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

July 15, 2025

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

RE: EERE-2025-BT-STD-0011: Energy Conservation Standards for Conventional Cooking Tops

Dear Mr. Taggart:

This letter constitutes the comments of the Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEEE), Ceres, Consumer Federation of America (CFA), Earthjustice, National Consumer Law Center, on behalf of its low-income clients (NCLC), and Natural Resources Defense Council (NRDC) on the notice of proposed rulemaking (NOPR) for conventional cooking tops. 90 Fed. Reg. 20,881 (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.

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

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

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

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

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

2. Introduction

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

In the NOPR, DOE is proposing to rescind the amended design requirements for conventional cooking tops. This action does not stand on its own. It is one of 17 proposals issued the same day to roll back efficiency standards.

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

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

On his first day in office, President Trump issued an Executive Order "Declaring a National Energy Emergency."[4] That order focused on the "active threat to the American people from high energy prices," highlighted the "high energy prices that devastate Americans, particularly those living on low- and fixed-incomes," and described "our Nation's inadequate energy supply." Weakening efficiency standards would only exacerbate these issues. If less efficient appliances are allowed to enter the market, consumers will end up using more energy and spending more money, worsening the "Energy Emergency" described in President Trump's order.

Below we describe how DOE's proposal leaves unclear the specific changes DOE intends to make to the conventional cooking top standards. Although the proposal's ambiguity renders the notice to the public inadequate, as we further explain below, the changes that appear to be contemplated would raise costs for consumers; increase energy waste and negatively impact indoor air quality; 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 description of the proposed action is inconsistent throughout the notice. In the opening of the General Discussion section, DOE states that the Department is proposing to rescind the amended design requirements for conventional cooking tops, codified in 10 C.F.R. 430.32(j)(1)(ii). This section of the CFR states that "gas portable indoor conventional cooking tops, manufactured on or after April 9, 2012, shall not be equipped with a constant burning pilot light." In other words, DOE's statement implies that the Department is proposing to rescind requirements regarding standing pilot lights only for gas portable indoor cooktops.

However, DOE later states that the proposed recission would return the energy conservation standards to those prescribed by Congress as found in 6295(h)(1) which states that "gas kitchen ranges and ovens having an electrical supply cord shall not be equipped with a constant burning pilot light." This latter statement could be interpreted as stating that DOE is also proposing to rescind the design requirements codified in 10 CFR 430.32(j)(1)(i), which state that "gas cooking tops, other than gas portable indoor conventional cooking tops, manufactured on or after April 9, 2012, and before January 31, 2028, shall not be equipped with a constant burning pilot light." In other words, removing the requirements in 10 CFR 430.32(j)(1)(i) would eliminate the standing pilot light prohibition for all products without an electrical supply cord. Thus, the scope of DOE's proposal is unclear and likely to confuse stakeholders who wish to provide comments.

4. DOE's proposal would raise costs for consumers. In the June 2009 final rule, DOE found that the amended design requirements for gas cooktops without an electrical supply cord save consumers an average of $321 in utility bills over the life of the product

[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.

compared to a model with a standing pilot light.[5] Taking into account the additional upfront cost, DOE estimated that the standards net consumers $299 in savings.[6] In other words, reverting to the statutory standards could raise utility bills for consumers by $321 over the life of a gas cooktop and increase net costs by $299. DOE also found in the June 2009 final rule that the amended design requirement for gas cooktops will provide net present value (NPV) savings for purchasers of between $220 million and $560 million over 30 years of sales.[7] In other words, by reverting to the statutory standards, DOE's current proposal could cost consumers hundreds of millions of dollars over the coming decades.

These higher costs would come at a time when one in five American households (nearly 25 million families) forgo necessary expenses, such as food or medicine, to pay their energy bills (as of 2020).[8] Rescinding the amended design requirements for conventional coking tops would further strain household budgets.

5. DOE's proposal would increase energy waste. In the June 2009 final rule, DOE found that the amended design requirements for cooktops will save 0.1 quadrillion Btus ("quads") of energy over 30 years of product sales.[9] DOE's proposal threatens some or all of those savings.

6. Rescinding the amended design requirements for cooktops would negatively impact indoor air quality. Gas cooking products represent a significant contributor to indoor air pollution in American households. Research has linked gas cooking product usage with a range of adverse health effects, including asthma.[10] DOE's proposal would allow some gas stoves to be sold with standing pilot lights, which produce larger amounts of indoor air pollution than models without standing pilot lights since they burn gas continuously even when the stove is not in use.

7. DOE's proposal would undermine manufacturer investments. Cooking product manufacturers, who employ nearly 5,000 people nationwide,[11] have been required to comply with the design requirements in the 2009 final rule since April 2012. To meet the design requirements, manufacturers likely incurred conversion costs including capital costs (one-time investments in plant, property, and equipment) and product conversion

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[5] 74 Fed. Reg. 16,070 (April 8, 2009). Table VI.7. Calculated as the difference between the lifetime operating cost at the baseline efficiency level ($561) and the lifetime operating cost at the standard level adopted, Trial Standard Level (TSL) 1 ($240).
[6] *Id*. Calculated as the difference between the total life-cycle cost (LCC) at the baseline efficiency level ($871) and the LCC at the standard level adopted, TSL 1 ($572).
[7] Table VI.23. 74 Fed. Reg. 16,076 (April 8, 2009). NPV = present value of operating cost savings – present value of total incremental installed costs; range corresponds to 7% and 3% discount rates, respectively. DOE adopted TSL 1.
[8] 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.
[9] Table VI.3. 74 Fed. Reg. 16,069 (April 8, 2009). DOE adopted TSL 1.
[10] PSE, Natural Gas and Human Health: Reheating an Old Debate (December 2023). www.psehealthyenergy.org/natural-gas-and-human-health-reheating-an-old-debate/.
[11] Table V.27. 89 Fed. Reg. 11,517 (February 14, 2024).

costs (research and development, testing, and marketing costs). DOE estimated that manufacturers would incur total conversion costs of $11.5 million to comply with the amended design requirement.[12] These investments would be undermined by DOE's proposal to revert to the statutory standards.

8. DOE lacks the authority to rescind standards. The proposed rule states that DOE is proposing to "rescind" the design standards for conventional cooking tops. EPCA authorizes DOE to promulgate new standards and to prescribe amended standards.[13] But no provision in EPCA authorizes DOE to rescind or repeal existing standards.[14]

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.[15] DOE has ignored this obligation. Nowhere in the proposed rule does the Department identify the source of statutory authority to rescind design standards for conventional cooking tops. 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.[16]

If DOE is instead prescribing an amended standard for conventional cooking tops, it still must identify the section of EPCA that it is relying on and explain how it has complied with the requirements of that provision.

10. The proposed amended standard does not conform to section 6295(h)(1). Section 6295(h)(1) prohibits gas ranges having an electrical supply cord from being equipped with a constant burning pilot light. The proposal would remove 10 C.F.R. 430.32(j)(ii), with the effect that there is no longer any design standard (i.e. "no pilot light" standard) for gas portable, indoor conventional cooking tops. This change would violate 6295(h)(1) for any gas portable cooktop that has an electric supply cord.

11. DOE's previous amendments to the energy conservation standards for cooking tops were lawful. The NOPR does not assert that DOE lacks authority to amend the statutory energy conservation standards for kitchen ranges and ovens. However, the proposed rule includes a confusing claim that although NAECA "directed DOE to conduct two cycles of rulemakings to determine if more stringent or additional standards were

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[12] 74 Fed. Reg. 16,073 (April 8, 2009).

[13] 42 U.S.C. § 6295(a)(2), (*l*), (m), (n), (o), & (p).

[14] *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.").

[15] 5 U.S.C. § 553(b)(2).

[16] 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").

justified for kitchen ranges and ovens," "NAECA did not specifically direct DOE to conduct additional cycles of rulemakings to determine whether the design requirements prescribed therein should also be amended." Because section 6295(m) requires DOE to review all standards on a prescribed schedule and either propose a new standard or a determination that no change is warranted, it is unclear why the NOPR focuses on the superseded NAECA provisions that formerly made such additional reviews optional. Moreover, to the extent the NOPR is claiming that DOE lacked authority to adopt regulations prescribing design requirements for conventional cooking tops, EPCA's definition of "energy conservation standard" makes clear that conventional cooking tops are a product for which DOE may adopt energy conservation standards that take the form of design requirements.[17]

12. The proposed amended standard violates EPCA's anti-backsliding provision. Section 6295(o)(1), referred to as the "anti-backsliding" provision, states that the "Secretary may not prescribe any amended standard which increases the maximum allowable energy use . . . or decreases the minimum required energy efficiency, of a covered product." The U.S. Court of Appeals for the Second Circuit has explained that "subsection (*o*)(1), read in the greater context of [42 U.S.C. § 6295] and in light of the statutory history of that section of the EPCA, admits to only one interpretation: that Congress, in passing the provision, intended to prevent DOE from amending efficiency standards downward once they have been published by DOE as final rules as required by the other provisions of [42 U.S.C. § 6295]."[18]

DOE's proposed amended standard plainly violates the anti-backsliding provision because it would increase the maximum allowed energy use from gas portable, indoor conventional cooking tops. The NOPR fails to acknowledge the anti-backsliding provision, much less to offer any explanation for why that provision would not prohibit the proposed rule.

13. DOE misinterprets and mis-applies EPCA's "economically justified" standard. As the first reason offered for its proposal, the Department states that the "The design requirements are not economically justifiable." Later, in the final paragraph of the discussion section, DOE states that part of the rationale for the purported rescission is that the "the portions of the current regulations that deviate from 6295 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. DOE fails to explain the legal relevance of its "policy to reduce regulatory burden wherever possible." The considerations governing DOE's amendment of energy

[17] *See* 42 U.S.C. § 6291(6)(B).
[18] *Nat. Res. Def. Council v. Abraham*, 355 F.3d 179, 199 (2d Cir. 2004).

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.

15. The NOPR misinterprets section 6295(p)(1). Section 6295(p)(1) requires DOE, in a proposed rule, to "determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered products." (i.e. "max-tech"). As explained below, DOE has not fulfilled this requirement. Of course, EPCA does not require that DOE always select the max-tech standard level, and the last sentence of subsection 6295(p)(1) requires DOE to provide its reasons in the proposed rule for not selecting max-tech. The NOPR appears to assume wrongly that 6295(p)(1) is the only standard it need apply – that so long as DOE can explain why it is not implementing max-tech that concludes the statutory 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."

16. 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 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. *See* 10 C.F.R. § Pt. 430, Subpt. C, App. A ("As required by 42 U.S.C. 6295(p)(1) of EPCA, the NOPR also will describe the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible and, if the proposed standards would not achieve these levels, the reasons for proposing different standards."). DOE colloquially refers to this maximum threshold as "max tech."[19] Of course, DOE is not obligated to select the max-tech efficiency level for every standard, and very frequently does not. The

[19] *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).

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,"[20] pursuant to which "DOE must first identify, for all product types or classes, the maximum improvement in energy efficiency that is technologically feasible." *Id*. at 1391 – 92. In the proposed rule, DOE has ignored that obligation entirely. Indeed, the proposed rule contains no discussion of conventional cooktop 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."[21] DOE may not "ignore the decisionmaking procedure Congress specifically mandated because the agency thinks it can design a better procedure."[22]

17. The proposed rule fails to apply the statutory requirement for new or amended standards in subsection 6295(o)(2)(A). Section 6295(o)(2)(A) requires that "Any new or amended energy conservation standard prescribed by the Secretary under this section for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency ... which the Secretary determines is technologically feasible and economically justified."[23] The NOPR fails to acknowledge the existence of this benchmark let alone apply it to its proposal.

It would strain credulity to suggest that an amended standard that frees gas, portable indoor cooktops to have standing pilot lights would represent the "maximum improvement in energy efficiency" that is "technologically feasible and economically justified." But that is the standard DOE must apply to this proposed rule and DOE has failed to meet this obligation.

18. DOE has failed to present any evidence to support its proposed rule. Even if it were otherwise permissible for DOE to pursue the proposed action, the NOPR does not provide a rational basis for doing so. For an agency action to withstand judicial review, the agency "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"[24] This requirement applies in equal force when an agency, like DOE here, is proposing to rescind earlier rules that were themselves supported by substantial evidence. When an agency reverses itself, it must provide a "reasoned explanation . . . for disregarding facts

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[20] NRDC v. Herrington, 768 F.2d 1355, 1391 (D.C. Cir. 1985).
[21] 42 U.S.C. § 6295(p)(1).
[22] *NRDC*, 768 F.2d at 1396.
[23] *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.'").
[24] *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").

and circumstances that underlay or were engendered by the prior policy,”[25] 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 conventional cooktop 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 prior rules on conventional cooktops. Those rules demonstrated that increasing efficiency requirements above prior requirements was warranted. The data and analysis they presented, which DOE ignores here, certainly do not support the conclusion that eliminating a design standard for gas, portable indoor cooktops would represent the “maximum improvement in energy efficiency” that is “technologically feasible and economically justified.”

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

When DOE finalized the rule for gas cooktops in 2009, it estimated significant energy savings (0.1 quads);[26] average life-cycle cost (LCC) savings for purchasers of $15;[27] and total consumer NPV savings of $220-$560 million.[28] The savings for consumers vastly outweigh the costs to manufacturers; DOE estimated that the NPV savings outweigh the maximum estimated loss of industry net present value (INPV) by a factor of 18.[29] DOE concluded that the levels adopted represent the maximum improvement in energy efficiency that is technologically feasible and economically justified.

19. DOE's complete failure to substantiate its factual claims means that it must issue a new proposal for public comment if it wishes to proceed. Agencies must present critical factual material at the proposed rule stage in order to ensure a meaningful opportunity for public comment.[30] 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.[31]

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

20. DOE has failed to comply with the National Environmental Policy Act. The proposed rule fails to comply with the requirements of NEPA, which requires agencies to prepare detailed environmental analyses of major actions significantly affecting the quality of the environment.[32] 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."[33] Not only would the proposed rule itself have a significant effect on the human environment by rolling back energy savings, but this

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[26] Table VI.3. 74 Fed. Reg. 16,069.
[27] 74 Fed. Reg. 16,070 (April 8, 2009). Average LCC savings are modest because most consumers are unaffected by the amended design requirements (i.e., most gas cooktops at the time of the rulemaking did not have a standing pilot light).
[28] Table VI.23. 74 Fed. Reg. 16,076 (April 8, 2009).
[29] Based on the NPV savings using the more conservative discount rate ($220 million) and the maximum estimated loss of INPV of $12 million at TSL 1. 74 Fed. Reg. 16043 (April 8, 2009).
[30] *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[.]").
[31] *See, e.g.*, Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters, 89 Fed. Reg. 59,692 (July 23, 2024).
[32] 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).
[33] Solar Energy Indus. Ass'n v. FERC, 80 F.4th 956, 991 (9th Cir. 2023).

action must be considered cumulatively with the many other proposed rollbacks that have also been issued by DOE.[34]

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.[35] 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.[36] 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 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.

21. The proposed rule does not acknowledge the statutory compliance period for kitchen ranges and ovens. The proposed rule does not indicate a compliance date. But section 6295(m)(4)(A)(i) requires that any amended standard for kitchen ranges and ovens 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.

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[34] *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").
[35] 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").
[36] 10 C.F.R. § 1021.102(b)(2); *see* Oak Ridge Env't. Peace Alliance v. Perry, 412 F. Supp. 3d 786, 846-47 (E.D. Tenn. 2019).

Thank you for considering these comments.

Sincerely,

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