Appliance Standards Awareness Project
American Council for an Energy-Efficient Economy
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-DET-0007: Proposed Withdrawal of Determination of Compressors as a Covered Equipment

Dear Mr. Taggart:

This letter constitutes the comments of the Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEEE), Ceres, Consumer Federation of America (CFA), Earthjustice, and Natural Resources Defense Council (NRDC) on the proposed withdrawal of determination of compressors as covered equipment. 90 Fed. Reg. 20,873 (May 16, 2025).[1] We appreciate the opportunity to provide input to the Department.

1. About the signatories

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

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

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

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

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

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

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

2. Introduction

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

In the notice, DOE is proposing to withdraw its prior determination that compressors are a covered equipment. DOE is also proposing to withdraw the applicable test procedures, certification requirements, and energy conservation standards for compressors. This action does not stand on its own. It is one of 17 proposals issued the same day to roll back efficiency standards.

On his first day in office, President Trump issued an Executive Order "Declaring a National Energy Emergency."[4] That order focused on the "active threat to the American people from high energy prices," highlighted the "high energy prices that devastate Americans,

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

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

[4] Exec. Order No. 14,156, Declaring a National Energy Emergency, 90 Fed. Reg. 8,433 (Jan. 29, 2025), available at www.govinfo.gov/content/pkg/FR-2025-01-29/pdf/2025-02003.pdf.

particularly those living on low- and fixed-incomes," and described "our Nation's inadequate energy supply." Weakening efficiency standards would only exacerbate these issues. If less efficient appliances are allowed to enter the market, consumers will end up using more energy and spending more money, worsening the "Energy Emergency" described in President Trump's order.

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

3. DOE's proposal would raise costs for businesses. In DOE's analysis for the January 2020 final rule, the Department estimated average life-cycle cost (LCC) savings for purchasers of between $2,618 and $10,559 depending on the equipment class.[5] In other words, eliminating the standards could increase net costs for businesses over the life of a compressor by $2,618 to $10,559. DOE also found in the January 2020 final rule that the standards for compressors will provide net present value (NPV) savings for purchasers of between $200 and $400 million over 30 years of sales.[6] In other words, DOE's current proposal could cost businesses hundreds of millions of dollars over the coming decades.

These higher costs for businesses would come at a time when commercial electricity prices are rising. The U.S. Energy Information Administration's (EIA's) forecast shows nationwide average commercial electricity prices rising by 3.9% in 2025 and 5.9% in 2026 relative to 2024 prices.[7] Some regions of the country are expected to experience even larger increases in commercial electricity prices, with the EIA forecast showing electricity price increases of 13.2% between 2024 and 2026 for New England and an increase of 10.3% for the Middle Atlantic region in the same period.[8] Repealing the standards for compressors would further increase electricity costs for businesses.

Independent of the harm caused by eliminating the standard, the proposed rule would also harm businesses 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 businesses to inform purchasing decisions across the full range of efficiency levels for a given product. The proposed rule, by

[5] 85 Fed. Reg. 1,506 (January 10, 2020).
[6] *Id*. NPV = present value of operating cost savings – present value of total incremental installed costs; range corresponds to 7% and 3% discount rates, respectively.
[7] Table 7c, p. 52. U.S. EIA, Short-Term Energy Outlook, June 2025. www.eia.gov/outlooks/steo/pdf/steo_full.pdf.
[8] *Id*.

proposing to eliminate coverage for compressors would deprive businesses of this valuable information.

4. DOE's proposal would increase energy waste and strain the electric grid unnecessarily. In the January 2020 final rule, DOE found that the standards for compressors will save 0.16 quadrillion Btus ("quads") of energy over 30 years of product sales.[9] DOE's proposal threatens those savings. DOE further found as part of their rulemaking analysis that the standards will reduce electricity consumption by 278 gigawatt-hours (GWh) in 2030 and 448 GWh in 2040 and lower total installed generation capacity by 79 megawatts (MW) in 2030 and 130 MW in 2040.[10] By rescinding the standards for compressors, DOE's proposal would increase electricity demand at a time when the electric grid is already challenged by increased demand from data centers, growing domestic manufacturing, and other factors.

A recent report estimates that U.S. electricity demand will grow 25% by 2030 and 78% by 2050 relative to 2023 levels, with peak demand growing 14% by 2030 and 54% by 2050.[11] Greater electricity demand means increased spending on generation, transmission, and distribution infrastructure, which translates to higher electricity bills for consumers. The same recent report projects that rising electricity demand could result in residential retail electricity rates increasing by between 15% and 40% by 2030, with electricity rates doubling for some utilities by 2050.[12] Repealing the current standards for compressors would further exacerbate these trends.

5. DOE's proposal would increase emissions that harm human health and the environment. In the January 2020 final rule, DOE found that the standards will result in cumulative emissions reductions over 30 years of sales of 8.2 million metric tons of carbon dioxide, 6.5 thousand tons of sulfur dioxide, 11.0 thousand tons of nitrogen oxides, 40.8 thousand tons of methane, 0.1 thousand tons of nitrous oxide, and 0.02 tons of mercury.[13] In other words, rescinding the standards for compressors would increase emissions of these harmful pollutants.

6. DOE's proposal would undermine manufacturer investments. Manufacturers have been required to comply with the standards in the January 2020 final rule since January 2025. 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

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[9] 85 Fed. Reg. 1,506 (January 10, 2020).
[10] DOE, Air Compressors, January 2020 Final Rule Technical Support Document (TSD), p. 15-8. www.regulations.gov/document/EERE-2013-BT-STD-0040-0082.
[11] ICF, Rising current: America's growing electricity demand. www.icf.com/-/media/files/icf/reports/2025/energy-demand-report-icf-2025_report.pdf?rev=c87f111ab97f481a8fe3d3148a372f7f. p. 3.
[12] *Id*.
[13] 85 Fed. Reg. 1,506 (January 10, 2020). The units for nitrogen oxides are listed as "tons," which appears to be a typo. At 85 Fed. Reg. 1,578, 1,581, 1,583 the units are noted as "thousand tons."

estimated that manufacturers would incur total conversion costs of $98.1 million to comply with the current standards for compressors.[14] These investments would be undermined by DOE's proposal to revert to the statutory standards. Furthermore, the manufacturers that made these investments and who sell products in the U.S. could be undercut by manufacturers that currently serve other markets.

7. DOE lacks the authority to withdraw standards. The proposed rule states that DOE is proposing to "withdraw" the energy conservation standards for compressors. EPCA authorizes DOE to promulgate new standards and to prescribe amended standards.[15] But no provision in EPCA authorizes DOE to withdraw or repeal existing standards.[16]

Section 6312(b) authorizes DOE to classify new types of industrial equipment as covered equipment. But Section 6312(b) provides no express authority to remove coverage for equipment the Department has already covered. It is true that DOE has withdrawn coverage determinations before. But DOE has only done so in circumstances where no standard was in effect and no direct regulatory consequence flowed from its coverage withdrawal; thus, the legality of those withdrawals has never been tested. In any event, the complete absence of statutory language permitting DOE to withdraw coverage determinations must mean, at a minimum, that section 6312(b) does not provide DOE with a backdoor authority to repeal standards in a manner that it plainly lacks authority to do under the sections of EPCA that govern modifications to existing standards.[17]

8. DOE's proposed amended standard for compressors violates EPCA's anti-backsliding provision. EPCA's anti-backsliding provision applies to commercial equipment.[18] It also plainly applies to the withdrawal of an energy conservation standard. An action that exempts products from a standard "prescribe[s] [an] amended standard which . . . decreases the minimum required energy efficiency, of a covered product."[19]

It is implausible that when Congress prohibited DOE from prescribing "any amended standard which . . . decreases the minimum required energy efficiency, of a covered product,"[20] it nevertheless intended to permit the withdrawal of coverage completely. As the U.S. Court of Appeals for the Second Circuit explained in *NRDC v. Abraham*, the anti-backsliding provision must be interpreted in light of "the appliance program's goal of steadily increasing the energy efficiency of covered products" and Congress' intent to

[14] 85 Fed. Reg. 1,572 (January 10, 2020).
[15] 42 U.S.C. § 6295(a)(2), (*l*), (m), (n), (o), & (p).
[16] *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.").
[17] See 42 U.S.C. § 6316(a) (incorporating subsections (*l*) through (s) of section 6295).
[18] 42 U.S.C. §§ 6295(o)(1), 6313(a)(6)(B)(iii)(I) & (C)(ii), 6316(a).
[19] 42 U.S.C. § 6295(o)(1); *see also id.*§ 6313(a)(6)(B)(iii)(I).
[20] 42 U.S.C. § 6295(o)(1); *see also id.*§ 6313(a)(6)(B)(iii)(I).

provide a "sense of certainty on the part of manufacturers as to the required energy efficiency standards."[21]

Allowing DOE the discretion to exempt products from standards entirely "would completely undermine any sense of certainty on the part of manufacturers as to the required energy efficiency standards" for any particular product.[22] "Finally, and most importantly, such a reading would effectively render section 325(o)(1)'s 'anti-backsliding' mechanism inoperative, or a nullity, in these circumstances."[23]

The Act also makes clear that the anti-backsliding provision applies to any DOE action that purports, as here, to withdraw a prior final rule. In 42 U.S.C. § 6295(p)(4), Congress granted DOE the option to take action in limited circumstances via "direct final rules," without first issuing a notice of proposed rulemaking. If DOE receives adverse comments on a direct final rule and "determines that such adverse public comments . . . may provide a reasonable basis for withdrawing the direct final rule," DOE may withdraw it. In that event, the withdrawn rule "shall not be considered to be a final rule for purposes of [42 U.S.C. § 6295(o)]," which imposes the anti-backsliding provision. The express exemption from the anti-backsliding provision for direct final rules demonstrates that Congress intended the provision to cover the withdrawal of final rules for which the Department had to issue a notice of proposed rulemaking and undertake full public notice and comment.

9. When Congress intended to allow DOE to exempt products from coverage, it specifically authorized that action. EPCA provides expansive authority to DOE to increase the coverage of federal energy conservation standards, but only limited opportunities to create exemptions from standards. EPCA broadly authorizes DOE to classify additional consumer products and commercial equipment as covered products and equipment subject to energy conservation standards.[24] By contrast, however, the Act confers no similarly broad authority to terminate the coverage of a product.

Indeed, EPCA only allows DOE to exempt products from standards under specified circumstances. Of the many dozens of items EPCA covers, the Act only authorizes DOE to grant exemptions for a few, none of which cover compressors.[25] When a statute confers

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[21] 355 F.3d 179, 197 (D.C. Cir. 2004).
[22] *Id*.
[23] *Id*.
[24] 42 U.S.C. §§ 6292(a)(20, 6311(1)(L), 6312(b).
[25] *See* 42 U.S.C. § 6291(33)(B)(ii) (permitting DOE to exclude products from the definition of "commercial prerinse spray valve"); *id*. § 6291(35)(B)(iii) (same as to distribution transformers); *id*. § 6295(e)(5)(F) (DOE may exclude water heaters from EPCA's uniform efficiency descriptor); *id*. § 6295(u)(5)(B)(i) (DOE may exempt certain external power supplies); *id*. § 6313(b)(3) (authorizing DOE to grant exemptions for types or classes of electric motors); *id*. § 6291(30)(S)(ii)(II) (DOE may exclude from the term "medium base compact fluorescent lamp" any lamp that is "designed for special applications" and "unlikely to be used in general purpose applications"); *id*. § 6291(30)(E) (DOE may exclude from the terms "fluorescent lamp" and "incandescent lamp" any lamp as to which the Department makes "a determination that standards for such

authority on an agency to create specific exemptions, broader authority to create other types of exemptions cannot be inferred.[26] Because EPCA confers authority on DOE to create exemptions for specific types of products—none of which include compressors—DOE cannot conclude that it has authority to exempt compressors from coverage.

10. EPCA does not authorize DOE to withdraw test procedures. EPCA does not authorize DOE to withdraw test procedures for commercial equipment. Instead, 42 U.S.C. § 6314 only provides DOE with authority to prescribe test procedures and subsequently amend them based on specific statutory criteria. Once DOE has prescribed test procedures under 42 U.S.C. § 6314, DOE may amend those procedures only as needed to "more accurately or fully comply with the requirements of [42 U.S.C. § 6314(b)(2) and (3)]."[27] Those requirements demand that test procedures "shall be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment . . . during a representative average use cycle," while not being "unduly burdensome to conduct."

In addition, because EPCA prohibits DOE from withdrawing energy conservation standards under 42 U.S.C. § 6295(o)(1), DOE may not withdraw the test procedures that are required to determine compliance with these standards. Under 42 U.S.C. § 6295(s), "[c]ompliance with, and performance under," energy conservation standards "shall be determined using the test procedures and corresponding compliance criteria prescribed under [42 U.S.C. § 6293]."[28] The mandatory language in this provision prevents DOE from nullifying a standard by rescinding a test procedure used to determine compliance with that standard.

11. DOE's proposal does not provide a rational basis for rescinding coverage of compressors. The Administrative Procedure Act (APA) requires an agency to provide a rational basis for its action.[29] But in DOE's proposal, the only reason the Department gives for withdrawing compressors from the EPCA's coverage is that doing so carries out two alleged policies of the Department.

Neither of these alleged policies provide a lawful basis for the proposed action. First, DOE claims that withdrawal "is consistent with a policy to classify industrial equipment as covered equipment only if energy conservation standards will significantly increase the energy resources of the nation, without compromising the performance of industrial products." Second, the NOPR claims that the proposed withdrawal of coverage for compressors "is consistent with the Secretary's position that regulatory burdens should be reduced wherever possible, consistent with DOE's statutory obligations."

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lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types").

[26] *See Law v. Siegel*, 571 U.S. 415, 424 (2014).

[27] 42 U.S.C. § 6314(a)(1)(A)(i).

[28] *See also* 42 U.S.C. § 6316(a) (applying section 6295(s) to commercial equipment).

[29] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm*, 463 U.S. 29, 43 (1983) (an "agency must … articulate a rational connection between the facts found and the choice made").

To the extent DOE has adopted such policies, it has not provided the public with notice and an opportunity to comment. DOE has not explained its reasons for adopting these policies, nor how the policies align with EPCA provisions governing DOE's coverage of industrial equipment.

The alleged policies also depart from DOE's Process Rule. The Process Rule applies to coverage determinations, and it does not apply any such policies to DOE's coverage determinations for commercial equipment.[30] The NOPR does not even acknowledge this conflict with the Process Rule, much less address it.

Even if the alleged policies could guide this action, DOE has not explained its application of the policies to compressors. Regarding the policy limiting coverage of commercial equipment, the NOPR includes only the conclusory assertion that "the inclusion of compressors does not meet that standard." The NOPR does not explain why DOE believes that energy conservation standards for compressors will not significantly increase the energy resources of the nation, without compromising the performance of industrial products. For example, the NOPR leaves unclear whether DOE believes standards for compressors will not significantly increase the energy resources of the nation, or will compromise the performance of industrial products.

In fact, neither belief would be reasonable. DOE has already found that the current standards for compressors save a significant amount of energy.[31] And efficient compressors perform well. As part of the January 2020 final rule analysis, the Department identified multi-staging, air-end improvements, and auxiliary component improvements as the anticipated design pathways to improve compressor efficiency.[32] Each of these design paths represents a proven, straightforward path to improving efficiency and can even improve performance and utility. For example, multi-stage compressors reduce overheating and moisture buildup, which can improve reliability; they also typically have smaller footprints than single-stage compressors (for a given airflow/pressure output), making them ideal for space constrained applications.

Regarding the objective that "regulatory burdens should be reduced wherever possible, consistent with DOE's statutory obligations," DOE fails to examine how eliminating coverage of compressors will impact regulated parties, particularly in light of the effect this action will have on the preemption of state standards. Moreover, as noted throughout these comments, the proposed action is *not* consistent with DOE's statutory obligations.

The absence of support for the proposed action contrasts sharply with the well-reasoned coverage determination that DOE issued in 2016.[33] There, the Department found that compressors satisfied the criteria for coverage in 42 U.S.C. § 6311(2) and 42 U.S.C. § 6312.

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[30] *See* 10 C.F.R. Pt. 430, Subpt. C. Appx. A § 5.
[31] 85 Fed. Reg. 1,504, 1,506 (Jan. 10, 2020).
[32] 85 Fed. Reg. 1,504, 1,537–39 (Jan. 10, 2020).
[33] 81 Fed. Reg. 79,991 (Nov. 15, 2016).

Among other things, DOE found that "compressors consume a significant amount of energy in the industrial and commercial sectors," and that its analyses of the impact of potential energy conservation standards revealed that "coverage will result in conservation of energy resources."[34] DOE then concluded that "incorporating compressors as covered equipment is necessary to carry out the purposes of Part A–1 of EPCA, and that efficiency standards that may result from coverage would improve the efficiency of compressors and help to capture some portion of the potential for energy savings from this improved efficiency."[35] Instead of engaging with these prior findings under sections 6311(2) and 6312, DOE's proposal ignores them. The Department cannot lawfully reverse its prior findings without explaining why it is doing so.[36]

12. DOE's proposal fails to apply the statutory criteria applicable to amendments to test procedures. EPCA requires that DOE amend test procedures only as needed to "more accurately or fully comply with the requirements of [42 U.S.C. § 6314(a)(2) and (3)]." Those requirements demand that test procedures "shall be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment . . . during a representative average use cycle," while not being "unduly burdensome to conduct."

The APA requires an agency to explain how its action complies with applicable statutory criteria.[37] DOE, however, has nowhere explained how its proposed amendments to the test procedures for compressors satisfy the applicable statutory criteria set forth in 42 U.S.C. § 6314(a)(2) and (3). Therefore, even assuming DOE has legal authority to withdraw the test procedures for compressors—which it does not—its decision to do so under these circumstances is arbitrary and capricious.

13. DOE's proposal fails to apply the statutory criteria applicable to amendments to energy conservation standards. Even if DOE had legal authority to withdraw energy conservation standards for compressors, the proposal 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.'"[38] This requirement applies in equal force when an agency, like DOE here, is proposing to rescind earlier rules that were

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[34] 81 Fed. Reg. at 79,995-96.

[35] *Id.* at 79,996.

[36] *See, e.g., F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 ("[A] reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.").

[37] *Defenders of Wildlife v. Babbitt*, 958 F. Supp. 670, 684 (D.C. Cir. 1997) ("The failure of the agency ... to articulate a rational reason for its decision under the ... statutory factors, establishes the arbitrary and capricious nature of the agency's decision-making.").

[38] *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").

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,"[39] a category that includes the technical and economic data that was presented to justify the existing standards.

EPCA sets forth specific criteria under which DOE may amend energy conservation standards. Under 42 U.S.C. § 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."[40] DOE's proposal, however, provides no information at all regarding compressor technology or alternative energy efficiency levels that might have been considered. Nor does the proposal provide any information to support the conclusion that its proposed withdrawal of standards 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 proposal does not consider any of these factors, even on a preliminary basis. This renders DOE's proposed action "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under the APA.[41]

Nor has DOE provided any explanation for disregarding the analysis and data it presented in its January 2020 final rule, which demonstrated that the current standards for

[39] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009).
[40] *See also* 42 U.S.C. § 6316(a) (applying section 6295(o) to commercial equipment).
[41] 5 U.S.C. § 706(2)(A); *see also Defenders of Wildlife*, 958 F. Supp. at 684 ("The failure of the agency … to articulate a rational reason for its decision under the … statutory factors, establishes the arbitrary and capricious nature of the agency's decision-making.").

compressors fulfilled the statutory criteria in § 6295(o)(2)(A). The data and analysis presented in the 2020 rule, which DOE ignores here, certainly do not support the conclusion that withdrawing standards for compressors results in the "maximum improvement in energy efficiency" that is "technologically feasible and economically justified."

When DOE finalized the current standards for compressors it estimated significant energy savings (0.16 quads);[42] average LCC savings for purchasers of between $2,618 and $10,559, depending on the equipment class;[43] and total NPV savings of between $200 million and $400 million over 30 years of sales.[44] The savings for compressor purchasers significantly outweigh the cost to manufacturers; DOE estimated for the 2020 final rule that the NPV savings outweigh the maximum estimated loss of industry net present value (INPV) by a factor of 3.6.[45] DOE concluded that the levels adopted represented the maximum improvement in energy efficiency that is technologically feasible and economically justified. DOE's proposal fails to justify withdrawing the compressor standards in light of those prior findings, including by identifying any energy savings or estimated changes in energy consumption that may result from the withdrawal of standards.[46]

Finally, DOE diverges—without any justification—from the Department's longstanding practice of conducting a careful economic analysis to determine whether amended standards meet the applicable statutory criteria. DOE's Process Rule explains the Department's rigorous approach to selecting new or amended energy conservation standards.[47] Among other things, the Process Rule identifies several factors to consider in selecting a proposed standard, including consensus stakeholder recommendations, impacts on manufacturers, impacts on consumers, impacts on competition, and impacts on utilities.[48] Because DOE's proposal engages in none of the detailed technical analysis required to evaluate these factors, and it does not explain why it fails to comply with the Process Rule, it is arbitrary and capricious.

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

> A proposed rule which prescribes an amended or new energy conservation standard or prescribes no amendment or no new standard for a type (or class) of covered products shall be published in the Federal Register. In

[42] 85 Fed. Reg. 1,506 (January 10, 2020).
[43] *Id*.
[44] *Id*.
[45] *Id*. Based on the NPV savings using the more conservative discount rate ($0.2 billion) and the maximum estimated loss of INPV of $55.1 million.
[46] *See F.C.C. v. Fox*, 556 U.S. at 516.
[47] 10 C.F.R. Part 430, Appendix A to Subpart C, Process Rule | Department of Energy.
[48] *Id*. at 490.

> prescribing any such proposed rule with respect to a standard, *the Secretary shall determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered products*. If such standard is not designed to achieve such efficiency or use, the Secretary shall state in the proposed rule the reasons therefor.

This provision requires the Secretary, at the proposed rule stage, to determine the maximum improvement in energy efficiency that is technologically feasible.[49] DOE colloquially refers to this maximum threshold as "max tech."[50] 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,"[51] pursuant to which "DOE must first identify, for all product types or classes, the maximum improvement in energy efficiency that is technologically feasible."[52] In the proposed rule, DOE has ignored that obligation entirely. Indeed, the proposed rule contains no discussion of compressor 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."[53] DOE may not "ignore the decisionmaking procedure Congress specifically mandated because the agency thinks it can design a better procedure."[54]

15. 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.[55] When it has new or revised data that it wants to rely on

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[49] *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.").

[50] *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).

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

[52] *Id*. at 1391-92.

[53] 42 U.S.C. § 6295(p)(1).

[54] *NRDC*, 768 F.2d at 1396.

[55] *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[.]").

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.[56]

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.

16. 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 quality of the environment.[57] 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."[58] Not only would the proposed rule itself have a significant effect on the human environment by rolling back energy savings, but this action must be considered cumulatively with the many other proposed rollbacks that have also been issued by DOE.[59]

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.[60] 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.[61] 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 its proposal, DOE invites comment on the use of CX B5.1, which applies to "actions to conserve energy or water."[62]

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

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[56] *See, e.g.*, Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters, 89 Fed. Reg. 59,692 (July 23, 2024).
[57] 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).
[58] *Solar Energy Indus. Ass'n v. FERC*, 80 F.4th 956, 991 (9th Cir. 2023).
[59] *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").
[60] *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").
[61] 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).
[62] *See* 90 Fed. Reg. 20,842.

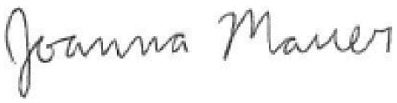
makes sense that this CX would ordinarily apply to EPCA rules, because EPCA requires that new or amended standards must improve energy and/or water efficiency. When DOE adopted this CX to complement its EPCA rulemaking activities, it emphasized the purpose of energy conservation, and it further specified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

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

17. 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, to the extent that section 6313(a)(6) defines the Department's review obligations for compressors,[63] DOE must clarify that the amended standard it is proposing takes effect three years after the date of publication of the final rule.

Thank you for considering these comments.

Sincerely,



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[63] DOE has taken the position that section 6295(m) establishes the requirements the Department must meet when reviewing the standards for certain types of commercial equipment. *See* 85 Fed. Reg. 71,840, 71,841 (Dec. 20, 2021) (citing section 6295(m) as establishing DOE's obligation to review the commercial clothes washer standards).

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Courtney Griffin
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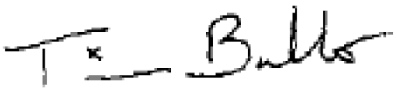

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