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: Docket Number EERE–2025–BT–STD–0013: Notice of proposed rule rescinding in part the amended energy conservation standards for dehumidifiers

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 rule (NOPR) rescinding in part the amended energy conservation standards for dehumidifiers. 90 Fed. Reg. 20,864 (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.

[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.

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 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 energy conservation standards for portable dehumidifiers, weakening the standards for these products by returning the

[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.

requirements to older standards established by Congress. This action does not stand on its own. It is one of 17 proposals issued the same day to roll back efficiency standards.

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

3. DOE's proposal would raise costs for consumers. Reverting to the statutory minimum standards would increase costs for consumers who purchase the more than 2 million portable dehumidifiers that are sold annually in the United States.[5] In the June 2016 final rule, DOE found that the current standards save consumers who purchase the most common size portable dehumidifiers (Product Class 2 [25.01-50.00 pints/day]) an average of $278 in electricity bills over the life of the product compared to a baseline model at the time of the rulemaking (i.e., a model that just meets the statutory standards).[6] Taking into account the additional upfront cost, DOE estimated that the standards net consumers $267 in savings relative to the statutory standards.[7] In other words, reverting to the statutory standards could raise electricity bills for consumers by $278 over the life of a common dehumidifier and increase net costs by $267. DOE also found in the June 2016 final rule that the standards for portable dehumidifiers will provide net present value (NPV) savings for purchasers of between $1.28 billion and $2.71 billion over 30 years of sales.[8] In other words, DOE's current proposal could cost consumers billions of dollars over the coming decades.

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[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.

[5] DOE, Dehumidifiers, November 2023 Proposed Rule Technical Support Document (TSD), p. 9-8. www.regulations.gov/document/EERE-2019-BT-STD-0043-0023.

[6] 81 Fed. Reg. 38,372 (June 13, 2016). Table V.4. Calculated as the difference between the lifetime operating cost at the baseline efficiency level ($1,173) and the lifetime operating cost at the standard level adopted, Trial Standard Level (TSL) 2 ($895).

[7] *Id*. Calculated as the difference between the total life-cycle cost (LCC) at the baseline efficiency level ($1,425) and the LCC at the standard level adopted, TSL 2 ($1,158).

[8] 81 Fed. Reg. 38,340 (June 13, 2016). NPV = present value of operating cost savings – present value of total incremental installed costs; range corresponds to 7% and 3% discount rates, respectively. For whole-home dehumidifiers, DOE adopted the baseline efficiency levels. Therefore, these NPV savings represent the savings for portable dehumidifiers.

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

4. DOE's proposal would increase energy waste and strain the electric grid unnecessarily. In the June 2016 final rule, DOE found that the standards for portable dehumidifiers will save 0.30 quads of energy over 30 years of product sales.[13] DOE's proposal threatens those savings. DOE further found in the June 2016 final rule that the standards will reduce electricity consumption by 1,139 gigawatt-hours (GWh) in 2030 and 1,171 GWh in 2040 and lower total installed generation capacity by 283 megawatts (MW) in 2030 and 341 MW in 2040.[14] By reverting to the statutory standards for portable dehumidifiers, DOE's proposal would increase electricity demand at a time when the electric grid is already challenged by increased demand from data centers, growing domestic manufacturing, and other factors.

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

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

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

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

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

[13] 81 Fed. Reg. 38,340 (June 13, 2016).

[14] DOE, Residential Dehumidifiers, June 2016 Final Rule TSD, p. 15-9. www.regulations.gov/document/EERE-2012-BT-STD-0027-0046. DOE adopted TSL 2.

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

doubling for some utilities by 2050.[16] Repealing the current standards for portable dehumidifiers would further exacerbate these trends.

5. DOE's proposal would increase emissions that harm human health and the environment. In the June 2016 final rule, DOE found that the standards will result in cumulative emissions reductions over 30 years of sales of 18.6 million metric tons of carbon dioxide, 11.0 thousand tons of sulfur dioxide, 33.1 thousand tons of nitrogen oxides, 77.9 thousand tons of methane, 0.23 thousand tons of nitrous oxide, and 0.04 tons of mercury.[17] In other words, reverting to the statutory standards for portable dehumidifiers would increase emissions of these harmful pollutants.

6. DOE's proposal would undermine manufacturer investments. Manufacturers have been required to comply with the standards in the 2016 final rule since June 2019. To meet the standards, manufacturers likely incurred conversion costs including capital costs (one-time investments in plant, property, and equipment) and product conversion costs (research and development, testing, and marketing costs). DOE estimated that manufacturers would incur total conversion costs of $52.5 million to comply with the current standards for portable dehumidifiers.[18] These investments would be undermined by DOE's proposal to revert to the statutory standards. Further, 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's proposal to revert to an outdated energy efficiency metric could increase the burden on manufacturers. In the proposed rule, DOE states that reverting to the statutory standards would reduce regulatory burden.[19] However, DOE's proposal could instead increase burdens for manufacturers. When Congress established the original standards for dehumidifiers, it also specified that test procedures for dehumidifiers be based on the ENERGY STAR Program Requirements for Dehumidifiers as in effect on August 8, 2005, which referenced the Energy Factor (EF) metric.[20] However, since then, DOE has updated the test procedures for dehumidifiers multiple times. The current standards are based on the Integrated Energy Factor (IEF) metric, which includes standby mode and off-mode energy use. Further, while the statutory standards were based on testing at 80 degrees F, testing to the current test procedure for portable dehumidifiers is conducted at 65 degrees F. Therefore, reverting to the statutory standards for portable dehumidifiers could require manufacturers to retest and/or re-rate all their models.

8. DOE does not have the authority to rescind standards. The proposed rule repeatedly states that DOE is proposing to "rescind" or "rescind, in part" the energy conservation standards for dehumidifiers manufactured on or after October 1, 2012. EPCA

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[16] *Id*.
[17] 81 Fed. Reg. 38,340 (June 13, 2016). The units for nitrogen oxides are listed as "tons," which appears to be a typo. At 81 Fed. Reg. 38,381, 38,385, 38,387 the units are noted as "thousand tons."
[18] 81 Fed. Reg. 38,376 (June 13, 2016). DOE adopted TSL 2.
[19] 90 Fed. Reg. 20,865.
[20] 42 U.S.C. § 6293 (b)(13);
www.energystar.gov/ia/partners/product_specs/program_reqs/dehumidifiers.pdf.

authorizes DOE to promulgate new standards and to prescribe amended standards.[21] But no provision in EPCA authorizes DOE to rescind or repeal existing standards.[22]

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.[23] 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 dehumidifiers manufactured on or after October 1, 2012. 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.[24]

If DOE is instead prescribing an amended standard for dehumidifiers at the level contained in 42 U.S.C. § 6295(cc)(2), 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. Among other things, DOE must explain how any such authority is available to it in light of its (erroneous) contention that dehumidifiers are not a "covered product" under EPCA.

10. 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]."[25]

DOE's proposed amended standard violates the anti-backsliding provision. The proposed rule would remove the energy conservation standards for dehumidifiers codified at 10 C.F.R. § 430.32(v) and replace them with the less stringent standards contained in 42 U.S.C. § 6295(cc)(2). The proposed change would, therefore, "decrease the minimum required energy efficiency" for dehumidifiers (as measured in liters/kWh). The proposed rule does not contend otherwise. Rather, the proposed rule asserts that the anti-

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[21] 42 U.S.C. § 6295(a)(2), (*l*), (m), (n), (o), & (p).
[22] *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.").
[23] 5 U.S.C. § 553(b)(2).
[24] 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").
[25] Nat. Res. Def. Council v. Abraham, 355 F.3d 179, 199 (2d Cir. 2004).

backsliding provision does not apply to dehumidifiers because: "That section only applies to 'covered products.'" DOE then appears to assert, without saying so explicitly, that dehumidifiers are not a "covered product" as defined in 42 U.S.C. § 6291(2). The Department observes that dehumidifiers are not among the 19 products listed in section 6292(a). The Department then acknowledges what it calls the "catchall provision" in 6292(b) whereby the "Secretary may classify a type of consumer product as a covered product." The Department then states that "the Secretary has not determined that coverage is necessary. Therefore, section 6295(o)(1) does not apply."

The Department is incorrect. Both EPCA's text and DOE's regulations declare that dehumidifiers are covered products.

Dehumidifiers and several other products added to EPCA by the Energy Policy Act of 2005 were left off the list of "covered products" found in 42 U.S.C. § 6292,[26] but by providing for energy conservation standards for these products in 42 U.S.C. § 6295, Congress clarified they are covered products. The purposes of 42 U.S.C. § 6295 are to provide energy conservation standards for covered products and to authorize amended or new standards for covered products.[27]

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

Even if the text of EPCA did not clearly show that dehumidifiers are a covered product, DOE has classified them as a covered product. In fact, DOE has classified dehumidifiers as a covered product in the most straightforward way possible: by adding dehumidifiers to the list of "covered products" in its regulations at 10 C.F.R. § 430.2. Remarkably, DOE offers no explanation to reconcile its suggestion that dehumidifiers are not a covered product with its own regulatory definition of "covered product."[28] Whether DOE explicitly invoked 42 U.S.C. § 6292(b) when it added dehumidifiers to the definition of "covered product" is immaterial. Given that Congress had prescribed an energy conservation standard for dehumidifiers, adding them to the list of covered products likely would have been viewed as a ministerial act.

Further, DOE has for well over a decade continued to treat dehumidifiers as a covered product by regulating them on that basis. DOE does not explain or even acknowledge that

[26] *See* 42 U.S.C. § 6295(u)-(ff).
[27] 42 U.S.C. § 6295(a).
[28] *See* FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2008) (agency may not "simply disregard rules that are still on the books").

it is changing its approach.[29] DOE issued energy conservation standards for dehumidifiers on two occasions, in 2009 and 2016.[30] These actions were, of course, based on the conception that dehumidifiers are "covered products."[31]

Finally, in a separate notice issued on the same day as this proposed rule, DOE states that when the Energy Policy Act of 2005 subjected additional products to standards under section 6295, those products became covered products under EPCA.[32] The NOPR fails to acknowledge DOE's inconsistent application of the newfound theory that dehumidifiers and other products added in the Energy Policy Act of 2005 are not covered products.

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

12. DOE misinterprets and mis-applies EPCA's "economically justified" standard. As the first reason offered for its proposal, the Department states that the "Secretary has tentatively determined that the current regulatory standard is 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 "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.

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

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

[30] *See* Department of Energy, Energy Conservation Program: Energy Conservation Standards for Dehumidifiers, Final Rule, 81 Fed. Reg. 38,338 (June 13, 2016); Department of Energy, Energy Conservation Standards for Certain Consumer Products and Commercial and Industrial Equipment, Final Rule, 74 Fed. Reg. 12,058 (March 23, 2009).

[31] *Id*.

[32] 90 Fed. Reg. 20,899, 20,900 (May 16, 2025) ("Congress added EPSs as a covered product in the Energy Policy Act of 2005.").

NOPR fails to explain how the new policy fits into EPCA's criteria for the amendment of standards.

14. DOE fails to substantiate its assertion that the existing standards are unlawful. As part of the rationale for its "rescission," DOE states that it has "tentatively determined that the portions of the current regulations that deviate from section 6295 are unlawful." But the NOPR never substantiates this claim. The NOPR never explains in what way DOE believes the current regulations are unlawful, nor does it explain what relevance that would have for the action it is proposing here.

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."[33] 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,"[34] 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 dehumidifier technology at all. *Compare* Department of Energy, Energy Conservation Program: Energy Conservation Standards for Dehumidifiers, Proposed Rule 88 Fed. Reg. 76,510, 76,525 – 26 (Nov. 6, 2023) (presenting a lengthy discussion of higher efficiency levels for dehumidifiers along with a technical support document). 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."[35] DOE may not "ignore the decisionmaking procedure Congress specifically mandated because the agency thinks it can design a better procedure."[36]

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."[37] The NOPR fails to acknowledge the existence of this benchmark let alone apply it to its proposal.

Whether or not the standards contained in section 6295(cc)(2) represented the "maximum improvement in energy efficiency" that was "technologically feasible and economically justified" in 2007, they certainly do not now. Over the past twenty years DOE has conducted two rulemaking cycles and manufacturers have updated their designs and manufacturing facilities accordingly. Indeed, it would strain credulity to suggest that an amended standard that brings efficiency levels back over a decade into the past represents 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

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[33] *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).
[34] NRDC v. Herrington, 768 F.2d 1355, 1391 (D.C. Cir. 1985).
[35] 42 U.S.C. § 6295(p)(1).
[36] *NRDC*, 768 F.2d at 1396.
[37] 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.'").

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 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.

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 dehumidifier 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 2016 final rule or its 2023 proposed rule. 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

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

prescribing an amended standard at the 2007 level represents the "maximum improvement in energy efficiency" that is "technologically feasible and economically justified."

When DOE finalized the current standards for dehumidifiers in 2016, it estimated significant energy savings (0.3 quads);[40] average life-cycle cost (LCC) savings for purchasers of portable dehumidifiers of between $107 and $142, depending on the product class;[41] and total NPV savings of $1.28-$2.71 billion.[42] 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 34.[43] 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.[44] 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.[45]

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.[46] 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."[47] Not only would the proposed rule itself have a significant effect on

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[40] 81 Fed. Reg. 38,340 (June 13, 2016).
[41] *Id*. at 38,339.
[42] *Id*. at 38,340.
[43] 81 Fed Reg. 38,339, 38,340 (June 13, 2016). Based on the NPV savings using the more conservative discount rate ($1.28 billion) and the maximum estimated loss of INPV of $37.5 million.
[44] 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[.]").
[45] *See, e.g.*, Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters, 89 Fed. Reg. 59,692 (July 23, 2024).
[46] 42 U.S.C § 4332(C);10 C.F.R. § 1021.213 (covering DOE rulemakings); *NRDC v. Herrington*, 768 F.2d 1355, 1429 – 33 (D.C. Cir. 1985) (holding a DOE rule promulgated under EPCA violated NEPA).
[47] Solar Energy Indus. Ass'n v. FERC, 80 F.4th 956, 991 (9th Cir. 2023).

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.[48]

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.[49] 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.[50] 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.

Thank you for considering these comments.

Sincerely,

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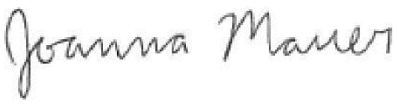
[48] *See* Kleppe v. Sierra Club, 427 U.S. 390, 410 (1976) ("when several proposals . . . will have cumulative or synergistic environmental impact . . . their environmental consequences must be considered together"); *see also* Nat'l Env't. Pol'y Act Implementing Procs., 57 Fed. Reg. 15,122 (Apr. 24, 1992) ("DOE agrees that to be eligible for categorical exclusion, a class of actions must not individually or cumulatively have significant effects on the human environment").

[49] 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").

[50] 10 C.F.R. § 1021.410(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).



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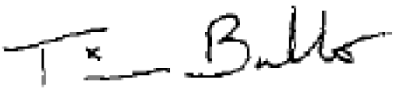

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