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

July 15, 2025

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

RE: EERE-2025-BT-STD-0026: Energy Conservation Standards for External Power Supplies

Dear Mr. Taggart:

This letter constitutes the comments of the Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEEE), Ceres, Consumer Federation of America (CFA) Earthjustice, National Consumer Law Center, on behalf of its low-income clients (NCLC), and Natural Resources Defense Council (NRDC) on the notice of proposed rulemaking (NOPR) for standards for external power supplies (EPSs). 90 Fed. Reg. 20,899 (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 EPSs, weakening the standards for some EPSs by returning the requirements to older

[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.

standards established by Congress while eliminating the standards for other EPSs not subject to the original statutory standards. 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. While the per-unit savings for many EPSs are modest,[5] the savings add up over the approximately 750 million EPSs that are sold each year.[6] In the February 2014 final rule, DOE found that the current standards will save consumers between $3.9 and $7.1 billion in discounted operating cost savings over 30 years of product sales.[7] Taking into account the additional upfront cost, DOE found that the standards will provide net present value (NPV) savings for purchasers of between $1.9 and $3.8 billion.[8] In other words, DOE's current proposal could cost consumers billions of dollars over the coming decades.

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

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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] The average life-cycle cost savings range from $0.17 to $142 depending on the product class. 79 Fed. Reg. 7,849 (February 10, 2014).

[6] DOE, External Power Supplies, February 2023 Proposed Rule Technical Support Document (TSD), p. 9-3. www.regulations.gov/document/EERE-2020-BT-STD-0006-0026.

[7] 79 Fed. Reg. 7,851 (February 10, 2014).

[8] 79 Fed. Reg. 7,850 (February 10, 2014). NPV = present value of operating cost savings – present value of total incremental installed costs; range corresponds to 7% and 3% discount rates, respectively.

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

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 EPSs 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 February 2014 final rule, DOE found that the standards for EPSs will save 0.94 quads of energy over 30 years of product sales.[13] DOE's proposal threatens those savings. DOE further found in the February 2014 final rule that the standards will reduce electricity consumption by 3,082 gigawatt-hours (GWh) in 2030 and 3,321 GWh in 2040 and lower total installed generation capacity by 696 megawatts (MW) in 2030 and 1,208 MW in 2040.[14] By repealing the current standards for EPSs, 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 doubling for some utilities by 2050.[16] Repealing the current standards for EPSs would further exacerbate these trends.

5. DOE's proposal would increase emissions that harm human health and the environment. In the February 2014 final rule, DOE found that the standards will result in cumulative emissions reductions over 30 years of sales of 47.0 million metric tons of carbon dioxide, 81.7 thousand tons of sulfur dioxide, 15.0 thousand tons of nitrogen

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[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] 79 Fed. Reg. 7,850 (February 10, 2014).
[14] DOE, External Power Supplies, February 2014 Final Rule TSD, Tables 15.3.2 to 15.3.4, pp. 15-10 to 15-12. www.regulations.gov/document/EERE-2008-BT-STD-0005-0217.
[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.
[16] *Id*.

oxides, and 0.1 tons of mercury.[17] In other words, repealing the current standards for EPSs 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 2014 final rule since 2016. 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 $43.4 million to comply with the current standards for EPSs.[18] These investments would be undermined by DOE's proposal to rescind the standards. Furthermore, if the current standards are repealed, rather than focusing on technological innovation and improved performance, domestic manufacturers may instead focus on cost cutting to avoid being undercut by manufacturers currently serving other markets.

7. Efficient external power supplies perform better. Efficient EPSs can safely deliver power to batteries more quickly without overheating, minimizing downtime for devices. Less heat generation while charging also improves safety and helps minimize wear and tear on the charger and battery, improving reliability and longevity of the charger and the equipment it powers.

8. DOE does not have the authority to rescind standards. The proposed rule repeatedly states that DOE is proposing to "rescind" the energy conservation standards for external power supplies. EPCA authorizes DOE to promulgate new standards and to prescribe amended standards.[19] But no provision in EPCA authorizes DOE to rescind or repeal existing standards.[20]

The NOPR claims that DOE conducted a "reevaluation of the EPS standards, pursuant to 42 U.S.C. 6295(u)(3)(D)," after which the Department "tentatively determined that the standards legislated by Congress do not require amendment and the current regulatory standards are not economically justified." However, nothing in the cited provision authorizes DOE to rescind the external power supply standards. Section 6295(u)(3)(D) requires DOE to complete two rulemakings to determine whether to *amend* the energy conservation standards for external power supplies. DOE completed its obligation under 42 U.S.C. 6295(u)(3)(D)(i) when it issued amended energy conservation standards for external power supplies in 2014. DOE's obligation under 42 U.S.C. 6295(u)(3)(D)(ii) remains

[17] 79 Fed. Reg. 7,850 (February 10, 2014).
[18] Tables V-6 to V-14. 79 Fed. Reg. 7,901 to 7,904 (February 10, 2014). Calculated by summing the "Total Conversion Costs" for each Product Class/Product Class Group. DOE adopted TSL 2.
[19] 42 U.S.C. § 6295(a)(2), (*l*), (m), (n), (o), & (p).
[20] *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.").

outstanding, but nothing in that provision even suggests that it authorizes DOE to rescind the current standards.

9. DOE's proposed change to the external power supply standards violates EPCA's anti-backsliding provision. Section 6295(o)(1), referred to as EPCA's "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]."[21]

The NOPR's unelaborated suggestion that "when DOE rescinds a rule in full it has not 'prescribe[d] any amended standard' that falls under the anti-backsliding provision" does not explain how DOE could arrive at that conclusion, but the interpretation does not withstand scrutiny. The only rational interpretation of the anti-backsliding provision is that it applies not only to DOE actions that amend the numerical level of a standard, but also to actions that withdraw standards or exempt products. Such actions "prescribe [an] amended standard," in that, like changes to numerical levels, they establish authoritatively a formal alteration of an energy conservation standard.[22] Such actions also "decrease[] the minimum required energy efficiency, of a covered product."[23]

It is not plausible that when it prohibited DOE from prescribing "any amended standard which . . . decreases the minimum required energy efficiency, of a covered product," Congress nevertheless intended to permit DOE the discretion to rescind updated standards and revert to weaker, superseded requirements. As the Second Circuit explained in *NRDC v. Abraham*, the anti-backsliding provision must be interpreted in light of "the appliance program's goal of steadily increasing the energy efficiency of covered products" and Congressional intent to provide a "sense of certainty on the part of manufacturers as to the required energy efficiency standards."[24] Allowing DOE the discretion to roll back standards a decade after their adoption "would completely undermine any sense of certainty on the part of manufacturers as to the required energy efficiency standards" for any particular product.[25] "Finally, and most importantly, such a reading would effectively render section 325(o)(1)'s 'anti-backsliding' mechanism inoperative, or a nullity, in these circumstances."[26]

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[21] *NRDC v. Abraham*, 355 F.3d 179, 199 (2d Cir. 2004).
[22] *See Prescribe*, BLACK'S LAW DICTIONARY (12th ed. 2024); *Amend*, *id.*
[23] 42 U.S.C. § 6295(o)(1).
[24] 355 F.3d at 197
[25] *Id.*
[26] *Id.*

10. The anti-backsliding provision bars DOE from weakening standards previously adopted by the Department. The provision prohibits "any amended standard which increases the maximum allowable energy use . . . or decreases the minimum required energy efficiency, of a covered product." The "maximum allowable energy use" or "minimum required energy efficiency" of a covered product refer to the requirements of the energy conservation standard that applies to such product.[27] Thus, the only plausible reading of this provision is that DOE cannot amend existing energy conservation standards in a way that weakens their energy efficiency or energy use requirements. Nothing in the text of EPCA suggests that this provision is triggered only by energy conservation standards codified in statute. Under EPCA, an energy conservation standard is an energy conservation standard, regardless of whether it is codified in statute.[28] Indeed, in *NRDC v. Abraham*, the Second Circuit considered in a case involving the application of the anti-backsliding provision to a regulatory standard, and held that section 6295(o)(1) "unambiguously operates to constrain DOE's ability to amend efficiency standards once they are published as final rules in the Federal Register."[29]

Other features of the statute reinforce this straightforward reading. For one, it is implausible to suggest that Congress intended to limit the application of section 6295(o)(1) to statutorily-codified standards when it defined the scope of that provision as applying to "any amended standard" for a "covered product." For many covered products, Congress has never codified standards at all; thus, again, the provision cannot reasonably be read to apply exclusively to standards set by Congress. In addition, the remainder of section 6295(o) establishes criteria for DOE's adoption of standards, such as how DOE determines whether a standard level is economically justified. Throughout the subsection, the base case for comparison is the status quo, not any statutory standards, which typically were superseded long ago.[30] Accordingly, whether an amendment to a standard impermissibly relaxes requirements must be determined by measuring the new standard against the current one, not against the levels codified by Congress 20 to 40 years ago.

Section 6295(p)(4) also makes clear that the anti-backsliding provision applies to any DOE action that purports, as here, to withdraw a prior final rule. Section 6295(p)(4) grants DOE the option, in limited circumstances, to take final action via "direct final rules," without

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[27] *See* 42 U.S.C. § 6291(6) (defining "energy conservation standard" as one that prescribes "a minimum level of energy efficiency or a maximum quantity of energy use").

[28] See *id*. (defining "energy conservation standard" without respect to origin); 42 U.S.C. § 6295(a) (stating that the purpose of the section is to "(1) provide Federal energy conservation standards applicable to covered products; and (2) authorize the Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.").

[29] 355 F.3d at 206.

[30] *See, e.g.*, 42 U.S.C. § 6295(o)(2)(B)(i)(II)-(IV) & (V) (requiring DOE to isolate the impacts likely to result from the imposition of the standard under consideration when assessing the economic justification for that standard); *id.* § 6295(o)(2)(4) (preventing the adoption of standards that would likely result in the unavailability of certain product features "generally available in the United States at the time of [DOE's] finding").

first issuing a notice of proposed rulemaking. However, to the extent DOE receives adverse comment on a direct final rule and "determines that such adverse public comments . . . may provide a reasonable basis for withdrawing the direct final rule," DOE may do so.[31] In that event, the withdrawn rule "shall not be considered to be a final rule for purposes of [42 U.S.C. § 6295(o)]," the subsection of EPCA containing the anti-backsliding provision.[32] That Congress exempted an explicitly authorized withdrawal of final action from the anti-backsliding provision demonstrates that the provision is otherwise applicable to other actions that would withdraw final rules under EPCA.

None of the NOPR's three justifications—based on legislative history, textual, and policy arguments—for suggesting that the anti-backsliding provision applies only to statutory standards can support the proposition.

The NOPR's examination of legislative history points to two isolated sentences from the development of The National Appliance Energy Conservation Act of 1987 (NAECA): one in a Senate committee report and another from a floor statement. Neither supports the DOE's position. The statements that DOE relies on do not express an intent to limit the anti-backsliding provision to statutory standards.

The committee report statement DOE relies on states that after a "lock-in period" the Department "may promulgate new standards which may not be less than those established by" legislation.[33] This "lock-in period" was a period of 3 to 10 years after congressionally enacted standards took effect, before which DOE could not establish amended standards.[34] After the lock-in period expired, NAECA authorized DOE to promulgate more stringent, amended standards.[35] Therefore, the committee report statement merely affirms that, pursuant to the anti-backsliding provision, DOE's initial round of amended standards could be no less stringent than the statutory baseline. The statement simply does not speak to whether the anti-backsliding provision applies to regulatory standards.

DOE's reliance on the floor statement from Sen. Johnston fares no better, because the statement merely expressed the Senator's view that establishing initial standards by legislation, rather than regulation, was more efficient. Johnston's viewpoint was likely a reaction to Congress' experience with the National Energy Conservation Policy Act (NECPA), under which the Department failed for years to promulgate energy efficiency standards through the rulemaking process. Congress enacted NECPA in 1978, requiring the Department to establish efficiency standards for 13 classes of appliances.[36] The Department issued proposed standards for 8 of these classes in 1980, but then suspended

[31] 42 U.S.C. § 6295(p)(4)(C)(i).
[32] *Id.* § 6295(p)(4)(C)(iii).
[33] S. Rep. 100-6 at 2.
[34] *Id.*
[35] *Id.*
[36] S. Rep. 100-6 at 3.

its rulemakings in 1981, and in 1982 issued a finding that no standards were economically justified.[37] The D.C. Circuit vacated the Department's finding in 1985, and the efficiency standards rulemaking was still in progress in 1987 when NAECA was up for debate in Congress.[38] Johnston's floor statement, expressing a desire to bypass "costly rulemaking procedures," was therefore an acknowledgment that the rulemaking process had thus far been insufficient to fulfill Congress' intent. Indeed, in the floor speech cited in the NOPR, Johnston also noted that "[i]t has been over 5 years since appliance efficiency standards were to have been established by the Department of Energy" and during this time, "the administration has used every argument and foot-dragging technique to frustrate and undermine the intent of Congress."[39]

Contrary to the NOPR's assertions, the legislative history of NAECA confirms that the anti-backsliding provision applies to both regulatory and legislative standards. A House Report from the Committee on Energy and Commerce states that "[t]he purpose of this requirement [the anti-backsliding provision] is to prevent the Secretary from weakening any energy conservation standard for a product, whether established in this Act or subsequently adopted."[40] The anti-backsliding provision, according to the report, "serves to maintain a climate of relative stability with respect to future planning by all interested parties."[41]

In addition, in remarks on the House floor in opposition to NAECA, Representative Barton (TX) took issue with the anti-backsliding provision, noting that "[t]hese standards, once set, can never be lowered."[42] Barton then argued that "I have some doubt that the people who will be setting the standards are going to ... pick the perfect standard right off the bat. There is going to be some that are too high, but under this legislation, once set, they can only be increased; they can never be decreased."[43] Barton's use of the future tense ("the people who *will be* picking the standards") indicates his understanding that legislatively established standards will be increased in the future, and the anti-backsliding provision will prohibit the Department from weakening those revised standards.

DOE's search for textual "clues" to support for its constrained reading of the anti-backsliding provision is similarly unavailing. DOE first observes that "[o]ther parts of the statute consistently refer to the statutory standards as maximum or minimum standards." But such references to "maximum" and "minimum" are hardly remarkable

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[37] *Id*.
[38] *Id*. at 4.
[39] 133 Cong. Rec. S1909-01 at *1; *see also* House Hearing on H.R. 5465 Before the Subcommittee on Energy Conservation and Power, 99th Cong. 74 (1986) (manufacturer testimony explaining that waiting for regulatory standards could take "until the mid '90s or later").
[40] H. Rep. 100-11 (1987) at 22 (emphasis added); *see also* H. Rep. 99-850 (1986) at 21 (same language), 34 (very similar language).
[41] H. Rep. 100-11 at 22.
[42] 133 Cong. Rec. H881-01 (March 3, 1987).
[43] *Id*.

when the statute's definition of "energy conservation standard"—whether codified in EPCA or adopted by DOE—calls for "a performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use."[44]

DOE next appears to refer to section 6295(i)(7)(B), which, under certain circumstances, allows the Secretary to amend the standard for a lamp "to permit increased energy use or to decrease the minimum required efficiency." Although this authorization appears intended to address the anti-backsliding provision, the text references instead section 6295(n)(1) (allowing petitions for more stringent standards for some products), not section 6295(o)(1).

The most likely explanation for this outcome is not, as the NOPR suggests, that "42 U.S.C. 6295(o)(1) is not a barrier to loosening or tightening regulatory standards, just statutory standards." Had Congress intended to make this point, there were surely clearer ways to indicate the anti-backsliding provision was so limited. Instead, the reference to subsection (n)(1) appears to be a mistake. That provision, subsection 6295(n)(1), authorizes petitions for rulemaking to DOE. It says nothing about amendment of standards *by* DOE and thus Congress would have had no reason to declare it inapplicable to section 6295(i)(7)(B), which governs amendments to lamp standards by DOE. In the Energy Policy Act of 1992 (EPACT 1992), Congress renumbered several subsections in 42 U.S.C. 6295, including the anti-backsliding provision.[45] When EPACT 1992 granted DOE the limited authority to relax lamp standards, the cross-reference "notwithstanding" the anti-backsliding provision, which had been correct in an earlier version of the legislation, appears to have been mistakenly directed at the section 6295(n)(1) petition process to amend standards.[46] However, even if the reference to the subsection (n)(1) petition process in section 6295(i)(7)(B) were correct, the anti-backsliding provision remains the root cause of Congress needing to grant specific authority to DOE to relax a standard.

Finally, DOE's attempted political justification for preferring not to apply the anti-backsliding provision to regulatory standards cannot overcome the text of the provision and its legislative history, both of which support the opposite reading. The NOPR's policy arguments echo Congressman Barton's rumination that the anti-backsliding provision prevents DOE from lowering standards that some might come to believe DOE has set too high. Moreover, the NOPR's characterization of regulatory standards as inherently more contentious than those enacted by Congress ignores DOE's track record of fostering consensus-based updates to standards.

11. DOE misinterprets and mis-applies EPCA's "economically justified" standard. DOE states that part of the rationale for the purported rescission is that "the current

[44] 42 U.S.C. § 6291(6)(A).

[45] EPACT 1992 sec. 123(f)(1), 106 Stat. 2776, 2825 (1992).

[46] *See* H. Rep. 102-474(I) at 30-31 (Mar. 30, 1992), 1992 WL 92925 (Leg.Hist.) at *30-31 (section 164(e) of H.R. 776 renumbers various subsections of 42 U.S.C. § 6295 and allows the weakening of lamp standards notwithstanding the anti-backsliding provision, as so renumbered).

regulatory standards are not economically justified." This unexplained statement has no direct bearing on the decision-making process prescribed by EPCA. To amend a standard, DOE must comply with the criteria in section 6295(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.

12. The proposed rule fails to determine "max-tech" as required by 42 U.S.C. § 6295(p)(1). Section 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.[47] DOE colloquially refers to this maximum threshold as "max tech."[48] 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 6295(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,"[49] pursuant to which "DOE must first identify, for all product types or classes, the maximum improvement in energy efficiency that is technologically feasible."[50] In the proposed rule, DOE has ignored that obligation entirely. Indeed, the proposed rule contains no discussion of external power supply technology at all.[51] 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

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[47] *See also* 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.").

[48] *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).

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

[50] *Id*. at 1391 – 92.

[51] *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).

the "proposed rule."[52] DOE may not "ignore the decisionmaking procedure Congress specifically mandated because the agency thinks it can design a better procedure."[53]

13. 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."[54] The NOPR acknowledges the existence of this benchmark, but never applies it to the proposal.

14. 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.'"[55] 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,"[56] 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 external power supply 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;

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[52] 42 U.S.C. § 6295(p)(1).
[53] *NRDC*, 768 F.2d at 1396.
[54] *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.'").
[55] *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").
[56] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009).

(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 2014 final rule. That rule demonstrated that adoption of the current efficiency requirements was warranted. The data and analysis presented therein, which DOE ignores here, certainly do not support the conclusion that 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 EPSs in 2014, it estimated significant energy savings (0.94 quads);[57] positive average life-cycle cost (LCC) savings for purchasers of all classes of EPSs;[58] and total NPV savings for consumers of $1.9-$3.8 billion.[59] 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 27.[60] DOE concluded that the levels adopted represent the maximum improvement in energy efficiency that is technologically feasible and economically justified.

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

[57] 79 Fed. Reg. 7,850 (February 10, 2014).
[58] *Id.* at 7,849
[59] *Id*. at 7,850.
[60] *Id.* at 7,849, 7,850. Based on the NPV savings using the more conservative discount rate ($1.9 billion) and the maximum estimated loss of industry NPV of $51.2 million.

opportunity for public comment.[61] 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.[62]

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

16. DOE has failed to comply with the National Environmental Policy Act. 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.[63] 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."[64] Not only would the proposed rule itself have a significant effect on the human environment by rolling back energy savings, but this action must be considered cumulatively with the many other proposed rollbacks that have also been issued by DOE.[65]

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.[66] 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.[67] DOE has offered no explanation of its reasoning on this point, despite that, as described below, the proposed rule would undo significant benefits

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[61] *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[.]").

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

[63] 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).

[64] *Solar Energy Indus. Ass'n v. FERC*, 80 F.4th 956, 991 (9th Cir. 2023).

[65] *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").

[66] *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").

[67] 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).

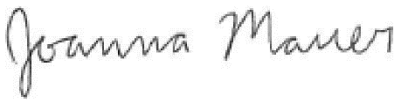
to the environment. Instead, in the NOPR, DOE invites comment on the use of CX B5.1, which applies to "actions to conserve energy or water."

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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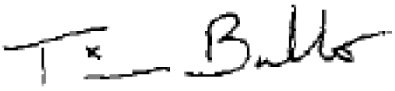

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