

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

July 15, 2025

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

**RE: EERE-2025-BT-STD-0023: Energy Conservation Standards for Residential Dishwashers**

Dear Mr. Taggart:

This letter constitutes the comments of the Appliance Standards Awareness Project (ASAP), Alliance for Water Efficiency (AWE), American Council for an Energy-Efficient Economy (ACEEE), American Water Works Association (AWWA), Association of Metropolitan Water Agencies (AMWA), Ceres, Consumer Federation of America (CFA), National Consumer Law Center, on behalf of its low-income clients (NCLC), Earthjustice, and Natural Resources Defense Council (NRDC) on the notice of proposed rulemaking (NOPR) for standards for residential dishwashers. 90 Fed. Reg. 20,859 (May 16, 2025).<sup>1</sup> We appreciate the opportunity to provide input to the Department.

**1. About the signatories**

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

AWE is a nonprofit dedicated to advancing the efficient and sustainable use of water across North America. AWE advocates for water-efficient products and programs,

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<sup>1</sup> 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.

develops cutting-edge research, and provides technical assistance to its diverse membership base. AWE partners with over 550 member organizations, providing benefits to local water utilities, businesses and industries, government agencies, universities, and professional associations.

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

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

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

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

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

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

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

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

## **2. Introduction**

Energy and water conservation standards save consumers significant amounts of money by reducing utility bills. According to DOE, efficiency standards reduced Americans' utility

bills by \$105 billion in 2024 alone, with a typical household saving \$576.<sup>2</sup> 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.<sup>3</sup> These tremendous savings can help avoid costly buildout of new infrastructure like water treatment facilities, power plants, and power lines, which would further increase water and energy prices.

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

Below we describe how DOE’s proposal would raise costs for consumers, increase water waste, 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 water efficiency standards would increase costs for consumers who purchase the nearly 9 million dishwashers that are sold annually.<sup>4</sup> As part of the May 2012 final rule analysis, DOE found that the current standards save consumers who purchase a standard dishwasher an average of \$62 in utility bills over the life of the product compared to a baseline model at the time of the rulemaking (i.e., a model that just meets the statutory standards).<sup>5</sup> Taking into account the additional upfront cost, DOE estimated that the current standards net consumers \$28 in savings relative to the statutory standards.<sup>6</sup>

Furthermore, DOE found that the amended standards finalized in the April 2024 final rule will save consumers who purchase a standard dishwasher an additional \$49 in utility bills over the life of the product compared to a baseline model at the time of the rulemaking (i.e., a model that just meets the current standards).<sup>7</sup> Taking into account the additional

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<sup>2</sup> 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](http://www.energy.gov/sites/default/files/2025-03/Appliance%20Standards%20Fact%20Sheet-02.pdf).

<sup>3</sup> 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](http://eta-publications.lbl.gov/sites/default/files/2025-01/standards_1987-2024_impacts_overview3.pdf). p. 4.

<sup>4</sup> DOE, Dishwashers, April 2024 Final Rule Technical Support Document (TSD), p. 9-6. [www.regulations.gov/document/EERE-2019-BT-STD-0039-0061](http://www.regulations.gov/document/EERE-2019-BT-STD-0039-0061)

<sup>5</sup> DOE, Dishwashers, May 2012 Final Rule Technical Support Document (TSD), p. 8-37. Calculated as the difference between the lifetime operating cost at the baseline efficiency level (\$489) and the lifetime operating cost at the standard level adopted, Efficiency Level (EL) 2 (\$417).

<sup>6</sup> *Id.* Calculated as the difference between the total life-cycle cost (LCC) at the baseline efficiency level (\$1,120) and the LCC at the standard level adopted, EL 2 (\$1,092).

<sup>7</sup> 89 Fed. Reg. 31452 (April 24, 2024). Calculated as the difference between the lifetime operating cost at the baseline efficiency level (\$625) and the lifetime operating cost at the 2018 standard level adopted, Trial Standard Level (TSL) 3 (\$576).

upfront cost, DOE estimated that the amended standards, which take effect in April 2027, will net consumers \$23 in savings relative to the current standards.<sup>8</sup> Taken together, the updated washer standards save consumers more than \$50 over the lifetime of a typical washer relative to the statutory standards.

DOE's analyses for the 2012 and 2024 final rules indicate that reverting to the statutory standards could significantly increase the water consumption of dishwashers. For example, a standard dishwasher could consume an additional 323 gallons/year relative to a model just meeting the current standards,<sup>9</sup> or an additional 658 gallons/year relative to a model meeting the recently amended standards.<sup>10</sup> Although the cost savings highlighted above reflect both energy and water savings, DOE's rulemaking analyses show that a meaningful portion of the total bill savings are attributable to reduced water consumption. The 2012 final rule analysis estimated that 25% of the cumulative operating cost savings are attributable to water savings,<sup>11</sup> while the 2024 final rule estimated that 32% of the operating cost savings are attributable to water savings.<sup>12</sup> DOE's proposal to revert to the statutory water efficiency standards could therefore significantly raise costs for consumers.

These higher costs for consumers would come at a time when water rates are rising. Between 2008 and 2021, average annual water utility rates throughout the U.S. grew 3.0% faster than inflation for water utilities and 3.2% faster than inflation for wastewater utilities.<sup>13</sup> Water utility rates are projected to continue to increase across the country due to aging infrastructure, increases in capital and operating costs, increased water quality

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<sup>8</sup> *Id.* Calculated as the difference between the total LCC at the baseline efficiency level (\$1,095) and the LCC at the standard level adopted, TSL 3 (\$1,072).

<sup>9</sup> DOE, Dishwashers, May 2012 Final Rule Technical Support Document (TSD), p. 7-5. [www.regulations.gov/document/EERE-2011-BT-STD-0060-0007](https://www.regulations.gov/document/EERE-2011-BT-STD-0060-0007). Calculated as the difference between the baseline annual water use (1,398 gallons) and the annual water use at the standard level adopted, Efficiency Level (EL) 2 (1,075 gallons).

<sup>10</sup> *Id.* and DOE, Dishwashers, April 2024 Final Rule Technical Support Document (TSD), p. 7-6. [www.regulations.gov/document/EERE-2019-BT-STD-0039-0061](https://www.regulations.gov/document/EERE-2019-BT-STD-0039-0061).

Calculated as the sum of the estimated savings from the 2012 final rule (323 gallons) and the difference between the baseline annual water use (986 gallons) and the annual water use at the standard level adopted in the 2024 final rule, EL 2 (651 gallons). We note that the estimated cycles per year in DOE's analysis were updated from 215 in 2012 to 197 in 2024, resulting in lower estimated annual water usage at the current standard level in the April 2024 final rule analysis.

<sup>11</sup> DOE, Dishwashers, May 2012 Final Rule National Impacts Analysis (NIA) spreadsheet. [www.regulations.gov/document/EERE-2011-BT-STD-0060-0010](https://www.regulations.gov/document/EERE-2011-BT-STD-0060-0010). See the "Std Calc" sheet, columns CA to CC Estimated by dividing the cumulative water operating cost savings by the total (i.e., fuel and water) cumulative operating cost savings.

<sup>12</sup> DOE, Dishwashers, April 2024 National Impacts Analysis (NIA) spreadsheet. [www.regulations.gov/document/EERE-2019-BT-STD-0039-0064](https://www.regulations.gov/document/EERE-2019-BT-STD-0039-0064). See the "Standard-Size" sheet, rows 116 to 119. Estimated by dividing the cumulative water operating cost savings by the total (i.e., electricity, gas, oil, and water) cumulative operating cost savings.

<sup>13</sup> Pacific Northwest National Laboratory, Water and Wastewater Annual Price Escalation Rates for Selected Cities Across the United States: 2023 Edition (March 2023). [www.osti.gov/servlets/purl/1975260](https://www.osti.gov/servlets/purl/1975260). p. ii.

compliance challenges, and decreased federal funding for local utilities.<sup>14</sup> EPA estimates that the cost to fund clean water and drinking water projects nationwide over the next 20 years will be approximately \$1.25 trillion.<sup>15</sup> This increased spending on water infrastructure will only drive rates higher. Furthermore, between 12.1 million and 19.2 million households throughout the United States (between 9.2% to 14.6% of families) lack affordable access to water,<sup>16</sup> while about 20% of households are in debt to their water utility.<sup>17</sup> Reverting to the statutory water efficiency standards for dishwashers would further increase water and wastewater costs and strains on household budgets.

**4. DOE’s proposal could waste billions of gallons of water.** DOE states in the NOPR that the dishwasher water use regulations “are not consistent with the need for national water conservation.”<sup>18</sup> However, DOE estimated that the water efficiency standards currently in effect will save 140 billion gallons of water cumulatively over 30 years.<sup>19</sup> The recently amended standards, set to take effect in 2027, will save an additional 110 billion gallons of water over 30 years of sales.<sup>20</sup> By reverting to the statutory standards, DOE’s current proposal threatens those savings, which are roughly equivalent to the total annual water use from nearly three million households.<sup>21</sup>

Water is increasingly scarce in many regions throughout the United States. As of a 2024 survey of water utilities across the United States, “only 45% of utilities feel very or fully prepared to meet long-term water supply needs, a decrease from the previous year, when 55.3% of utility personnel reported that their utilities were very or fully prepared to meet long-term water supply needs.”<sup>22</sup> Drought is affecting an increasing number of Americans. For example, in October 2024, the United States Drought Monitor found that “Abnormal dryness and drought are currently affecting over 242 million people across the United States including Puerto Rico—about 77.8% of the population. This is the highest

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<sup>14</sup> National Association of Clean Water Agencies (NACWA), The Growing U.S. Water Affordability Challenge and the Need for Federal Low-Income Water Customer Assistance Funding (December 2022). [www.nacwa.org/docs/default-source/resources---public/nacwa-affordability-report\\_dec22.pdf?sfvrsn=1ab5c761\\_2](http://www.nacwa.org/docs/default-source/resources---public/nacwa-affordability-report_dec22.pdf?sfvrsn=1ab5c761_2). p. 1.

<sup>15</sup> U.S. Environmental Protection Agency (EPA), Water Affordability Needs Assessment: Report to Congress (December 2024). [www.epa.gov/system/files/documents/2024-12/water-affordability-needs-assessment.pdf](http://www.epa.gov/system/files/documents/2024-12/water-affordability-needs-assessment.pdf). p. 5.

<sup>16</sup> *Id.* p. 2.

<sup>17</sup> Low Income Household Water Assistance Program, Understanding Water Affordability Across Contexts: LIHWAP Water Utility Affordability Survey (February 2024). [acf.gov/sites/default/files/documents/ocs/water-survey.pdf](http://acf.gov/sites/default/files/documents/ocs/water-survey.pdf). p. 5.

<sup>18</sup> 90 Fed. Reg. 20,860.

<sup>19</sup> 77 Fed. Reg. 31,919 (May 30, 2012).

<sup>20</sup> 89 Fed. Reg. 31,462 (April 24, 2024).

<sup>21</sup> Calculated by dividing 250 billion gallons by an estimated average household water use of 88,000 gallons/year. [www.circleofblue.org/wp-content/uploads/2016/04/WRF\\_REU2016.pdf](http://www.circleofblue.org/wp-content/uploads/2016/04/WRF_REU2016.pdf).

<sup>22</sup> American Water Works Association, State of the Water Industry 2025: Executive Summary (2025). [www.awwa.org/wp-content/uploads/2025-SOTWI-Executive-Summary.pdf](http://www.awwa.org/wp-content/uploads/2025-SOTWI-Executive-Summary.pdf). p. 7.

percentage in the entire 25-year-long USDM record.”<sup>23</sup> At present, 26.08% of the land area of the United States (and 31.05% of the area of the lower 48 states) is experiencing drought, across 32 states, affecting 80.7 million people.<sup>24</sup> Reverting to the statutory water efficiency standards for dishwashers would exacerbate water scarcity.

**5. DOE’s proposal would undermine manufacturer investments.** Dishwasher manufacturers—who make 76% of dishwashers sold in the U.S. domestically, employing nearly 4,000 people<sup>25</sup>—have been required to comply with the current standards since May 2013. To meet the standards, manufacturers likely incurred conversion costs including capital costs (one-time investments in plant, property, and equipment) and product conversion costs (research and development, testing, and marketing costs). DOE estimated that manufacturers would incur total conversion costs of \$94 million to comply with the current standards for dishwashers.<sup>26</sup> These investments would be undermined by DOE’s proposal to revert to the statutory water efficiency standards.

**6. Standards protect consumers who are not always able to make well-informed purchase decisions.** DOE states in the NOPR that “consumers are best situated to decide whether a given product is economically justified, as that is precisely what the free market does best.”<sup>27</sup> This statement ignores the realities of who purchases appliances and why. Many consumers are renters who pay their utility bills but have no control over the appliances purchased by their landlord (who often has no economic incentive to buy an efficient product).<sup>28</sup> Furthermore, about half of appliance purchases are emergency purchases (e.g., when a consumer’s current appliance breaks).<sup>29</sup> In this scenario, consumers are often limited by local availability (which is heavily influenced by retailers) and may make decisions based on getting a replacement as quickly as possible rather than on any type of economic analysis. Thus, minimum efficiency standards are an important policy tool to protect consumers.

**7. DOE lacks the authority to rescind standards.** The proposed rule states that DOE is proposing to “rescind” the water conservation standards for residential dishwashers. EPCA authorizes DOE to promulgate new standards and to prescribe amended

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<sup>23</sup> National Centers for Environmental Information, National Oceanic and Atmospheric Administration, U.S. Drought: Weekly Report for October 29, 2024 (Oct. 29, 2024). [www.ncei.noaa.gov/news/us-drought-weekly-report-october-29-2024](https://www.ncei.noaa.gov/news/us-drought-weekly-report-october-29-2024).

<sup>24</sup> National Integrated Drought Information System, National Current Conditions: May 21, 2025 - May 27, 2025 (May 27, 2025). [www.drought.gov/current-conditions#:~:text=As%20of%20May%2027%2C%202025,to%20the%20U.S.%20Drought%20Monitor.&text=of%20the%20U.S.%20and%2031.05,are%20in%20drought%20this%20week](https://www.drought.gov/current-conditions#:~:text=As%20of%20May%2027%2C%202025,to%20the%20U.S.%20Drought%20Monitor.&text=of%20the%20U.S.%20and%2031.05,are%20in%20drought%20this%20week).

<sup>25</sup> 89 Fed. Reg. 31,457, 31,458 (April 24, 2024).

<sup>26</sup> 77 Fed. Reg. 31,947 (May 30, 2012). DOE adopted TSL 2.

<sup>27</sup> 90 Fed. Reg. 20,860.

<sup>28</sup> For example, in the 2024 dishwashers final rule, DOE estimated that more than 48% of low-income households with dishwashers are renters who pay their utility bills. 89 Fed. Reg. 31438 (April 24, 2024).

<sup>29</sup> Consumer Federation of America, U.S. Consumer Attitudes Toward Appliance Efficiency Standards and Purchasing Behaviors by Income, Race, and Homeownership (October 2022). [consumerfed.org/wp-content/uploads/2022/10/Appliance-Survey-Issue-Brief.pdf](https://consumerfed.org/wp-content/uploads/2022/10/Appliance-Survey-Issue-Brief.pdf).

standards.<sup>30</sup> But no provision in EPCA authorizes DOE to rescind or repeal existing standards.<sup>31</sup> That is true even if DOE frets the existing standard might have been unlawful, or holds a general preference for reducing regulatory burdens. DOE cannot “construe [a] statute in a way that completely nullifies textually applicable provisions meant to limit its discretion.”<sup>32</sup> Congress specified what analysis DOE must complete, and what determinations it must make, to change a standard. DOE must comply with those limitations even if its motivation is a belief that the current standard was mistaken.

**8. The proposed rule fails to identify the statutory authority under which the Department is acting.** To the extent DOE believes it is exercising some lawful authority to rescind a standard, the proposed rule must notify the public of that legal authority.<sup>33</sup> DOE has ignored this obligation. Nowhere in the proposed rule does the Department identify the source of statutory authority it is relying on to rescind the water conservation standards for residential dishwashers. 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.<sup>34</sup>

If DOE is instead prescribing an amended standard for residential dishwashers at the level contained in 42 U.S.C. § 6295(g)(10)(A), 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.

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

There is an initial standard for water consumption set forth in EPCA. Residential dishwashers were limited to 4.5 gallons per cycle.<sup>35</sup> Congress also instructed (and, necessarily, thereby authorized) DOE to consider, at least once, whether to amend those standards.<sup>36</sup> Further, Congress required (and also, necessarily, thereby authorized) DOE to consider, on a prescribed schedule, whether to amend each standard established under

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<sup>30</sup> 42 U.S.C. § 6295(a)(2), (l), (m), (n), (o), & (p).

<sup>31</sup> See also *NRDC 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.”).

<sup>32</sup> *New Jersey v. EPA*, 517 F.3d 574, 583 (D.C. Cir. 2008). In *New Jersey*, EPA purported to revoke a listing because it was inconsistent with the statutory limits on listing.

<sup>33</sup> 5 U.S.C. § 553(b)(2).

<sup>34</sup> 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”).

<sup>35</sup> 42 U.S.C. § 6295(g)(10).

<sup>36</sup> *Id.* § 6295(g)(10)(B).

EPCA.<sup>37</sup> These mandates are ample authority for DOE to regulate the water consumption of residential dishwashers.

DOE's tentative determination appears to rely on a dictum in *Louisiana v. DOE*, 90 F.4th 461 (5th Cir. 2024). That dictum is unreliable, because no party had even contested whether DOE has authority to regulate the water consumption of clothes washers and dishwashers. The Fifth Circuit reached out to offer its unsolicited speculations about DOE's authorities, but it did so without the benefit of briefing. Had the issue been presented, DOE (or other participants) could easily have explained where DOE derives its authority for these water conservation regulations. The Louisiana dictum is also incorrect, no doubt as a consequence of lacking that input. The court noted that EPCA defines the term "energy conservation standard" in terms of "energy use," and then defines the term "energy use" as well.<sup>38</sup> But these definitions are beside the point, because the provisions cited above are not limited to energy conservation standards. Section 6295(g)(10)(B) directs DOE to consider "whether to amend the standards" for dishwashers. This language is different from the text of provisions like section 6295(l), which allows DOE to "prescribe an energy conservation standard" for a covered product brought under EPCA regulation by means of a coverage determination. Under the "meaningful-variation canon,"<sup>39</sup> that difference presumably has significance; and that significance must be that subsection (g)(10) allowed DOE to modify all the standards applicable to these products, regardless of whether they qualify as "energy conservation standards." The same is true of section 6295(m); that provision, too, allows DOE to "amend[] the standard for [a] product," 42 U.S.C. § 6295(m)(3)(A).

Moreover, subsection (g)(10) emphasizes the breadth of DOE's authority, stating that "[t]he final rule shall contain *any* amended standards."<sup>40</sup> The word "any" connotes breadth, and forecloses a gloss under which "amended standards" would somehow be limited to a subset that only covers energy use. Indeed, it would be surprising if Congress, having established standards for water use by residential dishwashers and residential clothes washers (which is governed by a nearly identical provision at section 6295(g)(9)),<sup>41</sup> denied DOE the authority to revise those particular standards, alone among all the standards described in section 6295—and even more surprising if Congress effectuated that carveout silently by means of a negative implication.

The Fifth Circuit noted that before 1992 (when showerheads, faucets, water closets, and urinals were added to EPCA), DOE did not regulate water use in any product.<sup>42</sup> That history stops before the events of interest. Standards for dishwashers and clothes washers were added in the Energy Independence and Security Act of 2007. *Louisiana* also suggested that

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<sup>37</sup> *Id.* § 6295(m)(1).

<sup>38</sup> 90 F.4th at 470 (quoting 42 U.S.C. § 6291(4), (6)).

<sup>39</sup> *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457-58 (2022)

<sup>40</sup> 42 U.S.C. § 6295(g)(9)(B) (emphasis added).

<sup>41</sup> The undersigned commenters have made a nearly identical comment respecting DOE's authority to regulate water use from residential clothes washers. See Docket No. EERE-2025-BT-STD-0022.

<sup>42</sup> 90 F.4th at 471.

there is no “overlap” between products that have energy standards and those with water standards.<sup>43</sup> The statute itself belies that statement. The standards established in the Energy Independence and Security Act of 2007 for dishwashers and clothes washers covered both energy efficiency and water efficiency.

Finally, the Fifth Circuit noted that section 6293 requires test procedures to be “reasonably designed to . . . measure energy efficiency, energy use, [or] water use (in the case of showerheads, faucets, water closets, and urinals).”<sup>44</sup> That observation is incomplete. A later paragraph in section 6293 says that when DOE amends a test procedure, it must “determine . . . to what extent, if any, the proposed test procedure would alter the measured energy efficiency, measured energy use, or measured water use of any covered product.”<sup>45</sup> “Read naturally, the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’”<sup>46</sup> And it would make little sense to require DOE to assess whether a revised test procedure would alter measured water use for *any* product if test procedures are only allowed to address water use for the four particular products called out in paragraph (b)(3). A more sensible explanation takes account of the fact that paragraph (b)(3) *requires* a test procedure to be designed for a reasonable measurement of energy use or water use. For many products (such as battery chargers), water use remains irrelevant, whereas for most water-consuming products (including dishwashers and clothes washers) energy use is important alongside water use. So, for a requirement to measure specifically water use rather than energy use, it makes sense to call out four products that do not directly use energy, but that recitation does not imply water is irrelevant for everything else.

In its focus on the dictum from *Louisiana*, the proposed rule also fails to address the fact that the regulations establishing water standards for dishwashers were promulgated pursuant to section 6295(p)(4) as consensus rules. Section 6295(p)(4) provides that when DOE receives a consensus recommendation “with respect to an energy *or water conservation standard*” the Department may issue a direct final rule “that establishes an energy *or water conservation standard*.”<sup>47</sup> With respect to both the 2012 and 2024 rules updating the statutory dishwasher standards, DOE received a consensus recommendation for water conservation standards and promulgated that water conservation standard as a direct final rule exactly as provided in section 6295(p)(4).<sup>48</sup>

#### **10. DOE misinterprets and mis-applies EPCA’s “economically justified” criterion.**

As the second reason offered for its proposal, after the purported lack of authority addressed above, the Department states that the “Secretary has tentatively found that the water use regulations are not economically justified.” This unsubstantiated statement has no direct bearing on the decision-making process prescribed by EPCA. To amend a

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<sup>43</sup> *Id.*

<sup>44</sup> 90 F.4th at 471 (citing 42 U.S.C. § 6293(b)((3)).

<sup>45</sup> 42 U.S.C. § 6293(e)(1).

<sup>46</sup> *FDA v. R.J. Reynolds Vapor Co.*, 606 U.S. \_\_\_, 2025 WL 1716135 (June 20, 2025).

<sup>47</sup> 42 U.S.C. § 6295(p)(4)(A) (emphasis added).

<sup>48</sup> 77 Fed. Reg. 31,918 (May 30, 2012); 89 Fed. Reg. 31,398 (April 24, 2024).

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.

**11. The water efficiency standards for dishwashers do not reduce utility.** In the NOPR, DOE claims that water use restrictions appear to lessen the utility of dishwashers by lengthening the time it takes to wash dishes. However, DOE offers no evidence that dishwasher standards are impacting consumer utility. The NOPR cites only to a rule that DOE has repealed.<sup>49</sup> As part of that repeal, DOE examined the cycle lengths of numerous appliances and concluded that consumer utility has not been impacted by current standards.<sup>50</sup> The proposed rule offers no rebuttal to DOE’s own conclusion that the current standards have produced no adverse impact on cycle length for dishwashers.

Moreover, DOE’s contention that efficiency standards reduce utility by lengthening cycle time is disproved by information provided as part of the 2012 rulemaking and by the data published by DOE as part of the most recent standards rulemaking. Manufacturers indicated during interviews conducted as part of the 2012 rulemaking that they had concerns about efficiency standards leading to an increase in cycle time only at levels higher than those adopted by DOE.<sup>51</sup> As part of the 2024 rulemaking, the Department tested dishwashers across a range of efficiencies and found no correlation between efficiency and cycle time.<sup>52</sup>

**12. DOE fails to explain the legal relevance of its “policy to reduce regulatory burden wherever possible.”** The considerations governing DOE’s amendment of 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.

**13. 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

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<sup>49</sup> See 89 Fed. Reg. 105,408 (Dec. 27, 2024).

<sup>50</sup> *Id.*

<sup>51</sup> 77 Fed. Reg. 31,940, 31,941.

<sup>52</sup> See 89 Fed. Reg. at 31,466, 31,467 (discussing DOE, Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Dishwashers, 5-17 – 5-18 (Jan. 2022) (DOE Docket No. EERE-2019-BT-STD-0039-0015)).

6295(p)(1) is the only standard it need apply – that so long as DOE can explain why it is not implementing max-tech that concludes the statutory decision-making process. But the fact that DOE is not choosing to implement the max-tech standard does not relieve DOE from its obligation to fulfill the requirement of subsection 6295(o)(2)(A). That section requires that any new or amended standard be “designed to achieve the maximum improvement in . . . water efficiency...which the Secretary determines is technologically feasible and economically justified.”

**14. The proposed rule fails to determine “max-tech” as required by 42 U.S.C. § 6295(p)(1).**

Section 6295(p)(1), which DOE purports to rely upon in its NOPR, provides, in a proposed rule, “*the Secretary shall determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered products*. If such standard is not designed to achieve such efficiency or use, the Secretary shall state in the proposed rule the reasons therefor.”

This provision requires the Secretary, at the proposed rule stage, to determine the maximum improvement in energy efficiency that is technologically feasible.<sup>53</sup> DOE colloquially refers to this maximum threshold as “max tech.”<sup>54</sup> 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,”<sup>55</sup> pursuant to which “DOE must first identify, for all product types or classes, the maximum improvement in energy efficiency that is technologically feasible.”<sup>56</sup> In the proposed rule, DOE has ignored that obligation entirely. Indeed, the proposed rule contains no discussion of dishwasher 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.”<sup>57</sup> DOE may not “ignore the decisionmaking procedure Congress specifically mandated because the agency thinks it can design a better procedure.”<sup>58</sup>

**15. The proposed rule is not based on the criteria in section 6295(o)(1).** Section 6295(m)(1)(B) requires that, when DOE proposes an amended standard, its proposal must be “based on the criteria established under subsection (o).” It is significant here that the statute requires DOE to base its proposal on the “criteria” of subsection (o). Because even if DOE took the view that section 6295(o) did not apply to this action by its own terms, it

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<sup>53</sup> 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.”).

<sup>54</sup> 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).

<sup>55</sup> *NRDC v. Herrington*, 768 F.2d 1355, 1391 (D.C. Cir. 1985).

<sup>56</sup> *Id.* at 1391 – 92.

<sup>57</sup> 42 U.S.C. § 6295(p)(1).

<sup>58</sup> *NRDC*, 768 F.2d at 1396.

still must apply the *criteria* of subsection (o). A contrary reading – i.e. that ‘the criteria of subsection (o) shall apply when the terms of subsection (o) so require’ – would render the quoted language in section 6295(m)(1)(B) superfluous if not tautological.<sup>59</sup>

The Merriam Webster dictionary defines criteria as “a standard on which a judgment or decision may be based.”<sup>60</sup> Subsection (o) provides two criteria for evaluating proposed amended standards that are of relevance here: subsection (o)(1) supplies the “anti-backsliding provision” whereby DOE may not prescribe an amended standard that increases water use; and subsection (o)(2)(A), discussed below, provides that any new or amended standard must be designed to achieve the maximum improvement in water efficiency that the Secretary determines is technologically feasible and economically justified.

The U.S. Court of Appeals for the Second Circuit has explained that “subsection (o)(1), read in the greater context of [42 U.S.C. § 6295] and in light of the statutory history of that section of the EPCA, admits to only one interpretation: that Congress, in passing the provision, intended to prevent DOE from amending efficiency standards downward once they have been published by DOE as final rules as required by the other provisions of [42 U.S.C. § 6295].”<sup>61</sup> The proposed rule plainly is not based on this criterion. The proposed rule seeks to revert to less stringent water use standards and would thus certainly *increase* water use, in direct conflict with the criterion in subsection (o)(1). The NOPR does not contend otherwise, nor does it even acknowledge subsection (o)(1).

**16. The proposed rule fails to apply the criteria in section 6295(o)(2)(A).** Section 6295(o)(2)(A) provides that “Any new or amended energy conservation standard prescribed by the Secretary under this section for any type (or class) of covered product shall be designed to achieve the maximum improvement in . . . water efficiency ... which the Secretary determines is technologically feasible and economically justified.” “Read naturally, the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’”<sup>62</sup>

The proposed rule is certainly not based on this criterion. Whether or not the water standards in section 6295(g)(10) represented the “maximum improvement” in water efficiency that was “technologically feasible and economically justified” in 2007, they certainly do not now. Over the past two decades DOE has revised those standards and manufacturers have updated their designs and manufacturing facilities accordingly. Indeed, it would strain credulity to suggest that an amended standard that brings water efficiency levels back over a decade into the past represents the “maximum improvement” in water efficiency that is “technologically feasible and economically justified.” But that is

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<sup>59</sup> *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.”)(internal quotations omitted)(quoting “ *Duncan v. Walker*, 533 U.S. 167, 174 (2001).”

<sup>60</sup> Available at [www.merriam-webster.com/dictionary/criterion](https://www.merriam-webster.com/dictionary/criterion).

<sup>61</sup> *NRDC v. Abraham*, 355 F.3d 179, 199 (2d Cir. 2004).

<sup>62</sup> *FDA v. R.J. Reynolds Vapor Co.*, 606 U.S. \_\_\_, 2025 WL 1716135 (June 20, 2025).

the standard DOE must apply to this proposed rule and DOE has failed to meet this obligation.

**17. 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.’”<sup>63</sup> 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,”<sup>64</sup> a category that includes the technical and economic data that was presented to justify the existing standards.

In the NOPR, DOE has failed to provide any data or analysis to support its proposal. Again, per section 6295(o)(2)(A), DOE must establish that its proposed standard represents the “maximum improvement” in water efficiency that is “technologically feasible and economically justified.” The NOPR provides no information at all regarding residential dishwasher technology or the alternative efficiency levels that might have been considered, either at the max-tech level or below. Nor does the NOPR provide any information to support the conclusion that its proposed standard is “economically justified” other than an unsubstantiated reference to cycle times. Section 6295(o)(2)(B) provides that, when evaluating “whether a standard is economically justified” DOE must to the maximum extent practicable consider:

- (I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;
- (II) the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;
- (III) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;
- (IV) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;
- (V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
- (VI) the need for national energy and water conservation; and

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<sup>63</sup> *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”).

<sup>64</sup> See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009).

(VII) other factors the Secretary considers relevant.

The NOPR does not consider any of these factors, even on a preliminary basis.

Nor has DOE provided any explanation for disregarding the analysis and data it presented in its past rules. Those rules demonstrated that increasing efficiency requirements above prior requirements was warranted. The data and analysis they presented, which DOE ignores here, certainly do not support the conclusion that prescribing an amended standard at the 2007 level represents the “maximum improvement” in water efficiency that is “technologically feasible and economically justified.”<sup>65</sup>

When DOE finalized the rule for dishwashers in 2012, it estimated average life-cycle cost (LCC) savings for purchasers of between \$3 and \$12, depending on the product class, and total NPV savings of \$80–\$460 million. For the 2024 final rule, DOE estimated average LCC savings of between \$9 and \$284, depending on the product class, and total NPV savings of \$1.23–\$2.9 billion. For the 2012 final rule, DOE estimated that the NPV savings are roughly equal to the estimated loss of industry net present value (INPV) in the worst case scenario; the NPV savings outweigh the maximum loss of INPV by a factor of 13 for the 2024 final rule. For both rules, DOE concluded that the levels adopted represent the maximum improvement in efficiency that is technologically feasible and economically justified.

**18. 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.<sup>66</sup> 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.<sup>67</sup>

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.

**19. 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

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<sup>65</sup> See *supra* at 1-3 (discussing the impact of the 2012 and 2024 rules updating dishwasher standards).

<sup>66</sup> 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[.]”).

<sup>67</sup> See, e.g., Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters, 89 Fed. Reg. 59,692 (July 23, 2024).

of the environment.<sup>68</sup> 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.”<sup>69</sup> Not only would the proposed rule itself have a significant effect on the human environment by rolling back water savings, but this action must be considered cumulatively with the many other proposed rollbacks that have also been issued by DOE.<sup>70</sup>

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.<sup>71</sup> 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.<sup>72</sup> DOE has offered no explanation of its reasoning on this point, despite that, as described below, the proposed rule would undo significant benefits to the environment. Instead, in the NOPR, DOE invites comment on the use of CX B5.1, which applies to “actions to conserve energy or water.”

But the plain language of CX B5.1 demonstrates its inapplicability. This CX applies specifically for “*improvements* in appliance efficiency ratings” and “*water conservation*.” It makes sense that this CX would ordinarily apply to EPCA rules, because EPCA requires that new or amended standards must improve energy and/or water efficiency. When DOE adopted this CX to complement its EPCA rulemaking activities, it emphasized the purpose of energy conservation, and it further specified that the CX does not apply for appliance efficiency standards that would “have the potential to cause a significant increase in energy consumption in a state or region.”

The proposed rule fails to meet the CX B5.1 requirements on numerous fronts. First, it is not “an action[s] to conserve energy or water” because it does the opposite: it would increase water use. Second, it does not propose an improvement in efficiency ratings because it would result in a *diminishment* of efficiency ratings.

**20. The proposed rule does not acknowledge the statutory compliance period for dishwashers.** The proposed rule does not indicate a compliance date. But section 6295(m)(4)(A)(i) requires that any amended standard for dishwashers apply to products “manufactured after the date that is 3 years after publication of the final rule establishing

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<sup>68</sup> 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).

<sup>69</sup> *Solar Energy Indus. Ass’n v. FERC*, 80 F.4th 956, 991 (9th Cir. 2023).

<sup>70</sup> 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”).

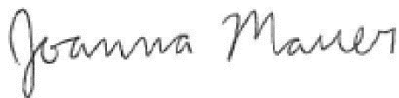
<sup>71</sup> *Pub. Employees for Env’t. Responsibility v. Nat’l Park Serv.*, 605 F. Supp. 3d 28, 56 (D.D.C. 2022); see also *California v. Norton*, 311 F.3d 1162, 1176 (9th Cir. 2002) (“concern for adequate justification of the categorical exclusion is heightened because there is substantial evidence in the record that exceptions to the categorical exclusion are applicable”).

<sup>72</sup> 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).

an applicable standard.” Thus, should DOE seek to finalize this rule, it must clarify that the amended water standard it is proposing will take effect three years after the date of publication of the final rule.

Thank you for considering these comments.

Sincerely,



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