" found in 42 U.S.C. § 6292,[31] but by providing for energy conservation standards for these products in 42 U.S.C. § 6295, Congress clarified they are covered products. The purposes of 42 U.S.C. § 6295 are to provide energy conservation standards for covered products and to authorize amended or new standards for covered products.[32]

Indeed, other provisions of EPCA explicitly clarify that battery chargers are a covered product. Section 6295(u)(1)(E) subjects battery chargers to "energy conservation standards," which are standards that EPCA defines as applying to a "covered product." Section § 6294(a)(5)(A) refers to the "covered products" described in 42 U.S.C. § 6295(u), which covers battery chargers. Similarly, 42 U.S.C. § 6295(gg)(2) and (3) require test procedure amendments for "covered products," including battery chargers, and the incorporation of standby mode and off mode energy use into the standards for "covered product[s]," again, including battery chargers. Finally, 42 U.S.C. § 6295(ii)(1) provides for the onset of preemption for battery chargers, but preemption applies only to covered products under 42 U.S.C. § 6297(c)).

Even if the text of EPCA did not clearly show that battery chargers are a covered product, DOE has classified battery chargers as a covered product.[33] In fact, DOE has classified battery chargers as a covered product in the most straightforward way possible: by adding battery chargers to the list of "covered products" in its regulations at 10 C.F.R. § 430.2.[34] Remarkably, DOE offers no explanation to reconcile its suggestion that battery chargers are not a covered product with its own regulatory definition of "covered product."[35]

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[30] 42 U.S.C. § 6295(o)(1) (emphasis added).
[31] *See* 42 U.S.C. § 6295(u)-(ff).
[32] 42 U.S.C. § 6295(a).
[33] *See* 42 U.S.C § 6292(b)(1) (authorizing DOE to classify types of consumer products as covered products).
[34] *See* 71 Fed. Reg. 71,340, 71,366 (Dec. 8, 2006).
[35] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2008) (agency may not "simply disregard rules that are still on the books").

Further, DOE has for nearly two decades continued to treat battery chargers as a covered product by regulating them on that basis. DOE does not explain or even acknowledge that it is changing its approach.[36] DOE issued initial test procedures in 2006[37] and energy conservation standards for battery chargers in 2016. That action was, of course, based on the conception that battery chargers are "covered products."[38]

Even assuming *arguendo* that battery chargers are not covered products, the anti-backsliding provision applies to the proposed rule through section 6295(m)(1)(B). That section states that, when amending a standard, the proposed rule must be "based on the criteria established under subsection (o)." This provision carries no explicit limitation to covered products. The anti-backsliding provision in subsection (o)(1) is unquestionably one of the "criteria established under subsection (o)."

11. The anti-backsliding provision bars DOE from weakening standards previously adopted by DOE. The provision prohibits "any amended standard which increases the maximum allowable energy use . . . or decreases the minimum required energy efficiency, of a covered product." The "maximum allowable energy use" or "minimum required energy efficiency" of a covered product refer to the requirements of the energy conservation standard that applies to such product.[39] Thus, the only plausible reading of this provision is that DOE cannot amend existing energy conservation standards in a way that weakens their energy efficiency or energy use requirements. Nothing in the text of EPCA suggests that this provision is triggered only by energy conservation standards codified in statute. Under EPCA, an energy conservation standard is an energy conservation standard, regardless of whether it is codified in statute.[40] Indeed, in *NRDC v. Abraham*, the Second Circuit considered in a case involving the application of the anti-backsliding provision to a regulatory standard, and held that section 6295(o)(1) "unambiguously operates to constrain DOE's ability to amend efficiency standards once they are published as final rules in the Federal Register."[41]

Other features of the statute reinforce this straightforward reading. For one, it is implausible to suggest that Congress intended to limit the application of section 6295(o)(1)

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[36] *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 224 (2016)("a lack of reasoned explication for a regulation that is inconsistent with the Department's longstanding earlier position results in a rule that cannot carry the force of law").

[37] *See* 71 Fed. Reg. 71,368 (adopting Appendix Y to Subpart B of Part 430— Uniform Test Method for Measuring the Energy Consumption of Battery Chargers).

[38] *See* 81 Fed. Reg. at 38,271 ("DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including battery chargers.").

[39] *See* 42 U.S.C. § 6291(6) (defining "energy conservation standard" as one that prescribes "a minimum level of energy efficiency or a maximum quantity of energy use").

[40] See *id*. (defining "energy conservation standard" without respect to origin); 42 U.S.C. § 6295(a) (stating that the purpose of the section is to "(1) provide Federal energy conservation standards applicable to covered products; and (2) authorize the Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.").

[41] 355 F.3d at 206.

to statutorily-codified standards when it defined the scope of that provision as applying to "any amended standard" for a "covered product." For many covered products, Congress has never codified standards at all; thus, again, the provision cannot reasonably be read to apply exclusively to standards set by Congress. In addition, the remainder of section 6295(o) establishes criteria for DOE's adoption of standards, such as how DOE determines whether a standard level is economically justified. Throughout the subsection, the base case for comparison is the status quo, not any statutory standards, which typically were superseded long ago.[42] Accordingly, whether an amendment to a standard impermissibly relaxes requirements must be determined by measuring the new standard against the current one, not against any levels codified by Congress 20 to 40 years ago.

In addition, as explained above, 42 U.S.C. § 6295(p)(4)(C) grants DOE the authority to withdraw a direct final rule and provides that the withdrawn rule "shall not be considered to be a final rule for purposes of [42 U.S.C. § 6295(o)]," the subsection of EPCA containing the anti-backsliding provision. That Congress exempted the withdrawal of a final rule prescribing standards from the anti-backsliding provision demonstrates that the provision is otherwise applicable to actions that amend standards adopted by DOE.

12. DOE misinterprets and mis-applies EPCA's "economically justified" standard. DOE states that part of the rationale for the purported rescission is that the "current regulations . . . are not economically justified." This unexplained statement has no direct bearing on the decision-making process prescribed by EPCA. To amend a standard DOE must comply with the criteria in section 6295(o). Those criteria require that the new or amended standard being *proposed* is economically justified, not that the existing standard is not economically justified. As explained below, the proposed rule does not even claim that the standard it is proposing is economically justified, much less support that claim with substantial evidence.

13. DOE fails to explain the legal relevance of its "policy to reduce regulatory burden wherever possible." The considerations governing DOE's amendment of energy conservation standards are set out in EPCA. DOE is not free to ignore the statutory criteria to pursue the administration's policy of "maximally reducing regulatory burdens." Even if the policy were a permissible "other factor" under section 6295(o)(2)(B)(i)(VII), the NOPR fails to explain how the new policy fits into EPCA's criteria for the amendment of standards.

14. The NOPR misinterprets section 6295(p)(1). Section 6295(p)(1) requires DOE, in a proposed rule, to "determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered

[42] *See, e.g.*, 42 U.S.C. § 6295(o)(2)(B)(i)(II)-(IV) & (V) (requiring DOE to isolate the impacts likely to result from the imposition of the standard under consideration when assessing the economic justification for that standard); *id.* § 6295(o)(2)(4) (preventing the adoption of standards that would likely result in the unavailability of certain product features "generally available in the United States at the time of [DOE's] finding").

products." (i.e. "max-tech"). As explained below, DOE has not fulfilled this requirement. Of course, EPCA does not require that DOE always select the max-tech standard level, and the last sentence of section 6295(p)(1) requires DOE to provide its reasons in the proposed rule for not selecting max-tech. The NOPR appears to assume wrongly that 6295(p)(1) is the only standard it need apply – that so long as DOE can explain why it is not implementing max-tech, that concludes the statutory decision-making process. But the fact that DOE is not choosing to implement the max-tech standard does not relieve DOE from its obligation to fulfill the requirement of section 6295(o)(2)(A). That section requires that any new or amended standard be "designed to achieve the maximum improvement in energy efficiency…which the Secretary determines is technologically feasible and economically justified."

15. The proposed rule fails to determine "max-tech" as required by 42 U.S.C. § 6295(p)(1). Section 6295(p)(1) provides:

> A proposed rule which prescribes an amended or new energy conservation standard or prescribes no amendment or no new standard for a type (or class) of covered products shall be published in the Federal Register. In prescribing any such proposed rule with respect to a standard, *the Secretary shall determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered products*. If such standard is not designed to achieve such efficiency or use, the Secretary shall state in the proposed rule the reasons therefor.

This provision requires the Secretary, at the proposed rule stage, to determine the maximum improvement in energy efficiency that is technologically feasible.[43] DOE colloquially refers to this maximum threshold as "max tech."[44] Of course, DOE is not obligated to select the max-tech efficiency level for every standard, and very frequently does not. The last sentence of section 6295(p)(1) requires DOE to provide its reasons if it declines to set a standard based on max-tech.

As the D.C. Circuit has explained, EPCA "establishes a clear decisionmaking procedure,"[45] pursuant to which "DOE must first identify, for all product types or classes, the maximum improvement in energy efficiency that is technologically feasible."[46] In the proposed rule, DOE has ignored that obligation entirely. Indeed, the proposed rule contains no discussion

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[43] *See also* 10 C.F.R. § Pt. 430, Subpt. C, App. A ("As required by 42 U.S.C. 6295(p)(1) of EPCA, the NOPR also will describe the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible and, if the proposed standards would not achieve these levels, the reasons for proposing different standards.").

[44] *See, e.g.,* Energy Conservation Program: Energy Conservation Standards for Dedicated Purpose Pool Pump Motors, 88 Fed. Reg. 66,966, 66,978 (Sept. 28, 2023).

[45] NRDC v. Herrington, 768 F.2d 1355, 1391 (D.C. Cir. 1985).

[46] *Id*. at 1391 – 92.

of battery charger technology at all.[47] This omission is not one that DOE can remedy at the final rule stage. Congress specified that the determination of max-tech must be in the "proposed rule."[48] DOE may not "ignore the decisionmaking procedure Congress specifically mandated because the agency thinks it can design a better procedure."[49]

16. The proposed rule fails to apply the statutory requirement for new or amended standards in subsection 6295(o)(2)(A). Section 6295(o)(2)(A) requires that "Any new or amended energy conservation standard prescribed by the Secretary under this section for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency … which the Secretary determines is technologically feasible and economically justified."[50] The NOPR fails to acknowledge the existence of this benchmark let alone apply it to the proposal.

17. DOE has failed to present any evidence to support its proposed rule. Even if it were otherwise permissible for DOE to pursue the proposed action, the NOPR does not provide a rational basis for doing so. For an agency action to withstand judicial review, the agency "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"[51] This requirement applies in equal force when an agency, like DOE here, is proposing to rescind earlier rules that were themselves supported by substantial evidence. When an agency reverses itself, it must provide a "reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy,"[52] a category that includes the technical and economic data that was presented to justify the existing standards.

In the NOPR, DOE has failed to provide any data or analysis to support its proposal. Again, per section 6295(o)(2)(A), DOE must establish that its proposed standard represents the "maximum improvement in energy efficiency" that is "technologically feasible and economically justified." The NOPR provides no information at all regarding battery charger technology or the alternative efficiency levels that might have been considered, either at the max-tech level or below. Nor does the NOPR provide any information to support the conclusion that its proposed standard is "economically justified." Section 6295(o)(2)(B)

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[47] *Compare* Department of Energy, Energy Conservation Program: Energy Conservation Standards for Dehumidifiers, Proposed Rule 88 Fed. Reg. 76,510, 76,525 – 26 (Nov. 6, 2023) (presenting a lengthy discussion of higher efficiency levels for dehumidifiers along with a technical support document).
[48] 42 U.S.C. § 6295(p)(1).
[49] *NRDC*, 768 F.2d at 1396.
[50] FDA v. R.J. Reynolds Vapor Co., 606 U.S. __, 2025 WL 1716135 (June 20, 2025) ("Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'").
[51] Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (quoting Burlington Truck Lines v. United States, 371 U.S. 156, 168 (1962)); *see also id*. (a rule is arbitrary and capricious if the agency "entirely failed to consider an important aspect of the problem [or] offered an explanation for its decision that runs counter to the evidence before the agency").
[52] *See* FCC v. Fox Television Stations, Inc., 556 U.S. 502, 516 (2009).

provides that, when evaluating "whether a standard is economically justified" DOE must to the maximum extent practicable consider:

(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.

The NOPR does not consider any of these factors, even on a preliminary basis.

Nor has DOE provided any explanation for disregarding the analysis and data it presented in its 2016 final rule. That rule demonstrated that adoption of the current efficiency requirements was warranted. The data and analysis presented therein, which DOE ignores here, certainly do not support the conclusion that prescribing an amended standard at a "no standard" level represents the "maximum improvement in energy efficiency" that is "technologically feasible and economically justified."

When DOE finalized the current standards for battery chargers in 2016, it estimated significant energy savings (0.2 quads);[53] positive average life-cycle cost (LCC) savings for purchasers of all classes of battery chargers;[54] and total NPV savings for consumers of $0.6-$1.2 billion.[55] The savings for consumers slightly outweigh the costs to manufacturers even in the worst case scenario.[56] DOE concluded that the levels adopted represent the maximum improvement in energy efficiency that is technologically feasible and economically justified.

[53] 81 Fed. Reg. 38,268.
[54] *Id*.
[55] *Id*. at 38,387.
[56] *Id*. Based on the NPV savings using the more conservative discount rate ($0.6 billion) and the maximum estimated loss of industry NPV of $529 million at TSL 2.

18. DOE's complete failure to substantiate its factual claims means that it must issue a new proposal for public comment if it wishes to proceed. Agencies must present critical factual material at the proposed rule stage in order to ensure a meaningful opportunity for public comment.[57] When it has new or revised data that it wants to rely on that arises after the publication of a NOPR, DOE will often issue a Notification of Data Availability and Request for Comment in order to fulfill this requirement.[58]

In the NOPR, DOE has provided no evidence. Thus, any evidence relied upon at the final rule stage will necessarily be both new and critical to the ultimate decision. Any such critical factual material must be made available for public comment before DOE issues a final rule. This obligation to accept further comment applies as well to any analysis conducted under the National Environmental Policy Act (NEPA), as described below.

19. DOE has failed to comply with the National Environmental Policy Act. The proposed rule fails to comply with the requirements of NEPA, which requires agencies to prepare detailed environmental analyses of major actions significantly affecting the quality of the environment.[59] Agencies may adopt categorical exclusions (CXs) to this requirement, but only for actions that do not "individually or cumulatively have a significant effect on the human environment."[60] Not only would the proposed rule itself have a significant effect on the human environment by rolling back energy savings, but this action must be considered cumulatively with the many other proposed rollbacks that have also been issued by DOE.[61]

Nor does the proposed rule meet DOE's own regulatory conditions for the applicability of CXs. It is DOE's burden to demonstrate why it believes a CX applies, and it must consider whether a nominally excluded action would nevertheless significantly affect the environment.[62] Indeed, as a predicate matter, DOE has an affirmative obligation, before applying a CX, to determine whether the unique circumstances of an action would lead to significant environmental effects.[63] DOE has offered no explanation of its reasoning on this

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[57] *See Ass'n of Data Processing Serv. Organizations, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 745 F.2d 677, 684 (D.C. Cir. 1984)(Scalia, J.) ("the most critical factual material that is used to support the agency's position on review must have been made public in the proceeding and exposed to refutation."); Am. Med. Ass'n v. Reno, 57 F.3d 1129, 1132 (D.C. Cir. 1995) ("Notice of a proposed rule must include sufficient detail on its content and basis in law and evidence to allow for meaningful and informed comment[.]").

[58] *See, e.g.*, Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters, 89 Fed. Reg. 59,692 (July 23, 2024).

[59] 42 U.S.C § 4332(C); *NRDC v. Herrington*, 768 F.2d 1355, 1429-33 (D.C. Cir. 1985) (holding a DOE rule promulgated under EPCA violated NEPA).

[60] *Solar Energy Indus. Ass'n v. FERC*, 80 F.4th 956, 991 (9th Cir. 2023).

[61] *See Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976) ("when several proposals . . . will have cumulative or synergistic environmental impact . . . their environmental consequences must be considered together").

[62] *Pub. Employees for Env't. Responsibility v. Nat'l Park Serv.*, 605 F. Supp. 3d 28, 56 (D.D.C. 2022); *see also California v. Norton*, 311 F.3d 1162, 1176 (9th Cir. 2002) ("concern for adequate justification of the categorical exclusion is heightened because there is substantial evidence in the record that exceptions to the categorical exclusion are applicable").

[63] 10 C.F.R. § 1021.102(b)(2); *see Oak Ridge Env't. Peace Alliance v. Perry*, 412 F. Supp. 3d 786, 846-47 (E.D. Tenn. 2019).

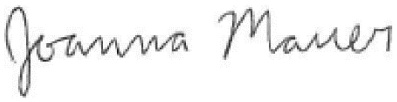
point, despite that, as described below, the proposed rule would undo significant benefits to the environment. Instead, in its proposal, DOE invites comment on the use of CX B5.1, which applies to "actions to conserve energy or water."[64]

But the plain language of CX B5.1 demonstrates its inapplicability. This CX applies specifically for "*improvements* in appliance efficiency ratings" and "water *conservation*." It makes sense that this CX would ordinarily apply to EPCA rules, because EPCA requires that new or amended standards must improve energy and/or water efficiency. When DOE adopted this CX to complement its EPCA rulemaking activities, it emphasized the purpose of energy conservation, and it further specified that the CX does not apply for appliance efficiency standards that would "have the potential to cause a significant increase in energy consumption in a state or region."

The proposed rule fails to meet the CX B5.1 requirements on numerous fronts. First, it is not "an action[s] to conserve energy or water" because it does the opposite: it would increase energy use. Second, it does not propose an improvement in efficiency ratings because it would result in a *diminishment* of efficiency ratings. Finally, it has the potential to cause a significant increase in energy consumption in a state or region because it would roll back the savings in energy consumption that provided part of the original justification for the standard.

Thank you for considering these comments.

Sincerely,



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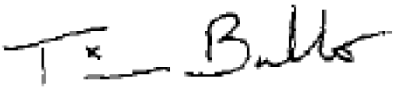
[64] *See* 90 Fed. Reg. 20,837.



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