

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
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-0019: Energy Conservation Standards for Compact Residential 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, 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 compact residential clothes washers. 90 Fed. Reg. 20,905 (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.

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.

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 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.

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.

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.

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 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 standards for compact residential clothes washers. 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 consumers; increase energy and water waste; 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 consumers. Rescinding the efficiency standards would increase costs for consumers who purchase the nearly quarter of a million compact clothes washers that are sold annually.⁴ As part of the May 2012 final rule, DOE found that the current standards save consumers who purchase top-loading and front-loading compact washers an average of \$373 and \$58 on utility bills, respectively, over the life of the product compared to baseline models at the time of the rulemaking.⁵ Taking into account the additional upfront cost, DOE estimated that the current standards net consumers \$312 in savings for top-loading compact washers and \$54 for front-loading washers.⁶ DOE also found in the May 2012 final rule that the standards for compact

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.

⁴ DOE, Residential Clothes Washers, March 2024 Final Rule Technical Support Document (TSD), p. 9-10. www.regulations.gov/document/EERE-2017-BT-STD-0014-0510.

⁵ DOE, Residential Clothes Washers, May 2012 Final Rule TSD, p. 8-41. www.regulations.gov/document/EERE-2008-BT-STD-0019-0047. Calculated as the difference between the lifetime operating cost at the baseline efficiency level (EL) (\$1,154 for top-loading, \$752 for front-loading) and the lifetime operating cost at the 2018 standard levels adopted: EL 2 for top-loading (\$781) and EL 1 for front-loading (\$694).

⁶ *Id.* Calculated as the difference between the total life-cycle cost (LCC) at the baseline efficiency level (\$1,573 for top-loading, \$1,613 for front-loading) and the LCC at the standard levels adopted: \$1,261 for top-loading (EL 2), \$1,559 for front-loading (EL 1).

clothes washers will provide net present value (NPV) savings for purchasers of between \$228 million and \$565 million over 30 years of sales.⁷

Furthermore, DOE found that the amended standards finalized in the March 2024 final rule will save consumers who purchase a front-loading compact washer an additional \$106 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 current standards).⁸ Taking into account the additional upfront cost, DOE estimated that the amended standards, which take effect in 2028, will net consumers \$19 in savings relative to the current standards for compact front-loading washers.⁹ (DOE did not increase the stringency of the standards for top-loading compact washers in the 2024 Final Rule.) DOE also found in the March 2024 final rule that the standards for front-loading compact clothes washers will provide NPV savings for purchasers of up to \$20 million over 30 years of sales.¹⁰ In other words, rescinding the standards for compact clothes washers 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 and water prices are rising. The U.S. Energy Information Administration's (EIA's) forecast shows average residential electricity prices rising by 13% in 2025 and 18% in 2026 relative to 2022 prices.¹¹ 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.¹² Rising prices are resulting in higher bills; the average U.S. household spent about \$1,750 on electricity costs in 2023, hundreds of dollars higher than the average cost of about \$1,500 in 2020.¹³ 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 2020.¹⁴

⁷ DOE, Residential Clothes Washers, 2012 National Impact Analysis (NIA), "Summary Results" sheet. www.regulations.gov/document/EERE-2008-BT-STD-0019-0046.

⁸ Table V.5. 89 Fed. Reg. 19,088 (March 15, 2024). Calculated as the difference between the lifetime operating cost at the baseline efficiency level (\$1,024) and the lifetime operating cost at the 2018 standard level adopted, Trial Standard Level (TSL) 2 (\$918).

⁹ *Id.* Calculated as the difference between the total LCC at the baseline efficiency level (\$1,798) and the LCC at the standard level adopted, TSL 2 (\$1,779).

¹⁰ DOE, Residential Clothes Washers, March 2024 Final Rule TSD, p. 10-16. www.regulations.gov/document/EERE-2017-BT-STD-0014-0510. DOE adopted TSL 2.

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 *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.

¹³ U.S. EIA, Today in Energy. U.S. electricity prices continue steady increase (May 2025). www.eia.gov/todayinenergy/detail.php?id=65284.

¹⁴ 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

Additionally, 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.¹⁵ 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.¹⁶ 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.¹⁷ This increased spending on water infrastructure will only drive rates higher. Furthermore, between 12.1 million and 19.2 million households throughout the United States (between 9.2% to 14.6% of families) lack affordable access to water,¹⁸ while about 20% of households are in debt to their water utility.¹⁹ Rescinding the standards for compact washers would further increase water and wastewater costs and strains on household budgets.

Independent of the harm caused by eliminating the standard, the proposed rule would also harm consumers by depriving them of information to make purchasing decisions. Manufacturers must test and certify all covered products, and the efficiency metrics they report for each model are made public through DOE's Compliance Certification Management System. This data can be used by consumers, consumer advocates, consumer reporting publications, and retailers to inform purchasing decisions across the full range of efficiency levels for a given product. The proposed rule, by proposing to eliminate coverage for compact clothes washers, would deprive consumers of this valuable information.

4. DOE's proposal would increase energy and water waste. In the May 2012 final rule, DOE found that the standards for compact washers will save 0.05 quads of energy (including both electricity and fuel savings) over 30 years of product sales.²⁰ DOE's current proposal threatens those savings at a time when the electric grid is already challenged by increased demand from data centers, growing domestic manufacturing, and other factors.

¹⁵ 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.

¹⁶ 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.

¹⁷ 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.

¹⁸ *Id.* p. 2.

¹⁹ Low Income Household Water Assistance Program, Understanding Water Affordability Across Contexts: LIHWAP Water Utility Affordability Survey (February 2024). acf.gov/sites/default/files/documents/ocs/water-survey.pdf. p. 5.

²⁰ 77 Fed. Reg. 23,265 (May 31, 2012). DOE adopted TSL 3.

DOE states in the NOPR that the compact clothes washer water use regulations “are not consistent with the need for national water conservation.”²¹ However, clothes washers use a significant amount of water, representing about one-sixth of total residential indoor water use.²² DOE’s analyses for the 2012 and 2024 final rules indicate that rescinding the standards could increase the water consumption of a compact top-loading washer by 740 gallons annually relative to a model just meeting the current standards²³ and by 760 gallons/year for a front-loading washer relative to a model meeting the recently amended standards.²⁴ In the 2012 final rule, DOE estimated that the water efficiency standards currently in effect will save about 20 billion gallons of water cumulatively over 30 years.²⁵ The recently amended standards, set to take effect in 2028, will save an additional 10 billion gallons of water over 30 years of sales.²⁶ DOE’s current proposal threatens those savings.

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.”²⁷ 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.”²⁸ 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

²¹ 90 Fed. Reg. 20,891.

²² Water Research Foundation, Residential End Uses of Water, Version 2: Executive Report (April 2016). www.circleofblue.org/wp-content/uploads/2016/04/WRF_REU2016.pdf.

²³ DOE, Residential Clothes Washers, May 2012 Final Rule TSD, p. 7-8. www.regulations.gov/document/EERE-2008-BT-STD-0019-0047. Calculated as the difference between the baseline annual water use (6,370 gallons) and the annual water use at the standard level adopted, EL 2 (5,630 gallons).

²⁴ *Id.* and March 2024 Final Rule TSD, p. 7-6. www.regulations.gov/document/EERE-2017-BT-STD-0014-0510. Calculated as the sum of the difference between the baseline annual water use (3,890 gallons) and the annual water use at the standard level adopted, EL 2 (3,630 gallons) in the 2012 final rule and the difference between the baseline annual water use (2,100 gallons) and the annual water use at the standard level adopted, EL 2 (1,600 gallons) in the 2024 final rule. The estimated cycles per year in DOE’s analysis were updated from 295 in 2012 to 217 in 2024, resulting in lower estimated annual water usage at the current standard level in the 2024 analysis.

²⁵ 77 Fed. Reg. 32,365 (May 31, 2012).

²⁶ Table 10.5.3. DOE, Residential Clothes Washers March 2024 Final Rule TSD, p. 10-15.

www.regulations.gov/document/EERE-2017-BT-STD-0014-0510. DOE adopted TSL 2.

²⁷ 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.

²⁸ 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.

drought, across 32 states, affecting 80.7 million people.²⁹ Rescinding the standards for compact washers 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. DOE estimates that 92% of washers sold in the U.S. are manufactured domestically, employing over 9,000 people.³⁰ Manufacturers have been required to comply with the standards in the 2012 final rule beginning in March 2015.³¹ 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). While DOE did not provide separate estimates of conversion costs for compact washers, the Department estimated total conversion costs of \$418.5 million to comply with the current residential clothes washer standards.³² These investments would be undermined by DOE’s proposal to rescind the compact washer standards.

7. Standards protect consumers who are not always able to make well-informed purchase decisions. DOE states in the NOPR that “consumers are best situated to decide whether a given product is economically justified, as that is precisely what the free market does best.” This statement ignores the realities of who purchases appliances and why. Many consumers are renters who pay their utility bills but have no control over the appliances purchased by their landlord (who often has no economic incentive to buy an efficient product).³³ Furthermore, about half of appliance purchases are emergency

²⁹ 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.

³⁰ 89 Fed. Reg. 19,095 (May 31, 2024).

³¹ Top-loading product classes had tiered standards with compliance for the second tier beginning in January 2018.

³² 77 Fed. Reg. 32,361 (May 31, 2012). DOE adopted TSL 3.

³³ For example, in the 2024 clothes washers final rule, DOE estimated that more than 40% of low-income households with clothes washers are renters who pay their utility bills. 89 Fed. Reg. 19068 (March 15, 2024).

purchases (e.g., when a consumer's current appliance breaks).³⁴ In this scenario, consumers are often limited by local availability (which is heavily influenced by retailers) and may make decisions based on getting a replacement as quickly as possible rather than on any type of economic analysis. Thus, minimum efficiency standards are an important policy tool to protect consumers.

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 compact clothes washers. EPCA authorizes DOE to promulgate new standards and to prescribe amended standards.³⁵ But no provision in EPCA authorizes DOE to rescind or repeal existing standards.³⁶

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 energy conservation standards, the proposed rule must notify the public of that legal authority.³⁷ DOE has ignored this obligation. Nowhere in the proposed rule does the Department identify the source of statutory authority to rescind the energy conservation standards for compact clothes washers. The proposed rule's failure to “include ... [a] reference to the legal authority under which the rule is proposed” denies the public a meaningful opportunity to comment on the proposed action.³⁸

If DOE is instead prescribing an amended standard for compact clothes washers—a “no-standard standard”³⁹—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.⁴⁰ Among other things, DOE must explain how any such authority is available to it in light of its (erroneous) contention that compact clothes washers are not a “covered product” under EPCA.

10. The proposed rule incorrectly describes the status of compact clothes washers. Citing amendments to EPCA enacted in 2007 that prescribe standards only for standard-size clothes washers, the proposed rule asserts that DOE “lacks authority to

³⁴ Consumer Federation of America, U.S. Consumer Attitudes Toward Appliance Efficiency Standards and Purchasing Behaviors by Income, Race, and Homeownership (October 2022). consumerfed.org/wp-content/uploads/2022/10/Appliance-Survey-Issue-Brief.pdf.

³⁵ 42 U.S.C. § 6295(a)(2), (l), (m), (n), (o), & (p).

³⁶ 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.”).

³⁷ 5 U.S.C. § 553(b)(2).

³⁸ 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”).

³⁹ See *NRDC v. Herrington*, 768 F.2d 1355, 1363 (D.C. Cir. 1985) (reviewing DOE's “no-standard standards”).

⁴⁰ Indeed, DOE appears to accept that it is amending a standard, as DOE recognizes that its action is subject to 42 U.S.C. § 6295(p). See 90 Fed. Reg. 20,906.

issue regulations for compact clothes washers.”⁴¹ The proposed rule suggests that such regulations would require DOE to first “make[] a determination to classify compact washers as a consumer product under 42 U.S.C. 6292(b).”⁴²

The proposed rule ignores statutory language pre-dating the 2007 amendments to EPCA. Compact clothes washers have been regulated under EPCA since 1987. In the National Appliance Energy Conservation Act of 1987 (“NAECA”), Congress codified standards in the form of a design requirement for all clothes washers—both standard-size and compact.⁴³

DOE subsequently amended the NAECA standards, adopting performance standards specifying a minimum level of energy efficiency for certain compact clothes washers. The Department finalized the compact product class for top-loading clothes washers in a May 1991 final rule,⁴⁴ and it added a compact product class for front-loaders in a May 2012 direct final rule, as proposed by a joint petition.⁴⁵

In 2007, Congress prescribed amended energy conservation standards for standard-size clothes washers, but did not amend the standards for compact models.⁴⁶ Congress then ordered DOE to determine “whether to amend the standards in effect for clothes washers.”⁴⁷ But nothing in the 2007 amendments suggests that Congress intended for DOE to amend the standards for standard-size clothes washers only. In fact, the language of paragraph (g)(9) suggests the opposite. This provision instructs DOE to consider amending the standards for “clothes washers,” with no “standard-size” qualification or limitation. The absence of that phrase, after it appears in a neighboring provision, is highly suggestive and indicates the omission was deliberate—*i.e.* paragraph (g)(9) applies to all residential clothes washers, not just “standard-size” washers.

11. DOE’s proposed change to the standards violates the 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].”⁴⁸

⁴¹ 90 Fed. Reg. 20,906.

⁴² *Id.*

⁴³ See 42 U.S.C. § 6295(g)(2).

⁴⁴ 56 Fed. Reg. 22,250 (May 14, 1991).

⁴⁵ 77 Fed. Reg. 32,308 (May 31, 2012).

⁴⁶ See 42 U.S.C. § 6295(g)(9)(A).

⁴⁷ *Id.* § 6295(g)(9)(B).

⁴⁸ *Nat. Res. Def. Council v. Abraham*, 355 F.3d 179, 199 (2d Cir. 2004).

The proposed rule violates the anti-backsliding provision. The proposed rule would amend energy conservation standards for compact clothes washers codified at 10 C.F.R. § 430.32(g) by removing the standards from the C.F.R. The proposed change would, therefore, “decrease the minimum required energy efficiency” for compact clothes washers. The proposed rule does not contend otherwise. In fact, the proposed rule does not even mention the anti-backsliding provision. If DOE believes there is a reason why the anti-backsliding provision does not constrain the proposed action, DOE’s failure to notify the public of that interpretation deprives stakeholders of a meaningful opportunity to comment on a key legal issue.

12. The proposed rule fails to identify the criteria DOE is using to define a compact clothes washer. DOE has used two different capacity thresholds to identify compact clothes washers. Historically, DOE considered clothes washers with less than 1.6 cubic feet of capacity to be compact models.⁴⁹ This was the size cut-off in place in 2007, when Congress amended EPCA to enact updated energy conservation standards for standard-size clothes washers, but did not amend the existing standards for compact clothes washers.⁵⁰ However, in 2024, DOE redefined what constitutes a compact clothes washer. DOE raised the capacity threshold so that front loaders with less than 3.0 cubic feet of capacity now qualify as compact models.⁵¹ At the same time, DOE redefined top loading clothes washers with capacities less than 1.6 cubic feet as “ultra-compact” clothes washers.⁵²

DOE now purports to rescind the standards for all clothes washers labeled as “compact.” Accordingly, DOE has proposed to remove from 10 C.F.R. 430.32 paragraphs (g)(1)(i) and (iii) and paragraphs (g)(2)(i)(A)(3).⁵³ Without explanation, DOE has spared the new standards for ultra-compact top loading clothes washers from its purge of the C.F.R., while at the same time targeting front loading clothes washers with capacities between 1.6 and 3.0 cubic feet, even though such front loading machines were directly regulated by Congress in 2007 because they were then considered standard size. In other words, DOE’s rationale for its proposed action—that the Department lacks authority to issue regulations for compact clothes washers because Congress targeted only standard size models—runs counter to the content of the proposed action itself, which curtails standards for some standard size models, while leaving standards for some compact models in place.

The proposed rule’s internal inconsistency on this point forces the public to guess at what DOE might have intended—to make a choice between whether to believe that DOE’s stated rationale or its proposed amendments to the C.F.R. define the proposal on which

⁴⁹ See 66 Fed. Reg. 3314, 3332-33 (Jan. 12, 2001) (listing previous standards for clothes washers).

⁵⁰ See 42 U.S.C. § 6295(g)(9)(A).

⁵¹ See 10 C.F.R. § 430.32(g)(2)(i)(A)(3).

⁵² See *id.* § 430.32(g)(2)(i)(A)(1).

⁵³ 90 Fed. Reg. at 20,909.

DOE seeks comment. This is not adequate notice of “the terms or substance of the proposed rule.”⁵⁴

13. DOE misinterprets and mis-applies EPCA’s “economically justified” standard.

As a second justification for the proposed rule, DOE states that it “has tentatively found that the efficiency standards for compact washers are not economically justified.” Later, in the final paragraph of the discussion section, DOE states that part of the rationale for the purported rescission is that the “current regulations . . . are not economically justified.” These unexplained statements have no direct bearing on the decisionmaking 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. 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.

14. The standards for compact clothes washers do not reduce consumer utility. In the NOPR, DOE claims that current efficiency standards “appear to lessen the utility of clothes washers by lengthening the time it takes to wash clothes. However, DOE offers no support for the proposition that the current standards have reduced consumer utility. The NOPR cites to a rule in which DOE claimed that the cycle times of *dishwashers* had been impacted by standards. Even if that analysis were relevant, the cited rule has been repealed.⁵⁵

As part of that repeal, DOE examined the cycle lengths of numerous appliances and concluded that consumer utility had not been impacted by current standards.⁵⁶ The proposed rule offers no rebuttal to DOE’s own conclusion that the current standards have produced no adverse impact on cycle length for clothes washers.

Moreover, DOE’s contention that current efficiency standards reduce utility by lengthening cycle time is not supported by information provided as part of the 2012 rulemaking nor 2023 data published by DOE as part of the most recent update to the clothes washer standards. Manufacturers indicated during interviews conducted as part of the 2012 rulemaking that the efficiency levels finalized by DOE would not result in an increased cycle time for units within any of the product classes established in the final rule, an assertion supported by the Department’s analysis of test data and published product literature.⁵⁷ As part of the 2024 rulemaking, the Department tested clothes washers across a range of efficiencies and found no correlation between washer efficiency and cycle

⁵⁴ 5 U.S.C. § 553(b)(3).

⁵⁵ See 89 Fed. Reg. 105,408 (Dec. 27, 2024).

⁵⁶ *Id.*

⁵⁷ 77 Fed. Reg. 32,336 (May 31, 2012).

time.⁵⁸ More broadly, DOE’s testing also found that other key performance attributes (e.g., wash temperatures, stain removal, mechanical action) are similar for both efficient and inefficient washers.

15. The current standards for compact clothes washers are consistent with the need for national water conservation. Congress long ago concluded that energy conservation standards provide needed assistance to consumers making purchasing decisions when it began directing DOE to issue such standards. Indeed, DOE weighed “the need for national energy and water conservation” when selecting the current standards. The NOPR’s avowal of faith in markets does not provide an excuse to abate the standard-setting exercise that Congress ordered DOE to complete.

16. 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 subsection 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.

17. The NOPR misinterprets 42 U.S.C. § 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 decisionmaking 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 energy efficiency...which the Secretary determines is technologically feasible and economically justified.”

18. The proposed rule fails to determine “max-tech” as required by 42 U.S.C. § 6295(p)(1). Section 6295(p)(1) requires DOE, at the proposed rule stage, to determine the maximum improvement in energy efficiency that is technologically feasible.⁵⁹ DOE

⁵⁸ 2023-01 Clothes Washer Performance Characteristics Test Report; Energy Conservation Program for Consumer Products and Commercial and Industrial Equipment Residential Clothes Washers, January 2023. www.regulations.gov/document/EERE-2017-BT-STD-0014-0059.

⁵⁹ 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

colloquially refers to this maximum threshold as “max tech.”⁶⁰ 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,”⁶¹ pursuant to which “DOE must first identify, for all product types or classes, the maximum improvement in energy efficiency that is technologically feasible.”⁶² In the proposed rule, DOE has ignored that obligation entirely. Indeed, the proposed rule contains no discussion of clothes washer technology at all.⁶³ 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.”⁶⁴ DOE may not “ignore the decisionmaking procedure Congress specifically mandated because the agency thinks it can design a better procedure.”⁶⁵

19. The proposed rule fails to apply the statutory requirement for new or amended standards in 42 U.S.C. § 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.”⁶⁶ The proposed rule fails to acknowledge the existence of this benchmark let alone apply it to the proposed action.

20. 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 proposed rule 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.’”⁶⁷ This requirement applies in equal force when an agency, like DOE here, is

technologically feasible and, if the proposed standards would not achieve these levels, the reasons for proposing different standards.”).

⁶⁰ 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).

⁶¹ NRDC v. Herrington, 768 F.2d 1355, 1391 (D.C. Cir. 1985).

⁶² *Id.* at 1391 – 92.

⁶³ Compare Department of Energy, Energy Conservation Program: Energy Conservation Standards for Residential Clothes Washers, Direct Final Rule 89 Fed. Reg. 19,026 (Mar. 15, 2024) (presenting a lengthy discussion of higher efficiency levels for clothes washers along with a technical support document).

⁶⁴ 42 U.S.C. § 6295(p)(1).

⁶⁵ NRDC, 768 F.2d at 1396.

⁶⁶ 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.’”).

⁶⁷ 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”).

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,”⁶⁸ 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 clothes washer 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) 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 2012 and 2024 rules updating the clothes washer standards. Those rules demonstrated that increasing efficiency requirements above prior levels was warranted. The data and analysis they presented, which DOE ignores here, certainly do not support the conclusion that prescribing an amended standard at a no-standard level represents

⁶⁸ See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009).

the “maximum improvement in energy efficiency” that is “technologically feasible and economically justified.”

When DOE finalized the rule for washers in 2012, it estimated average life-cycle cost (LCC) savings for top-loading and front-loading compact washers of \$37 and \$54, respectively,⁶⁹ and total NPV savings for compact washers of \$228–\$565 million. For the 2024 final rule, DOE estimated average LCC savings⁷⁰ of \$9 for front-loading compact washers and NPV savings of up to \$20 million.⁷¹ Overall, the savings for consumers vastly outweigh the costs to manufacturers for both rules. For the 2012 final rule, DOE estimated that the total NPV savings for residential washers outweigh the maximum estimated loss of industry net present value (INPV) by a factor of 15;⁷² the NPV savings outweigh the maximum loss of INPV by a factor of 12 for the 2024 final rule.⁷³ For both rules, DOE concluded that the levels adopted represent the maximum improvement in energy efficiency that is technologically feasible and economically justified.

21. 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.⁷⁴ 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.⁷⁵

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.

22. DOE has failed to comply with the National Environmental Policy Act (NEPA). 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

⁶⁹ 77 Fed. Reg. 32,310 (May 31, 2012).

⁷⁰ 89 Fed. Reg. 19,028 (March 15, 2024).

⁷¹ DOE, Residential Clothes Washers March 2024 Final Rule TSD, p. 10-16.

www.regulations.gov/document/EERE-2017-BT-STD-0014-0510. DOE adopted TSL 2.

⁷² 77 Fed. Reg. 32,310 (May 31, 2012). Based on the NPV savings using the more conservative 7% discount rate (\$13.01 billion) and the maximum estimated loss of INPV of \$859 million.

⁷³ 89 Fed. Reg. 19,028 (March 15, 2024). Based on the NPV savings using the more conservative 7% discount rate (\$3.28 billion) and the maximum estimated loss of INPV of \$278 million.

⁷⁴ 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[.]”).

⁷⁵ See, e.g., *Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters*, 89 Fed. Reg. 59,692 (July 23, 2024).

quality of the environment.⁷⁶ 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.”⁷⁷ Not only would the proposed rule itself have a significant effect on the human environment by rolling back energy and water savings, but this action must be considered cumulatively with the many other proposed rollbacks that have also been issued by DOE.⁷⁸

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.⁷⁹ 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.⁸⁰ 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 energy and water 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

⁷⁶ 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).

⁷⁷ *Solar Energy Indus. Ass’n v. FERC*, 80 F.4th 956, 991 (9th Cir. 2023).

⁷⁸ 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.

⁷⁹ *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”).

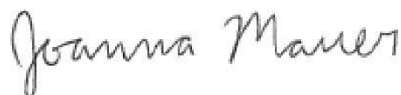
⁸⁰ 10 C.F.R. § 1021.102(b)(2); see *Oak Ridge Env’t. Peace Alliance v. Perry*, 412 F. Supp. 3d 786, 846-47 (E.D. Tenn. 2019) (emphasizing mandatory nature of this portion of DOE’s NEPA regulations and holding arbitrary and capricious the agency’s issuance of sixty-nine CXs).

because it would roll back the savings in energy consumption that provided part of the original justification for the standard.

23. The proposed rule does not acknowledge the statutory compliance period for clothes washers. The proposed rule does not indicate a compliance date. But section 6295(m)(4)(A)(i) requires that any amended standard for clothes washers apply to products “manufactured after the date that is 3 years after publication of the final rule establishing an applicable standard.” Thus, should DOE seek to finalize this rule, it must clarify that the amended standard it is proposing will take effect three years after the date of publication of the final rule.

Thank you for considering these comments.

Sincerely,



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