Alliance for Water Efficiency
Appliance Standards Awareness Project
American Council for an Energy-Efficient Economy
Ceres
Consumer Federation of America
Earthjustice
Natural Resources Defense Council

July 15, 2025

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

RE: Docket Number EERE–2025–BT–STD–0021: Proposed recission/amendment of water conservation standards for faucets

Dear Mr. Taggart,

This letter constitutes the comments of the Alliance for Water Efficiency (AWE), Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEEE), Ceres, Consumer Federation of America (CFA), Earthjustice, and Natural Resources Defense Council (NRDC) on the notice of proposed recission/amendment of water conservation standards for faucets. 90 Fed. Reg. 20854 (May 16, 2025).[1] We appreciate the opportunity to provide input to the Department.

1. About the signatories

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, 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.

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.

[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.

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

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

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

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

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

2. Introduction

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

In the notice, DOE has proposed to rescind the water conservation standards for faucets codified at 10 C.F.R. § 430.32(o), which apply when measured at a flowing water pressure of 60 pounds per square inch. DOE's proposal would return the faucet standards to those prescribed at 42 U.S.C. § 6295(j)(2), which are based on a flowing water pressure of 80 pounds per square inch. Though measured at different pressures, DOE long ago concluded

[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.

that the two standards are equivalent.[4] Thus, reverting to ASME/ANSI A112.18.1M-1989 will have little-to-no effect on water use or flow rates, but it could easily increase costs for manufacturers to redesign and manufacture faucets to a different standard. These additional costs may be passed along to consumers. DOE's misguided proposal could therefore increase the purchase price for faucets while having no impact on water use.

Below, we also outline numerous reasons why DOE's proposal is unlawful. DOE should therefore withdraw the proposed rule.

3. DOE lacks the authority to rescind standards. The proposed rule states that DOE is proposing to "rescind" the current water use standards for faucets. EPCA authorizes DOE to promulgate new standards and to prescribe amended standards.[5] But no provision in EPCA authorizes DOE to rescind or repeal existing standards.[6] That is true even if DOE believes 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."[7] 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.

4. 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.[8] DOE has ignored this obligation. DOE claims that a "reevaluation" of the maximum water use values from ASME/ANSI Standard A112.18.1M–1996 has resulted in DOE thinking those values "were not economically justified, and likely should not have been adopted in regulation, and should now be rescinded." This language suggests that DOE may believe the authority provided in 42 U.S.C. § 6295(j)(3) to amend faucet standards based on updates to ASME/ANSI Standard A112.18.1M also can be used to rescind such amendments decades later. However, the NOPR is ambiguous on this key point. Nowhere in the proposed rule does the Department clearly identify the source of statutory authority it is relying on to rescind the water use standards for faucets. 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.[9]

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[4] 62 Fed. Reg. 7834, 7836 (Feb. 20, 1997).

[5] *See* 42 U.S.C. § 6316(a) (incorporating 42 U.S.C. § 6295(*l*), (m), (n), (o), & (p)).

[6] *See also Nat. Res. Def. Council v. Abraham*, 355 F.3d 179, 202 (2d Cir. 2004) (holding that under EPCA DOE lacks any "inherent power to reconsider a final rule following its announcement in the Federal Register.").

[7] *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.

[8] 5 U.S.C. § 553(b)(2).

[9] 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").

If DOE is instead prescribing an amended standard for faucets at the level contained in 42 U.S.C. § 6295(j)(2), it still must identify the section of EPCA that it is relying on and explain how it has complied with the requirements of that provision.

5. DOE must determine that the proposed revision will be the standard that achieves the "maximum improvement" in water efficiency that is "technologically feasible and economically justified." Without any explanation, the NOPR simply asserts that the existing faucet standards are not economically justified. Even if DOE could show that were true, it would have no direct bearing on the decision-making process prescribed by EPCA. Congress stated explicitly what DOE must determine before amending a standard. The standard resulting from the change must "be designed to achieve the maximum improvement in . . . water efficiency, which the Secretary determines is technologically feasible and economically justified."[10] DOE must assess the benefits and burdens of the *amended* standard, not the existing one.

To make the change that it has proposed, DOE must determine that the amended standards satisfy the criteria in section 6295(o)(2)(A), but DOE has not shown the proposed amendment would achieve the greatest water efficiency that is technologically feasible and economically justified. DOE has provided no evidence of what the supposed economic benefit from the revision would be. A political preference for reduced regulation is not inherently an economic benefit; if DOE has some evidence that the revised standard would actually generate economic benefits it must put that evidence before the public for comment.

6. DOE fails to explain the legal relevance of its policy to reduce regulatory burdens. The considerations governing DOE's amendments to 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 section 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.

7. The current faucet standards raise no constitutional questions. Aside from its purported rationale for revising the faucet standards, DOE claims it is "questioning whether" its adoption of standards nearly 30 years ago "resulted in an unconstitutional delegation of legislative power to a private entity." The answer to DOE's question is no. The faucet standards currently in place are not in DOE's regulations simply because ANSI decided it should be so. DOE reviewed the 1996 version of the ANSI standard and concluded that it had no obligation under EPCA to incorporate that version because it did not "constitute[] an improvement in water efficiency" compared to the 1989 version codified in the statute.[11] Thus, even if section 6295(j)(3)(A), the provision requiring consideration of certain ASME/ANSI revisions, were an improper delegation (it is not, as discussed below), that status would not undermine the faucet standards because the

[10] 42 U.S.C. § 6295(o)(2)(A).
[11] 62 Fed. Reg. at 7,836.

provision was not the basis for the faucet standards. DOE concluded that section 6295(j)(3)(A) was not triggered.

DOE chose to follow the 1996 version as an exercise of DOE's own policy discretion, in furtherance of a "policy of promoting harmonization,"[12]—a policy value that DOE chose, not ASME. DOE had, and exercised, the authority to decide what the regulatory standard should be. Indeed, DOE's standard for faucets does not even incorporate the ASME/ANSI standard by reference. DOE wrote a particular standard, 2.2 gpm at 60 psi, that is the same as the then-prevailing ANSI standard. To think that accepting an *idea* from ASME amounts to delegating authority to a private body is like saying an agency cannot change a proposed rule based on notice-and-comment because the comments come from the public.

More broadly, the statutory provision requiring DOE to consider an ASME/ANSI update that improves water efficiency is not, itself, an unconstitutional delegation of authority. The statute says that if ASME makes a pertinent update to the relevant standard, DOE must update its own standards to the same level as the revised ASME/ANSI standard, "unless [DOE] determines" that such an update "is not technologically feasible and economically justified," "is not consistent with the maintenance of public health and safety," or "is not consistent with the purposes of [EPCA]."[13] Thus, DOE decides what the standard shall be, and the ASME/ANSI revision simply triggers the process. "Private entities may serve as advisors that propose regulations."[14] Under the standard established long ago by the Supreme Court, what matters is that the agency, "not the code authorities, determines the [standards]."[15] That is certainly true under section 6295(j)(3)(A).

The Fifth Circuit recently found an unrelated statute to involve an unconstitutional private delegation. Section 6295(j)(3)(A) is quite different. *National Horsemen's Benevolent & Protective Ass'n v. Black* dealt with a statute under which a private body wrote all rules for the horseracing industry. The Federal Trade Commission's (FTC's) approval for rules was needed; but the private body would propose a rule, and then the FTC was required to approve or disapprove, within 60 days, and had to approve the proposed rule if it was "consistent with . . . this [act]."[16] The court stressed that the FTC had no "general policy" discretion about the rules, and among other limitations could not modify the rules itself, but could only approve, disapprove, or recommend changes to the private body.[17] Here, by contrast, DOE has full authority to determine whether following an amended ANSI standard would be "consistent with the purposes of [EPCA]," or to decline to follow it for various other reasons such as that it would be inconsistent with "public health and safety."[18] Assessing whether a proposed standard would be consistent with EPCA's purposes, would be economically justified, etc., is the same level of discretion that DOE

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[12] 62 Fed. Reg. at 7,836.
[13] 42 U.S.C. § 6295(j)(3)(A).
[14] *Oklahoma v. United States*, 62 F.4th 221, 229 (6th Cir. 2023).
[15] *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 399 (1940).
[16] 53 F.4th 869, 884-85 (5th Cir. 2022) (citing 15 U.S.C. § 3053(c)(2)(A)).
[17] *Id.*
[18] 42 U.S.C. § 6295(j)(3)(A).

enjoys for a rulemaking it initiates on its own. Further, the statute specifically allows DOE to consider, on its own, whether adopting a different standard would be warranted.[19] Consequently, *National Horsemen's* teaches nothing about the constitutionality of section 6295(j)(3)(A).

8. The NOPR misinterprets section 6295(p)(1). Section 6295(p)(1) requires DOE, in a proposed rule, to "determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered products." (i.e. "max-tech"). As explained below, DOE has not fulfilled this requirement. Of course, EPCA does not require that DOE always select the max-tech standard level, and the last sentence of subsection 6295(p)(1) requires DOE to provide its reasons in the proposed rule for not selecting max-tech. The NOPR appears to assume wrongly that 6295(p)(1) is the only standard it need apply – that so long as DOE can explain why it is not implementing max-tech, that concludes the statutory decisionmaking process. But the fact that DOE is not choosing to implement the max-tech standard does not relieve DOE from its obligation to fulfill the requirement of section 6295(o)(2)(A). That section requires that any new or amended standard be "designed to achieve the maximum improvement in energy efficiency…which the Secretary determines is technologically feasible and economically justified."

9. The proposed rule fails to determine "max-tech" as required by 42 U.S.C. § 6295(p)(1). Subsection 6295(p)(1) 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.[20] DOE colloquially refers to this maximum threshold as "max tech."[21] 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,"[22] pursuant to which "DOE must first identify, for all product types or classes, the maximum improvement in energy efficiency that is technologically feasible."[23] In the proposed rule,

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[19] *Id.* § 6295(j)(3)(B).

[20] *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.").

[21] *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).

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

[23] *Id*. at 1391 – 92.

DOE has ignored that obligation entirely. Indeed, the proposed rule contains no discussion of faucet 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."[24] DOE may not "ignore the decisionmaking procedure Congress specifically mandated because the agency thinks it can design a better procedure."[25]

10. The proposed rule is not based on the criteria in subsection (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."[26]

The proposed rule is certainly not based on this criterion. Whether or not the water standards in section 6295(j)(2) represented the "maximum improvement" in water efficiency that was "technologically feasible and economically justified" in 1992, they certainly do not now. Even if it were possible that water efficiency levels from 30 years ago represent the "maximum improvement" in water efficiency that is "technologically feasible and economically justified," as discussed further below, DOE has failed to point to any evidence showing this is the case.

11. 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.'"[27] 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,"[28] 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 faucet technology or the alternative efficiency levels that might have been considered, either at

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[24] 42 U.S.C. § 6295(p)(1).
[25] *NRDC*, 768 F.2d at 1396.
[26] 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.'").
[27] 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").
[28] *See* FCC v. Fox Television Stations, Inc., 556 U.S. 502, 516 (2009).

the max-tech level or below. Nor does the NOPR provide any information to support a conclusion that its proposed standard is "economically justified." Section 6295(o)(2)(B) provides that, when evaluating "whether a standard is economically justified" DOE must to the maximum extent practicable consider:

(I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(II) the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(III) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;

(IV) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) the need for national energy and water conservation; and

(VII) other factors the Secretary considers relevant.

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

12. 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.[29] 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.[30]

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.

Thank you for considering these comments.

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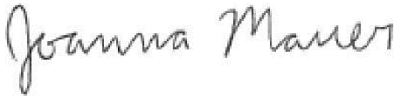
[29] See Ass'n of Data Processing Serv. Organizations, Inc. v. Bd. of Governors of Fed. Rsrv. Sys., 745 F.2d 677, 684 (D.C. Cir. 1984)(Scalia, J.) ("the most critical factual material that is used to support the agency's position on review must have been made public in the proceeding and exposed to refutation."); 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[.]").

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

Sincerely,

Ron Burke
President and CEO
Alliance for Water Efficiency



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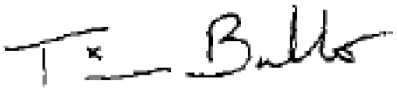

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