Appliance Standards Awareness Project
Alliance for Water Efficiency
American Council for an Energy-Efficient Economy
American Water Works Association
Association of Metropolitan Water Agencies
Ceres
Consumer Federation of America
Earthjustice
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-0018: Energy Conservation Standards for Commercial Clothes Washers

Dear Mr. Taggart:

This letter constitutes the comments of the Appliance Standards Awareness Project (ASAP), Alliance for Water Efficiency (AWE), American Council for an Energy-Efficient Economy (ACEEE), American Water Works Association (AWWA), Association of Metropolitan Water Agencies (AMWA), Ceres, Consumer Federation of America (CFA), Earthjustice, and Natural Resources Defense Council (NRDC) on the notice of proposed rulemaking (NOPR) for standards for commercial clothes washers (CCWs). 90 Fed. Reg. 20,925 (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.

AWE is a nonprofit dedicated to advancing the efficient and sustainable use of water across North America. AWE advocates for water-efficient products and programs, develops cutting-edge research, and provides technical assistance to its diverse membership base. AWE partners with over 550 member organizations, providing benefits

[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.

to local water utilities, businesses and industries, government agencies, universities, and professional associations.

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.

Established in 1881, AWWA is the largest nonprofit, scientific and educational association dedicated to managing and treating water, the world's most vital resource. With approximately 50,000 members, AWWA provides solutions to improve public health, protect the environment, strengthen the economy and enhance our quality of life.

AMWA represents the largest publicly owned drinking water systems in the United States. AMWA member utilities collectively provide clean drinking water to over 160 million people across the nation.

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.

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

[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.

supply in the United States in 2015.[3] These tremendous savings can help avoid costly buildout of new infrastructure like water treatment facilities, power plants, and power lines, which would further increase water and energy prices.

In the NOPR, DOE is proposing to rescind the amended water conservation standards for CCWs, weakening the water efficiency standards for these products by returning the requirements to older standards established by Congress. This action does not stand on its own. It is one of 17 proposals issued the same day to roll back efficiency standards.

Below we describe how DOE's proposal would raise costs for businesses; increase water waste and upend water and wastewater utility planning; 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 businesses. Reverting to the statutory water efficiency standards would increase costs for purchasers of the approximately 200,000 CCWs that are sold annually.[4] In the January 2010 final rule analysis, DOE found that the amended, stronger standards, which took effect in 2013, save laundromat owners who purchase top-loading CCWs, the most common type, an average of $397 in utility bills over the life of the product compared to a baseline model at the time of the rulemaking (i.e., a model that just meets the statutory standards).[5] Taking into account the additional upfront cost, DOE estimated that the 2010 standards net laundromat owners $183 in savings relative to the statutory standards.[6] Further, DOE found that the amended standards finalized in the December 2014 final rule will net laundromat owners who purchase a top-loading CCW an additional $166 in savings over the life of the product compared to a baseline model at the time of the rulemaking with no additional upfront cost.[7] Taken together, the updated CCW standards save purchasers hundreds of dollars over the lifetime of a typical CCW relative to the statutory standards.

DOE's analyses for the 2010 and 2014 final rules indicate that reverting to the statutory standards could significantly increase the water consumption of CCWs. For example, a top-loading CCW in a typical laundromat could consume an additional 6,660 gallons/year

[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.
[4] DOE, Commercial Clothes Washers, December 2014 Final Rule Technical Support Document (TSD), p. 9-19. www.regulations.gov/document/EERE-2012-BT-STD-0020-0036.
[5] 75 Fed. Reg. 1,161 (January 8, 2010). Calculated as the difference between the lifetime operating cost at the baseline efficiency level ($3,422) and the lifetime operating cost at the 2010 standard level adopted, Trial Standard Level (TSL) 3 ($3,025). For multi-family housing applications, utility bill savings were similar ($390).
[6] *Id*. Calculated as the difference between the total life-cycle cost (LCC) at the baseline efficiency level ($4,182) and the LCC at the standard level adopted, TSL 3 ($3,999).
[7] 79 Fed. Reg. 74,523 (December 15, 2014). Calculated as the difference between the LCC at the baseline efficiency level ($4,867) and the LCC at the standard level adopted, TSL 2 ($4,701). Average net savings for multi-family housing applications are $294.

relative to a model just meeting the current standards.[8] Although the cost savings highlighted above reflect both energy and water savings, DOE's rulemaking analyses show that a significant portion of the bill savings are attributable to reduced water consumption. For example, the 2010 final rule analysis estimated that 54% of the cumulative operating cost savings are attributable to water savings.[9] DOE's proposal to revert to the statutory water efficiency standards could therefore significantly raise costs for businesses.

These higher costs for businesses would come at a time when water rates are rising. Between 2008 and 2021, average annual water utility rates throughout the U.S. grew 3.0% faster than inflation for water utilities and 3.2% faster than inflation for wastewater utilities.[10] Water utility rates are projected to continue to increase across the country due to aging infrastructure, increases in capital and operating costs, increased water quality compliance challenges, and decreased federal funding for local utilities.[11] EPA estimates that the cost to fund clean water and drinking water projects nationwide over the next 20 years will be approximately $1.25 trillion.[12] This increased spending on water infrastructure will only drive rates higher.

4. DOE's proposal could waste billions of gallons of water. DOE states in the NOPR that the CCW water use regulations "are not consistent with the need for national water conservation."[13] However, DOE estimated that the amended water efficiency standards for CCWs will cumulatively save about 163 billion gallons of water over 30 years.[14] By reverting

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[8] DOE, Commercial Clothes Washers, January 2010 Final Rule TSD, p. 6-9. www.regulations.gov/document/EERE-2006-STD-0127-0118.
DOE, Commercial Clothes Washers, December 2014 Final Rule TSD, p. 7-9. www.regulations.gov/document/EERE-2012-BT-STD-0020-0036.
Calculated as the sum of the difference between baseline annual water use in the 2010 final rule (58,300 gallons) and the annual water use at the standard level adopted, efficiency level (EL) 2, (52,100 gallons) and the difference between the baseline annual water use in the 2014 final rule (41,300 gallons) and the annual water use at the standard level adopted, EL2 (40,830 gallons). We note that the estimated cycles per day in DOE's analysis were updated from 6 in 2010 to 4.18 in 2014, resulting in lower estimated annual water usage at the current standard level in the 2024 final rule analysis.

[9] DOE, Commercial Clothes Washers, January 2010 Final Rule National Impacts Analysis spreadsheet. www.regulations.gov/document/EERE-2006-STD-0127-0123. See the "Standards Case" sheet, columns AY to BA. Estimated by dividing the cumulative water operating cost savings by the total (i.e., water and fuel) cumulative operating cost savings.

[10] Pacific Northwest National Laboratory, Water and Wastewater Annual Price Escalation Rates for Selected Cities Across the United States: 2023 Edition (March 2023). www.osti.gov/servlets/purl/1975260. p. ii.

[11] National Association of Clean Water Agencies (NACWA), The Growing U.S. Water Affordability Challenge and the Need for Federal Low-Income Water Customer Assistance Funding (December 2022). www.nacwa.org/docs/default-source/resources---public/nacwa-affordability-report_dec22.pdf?sfvrsn=1ab5c761_2. p. 1.

[12] U.S. Environmental Protection Agency (EPA), Water Affordability Needs Assessment: Report to Congress (December 2024). www.epa.gov/system/files/documents/2024-12/water-affordability-needs-assessment.pdf. p. 5.

[13] 90 Fed. Reg. 20,891.

[14] Calculated by adding the cumulative savings from the 2010 final rule (143 billion gallons) and the 2014 final rule (20 billion gallons). 75 Fed. Reg. 1,123 (January 8, 2010); DOE, Commercial Clothes Washers, December 2014 Final Rule TSD, p. 10-18, www.regulations.gov/document/EERE-2012-BT-STD-0020-0036.

to the statutory standards, DOE's current proposal threatens those savings, which are roughly equivalent to the total annual water use from nearly 2 million households.[15]

Water is increasingly scarce in many regions throughout the United States. As of a 2024 survey of water utilities across the United States, "only 45% of utilities feel very or fully prepared to meet long-term water supply needs, a decrease from the previous year, when 55.3% of utility personnel reported that their utilities were very or fully prepared to meet long-term water supply needs."[16] Drought is affecting an increasing number of Americans. For example, in October 2024, the United States Drought Monitor found that "Abnormal dryness and drought are currently affecting over 242 million people across the United States including Puerto Rico—about 77.8% of the population. This is the highest percentage in the entire 25-year-long USDM record."[17] At present, 26.08% of the land area of the United States (and 31.05% of the area of the lower 48 states) is experiencing drought, across 32 states, affecting 80.7 million people.[18] Reverting to the statutory water efficiency standards for CCWs would exacerbate water scarcity.

5. DOE's proposal would upend water and wastewater utility planning. Water and wastewater utilities regularly plan to assure safe drinking water and effective sanitation. Part of that planning involves assuring adequate infrastructure and treatment capacity for both services, and reasonable assumptions for both new development and existing development must be made. The introduction of less efficient products in residential and commercial settings where standards have been in place for years upends these plans and over time could lead to the need for additional infrastructure at considerable cost to those communities. Additionally, introducing less efficient products undermines utility conservation programs designed to assist customers and assure adequate supplies. These are challenges that would have been apparent if DOE had performed an adequate analysis of the impacts of this decision.

6. DOE's proposal would undermine manufacturer investments. Manufacturers have been required to comply with the amended CCW standards dating back to January 2013. 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 $16.6 million to

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[15] Calculated by dividing 165 billion gallons by an estimated average household water use of 88,000 gallons/year. www.circleofblue.org/wp-content/uploads/2016/04/WRF_REU2016.pdf.

[16] American Water Works Association, State of the Water Industry 2025: Executive Summary (2025). www.awwa.org/wp-content/uploads/2025-SOTWI-Executive-Summary.pdf. p. 7.

[17] National Centers for Environmental Information, National Oceanic and Atmospheric Administration, U.S. Drought: Weekly Report for October 29, 2024 (Oct. 29, 2024), www.ncei.noaa.gov/news/us-drought-weekly-report-october-29-2024.

[18] National Integrated Drought Information System, National Current Conditions: May 21, 2025 - May 27, 2025 (May 27, 2025), www.drought.gov/current-conditions#:~:text=As%20of%20May%2027%2C%202025,to%20the%20U.S.%20Drought%20Monitor.&text=of%20the%20U.S.%20and%2031.05,are%20in%20drought%20this%20week.

comply with the 2010 standards[19] and $10.2 million to comply with the current standards.[20] These investments would be undermined by DOE's proposal to revert to the statutory standards.

7. DOE's proposal to revert to an outdated water efficiency metric could increase burden for manufacturers. In the proposed rule, DOE states that reverting to the statutory standards would reduce regulatory burden.[21] However, DOE's proposal could instead increase burdens for manufacturers. When Congress established the statutory standards for CCWs, the test procedure referenced the Water Factor (WF) metric.[22] However, since then, DOE has updated the test procedures for CCWs multiple times. The current standards are based on the Integrated Water Factor (IWF) metric, which incorporates water use from additional test cycles. Importantly, DOE's recently amended test procedure, finalized in 2022, does not specify how to calculate the obsolete WF metric. Therefore, reverting to the statutory standards for CCWs could require manufacturers to retest and/or re-rate all their models.

8. DOE lacks the authority to rescind standards. The proposed rule states that DOE is proposing to "rescind" the water conservation standards for CCWs. EPCA authorizes DOE to promulgate new standards and to prescribe amended standards.[23] But no provision in EPCA authorizes DOE to rescind or repeal existing standards.[24] That is true even if DOE frets the existing standard might have been unlawful, or holds a general preference for reducing regulatory burdens. DOE cannot "construe [a] statute in a way that completely nullifies textually applicable provisions meant to limit its discretion."[25] Congress specified what analysis DOE must complete, and what determinations it must make, to change a standard. DOE must comply with those limitations even if its motivation is a belief that the current standard was mistaken.

9. The proposed rule fails to identify the statutory authority under which the Department is acting. To the extent DOE believes it is exercising some lawful authority to rescind a standard, the proposed rule must notify the public of that legal authority.[26] DOE has ignored this obligation. Nowhere in the proposed rule does the Department identify the source of statutory authority it is relying on to rescind the water conservation standards for CCWs. The proposed rule's failure to "include … [a] reference to the legal authority under

[19] 75 Red. Reg. 1,148 (January 8, 2010).
[20] 79 Fed. Reg. 74,525 (December 15, 2014). DOE adopted TSL 2.
[21] 90 Fed. Reg. 20,891.
[22] 42 U.S. Code § 6313(e).
[23] *See* 42 U.S.C. § 6316(a) (incorporating 42 U.S.C. § 6295(*l*), (m), (n), (o), & (p)).
[24] *See also* Nat. Res. Def. Council 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.").
[25] *New Jersey v. EPA*, 517 F.3d 574, 583 (D.C. Cir. 2008). In *New Jersey*, EPA purported to revoke a listing because it was inconsistent with the statutory limits on listing.
[26] 5 U.S.C. § 553(b)(2).

which the rule is proposed" denies the public a meaningful opportunity to comment on the proposed action.[27]

If DOE is instead prescribing an amended standard for CCWs at the level contained in 42 U.S.C. § 6313(e), it still must identify the section of EPCA that it is relying on and explain how it has complied with the requirements of that provision.

10. The Department has authority to prescribe amended water conservation standards for CCWs. The proposed rule says DOE has tentatively determined that it lacks authority to regulate the water use of CCWs. This tentative determination is incorrect. DOE's authority for these water regulations is explicit and clear in EPCA.

Congress set two initial standards for CCWs in paragraph (1) of section 6313(e): an energy standard and a water standard. Each CCW manufactured beginning in 2007 must have "a Modified Energy Factor of at least 1.26" and "a Water Factor of not more than 9.5."[28] Congress then required DOE to publish a pair of final rules "to determine whether the *standards* established under paragraph (1) should be amended."[29] The use of the plural "standards" in defining DOE's review obligation makes no sense unless Congress intended to authorize DOE to amend both the energy standard and the water standard established under paragraph (1).

Following these two initial revisions, CCWs fall under EPCA's requirement that DOE consider, on a prescribed schedule, whether further amendments are warranted. This "regular review" mandate appears in two places in EPCA. Section 6295(m) applies the regular review obligation to consumer products, and that subsection is also incorporated by reference for certain types of covered commercial equipment, including CCWs.[30] However, Section 6313(a)(6)(C) establishes a nearly identical regular review requirement for covered commercial equipment. Faced with dueling provisions imposing a regular review requirement on CCWs, DOE has taken the position that section 6295(m) establishes the requirements the Department must meet.[31] Importantly, section 6295(m) requires updates to "standards," without regard to whether the standard regulates energy or water.

Despite these mandates providing ample authority for DOE to regulate the water consumption of CCWs, DOE offers a purported justification for its tentative determination that it lacks authority to regulate the water use of CCWs. DOE argues that section 6313(a)(6) is entitled "amended energy efficiency standards," and that the heading shows

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[27] 5 U.S.C. § 553(b)(2); *see also* U.S. Dep't of Justice, *Attorney General's Manual on the Administrative Procedure Act* 29 (1947) (explaining that "[t]he reference [to legal authority] must be sufficiently precise to apprise interested persons of the agency's legal authority to issue the proposed rule"); Glob. Van Lines, Inc. v. I.C.C., 714 F.2d 1290, 1297–98 (5th Cir. 1983) (explaining that the agency's "failure to articulate the legal basis" for its rule "effectively deprived the petitioners of *any* opportunity to present comments").

[28] 42 U.S.C. § 6313(e)(1).

[29] *Id.* § 6313(e)(2)(A)(i), (B)(i) (emphasis added).

[30] *Id*. § 6316(a).

[31] *See* 85 Fed. Reg. 71,840, 71,841 (Dec. 20, 2021) (citing section 6295(m) as establishing DOE's obligation to review the CCW standards).

"the standards to be amended in section 6313 refer only to energy standards." However, the NOPR does not even acknowledge DOE's prior interpretation that section 6295(m), not section 6313(a)(6)(C), imposes the relevant regular review requirement for CCWs.

Moreover, even if section 6313(a)(6) defines DOE's review obligation, DOE's reliance on the heading of section 6313(a)(6) is contrary to recent Supreme Court precedent. As the Court explained, "The title of a statutory provision can inform its interpretation, but it is not conclusive."[32] The case, *City and County of San Francisco v. EPA*, interpreted a provision that was titled "Effluent Limitations," and concluded that certain provisions within it authorize restrictions beyond effluent limitations. "Section 1311 is a lengthy provision, and most of its subsections concern effluent limitations. The title 'Effluent limitations' provides a rough description of the provision's general sweep, but it cannot be read as doing more than that."[33]

The same observation holds true for 42 U.S.C. § 6313(a)(6), which runs to roughly 30 subparagraphs, clauses, subclauses, and items: the text of section 6313(a)(6)(C) reaches beyond the paragraph heading's "rough description." The provision mandates, for "each class of covered equipment," a regular review of the "standards"—not limited to energy efficiency standards or any other type of standards.[34] If, in that review, DOE concludes an amendment is warranted, DOE "shall publish a final rule amending the standards for the product." *Id.* § 6313(a)(6)(C)(iii)(I). So, regardless of what the title of subsection (a)(6) might say about the "general sweep" of that subsection, the pertinent text does not, as DOE supposes, limit DOE to amending "energy conservation standards" or assessing only energy efficiency. DOE can, indeed, carry out the amendments that section 6313(e)(2) and section 6295(m) expressly call for, consistent with section 6313(a)(6).

11. DOE misinterprets and mis-applies EPCA's "economically justified" criterion. As the second reason offered for its proposal, after the purported lack of authority addressed above, the Department states that "DOE has determined that it is economically justified to revert back to the statutory standard." The NOPR subsequently claims that the current standards "are not economically justified." These unsubstantiated statements do not satisfy the decision-making process prescribed by EPCA. To amend a standard DOE must comply with the criteria in subsection (o). Those criteria require that the new or amended standard being *proposed* is economically justified, not that the existing standard is not economically justified. Moreover, the bare assertion in the proposed rule that reverting back to the water standard in section 6313(e)(1)(B) would be economically justified does not support that claim with substantial evidence, as EPCA requires.[35]

12. The water efficiency standards for CCWs do not reduce utility. In the NOPR, DOE states that water use restrictions appear to lessen the utility of CCWs by lengthening the time it takes to wash clothes. However, DOE offers no evidence that CCW standards are

[32] *City & County of S.F., Calif. v. EPA*, 604 U.S. ___, 145 S. Ct. 704, 714 (2025).
[33] *Id.*
[34] 42 U.S.C. § 6313(a)(6)(C)(i).
[35] *See* 42 U.S.C. §§ 6306(b)(2), 6316(a).

impacting consumer utility. The NOPR instead cites to a rule in which DOE claimed that the cycle times of residential *dishwashers* had been impacted by standards. Even if that analysis were relevant, the cited rule has been repealed.[36]

As part of that repeal, DOE examined the cycle lengths of numerous appliances and concluded that consumer utility has not been impacted by current standards.[37] The proposed rule offers no rebuttal to DOE's own conclusion that water consumption standards have produced no adverse impact on cycle length.

Moreover, DOE's contention that efficiency standards reduce utility by lengthening cycle time is disproved by information provided during the previous rulemaking. Manufacturers indicated during the 2014 final rule rulemaking that DOE's finalized standard levels would not result in lessening of CCW utility or performance;[38] this was supported by DOE test data accompanying the rulemaking, which showed that CCWs meeting the amended standards achieve a similar level of performance (e.g., cycle time and cleaning score) as baseline CCWs.[39]

13. DOE fails to explain the legal relevance of its "policy to reduce regulatory burden wherever possible." The considerations governing DOE's amendments to 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 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 subsection 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 subsection 6295(o)(2)(A). That section requires that any new or amended standard be "designed to achieve the maximum improvement in . . . water 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). Subsection 6295(p)(1), which DOE purports to rely upon in its NOPR, provides,

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[36] *See* 89 Fed. Reg. 105,408 (Dec. 27, 2024).
[37] *Id*.
[38] 79 Fed. Reg. at 74,506, 74,507.
[39] DOE, Commercial Clothes Washers, December 2014 Final Rule TSD, pp. 5-22 to 5-32. www.regulations.gov/document/EERE-2012-BT-STD-0020-0036.

in a proposed rule, "*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. *See* 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."). DOE colloquially refers to this maximum threshold as "max tech."[40] 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 (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,"[41] pursuant to which "DOE must first identify, for all product types or classes, the maximum improvement in energy efficiency that is technologically feasible." *Id*. at 1391 – 92. In the proposed rule, DOE has ignored that obligation entirely. Indeed, the proposed rule contains no discussion of CCW technology at all. 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."[42] DOE may not "ignore the decisionmaking procedure Congress specifically mandated because the agency thinks it can design a better procedure."[43]

16. The proposed rule is not based on the criteria in subsection 6295(o)(1). Section 6295(m)(1)(B), incorporated for commercial products by section 6316(a), requires that, when DOE proposes an amended standard, its proposal must be "based on the criteria established under subsection (o)." It is significant that the statute requires DOE to base its proposal on the "criteria" of subsection (o). Because even if DOE took the view that section 6295(o) did not apply to this action by its own terms, DOE still must apply the *criteria* of subsection (o). A contrary reading – i.e. that 'the criteria of subsection (o) shall apply when the terms of subsection (o) so require' – would render the quoted language in section 6295(m)(1)(B) superfluous if not tautological.[44]

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[40] *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).
[41] NRDC v. Herrington, 768 F.2d 1355, 1391 (D.C. Cir. 1985).
[42] 42 U.S.C. § 6295(p)(1).
[43] *NRDC*, 768 F.2d at 1396.
[44] TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001)("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.")(internal quotations omitted)(quoting " Duncan v. Walker, 533 U.S. 167, 174 (2001).

The Merriam Webster dictionary defines criteria as "a standard on which a judgment or decision may be based."[45] Subsection (o) provides two criteria for evaluating proposed amended standards that are of relevance here: subsection (o)(1) supplies the "anti-backsliding provision" whereby DOE may not prescribe an amended standard that increases water use; and subsection (o)(2)(A), discussed below, provides that any new or amended standard must be designed to achieve the maximum improvement in water efficiency that the Secretary determines is technologically feasible and economically justified.

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]."[46] The proposed rule plainly is not based on this criterion. The proposed rule seeks to revert to less stringent water use standards and would thus certainly *increase* water use, in direct conflict with the criterion in subsection (o)(1). The NOPR does not contend otherwise, nor does it acknowledge subsection (o)(1).

17. The proposed rule is not based on the criteria in subsection (o)(2)(A). Section 6295(o)(2)(A) provides 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 . . . water efficiency … which the Secretary determines is technologically feasible and economically justified."[47]

The proposed rule is certainly not based on this criterion. Whether or not the water standards in section 6313(e) represented the "maximum improvement" in water efficiency that was "technologically feasible and economically justified" in 2005, they certainly do not now. Over the past two decades DOE has revised those standards and manufacturers have updated their designs and manufacturing facilities accordingly. Indeed, it would strain credulity to suggest that an amended standard that brings water efficiency levels back over a decade into the past represents the "maximum improvement" in water efficiency that is "technologically feasible and economically justified." But that is the standard DOE must apply to this proposed rule and DOE has failed to meet this obligation.

18. 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.'"[48]

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[45] Available at www.merriam-webster.com/dictionary/criterion.

[46] Nat. Res. Def. Council v. Abraham, 355 F.3d 179, 199 (2d Cir. 2004).

[47] 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.'").

[48] 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

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,"[49] 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 water efficiency that is "technologically feasible and economically justified." The NOPR provides no information at all regarding CCW 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" other than an unsubstantiated reference to cycle times. Section 6295(o)(2)(B) 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 past rules. Those rules demonstrated that increasing efficiency requirements above prior requirements was warranted. The data and analysis they presented, which DOE ignores here, certainly do not support the conclusion that prescribing an amended standard at the 2005 level represents the "maximum improvement" in water efficiency that is "technologically feasible and economically justified."

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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").

[49] *See* FCC v. Fox Television Stations, Inc., 556 U.S. 502, 516 (2009).

When DOE finalized the rule for CCWs in 2010, it estimated average life-cycle cost (LCC) savings for purchasers of between $20 and $180, depending on the product class, and total NPV savings of $400–900 million.[50] For the 2014 final rule, DOE estimated average LCC savings of between $166 and $295, depending on the product class and application type, and total NPV savings of $243–$532 million.[51] The savings for purchasers vastly outweigh the costs to manufacturers for both rules. For the 2010 final rule, DOE estimated that the NPV savings outweigh the maximum estimated loss of industry net present value (INPV) by a factor of 57;[52] the NPV savings outweigh the maximum loss of INPV by a factor of 37 for the 2024 final rule.[53] For both rules, DOE carefully considered the impact on small business purchasers and manufacturers, concluding that the levels adopted represent the maximum improvement in energy efficiency that is technologically feasible and economically justified.

19. 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.[54] 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.[55]

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.

20. 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.[56] Agencies may adopt categorical exclusions (CXs) to this requirement, but only for actions that do not "individually or cumulatively have a

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[50] 75 Fed. Reg. 1,123 (January 8, 2010).
[51] 79 Fed. Reg. 74,493 (December 15, 2014).
[52] 75 Fed. Reg. 1,123 (January 8, 2010). Based on the NPV savings using the more conservative 7% discount rate ($400 million) and the maximum estimated loss of INPV of $7 million.
[53] 79 Fed. Reg. 74,493 (December 15, 2014). Based on the NPV savings using the more conservative 7% discount rate ($243 million) and the maximum estimated loss of INPV of $6.6 million.
[54] 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[.]").
[55] *See, e.g.*, Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters, 89 Fed. Reg. 59,692 (July 23, 2024).
[56] 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).

significant effect on the human environment."[57] Not only would the proposed rule itself have a significant effect on the human environment by rolling back water savings, but this action must be considered cumulatively with the many other proposed rollbacks that have also been issued by DOE.[58]

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.[59] 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.[60] DOE has offered no explanation of its reasoning on this point, despite that, as described below, the proposed rule would undo significant benefits to the environment. Instead, in the NOPR, DOE invites comment on the use of CX B5.1, which applies to "actions to conserve energy or water."

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 water use. Second, it does not propose an improvement in efficiency ratings because it would result in a *diminishment* of efficiency ratings.

21. **The proposed rule does not acknowledge the statutory compliance period for industrial equipment.** The proposed rule does not indicate a compliance date. But section 6313(a)(6)(C)(iv) requires that amended standards for industrial equipment apply to products manufactured at least 3 years after publication of the final rule establishing an applicable standard. Thus, should DOE seek to finalize this rule, and if DOE maintains that section 6313(a)(6) defines the Department's review obligation, then DOE must clarify that the amended standard it is proposing will take effect three years after the date of publication of the final rule.

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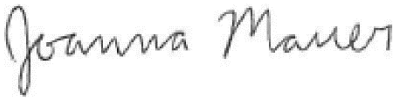
[57] Solar Energy Indus. Ass'n v. FERC, 80 F.4th 956, 991 (9th Cir. 2023).
[58] *See* Kleppe v. Sierra Club, 427 U.S. 390, 410 (1976) ("when several proposals . . . will have cumulative or synergistic environmental impact . . . their environmental consequences must be considered together").
[59] Pub. 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").
[60] 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).

Thank you for considering these comments.

Sincerely,



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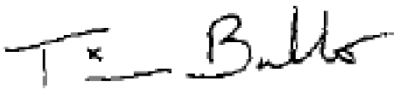

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