Comments of the Attorneys General of the State of California, Maryland, New York, the City of New York, the State of Connecticut, Illinois, Maine, Michigan, Minnesota, New Jersey, Oregon, Vermont, Washington, the Commonwealth of Massachusetts, and the District of Columbia

July 15, 2025

Submitted *via* regulations.gov

Appliance and Equipment Standards Program
U.S. Department of Energy
Building Technologies Office

Re: Rescinding the Amended Water Use Standards for Residential Dishwashers Docket No. EERE-2025-BT-STD-0023 (RIN 1904-AF93)

The undersigned offices of state attorneys general and local government offer the following comments in opposition to the U.S. Department of Energy's ("DOE") proposed rescission of existing amended water use standards for residential dishwashers under the Energy Policy and Conservation Act ("EPCA"). *See* 42 U.S.C. §§ 6291-6374e; Rescinding the Amended Water Use Standards for Residential Dishwashers, 90 Fed. Reg. 20,859 (proposed May 16, 2025) (the "Proposed Rescission"). The Proposed Rescission contemplates vacating existing water use standards for dishwashers, codified at 10 C.F.R. 430.32(f) (2025), and returning to the initial statutory standards set forth in 42 U.S.C. § 6295(g)(10). As governmental entities committed to addressing climate change, protecting public health and the environment, and safeguarding consumer interests, we urge DOE to withdraw the Proposed Rescission because it violates EPCA and fails to comply with the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551-559, and the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4370.

I. The Proposed Rescission Violates EPCA.

The Proposed Rescission is illegal and must be withdrawn because it violates EPCA. Congress enacted EPCA to "conserve energy supplies through energy conservation programs and…the regulation of certain energy uses," to "provide for improved energy efficiency of…major appliances and certain other consumer products," and "to conserve water by improving the water efficiency of certain plumbing products and appliances." 42 U.S.C. § 6201(4), (5), (8). In furtherance of these purposes, Congress required that any conservation standard promulgated by DOE for covered products under EPCA achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified. 42 U.S.C. § 6295(o)(2)(A). Once such a standard is in place, Congress prohibited DOE from weakening the standard for that product. 42 U.S.C. § 6295(o)(1). Despite these clear Congressional directives, the Proposed Rescission fails both requirements—seeking to weaken the water use standards for dishwashers, which DOE has already determined are technologically

feasible and economically justified, and which provide clear consumer and public benefits. *See* Energy Conservation Standards for Dishwashers, 77 Fed. Reg. 31,918 (May 5, 2012) (the "May 2012 Rule"); Energy Conservation Standards for Dishwashers, 89 Fed. Reg. 31,398, (Apr. 24, 2024) (the "Apr. 2024 Rule"); Energy Conservation Standards for Dishwashers, 89 Fed Reg. 83,611 (Oct. 17, 2024) (the "Oct. 2024 Rule").

Notably, EPCA's "anti-backsliding" provision, 42 U.S.C. § 6295, also applies to water use standards, despite the fact that Section 6295(o)(2)(A) only expressly references "water efficiency" with respect to four products: showerheads, faucets, water closets, and urinals.[1] As DOE previously concluded, based upon an examination of EPCA's history and structure as a whole, EPCA's references to "covered products and energy conservation standards can only be read coherently as including the covered products and energy conservation standards Congress added directly to section 6295," including water efficiency standards for residential dishwashers. Apr. 2024 Rule, 89 Fed. Reg. at 31,407. Moreover, DOE's previous interpretation of "energy conservation standard" as encompassing water use standards furthers EPCA's energy conservation goals, as improving water efficiency standards for appliances like residential dishwashers allows DOE to more effectively regulate energy use. *See* May 2012 Rule, 77 Fed. Reg. at 31,921-32 (finding that "[t]he largest component of dishwasher energy consumption is water-heating energy use"). DOE's prior interpretation is, therefore, consistent with both the statutory purposes and structure of EPCA.

The existing water conservation standards for dishwashers were lawfully enacted. In 2012, DOE amended the statutory energy conservation standards for residential dishwashers manufactured after May 30, 2013. May 2012 Rule, 77 Fed. Reg. at 31,919; *see also* 10 C.F.R. 430.32(f) (the "2012 Standards"). DOE determined that the 2012 Standards would result in 140 billion gallons of water savings during the analysis period. May 2012 Rule, 77 Fed. Reg. at 31,957. In 2024, DOE further amended the water conservation standards for dishwashers manufactured after April 23, 2027. Apr. 2024 Rule, 89 Fed. Reg. at 31,398; Oct. 2024 Rule, 89 Fed. Reg. at 83,616 (the "2024 Standards"). DOE determined that the 2024 Standards would result in 240 billion gallons of water savings during the analysis period. May 2012 Rule, 89 Fed. Reg. at 31,476-77. Having previously found that the 2012 Standards and the 2024 Standards would result in these savings, DOE's proposal to rescind the 2012 Standards and the 2024 Standards in favor of the statutory requirements would clearly increase the maximum allowable water use of dishwashers in violation of 42 U.S.C. § 6295(o)(1), and is not designed to achieve the maximum improvement in efficiency, in violation of 42 U.S.C. § 6295(o)(2)(A). *See also Nat. Res. Def. Council, Inc. v. Abraham*, 355 F.3d 179, 197 (2d Cir. 2004) (after DOE promulgates a final rule amending a conservation standard, "subsection (o)(1) operates to restrict DOE's discretionary ability to amend standards downward thereafter.").

DOE also newly asserts that it lacks authority to regulate the water use of dishwashers. Rescinding Water Use Standards for Residential Dishwashers, 90 Fed. Reg. at 20,859-

[1] Unless otherwise indicated, all section references refer to Title 42 of the United States Code.

60. According to DOE, EPCA does not contemplate regulating energy and water use in the same product, because the definition of "energy conservation standard" at 42 U.S.C. § 6291(6)(A) only specifically references water use in showerheads, faucets, water closets, and urinals, which are non-electrified products. *Id.* Additionally, DOE points out that the statutory definition of "water use" at 42 U.S.C. 6292(31)(A) only mentions these four products. *Id.*

However, as DOE noted in a 2024 rulemaking, its authority to amend both energy and water use performance standards for dishwashers is clearly articulated in 42 U.S.C. § 6295(g)(10). *See* Apr. 2024 Rule, 89 Fed. Reg. 31,406-07. That subsection sets forth statutory energy and water conservation standards for residential dishwashers. 42 U.S.C. § 6295(g)(10)(A). Section 6295(g)(10)(B) directs the DOE Secretary to publish a final rule, no later than January 1, 2015, determining "whether to amend the standards for dishwashers manufactured on or after January 1, 2018." By using the term "standards," as opposed to "energy efficiency standards," 42 U.S.C. § 6295(g)(10)(B) clearly refers to both the energy and water conservation standards in 42 U.S.C. § 6295(g)(10)(A). And by referring to both types of standards, 42 U.S.C. § 6295(g)(10) makes clear that the DOE Secretary has the authority to amend the water conservation standards for residential dishwashers.

DOE has further noted that 42 U.S.C. § 6295(m) obligates it to amend "standards" for covered products, including both the energy and water use performance standards for dishwashers. *See* Apr. 2024 Rule, 89 Fed. Reg. at 31,406-07. Finally, DOE has recognized that 42 U.S.C. § 6295(p)(4) specifically authorizes DOE to issue final rules establishing "any 'energy or water conservation standard' without qualification." *See id.*

II. The Proposed Rescission is Not Supported by DOE's Reasoning or by the Rulemaking Record, and Thus Violates the APA.

The Proposed Rescission violates the APA and must be withdrawn because it is devoid of any rational explanation, lacks any analytical support, fails to consider relevant factors, including the factors Congress directed DOE to consider, and is contrary to previous DOE findings and the evidence DOE relied upon in making those findings. To comply with the APA, DOE is required to provide a "reasoned explanation for its action" and a "rational connection between the facts found and the choice made." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). As such, an agency must examine the relevant data and articulate a satisfactory explanation for its actions. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 43. And where it has changed its position, the agency must at least "display awareness that it is changing position" and "show that there are good reasons for the new policy." 556 U.S. at 515. Additionally, when an agency changes course, it must "be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account.'" *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 212 (2016) (quoting *FCC v. Fox*, 556 U.S. at 512). It is arbitrary and capricious for an agency to ignore such matters. *Id.*

DOE states that its decision to rescind the existing water use standards for residential dishwashers is based both on its conclusion that the existing standards are not economically justified, and on "a new policy to reduce regulatory burden wherever possible." As discussed below, in advancing those positions, DOE fails to offer a rational explanation, or indeed any analytical support; fails to consider relevant factors; and fails to adequately address the fact that its conclusions are contrary to previous findings and the evidence DOE relied upon in making those findings. Moreover, DOE fails to consider reliance interests in the existing water use standards, incorrectly asserting that such interests do not exist. Proposed Rescission, 90 Fed. Reg. at 20,860.

a. DOE Fails to Show that the Water Use Standards for Residential Dishwashers are Not Economically Justified.

DOE bases the Proposed Rescission in part on its conclusion that the water use standards it seeks to rescind are not economically justified. DOE bases that conclusion on three assumptions: (1) that the standards lengthen the time it takes to wash dishes; (2) that the standards are not consistent with the need for national water conservation; and (3) that "[c]onsumers are best situated to decide whether a given product is economically justified, as that is precisely what the free market does best." Proposed Rescission, 90 Fed. Reg. at 20,860.

DOE's economic justification analysis is flawed, as it fails to provide a rational explanation of, or any analytical support for, its conclusion. For example, based on an analysis in a 2020 rulemaking, DOE claims that the standards would lengthen the time residential dishwashers take to wash dishes. *See* Establishment of a New Product Class for Residential Dishwashers, 85 Fed. Reg. at 68,727 (Oct. 30, 2020). However, in 2022, DOE repudiated that analysis, providing data showing that "cycle time is not substantively correlated with energy and water consumption." Apr. 2024 Rule, 89 Fed. Reg. at 31,477. DOE reiterated this position when it stated that the 2024 Standards would "not reduce the utility or performance" of dishwashers. Oct. 2024 Rule, 89 Fed. Reg. at 83,616. The Association of Home Appliance Manufacturers, a trade association representing dishwasher manufacturers, agreed with that assessment. *Id.* In short, DOE has failed to offer any reasoned explanation to support its conclusion that the standards for residential dishwashers lengthen the time it takes to wash dishes.

DOE also does not explain how the standards are inconsistent with the need for national water conservation, or provide any analytical support for such a conclusion. Similarly, DOE fails to explain how consumer choice is relevant to whether a water conservation standard is economically justified.

Moreover, DOE's economic justification analysis also fails to consider the factors Congress directed DOE to consider. In deciding whether a proposed standard is economically justified, EPCA provides that DOE must determine whether the benefits of the standard exceed its burdens. 42 U.S.C. §§ 6295(o)(2)(B)(i), 6316(a). DOE must make that determination by considering the following seven statutory factors: (1) "the economic impact of the standard on

the manufacturers and on the consumers of the products subject to such standard"; (2) "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"; (3) "the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard"; (4) "any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard"; (5) "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"; (6) "the need for national energy and water conservation"; and (7) "other factors the Secretary considers relevant." 42 U.S.C. § 6295(o)(2)(B)(i). In proposing to amend the water use standards for residential dishwashers, DOE fails to consider any of the identified factors. Without addressing these factors, DOE's conclusion that water conservation standards are not "economically justified" is arbitrary and capricious.

Nor does DOE adequately justify its changed position regarding the economic justification of the 2012 Standards and the 2024 Standards. In adopting both the 2012 Standards and the 2024 Standards, DOE relied upon an extensive factual record demonstrating that the standards were both technologically feasible and economically justified. DOE determined that the 2012 Standards resulted in life-cycle cost savings for consumers as well as net national benefits between $80 million and $460 million, with annual savings between $7 million and $27 million per year. May 2012 Rule, 77 Fed. Reg. at 31,957-58. DOE also noted that, in 2012, sixty-four percent of dishwashers were already compliant with the 2012 Standards, and every dishwasher manufacturer made products meeting the 2012 Standards. *Id.* at 31,949. For these reasons and others, DOE determined that the 2012 Standards were economically justified because the benefits would outweigh the burdens. *Id.* at 31,957-58. Similarly, DOE found that the 2024 Standards were economically justified because they resulted in life-cycle savings for consumers as well as net national benefits between $1.23 billion and $2.9 billion, with annual savings between $113.2 million and $237 million per year. Apr. 2024 Rule, 89 Fed. Reg. at 31,476-77. In proposing to rescind the amended standards, DOE completely fails to consider its past conclusions or show that there are good reasons for the new policy. *See Fox*, 556 U.S. at 515.

b. DOE Does Not Explain How Reducing Regulatory Burdens Would Justify the Proposed Rescission.

DOE states the Proposed Rescission is based on its "new policy to reduce regulatory burdens wherever possible." Proposed Rescission, 90 Fed. Reg. at 20,860. However, DOE does not even attempt to analyze the burdens or benefits of the Proposed Rescission. DOE also fails to explain how the new policy is consistent with the provisions of EPCA that relate to the amendment of energy and water conservation standards, or how that policy can be a relevant consideration for DOE under EPCA. Finally, DOE has failed to explain why the new policy weighs in favor of rescinding the standards here, or to provide adequate support for its

application. Without providing such an explanation, DOE's explanation for relying on its new policy is arbitrary and capricious. *See Fox*, 556 U.S. at 515.

c. DOE Fails to Consider Reliance Interests.

When an agency changes positions, it must consider reliance interests. *See id.* Here, DOE has not considered reliance interests because it believes there is "no reliance interest in an unlawful regulation." Proposed Rescission, 90 Fed. Reg. at 20,860. It is unclear why DOE believes there are no reliance interests in the water use standards; DOE provides no explanation.

As discussed above, the current regulations are not unlawful and should not be rescinded, because to do so would violate the APA. However, even if they were, the case DOE cites makes clear that DOE is not exempt from reviewing and considering reliance interests. Proposed Rescission, 90 Fed. Reg. at 20,860. In that case, the Supreme Court rejected similar reasoning advanced by the Department of Homeland Security ("DHS"). DHS had rescinded the Deferred Action for Childhood Arrivals memorandum ("DACA") without considering reliance interests because, according to DHS, DACA was unlawful, and, therefore, consideration of reliance interests was unnecessary. *Id.* at 31-33. The Supreme Court rejected this reasoning, holding that DHS's failure to consider whether there were reliance interests was arbitrary and capricious in violation of the APA. *Id.* at 30. The Court concluded that, as the government was "not writing on a blank slate, it was required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." *Id.* at 33.

Ultimately, the Proposed Rescission undermines the interests of manufacturers of dishwashers, which have made product investments in reliance on existing energy conservation standards and properly understood that energy efficiency standards would only be strengthened, not weakened. *See Abraham*, 355 F.3d at 197 (pointing out that "unfettered agency discretion to amend standards [downward] . . . would completely undermine any sense of certainty on the part of manufacturers as to the required energy efficiency standards at a given time"). Notably, manufacturers recommended and supported the 2012 Standards and 2024 Standards. *See* May 2012 Rule, 77 Fed. Reg. at 31,957; Apr. 2024 Rule, 89 Fed. Reg. at 31,410. The Proposed Rescission would not only promote uncertainty in the market and punish manufacturers that have invested in producing compliant dishwashers, it would also invite an influx of less efficient products from companies that would undercut those manufacturers on price. In sum, DOE's failure to consider the legitimate reliance on the standards DOE is proposing to rescind is arbitrary and capricious.

III. The Proposed Rescission Would Significantly Impact Energy Use and Must Be Analyzed under Executive Order 13211.

Executive Order 13211 requires the federal government to prepare an analysis of energy effects when proposing to take regulatory actions that may significantly affect energy supply, distribution, or use. The Proposed Rescission would eliminate the 2012 Standards that DOE

previously estimated would save approximately 0.07 quads of energy and 140 billion gallons of water, and the 2024 Standards that DOE previously estimated would save approximately 0.31 quads of energy and 240 billion gallons of water. May 2012 Rule, 77 Fed. Reg. at 31,919; Apr. 2024 Rule, 89 Fed. Reg. at 31,476. DOE previously described the energy and water savings of both the 2012 Standards and the 2024 Standards as "significant." May 2012 Rule, 77 Fed. Reg. at 31,919; Apr. 2024 Rule, 89 Fed. Reg. at 31,476.

Despite the fact that the Proposed Rescission would eliminate those savings, DOE has determined that "the proposed rescission will not have a significant adverse effect on the supply, distribution, or use of energy," and "[a]ccordingly, DOE has not prepared a Statement of Energy Effects." Proposed Rescission, 90 Fed. Reg. at 20,862. DOE's conclusion is unmoored from its previous finding of significant energy and water savings from promulgating the standards now proposed for rescission, and it lacks any factual support. The conclusion is therefore arbitrary and capricious, and DOE must prepare the analysis required by Executive Order 13211 for this regulatory action.

IV. DOE Fails to Evaluate the Environmental Impacts of its Proposed Rescission, as Required under NEPA.

DOE has also failed to comply with NEPA because it has not conducted any environmental review. DOE states it is considering whether the Proposed Rescission qualifies for the categorical exclusion applicable to "Actions to Conserve Energy or Water" ("Categorical Exclusion B5.1"), and thus may avoid environmental review under NEPA. Proposed Rescission, 90 Fed. Reg. at 20,927; *see also* 10 C.F.R. pt. 1021, app. B, B5.1. However, Categorical Exclusion B5.1 does not apply to rulemakings that would "have the potential to cause a significant increase in energy consumption in a state or region." 10 C.F.R. pt. 1021, app. B, B5.1(b). More fundamentally, no categorical exclusion is available for actions, like the Proposed Rescission, that "threaten a violation of statutory [or] regulatory . . . requirements of DOE." 10 C.F.R. pt. 1021, app. B, B(1).

DOE's own record shows that the Proposed Rescission would increase the maximum allowable energy and water use for residential dishwashers, and thus has the potential to cause a significant increase in energy and water consumption in a state or region. For this reason, the Proposed Rescission is not exempt from review under NEPA under Categorical Exclusion B5.1 or any other categorical exclusion, and reliance on Categorical Exclusion B5.1 is arbitrary and capricious. Moreover, DOE must take into account the cumulative impacts from its multiple pending proposals to repeal energy and water efficiency standards pursuant to NEPA. Accordingly, DOE must undertake the necessary NEPA review of its rulemaking, and its failure to do so is arbitrary and capricious. *New York v. NRC*, 681 F.3d 471, 476-78 (2d Cir. 2012) (vacating agency's rulemaking, which the court considered to be a major federal action, because of deficient NEPA review).

V. Conclusion

The Proposed Rescission is illegal and contrary to the interests of consumers, manufacturers, and the public. For the reasons set forth above, the undersigned Attorneys General and local government urge DOE to withdraw the Proposed Rescission and comply with EPCA, the APA, and NEPA.

Respectfully submitted,

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ Jina J. Kim
JINA J. KIM
JAMIE JEFFERSON
TAYLOR WETZEL
ELIZABETH SONG
Deputy Attorneys General
Laura Zuckerman
Supervising Deputy Attorney General
600 W. Broadway, Suite 1800
San Diego, CA 92101
Telephone: (619) 738-9345
Email: jina.kim@doj.ca.gov

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ Timothy Hoffman
TIMOTHY HOFFMAN
LAURA MIRMAN-HESLIN
CHRISTOPHER GORE
Assistant Attorneys General
MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN
Attorney General

/s/ Steven J. Goldstein
STEVEN J. GOLDSTEIN
ROBERT N. BREWER
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6414
Email: sgoldstein@oag.state.md.us

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ Christian Harned
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ Daniel M. Salton
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
(860) 808-5250
Email: daniel.salton@ct.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General

/s/ Scott W. Boak
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
Email: scott.boak@maine.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General

/s/ Jason E. James
Jason E. James
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE PEOPLE OF THE STATE OF MICHIGAN

DANA NESSEL
Attorney General

/s/ Benjamin C. Houston
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
Email: HoustonB1@michigan.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

Alyssa Bixby-Lawson
ALYSSA BIXBY-LAWSON
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
(651) 300-0904
Email: Alyssa.Bixby-Lawson@ag.state.mn.us

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ Paul Garrahan
PAUL GARRAHAN
Attorney-in-Charge, Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Email: Paul.Garrahan@doj.oregon.gov

FOR THE STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL

/s/ Jack A. Ventura
Jack A. Ventura
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ Hannah Yindra
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Email: Hannah.Yindra@vermont.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ Steve Scheele
STEPHEN SCHEELE
Assistant Attorney General, Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ Brian Caldwell
Brian Caldwell
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 727-6211 (desk)
(202) 445-1952 (cell)
Email: brian.caldwell@dc.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ I. Andrew Goldberg
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

Comments of the Attorneys General of the State of California, Maryland, New York, the City of New York, the State of Connecticut, Illinois, Maine, Michigan, Minnesota, New Jersey, Oregon, Vermont, Washington, the Commonwealth of Massachusetts, and the District of Columbia

July 15, 2025

Submitted *via* regulations.gov

Appliance and Equipment Standards Program
U.S. Department of Energy
Building Technologies Office

Re: Rescinding the Amended Water Conservation Standards for Commercial Clothes Washers
Docket No. EERE–2025–BT–STD–0018 (RIN 1904-AF81)

The undersigned offices of state attorneys general and local government respectfully submit these comments in response to the U.S. Department of Energy's ("DOE") proposed rescission of amended water conservation standards for commercial clothes washers under the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. §§ 6291-6374e, Rescinding the Amended Water Conservation Standards for Commercial Clothes Washers, 90 Fed. Reg. 20,926 (proposed May 16, 2025) (the "Proposed Rescission"). The Proposed Rescission contemplates vacating existing water conservation standards for commercial clothes washers, codified at 10 C.F.R. § 430.156(a)-(b), and returning to the initial water factors set forth in 42 U.S.C. § 6313(e). As governmental entities committed to addressing climate change, protecting public health and the environment, and safeguarding consumer interests, we urge DOE to withdraw the Proposed Rescission because it violates EPCA and fails to comply with the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551-559, and the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4347.

I. The Proposed Rescission Violates EPCA.

The Proposed Rescission is illegal and must be withdrawn because it violates EPCA. Congress enacted EPCA, in part, to "improve the efficiency of … certain … industrial equipment in order to conserve the energy resources of the Nation," and "to conserve water by improving the water efficiency of certain plumbing products and appliances." 42 U.S.C. §§ 6201(8), 6312(a). In furtherance of these purposes, Congress required that any new or amended conservation standard promulgated by DOE must achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified. 42 U.S.C. §§ 6295(o)(2)(A), 6316(a). Once such a standard is in place, Congress prohibited DOE from weakening the conservation standard for that product. *See* 42 U.S.C. §§ 6295(o)(1), 6313(a)(6)(B)(iii). Despite a clear Congressional directive, the Proposed Rescission seeks to

weaken the water conservation standards for commercial clothes washers, which DOE has already determined are technologically feasible and economically justified, even though the existing standards provide clear consumer and public benefits. *See* Energy Conservation Standards for Commercial Clothes Washers, 75 Fed. Reg. 1122 (Jan. 8, 2010) (the "Jan. 2010 Rule"); Energy Conservation Standards for Commercial Clothes Washers, 79 Fed. Reg. 74,492 (Dec. 15, 2014) (the "Dec. 2014 Rule").

The existing water conservation standards for commercial clothes washers were lawfully enacted. In 2010, DOE amended the water conservation standards for commercial clothes washers manufactured after January 8, 2013. Jan. 2010 Rule, 75 Fed. Reg. at 1123; 10 C.F.R. § 431.156(a) (the "2010 Standards"). DOE determined that the 2010 Standards would save over 143 billion gallons of cumulative water consumption over 30 years. Jan. 2010 Rule, 75 Fed. Reg. at 1123. In 2014, DOE further amended the water conservation standards for commercial clothes washers manufactured after January 1, 2018. *See* Dec. 2014 Rule, 79 Fed. Reg. 74,492; 10 C.F.R. § 431.156(b) (the "2014 Standards"). Having previously found that the amended water conservation standards for commercial clothes washers would result in these water conservation savings, DOE's proposal to rescind the 2010 and 2014 Standards in favor of the statutory requirements would clearly "increase[] the maximum allowable energy use" or "decrease[] the minimum required energy efficiency" of commercial clothes washers in violation of Section 6313(a)(6)(B)(iii).[1]

DOE admits that the Proposed Rescission is not designed to "achieve a maximum reduction in energy efficiency," but claims that this is permissible under EPCA because the "anti-backsliding" provision in Section 6313(a)(6)(B)(iii) does not apply to water use requirements for commercial clothes washers. According to DOE, that anti-backsliding provision only applies to standards that relate to "energy use" or "energy efficiency." And because "energy use" is defined as energy consumed directly by industrial equipment, and because, according to DOE, water use has nothing to do with "energy consumed by a clothes washer," DOE alleges that the anti-backsliding provision in Section 6313(a)(6)(B)(iii) does not apply to the water efficiency standards for commercial clothes washers. However, this is baseless, and the related assertion that water use has nothing to do with the amount of energy consumed by a clothes washer is equally meritless. The amount of water a commercial clothes washer uses directly impacts the amount of energy the equipment uses because it impacts the amount of water heater energy the equipment will use. *See* Energy Conservation Standards for Residential Clothes Washers, 89 Fed. Reg. 19,026, 19,043 (Mar. 15, 2024) (the "Residential Clothes Washers Mar. 2024 Rule") (finding that "[m]ost of the methods for decreasing water use are also methods for decreasing water heating energy" in residential clothes washers).

Regardless, even if the anti-backsliding provision in Section 6313(a)(6)(B)(iii) did not bar the rescission here, the anti-backsliding provision in Section 6295(o) would apply to bar it. Section 6316(a), which is contained within Part A-1 of EPCA, makes the anti-backsliding

[1] Unless otherwise indicated, all section references refer to Title 42 of the United States Code.

provision in Section 6295(o) applicable to Part A-1 of EPCA. The anti-backsliding provision in Section 6295(o) applies to water use standards, despite the fact that Section 6295(o)(2)(A) only expressly references "water efficiency" with respect to four products: showerheads, faucets, water closets, and urinals. As DOE previously concluded, based upon an examination of EPCA's history and structure as a whole, EPCA's references to "covered products and energy conservation standards can only be read coherently as including the covered products and energy conservation standards Congress added directly to section 6295," including water efficiency standards for commercial clothes washers. *See* Residential Clothes Washers Mar. 2024 Rule, 89 Fed. Reg. at 19,033. Moreover, DOE's previous interpretation of "energy conservation standard" as encompassing water use standards furthers EPCA's energy conservation goals. *Id.* In sum, DOE's Proposed Rescission violates EPCA's anti-backsliding provision.

DOE also newly asserts that it lacks authority to regulate the water use of commercial clothes washers. Proposed Rescission, 90 Fed. Reg. at 20,926. According to DOE, the agency lacks authority to regulate water use because Section 6313(a)(6) is titled "[a]mended energy efficiency standards," and therefore DOE cannot regulate water use requirements—only energy use requirements. Proposed Rescission, 90 Fed. Reg. at 20,926. As such, according to DOE, the standards EPCA envisions DOE will amend under Section 6313 are limited to energy standards. *Id*. DOE's interpretation of Section 6313 is clearly incorrect. DOE's authority to amend the standards for commercial clothes washers under Section 6313 is set forth in subsection (e). That subsection sets forth statutory energy conservation standards *and* statutory water conservation standards for commercial clothes washers. *See* 42 U.S.C. § 6313(e)(1)(A)-(B). Section 6313(e)(2)(A)(i), directs the DOE Secretary to publish a final rule, no later than January 1, 2010, determining whether the "*standards* established under paragraph (1) should be amended." (Emphasis added). By using the term "*standards*," as opposed to "energy efficiency standards," Section 6313(e)(2)(A)(i) clearly refers to both the energy efficiency standards *and* the water conservation standards in Section 6313(e)(1). And by referring to both types of standards, Section 6313(e)(2)(A)(i) makes clear that the DOE Secretary has authority to amend the water conservation standards for commercial clothes washers.

II. The Proposed Rescission is Not Supported by DOE's Reasoning or the Rulemaking Record, and Thus Violates the APA.

The Proposed Rescission violates the APA and must be withdrawn because it is devoid of any rational explanation, lacks any analytical support, fails to consider relevant factors, including the factors Congress directed DOE to consider, and is contrary to previous DOE findings and the evidence DOE relied upon in making those findings. To comply with the APA, DOE is required to provide a "reasoned explanation for its action" and a "rational connection between the facts found and the choice made." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009); *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). As such, an agency must examine the relevant data and articulate a satisfactory explanation for its actions. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 43. And where it has changed its position, the agency must at least "display awareness that it is

changing position" and "show that there are good reasons for the new policy." 556 U.S. at 515. Additionally, when an agency changes course, it must "be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 212 (2016) (quoting *FCC*, 556 U.S. at 515). It is arbitrary and capricious for an agency to ignore such matters. *Id.*

DOE states that its decision to rescind the existing water conservation standards for commercial clothes washers is based both on its conclusion that the existing standards are not economically justified, and on "a new policy to reduce regulatory burden wherever possible." Proposed Rescission, 90 Fed. Reg. at 20,926. As discussed below, in advancing those positions, DOE fails to offer a rational explanation or any analytical support, fails to consider relevant factors, and fails to adequately address the fact that its conclusions are contrary to previous findings and the evidence it relied upon in making those findings. *Id.* Moreover, DOE fails to consider reliance interests in the existing water conservation standards, incorrectly asserting that such interests do not exist. *Id.*

A. DOE Fails to Show that the Water Use Standards for Commercial Clothes Washers are Not Economically Justified.

DOE bases the Proposed Rescission in part on its conclusion that the water conservation standards it seeks to rescind are not economically justified. DOE bases that conclusion on three assumptions: (1) that the standards lengthen the time it takes to wash clothes; (2) that the standards are not consistent with the need for national water conservation; and (3) that "consumers are best situated to decide whether a given product is economically justified, as that is precisely what the free market does best." Proposed Rescission, 90 Fed. Reg. at 20,926.

DOE's economic justification analysis is flawed, as it fails to provide a rational explanation of, or any analytical support for, its conclusion. For example, DOE does not adequately explain how the standards would lengthen the time commercial clothes washers take to wash clothes or provide any analytical support for such a conclusion. Instead, DOE merely cites an inapposite Federal Register notice for a final rule establishing a new product class for residential *dishwashers*. Establishment of a New Product Class for Residential Dishwashers, 85 Fed. Reg. 68,723, 68,727 (Oct. 30, 2020). Nothing in the *residential dishwashers* final rule supports DOE's conclusion that water conservation standards for *commercial clothes washers* lengthen the time it takes to wash clothes. Moreover, in 2022, DOE provided data showing that "cycle time is not substantively correlated with energy and water consumption." Energy Conservation Standards for Dishwashers, 89 Fed. Reg. 31,398, 31,477 (Apr. 24, 2024). DOE reiterated this position when it stated that the 2024 standards for dishwashers would "not reduce the utility or performance" of dishwashers. Energy Conservation Standards for Dishwashers, 89 Fed. Reg. 83,611, 83,616 (Oct. 17, 2024). The Association of Home Appliance Manufacturers, a trade association representing dishwasher manufacturers, agreed with that assessment. *Id.* In short, DOE has failed to offer any reasoned explanation to support its conclusion that the 2010 or 2014 Standards for commercial clothes washers lengthen the time it takes to wash clothes. DOE

also does not explain how the Standards are inconsistent with the need for national water conservation, or provide any analytical support for such a conclusion. Similarly, DOE fails to explain how consumer choice is relevant to whether a water conservation standard is economically justified.

Moreover, DOE's economic justification analysis fails to consider the factors Congress directed DOE to consider. In deciding whether a proposed standard is economically justified, EPCA provides that DOE must determine whether the benefits of the standard exceed its burdens. 42 U.S.C. §§ 6295(o)(2)(B)(i), 6316(a). DOE must make that determination by considering the following seven statutory factors: (1) "the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard"; (2) "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"; (3) "the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard"; (4) "any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard"; (5) "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"; (6) "the need for national energy and water conservation"; and (7) "other factors the Secretary considers relevant." 42 U.S.C. § 6295(o)(2)(B)(i). In proposing to amend the water conservation standards for commercial clothes washers, DOE fails to consider any of the identified factors. Without addressing these factors, DOE's conclusion that water conservation standards are not "economically justified" is arbitrary and capricious.

Nor does DOE adequately justify its changed position regarding the economic justification of the 2010 Standards and the 2014 Standards. In adopting the 2010 Standards and the 2014 Standards, DOE relied upon an extensive factual record demonstrating that the Standards were economically justified. *See* Jan. 2010 Rule, 75 Fed. Reg. 1122; 79 Fed. Reg. at 74,536. Specifically, DOE considered the benefits and burdens of the amended standards and determined that the standards were economically justified. *See e.g.*, Jan. 2010 Rule, 75 Fed. Reg. at 1172; Dec. 2014 Rule, 79 Fed. Reg. at 74,536; *see also* Technical Support Document for 2010 Standards; Technical Support Document for 2014 Standards. For example, in adopting the 2010 Standards, DOE explained that when considering the carbon dioxide emission reduction co-benefits in conjunction with the consumer savings and other factors, the benefits and burdens of the 2010 Standards were economically justified. Jan. 2010 Rule, 75 Fed. Reg. at 1172. In proposing to rescind the amended standards, DOE completely fails to consider its past conclusions or show that there are good reasons for the new policy. *See FCC v. Fox*, 556 U.S. at 515.

B. DOE Does Not Explain How Reducing Regulatory Burdens Would Justify the Proposed Rescission.

DOE states the Proposed Rescission is based on its "new policy to reduce regulatory burdens wherever possible." Proposed Rescission, 90 Fed. Reg. at 20,926. Yet DOE fails to explain how its new policy is consistent with the provisions of EPCA that relate to the amendment of energy and water conservation standards. Moreover, DOE fails to explain how the new policy is a relevant consideration when DOE fulfills its statutory mandate under EPCA. Finally, DOE has failed to explain why the new policy weighs in favor of rescinding the standards here or to provide adequate support for its application. Without providing such an explanation, DOE's explanation for relying on its new policy is arbitrary and capricious. *See FCC v. Fox*, 556 U.S. at 515.

C. DOE Has Failed to Consider Reliance Interests.

As noted above, when an agency changes positions, it must consider reliance interests. *See FCC v. Fox*, 556 U.S. at 515. Here, DOE has not considered reliance interests because it believes there is "no reliance interest in the water use standards." Proposed Rescission, 90 Fed. Reg. at 20,926. It is unclear why DOE believes there are no reliance interests in the water use standards; DOE provides no explanation. To the extent DOE is taking the position that there are no reliance interests in these water use standards because the water use standards are allegedly unlawful, DOE is incorrect. In *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1 (2020), the Supreme Court rejected similar reasoning advanced by the Department of Homeland Security ("DHS"). DHS had rescinded the Deferred Action for Childhood Arrivals memorandum ("DACA") without considering reliance interests because, according to DHS, DACA was unlawful and, therefore, consideration of reliance interests was unnecessary. *Id.* at 31-33. The Supreme Court rejected this reasoning, holding that DHS's failure to consider whether there were reliance interests was arbitrary and capricious. *Id.* at 30.

Ultimately, the Proposed Rescission undermines the interests of manufacturers of commercial clothes washers, which have made product investments in reliance on existing energy conservation standards and properly understood that energy efficiency standards would only be strengthened not weakened. *See Nat. Res. Def. Council, Inc. v. Abraham*, 355 F.3d 179, 197 (2d Cir. 2004) (pointing out that "unfettered agency discretion to amend standards [downward] . . . would completely undermine any sense of certainty on the part of manufacturers as to the required energy efficiency standards at a given time"). The Proposed Rescission would not only promote uncertainty in the market and punish manufacturers that have invested in producing compliant commercial clothes washers, it would also invite an influx of less-efficient products from sources that would undercut those manufacturers. In sum, DOE's failure to consider the legitimate reliance in the standards DOE is proposing to rescind is arbitrary and capricious.

III. The Proposed Rescission Would Have a Significant Impact on Energy Use and Must be Analyzed under Executive Order 13211.

The Proposed Rescission would remove regulations that were estimated to cumulatively save about 163 billion gallons of water over 30 years.[2] As noted above, the amount of water a commercial clothes washer uses directly impacts the amount of energy the equipment uses because it impacts the amount of water heater energy the equipment will use. *See* Residential Clothes Washers Mar. 2024 Rule, 89 Fed. Reg. 19,043. The Proposed Rescission would void many of those savings, yet DOE has "determined that [rescission] would not have a significant adverse effect on the supply, distribution, or use of energy" and that a Statement of Energy Effects under Executive Order 13211 is not required. Proposed Rescission, 90 Fed. Reg. at 20,928. That conclusion is unmoored from DOE's previous finding of significant water savings from promulgating the standards now proposed for rescission and lacks any factual support. The conclusion is therefore arbitrary and capricious, and DOE must prepare the analysis required by Executive Order 13211 for this regulatory action.

IV. DOE Fails to Evaluate the Environmental Impacts of its Proposed Rescission as Required under NEPA

DOE has also failed to comply with NEPA because it has not conducted any environmental review. DOE suggests that the Proposed Rescission may avoid environmental review under NEPA because it qualifies for the categorical exclusion applicable to "Actions to Conserve Energy or Water" ("Categorical Exclusion B5.1"). Proposed Rescission, 90 Fed. Reg. at 20,927; *see also* 10 C.F.R. pt. 1021, app. B, B5.1. DOE's suggestion that the Proposed Rescission qualifies for Categorical Exclusion B5.1 is plainly without merit. That categorical exclusion does not apply to rulemakings that would "have the potential to cause a significant increase in energy consumption in a state or region." 10 C.F.R. pt. 1021, app. B, B5.1(b)(4). DOE's records for the 2010 Standards and the 2014 Standards shows that the Proposed Rescission would increase the maximum allowable water use for commercial clothes washers and thus has the potential to cause a significant increase in energy and water consumption in a state or region. *See* Jan. 2010 Rule, 75 Fed. Reg. at 1123; *see also* Dec. 2014 Rule, 79 Fed. Reg. 74,492. As such, the Proposed Rescission is not exempt from review under NEPA under Categorical Exclusion B5.1 or any other categorical exclusion, and reliance on Categorical Exclusion B5.1 is arbitrary and capricious. Moreover, DOE must take into account the cumulative impacts from its multiple pending proposals to repeal energy and water efficiency standards pursuant to NEPA. Accordingly, DOE must undertake the necessary NEPA review of its rulemaking, and its failure to do so is arbitrary and capricious. *New York v. NRC*, 681 F.3d

[2] Calculated by adding the cumulative savings from the 2010 final rule (143 billion gallons) and the 2014 final rule (20 billion gallons). Jan. 2010 Rule, 75 Fed. Reg. at 1123; Dec. 2014 Rule Technical Support Document, ch. 10, pp. 10-18, www.regulations.gov/document/EERE-2012-BT-STD-0020-0036.

471, 476-78 (2d Cir. 2012) (vacating agency's rulemaking, which the court considered to be a major federal action, because of deficient NEPA review).

V. Conclusion

For the reasons set forth above, the undersigned Attorneys General and local government urge DOE to withdraw the Proposed Rescission and comply with EPCA, the APA, and NEPA.

Respectfully submitted,

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ Taylor Wetzel
TAYLOR WETZEL
JAMIE JEFFERSON
JINA J. KIM
ELIZABETH SONG
Deputy Attorneys General
Laura Zuckerman
Supervising Deputy Attorney General
1300 I Street
Sacramento, CA 95814
Telephone: (916) 210-7832
Email: taylor.wetzel@doj.ca.gov

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN
Attorney General

/s/ Steven J. Goldstein
STEVEN J. GOLDSTEIN
ROBERT N. BREWER
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6414
Email: sgoldstein@oag.state.md.us

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ Timothy Hoffman
TIMOTHY HOFFMAN
LAURA MIRMAN-HESLIN
CHRISTOPHER GORE
Assistant Attorneys General
MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ Daniel M. Salton
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
(860) 808-5250
Email: daniel.salton@ct.gov

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ Christian Harned
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General

/s/ Jason E. James
Jason E. James
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General

/s/ Scott W. Boak
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
Email: scott.boak@maine.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

Alyssa Bixby-Lawson
ALYSSA BIXBY-LAWSON
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
(651) 300-0904
Email: Alyssa.Bixby-Lawson@ag.state.mn.us

FOR THE PEOPLE OF THE STATE OF MICHIGAN

DANA NESSEL
Attorney General

/s/ Benjamin C. Houston
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
Email: HoustonB1@michigan.gov

FOR THE STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL

/s/ Jack A. Ventura
Jack A. Ventura
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ Paul Garrahan
PAUL GARRAHAN
Attorney-in-Charge, Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Email: Paul.Garrahan@doj.oregon.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ Steve Scheele
STEPHEN SCHEELE
Assistant Attorney General, Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ Hannah Yindra
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Email: Hannah.Yindra@vermont.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ I. Andrew Goldberg
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ Brian Caldwell
BRIAN CALDWELL
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 727-6211 (desk)
(202) 445-1952 (cell)
Email: brian.caldwell@dc.gov

Comments of the Attorneys General of the State of California, Maryland, New York, the City of New York, the State of Connecticut, Illinois, Maine, Michigan, Minnesota, New Jersey, Oregon, Vermont, Washington, the Commonwealth of Massachusetts, and the District of Columbia

July 15, 2025
Submitted *via* regulations.gov

Appliance and Equipment Standards Program
U.S. Department of Energy
Building Technologies Office

Re: Energy Conservation Standards for External Power Supplies
Docket No. EERE-2025-BT-STD-0026 (RIN 1904-AF96)

The undersigned offices of state attorneys general and local government respectfully submit this comment on the U.S. Department of Energy's ("DOE") proposed rule rescinding energy conservation standards for external power supplies. *See* Energy Conservation Standards for External Power Supplies, 90 Fed. Reg. 20,899 (proposed May 16, 2025) (the "Proposed Rescission"). External power supplies are consumer devices that convert household electric current into lower voltage DC or AC power which are used to power detached electronic devices. 42 U.S.C. § 6291(36).[1] DOE's Proposed Rescission seeks to vacate existing energy conservation standards for external power supplies, codified at 10 C.F.R. § 430.32(w), and revert to the energy standards established in Section 6295(u)(3) of the Energy Policy and Conservation Act ("EPCA"), §§ 6291-6374e. As governmental entities committed to addressing climate change, protecting public health and the environment, and safeguarding consumer interests, we urge DOE to withdraw the Proposed Rescission, which violates EPCA, the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551-559, and the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4347.

I. Background on Energy Efficiency Standards for External Power Supplies.

Since EPCA's passage in 1975, Congress and DOE have adopted policies to advance and improve energy efficiency standards applicable to consumer products. In 2005, the Energy Policy Act added external power supplies as a "covered product" under EPCA. *See* Energy Policy Act of 2005, Pub. L. No. 109-58, § 135, 119 Stat. 594, 630 (2005). In 2007, Congress passed the Energy Independence and Security Act ("EISA"), which created a category of external power supplies (called Class A external power supplies) and established minimum

[1] Unless otherwise indicated, all section references refer to Title 42 of the United States Code.

conservation standards for that category.[2] EISA also required that DOE determine whether these standards should be amended no later than two years after EISA's enactment. *See* Pub. L. No. 110-140, § 301, 121 Stat. at 1551; 42 U.S.C. § 6295(u)(1)(E)(i)(I), (u)(3)(D).[3]

In compliance with EISA's mandate, in 2010, DOE determined that energy conservation standards for non-Class A external power supplies were "technologically feasible and economically justified" and would result in a significant energy savings. Determination Concerning the Potential for Energy Conservation Standards for Non-Class A External Power Supplies, 75 Fed. Reg. 27,170 (May 14, 2010). In 2014, DOE adopted a final rule that amended performance standards for both Class A and non-Class A external power supplies. Energy Conservation Standards for Power Supplies, 79 Fed. Reg. 7,846 (Feb. 10, 2014) ("2014 Standards").[4] DOE found that the 2014 Standards would result in 0.94 quads[5] of energy savings during the analysis period, or the equivalent of 47.0 million tons of avoided carbon dioxide emissions. 2014 Standards, 79 Fed. Reg. at 7,850. DOE asserted the standards "would save a significant amount of energy." *Id.*

In 2023, DOE issued a notice of proposed rulemaking ("NOPR") to further amend standards for five categories of external power supplies.[6] Energy Conservation Standards for External Power Supplies, 88 Fed. Reg. 7,284, 7,284-85 (Feb. 2, 2023) ("2023 Proposed Rule"). Analyzing the energy savings of the proposed 2023 standards, DOE found the 2023 Proposed Rule would result in 0.11 quads of energy savings during the analysis period (representing savings of 2.9 percent above the existing standards), or the equivalent of 3.9 million metric tons of avoided carbon dioxide emissions. 2023 Proposed Rule, 88 Fed. Reg. at 7,287. After the NOPR, DOE never completed this rulemaking to adopt a final rule. Instead, it issued the Proposed Rescission, which will rescind the 2014 Standards, abandon the 2023 standards, which DOE had just determined were technologically feasible and economically justified, and revert to

---

[2] EISA's energy conservation standards for Class A external power supplies took effect on July 1, 2008. Energy Independence and Security Act of 2007, Pub. L. No. 110-140, § 301, 121 Stat. 1492, 1550 (2007).

[3] EISA also required DOE to amend its procedures for testing external power supplies to measure the energy they consume in both standby mode and off mode, 42 U.S.C. § 6295(gg)(2)(B)(i), which amendment DOE completed in 2009. *See* Test Procedures for Battery Chargers and External Power Supplies, 74 Fed. Reg. 13318 (March 27, 2009) ("2009 Rule"). The Proposed Rule would eliminate these test procedures.

[4] The 2014 Standards prescribed a minimum average efficiency during active mode and a maximum power consumption level during no-load mode for all external power supplies manufactured on or after February 10, 2016. 2014 Standards, 79 Fed. Reg. at 7847.

[5] A quad is a unit of energy equal to one quadrillion (1,000,000,000,000,000) British thermal units. One quad is also equal to 293 billion kilowatt-hours.

[6] These included single voltage external AC-DC power supplies (basic voltage), single voltage external AC-DC power supplies (low voltage), single voltage external AC-AC power supplies (basic voltage), single voltage external AC-AC power supplies (low voltage), and multiple voltage external power supplies.

the 2007 standards set in EISA. *See* 2009 Rule, 74 Fed. Reg. 13,318; Test Procedures for Battery Chargers and External Power Supplies, 76 Fed. Reg. 31,750 (June 1, 2011) ("2011 Rule"); 2014 Standards, 79 Fed. Reg. 7,846; 2023 Proposed Rule, 88 Fed. Reg. at 7,285.

II. The Proposed Rescission Violates EPCA.

The Proposed Rescission is illegal and violates EPCA. Congress enacted EPCA to "conserve energy supplies through energy conservation programs and…the regulation of certain energy uses" and to "provide for improved energy efficiency of…major appliances." 42 U.S.C. § 6201(4), (5). In furtherance of these purposes, Congress required that any energy conservation standard promulgated by DOE under EPCA's appliance and equipment standards program achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 42 U.S.C. § 6295(o)(2)(A). Once such a standard is in place, Congress prohibited DOE from weakening the energy conservation standard for that appliance. 42 U.S.C. § 6295(o)(1).[7] Despite this clear Congressional directive, the Proposed Rescission illegally seeks to weaken the energy conservation standards for external power supplies, even though the existing standards provide clear consumer and public benefits. *See* 2009 Rule, 74 Fed. Reg. 13,318; 2011 Rule, 76 Fed. Reg. 31,750; 2014 Standards, 79 Fed. Reg. 7,846; 2023 Proposed Rule, 88 Fed. Reg. at 7,285.

The existing energy efficiency standards for external power supplies were lawfully enacted. DOE's prior rulemakings establish that the 2014 Regulations conserve more energy than the 2007 statutory standards. By restoring statutory standards from almost twenty years ago, the Proposed Rescission—because it will rescind all the regulations except for Class A standards set by EISA almost twenty years ago—would clearly "increase[] the maximum allowable energy use" of external power supplies in violation of § 6295(o)(1), and result in a failure to "achieve the maximum improvement in energy efficiency" in violation of § 6295(o)(2)(A).

DOE does not deny that the Proposed Rescission weakens energy efficiency standards for external power supplies. It contends, instead, that EPCA's "anti-backsliding" provision, 42 U.S.C. § 6295, does not apply, for two reasons. First, DOE contends that the anti-backsliding provision does not apply when DOE "rescinds a rule in full" because a rescission does not "prescribe…any amended standard," as set forth in the text of Section 6295(o)(1). Proposed Rescission, 90 Fed. Reg. at 20,901 (quoting 42 U.S.C. § 6295(o)(1)). Second, DOE claims that even if a rescission could be considered an "amended standard," the anti-backsliding provision only bars DOE from weakening the statutory standards set by Congress, not the regulatory standards set by DOE. *Id.* As discussed below, these arguments conflict both with case law construing the anti-backsliding provision and the plain meaning of the statutory text.

[7] Section 6295(o)(1) states "the Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product."

First, DOE's Proposed Rescission conflicts with case law construing the meaning of the anti-backsliding provision, which affirms the "appliance program's goal of steadily increasing the energy efficiency of covered products." *Nat. Res. Def. Council, Inc. v. Abraham*, 335 F.3d 179, 197 (2d Cir. 2004) (after DOE promulgates a final rule amending an energy conservation standard, "subsection (o)(1) operates to restrict DOE's discretionary ability to amend standards downward thereafter.") Case law construing Section 6295(o)(1) has expressly held that the provision "constrain[s] [DOE's] ability to weaken a standard in a newly initiated rulemaking proceeding to amend or *rescind* a standard." *Abraham*, 355 F.3d at 203 (emphasis added). Under this clear precedent, DOE's Proposed Rescission would violate the anti-backsliding provision.

Second, the Proposed Rescission is at odds with the plain meaning of the statutory text. Section 6295(o)(1) prohibits the Secretary from "prescrib[ing] any amended standard which increases the maximum allowable energy use, … or decreas[ing] the minimum required energy efficiency, of a covered product." 42 U.S.C. § 6295(o)(1). A DOE regulatory action that removes the current energy efficiency standard in the Code of Federal Regulations and replaces it with a different one undeniably "prescribes an amended standard" and is subject to the anti-backsliding requirements of 6295(o)(1). DOE cannot circumvent those requirements merely by removing the standard from the Code of Federal Regulations without immediately replacing it. Otherwise, DOE could avoid the anti-backsliding provision whenever it wanted to, simply by turning any amendment into a two-step process, by always first repealing a standard without replacing it, and then taking separate action to prescribe a standard weaker than the one that had been repealed.

Nor does the anti-backsliding provision only prevent DOE from setting standards below the statutory minimum found in EPCA, as DOE argues. Proposed Rescission, 90 Fed. Reg. at 20,901. The text of the anti-backsliding provision makes clear that it is not limited to statutory standards. *See* 42 U.S.C. § 6295(o)(1). Such an interpretation would run contrary to EPCA's purpose to improve "energy efficiency … of major appliances and certain other consumer products." 42 U.S.C. § 6201(4)-(5). It would also not comport with EPCA's statutory scheme. EPCA requires DOE to review and update all standards and test procedures every six years unless the Secretary determines that the standards do not need to be amended based on specific criteria. 42 U.S.C. § 6295(m)(1), (m)(1)(A), (n)(2)(A)-(C). Thus, the burden is on DOE to demonstrate that the standards do not need updating, and Congress also intended for standards to be strengthened over time if technologically feasible. *Id.* DOE's argument that Congress meant to prevent DOE itself from adopting standards below those set by Congress makes little sense when EPCA is considered as a whole.

No provision of EPCA authorizes DOE to withdraw existing energy conservation standards. Viewed as a proposed amendment to existing standards, DOE's proposal is subject to the provisions in 42 U.S.C. § 6295(o)(2) and (p), requiring DOE to determine that the amended standards are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. This DOE has failed to do; *see* 42 U.S.C. § 6316(a) (making the provisions of 42 U.S.C. § 6295 (l) through (s) applicable to Part A-1 of EPCA).

III. The Proposed Rescission is Not Supported by DOE's Reasoning or by the Rulemaking Record, and Thus Violates the APA.

The Proposed Rescission violates the APA and must be withdrawn because it is devoid of any rational explanation, lacks any analytical support, and conflicts with DOE's previous findings and the evidence it relied upon in making those findings in previous rulemakings. To comply with the APA, DOE is required to provide a "reasoned explanation for its action," *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009), and demonstrate a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). As such, an agency must examine the relevant data and articulate a satisfactory explanation for its actions. *Id*. at 43. And where it has changed its position, as DOE has here, the agency must at least "display awareness that it is changing position" and "show that there are good reasons for the new policy." 556 U.S. at 515. Additionally, when an agency changes course, it must "be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account.'" *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 212 (2016) (quoting *Fox*, 556 U.S. at 512). It is arbitrary and capricious for an agency to ignore such matters. *Id.*

DOE bases the Proposed Rescission on its conclusory assertion that the 2014 Standards are no longer economically justified. Proposed Rescission, 90 Fed. Reg. at 20900. As discussed below, in advancing this position, DOE fails to offer a rational explanation, or indeed any analytical support; fails to consider relevant factors; and fails to address the fact that its present conclusion conflicts with its previous findings and the evidence DOE relied upon in making those findings. *See generally id.* DOE also impermissibly fails to consider reliance interests. *Id.* All of these failures represent a violation of the APA.

A. DOE Fails to Substantiate its Conclusion that the 2014 Standards Are No Longer Economically Justified.

DOE's economic justification analysis is flawed, for several reasons. First, DOE provides no rational explanation of, or any analytical support for, its conclusion that the 2014 Standards are no longer economically justified. DOE states only, "[T]he Secretary has tentatively determined that the standards legislated by Congress do not require amendment and the current regulatory standards are not economically justified." Proposed Rescission, 90 Fed. Reg. at 20,900. Second, DOE fails to consider whether the benefits of the Proposed Rescission exceed its burdens, taking into account the seven statutory factors in the economic justification analysis required by EPCA.[8] 42 U.S.C. §§ 6295(o)(2)(B)(i), 6316(a).

[8] The seven factors are the following: (1) "the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard"; (2) "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"; (3) "the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard"; (4) "any lessening of the

Third, DOE neither adequately acknowledges nor explains the change in position between its 2014 rulemaking and the Proposed Rescission. Proposed Rescission, 90 Fed. Reg. at 20,900. When an agency changes policies, it must at least "display awareness that it is changing position" and "show that there are good reasons for the new policy." *Fox*, 556 U.S. at 515 (an agency must provide a detailed justification for a change in policy when "its new policy rests upon factual findings that contradict those which underlay its prior policy"). DOE does neither.

In its rulemaking resulting in the 2014 Standards, DOE examined all seven statutory factors at length, even rejecting an amended standard that would present an economic burden on consumers as not "economically justified" and choosing amended standards with a clear demonstration of significant consumer benefit. 2014 Standards, 79 Fed. Reg. at 7,917. DOE also determined that the 2014 Standards resulted in life-cycle cost savings for consumers and net national benefits exceeding $1.5 billion per year. *Id.* DOE also stated that the energy savings from the amended standards were "likely to provide improvements to the security and reliability of the nation's energy system." *Id.* at 7,863. DOE's determinations relied upon rigorous analyses of the economic and health impacts of its proposals and considered comments received from trade associations representing manufacturers, energy and environmental advocates, consumer groups, and utilities.

Conversely, here, DOE fails to undertake the economic justification analysis, does not acknowledge its change in position, and provides no explanation for its conclusion that the 2014 Rule is not "economically justified." *See Fox* 556 U.S. at 515. When compared with the detailed analysis undergirding DOE's previous findings, this lack of analysis results in a conclusion that can only be described as arbitrary and capricious.

B. DOE Illegally Failed to Consider Reliance Interests.

Finally, DOE has also failed to consider reliance interests, in violation of the APA. *See id.*; *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 31-33 (2020) (even when rescinding a rule that is illegal, federal agencies must consider reliance interests).

Ultimately, the Proposed Rescission undermines the economic interests of manufacturers of external power supplies, which have made product investments in reliance on existing energy conservation standards and properly understood that energy efficiency standards would only be strengthened not weakened. *See Abraham*, 355 F.3d at 197 (pointing out that "unfettered agency discretion to amend standards [downward] . . . would completely undermine any sense of certainty on the part of manufacturers as to the required energy efficiency standards at a given time"). The 2014 Standards have been in place for over ten years and by virtue of the length of

---

utility or the performance of the covered products likely to result from the imposition of the standard"; (5) "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"; (6) "the need for national energy and water conservation"; and (7) "other factors the Secretary considers relevant."

time that has elapsed since their effective date, industry has long ago adjusted to them. DOE's Proposed Rescission fails to consider reliance interests and thereby violates the APA.

IV. The Proposed Rescission Would Significantly Impact Energy Use and Must Be Analyzed under Executive Order 13211.

Executive Order 13211 requires that the federal government prepare an analysis of energy effects when proposing to take regulatory actions which may significantly affect energy supply, distribution or use. The Proposed Rescission would eliminate the 2014 Standards that DOE previously estimated would save approximately 0.94 quads of energy over a thirty-year period. 2014 Standards, 79 Fed. Reg. at 7,850. DOE previously asserted that the 2014 Standards "would save a significant amount of energy."[9] *Id.* Now because the Proposed Rescission will eliminate those savings —which represents almost 0.15 percent of total residential energy use in 2012— DOE must comply with Executive Order 13211. Instead, DOE erroneously has determined that "[rescission] would not have a significant adverse effect on the supply, distribution, or use of energy" and that a Statement of Energy Effects under Executive Order 13211 is not required. Proposed Rescission, 90 Fed. Reg. at 20,903. That conclusion contradicts DOE's previous determination that the standards now proposed for rescission resulted in significant energy savings, and lacks factual support and is therefore arbitrary and capricious. DOE must prepare the analysis required by Executive Order 13211 for this action.

V. DOE Has Not Evaluated the Environmental Impacts of its Proposed Action under NEPA.

DOE's reliance on a categorical exclusion to avoid environmental review violates NEPA. DOE relies on a categorical exclusion applicable to "Actions to Conserve Energy or Water" ("Categorical Exclusion B5.1") for its NEPA review. Proposed Rescission, 90 Fed. Reg. at 20901; *see also* 10 C.F.R. pt. 1021, app. B, B5.1 (2024). However, that categorical exclusion does not apply to rulemakings that would "have the potential to cause a significant increase in energy consumption in a state or region." 10 C.F.R. pt. 1021, app. B, B5.1(b). More fundamentally, no categorical exclusion is available for actions, like the Proposed Rescission, that "threaten a violation of statutory [or] regulatory . . . requirements of DOE." 10 C.F.R. p.t 1021, app. B, B(1).

On DOE's own record, the Proposed Rescission increases the maximum allowable energy utilized by external power supplies and has the potential to cause a significant increase in energy consumption nationwide. As such, the Proposed Rescission is not exempt from review under NEPA Categorical Exclusion B5.1 or any other categorical exclusion and reliance on Categorical Exclusion B5.1 is arbitrary and capricious. Accordingly, DOE must undertake the

[9] As an illustration of energy savings attributable to the 2014 Standards, DOE estimated that the savings resulting from the 2014 Standards would equal 0.15 percent of total residential energy use in 2012.

necessary NEPA review of its rulemaking, and its failure to do so is arbitrary and capricious. *New York v. NRC*, 681 F.3d 471, 476-78 (2d Cir. 2012) (vacating agency's rulemaking, which the court considered to be a major federal action, because of deficient NEPA review). Finally, given the multiple contemporaneous proposals to repeal energy and water efficiency standards pursuant to NEPA, DOE must evaluate the cumulative impacts from these proposals in an EIS.

VI. Conclusion

The Proposed Rescission is illegal and contrary to the interests of consumers, manufacturers, and the public. For the reasons set forth above, the undersigned Attorneys General and local government entities urge DOE to withdraw the Proposed Rescission and comply with EPCA, the APA, and NEPA.

Respectfully submitted,

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ Jamie Jefferson
JAMIE JEFFERSON
TAYLOR WETZEL
JINA J. KIM
ELIZABETH SONG
Deputy Attorneys General
LAURA ZUCKERMAN
Supervising Deputy Attorney General
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, California 94610
Email: Jamie.Jefferson@doj.ca.gov

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN
Attorney General

/s/ Steven J. Goldstein
STEVEN J. GOLDSTEIN
ROBERT N. BREWER
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6414
Email: sgoldstein@oag.state.md.us

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ Timothy Hoffman
TIMOTHY HOFFMAN
LAURA MIRMAN-HESLIN
CHRISTOPHER GORE
Assistant Attorneys General
MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ Daniel M. Salton
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
(860) 808-5250
Email: daniel.salton@ct.gov

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ Christian Harned
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General

/s/ Jason E. James
Jason E. James
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General

/s/ Scott W. Boak
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
Email: scott.boak@maine.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

Alyssa Bixby-Lawson
ALYSSA BIXBY-LAWSON
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
(651) 300-0904
Email: Alyssa.Bixby-Lawson@ag.state.mn.us

FOR THE PEOPLE OF THE STATE OF MICHIGAN

DANA NESSEL
Attorney General

/s/ Benjamin C. Houston
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
Email: HoustonB1@michigan.gov

FOR THE STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL

/s/ Jack A. Ventura
Jack A. Ventura
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ Paul Garrahan
PAUL GARRAHAN
Attorney-in-Charge, Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Email: Paul.Garrahan@doj.oregon.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ Steve Scheele
STEPHEN SCHEELE
Assistant Attorney General, Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ Hannah Yindra
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Email: Hannah.Yindra@vermont.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ I. Andrew Goldberg
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ Brian Caldwell
Brian Caldwell
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 727-6211 (desk)
(202) 445-1952 (cell)
Email: brian.caldwell@dc.gov

Comments of the Attorneys General of the State of California, Maryland, New York, the City of New York, the State of Connecticut, Illinois, Maine, Michigan, Minnesota, New Jersey, Oregon, Vermont, Washington, the Commonwealth of Massachusetts, and the District of Columbia

July 15, 2025

Submitted *via* regulations.gov

Appliance and Equipment Standards Program
U.S. Department of Energy
Building Technologies Office

Re: Amended Water Use Standards for Residential Clothes Washers
Docket No. EERE-2025-BT-STD-0022 (RIN 1904-AF92)

The undersigned offices of state attorneys general and local government offer the following comments in opposition to the U.S. Department of Energy's ("DOE") proposed rescission of existing amended water use standards for residential clothes washers under the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. §§ 6291-6374e, Energy Conservation Standards for Residential Clothes Washers, 90 Fed. Reg. 20,890 (proposed May 16, 2025) (the "Proposed Rescission"). The Proposed Rescission contemplates vacating existing water use standards for residential clothes washers, codified at 10 C.F.R. § 430.32(g), and returning to the initial statutory standards for those appliances, located at 42 U.S.C. § 6295(g)(9). As governmental entities committed to addressing climate change, protecting public health and the environment, and safeguarding consumer interests, we urge DOE to withdraw the Proposed Rescission because it violates EPCA and fails to comply with the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551-559, and the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4347.

I. The Proposed Rescission Violates EPCA.

The Proposed Rescission is illegal and must be withdrawn because it violates EPCA. Congress enacted EPCA to "conserve energy supplies through energy conservation programs and…the regulation of certain energy uses," to "provide for improved energy efficiency of…major appliances[] and certain other consumer products," and "to conserve water by improving the water efficiency of certain plumbing products and appliances." 42 U.S.C. § 6201(4), (5), (8). In furtherance of these purposes, Congress required that any conservation standard promulgated by DOE for covered products under EPCA achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified. 42 U.S.C. § 6295(o)(2)(A). Once such a standard is in place, Congress prohibited DOE from weakening the standard for that product. *See* 42 U.S.C. § 6295(o)(1). Despite a clear Congressional directive, the Proposed Rescission fails both requirements–seeking to weaken the

water use standards for clothes washers, which DOE has already determined are technologically feasible and economically justified, and which provide clear consumer and public benefits. *See* Energy Conservation Standards for Residential Clothes Washers, 77 Fed. Reg. 32,308 (May 31, 2012) (the "May 2012 Rule"); Energy Conservation Standards for Residential Clothes Washers, 89 Fed. Reg. 19,026 (Mar. 14, 2024) (the "Mar. 2024 Rule").

Notably, EPCA's anti-backsliding provision also applies to water use standards, despite the fact that Section 6295(o)(2)(A) only expressly references "water efficiency" with respect to four products: showerheads, faucets, water closets, and urinals. As DOE previously concluded, based upon an examination of EPCA's history and structure as a whole, EPCA's references to "covered products and energy conservation standards can only be read coherently as including the covered products and energy conservation standards Congress added directly to section 6295," including water efficiency standards for residential clothes washers. Mar. 2024 Rule, 89 Fed. Reg. at 19,033; *see also* 42 U.S.C. § 6295(g)(9). Moreover, DOE's previous interpretation of "energy conservation standard" as encompassing water use standards furthers EPCA's energy conservation goals, as improving water efficiency standards for appliances like residential clothes washers allows DOE to more effectively regulate energy use. *See* Mar. 2024 Rule, 89 Fed. Reg. at 19,043 (finding that "[m]ost of the methods for decreasing water use are also methods for decreasing water heating energy"). DOE's interpretation is, therefore, consonant with both the statutory purposes and structure of EPCA.

The existing water conservation standards for clothes washers were lawfully enacted. In 2012, DOE amended the statutory energy conservation standards for residential clothes washers to make the applicable energy and water use requirements more stringent. *See* May 2012 Rule, 77 Fed. Reg. at 32,309; *see also* 10 C.F.R. § 430.32(g)(1) ("the 2012 Standards"). DOE determined that the 2012 amendments would result in 2.04 quads[1] of energy savings and 3.03 trillion gallons of water, respectively, or the equivalent of 113 million metric tons of avoided carbon dioxide emissions during the analysis period. May 2012 Rule, 77 Fed. Reg. at 32,310. In 2024, DOE further amended the energy conservation standards for residential clothes washers.[2] Mar. 2024 Rule, 89 Fed. Reg. at 19,027; *see also* 10 C.F.R. § 430.32(g)(2) (the "2024 Standards"). DOE determined that the 2024 Standards would result in energy and water savings amounting to 0.67 quads of energy and 1.89 trillion gallons of water, respectively. Mar. 2024 Rule, 89 Fed. Reg. at 19,028. Having previously found that the amended energy conservation standards for residential clothes washers would result in these energy savings, DOE's proposal to rescind the regulatory standards in favor of the statutory requirements would clearly "increase[] the maximum allowable energy use" of residential clothes washers in violation of Section 6295(o)(1), and is not "designed to achieve the maximum improvement in energy efficiency" in

[1] A quad is a unit of energy equal to one quadrillion (1,000,000,000,000,000) British thermal units. One quad is also equal to 293 billion kilowatt-hours.

[2] Critically, the amended energy conservation standards were proposed to DOE in a joint agreement between groups representing manufacturers, energy and environmental advocates, consumers groups, and a utility. *See* Mar. 2024 Rule, 89 Fed. Reg. at 19,027.

violation of Section 6295(o)(2)(A).[3] *See also Nat. Res. Def. Council, Inc. v. Abraham*, 355 F.3d 179, 197 (2d Cir. 2004) (after DOE promulgates a final rule amending a conservation standard, "subsection (o)(1) operates to restrict DOE's discretionary ability to amend standards downward thereafter.").

DOE also newly asserts that it lacks authority to regulate the water use of clothes washers. *See* Proposed Rescission, 90 Fed. Reg. at 20,891. According to DOE, EPCA does not contemplate the regulation of both energy use and water use for the same product, because the definition of "energy conservation standard" in 42 U.S.C. § 6291(6)(A) only references water use in showerheads, faucets, water closets, and urinals, which are non-electrified products. *See id.* Additionally, DOE points out that the statutory definition of "water use" at 42 U.S.C. 6292(31)(A) only mentions these four products. *Id.*

However, as DOE noted in a 2024 rulemaking, its authority to amend both energy use and water use performance standards for clothes washers is clearly articulated in 42 U.S.C. § 6295(g)(9). *See* Mar. 2024 Rule, 89 Fed. Reg. at 19,033. That subsection sets forth statutory energy *and* water conservation standards for residential clothes washers. 42 U.S.C. § 6295(g)(9)(A). Section 6295(g)(9)(B) directs the DOE Secretary to publish a final rule, no later than December 31, 2011, determining "whether to amend the *standards* in effect for clothes washers manufactured on or after January 1, 2015." (Emphasis added). By using the term "standards," as opposed to "energy efficiency standards," 42 U.S.C. § 6295(g)(9)(B) refers to both the energy and water conservation standards in 42 U.S.C. § 6295(g)(9)(A). And by referring to both types of standards, 42 U.S.C. § 6295(g)(9) makes clear that the DOE Secretary has the authority to amend the water conservation standards for residential clothes washers.

DOE has further noted that 42 U.S.C. § 6295(m) obligates it to amend "standards" for covered products, including both the energy and water use performance standards for clothes washers. *See* Mar. 2024 Rule, 89 Fed. Reg. at 19,032. Finally, DOE has recognized that 42 U.S.C. § 6295(p)(4) specifically authorizes DOE to issue final rules establishing "any 'energy or water conservation standard' without qualification." *See id.*

II. The Proposed Rescission is Not Supported by DOE's Reasoning or by the Rulemaking Record, and Thus Violates the APA.

The Proposed Rescission violates the APA and must be withdrawn because it is devoid of any rational explanation, lacks any analytical support, fails to consider relevant factors, including the factors Congress directed DOE to consider, and is contrary to previous DOE findings and the evidence DOE relied upon in making those findings. To comply with the APA, DOE is required to provide a "reasoned explanation for its action" and a "rational connection between the facts found and the choice made." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43

[3] Unless otherwise indicated, all section references refer to Title 42 of the United States Code.

(1983). As such, an agency must examine the relevant data and articulate a satisfactory explanation for its actions. *Motor Vehicle Mfrs. Ass'n of U.S., Inc.*, 463 U.S. at 43. And where it has changed its position, as DOE has here, the agency must at least "display awareness that it is changing position" and "show that there are good reasons for the new policy." *FCC*, 556 U.S. at 515. Additionally, when an agency changes course, it must "be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account.'" *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 212 (2016) (quoting *FCC*, 556 U.S. at 515). It is arbitrary and capricious for an agency to ignore such matters. *See id.*

DOE states that its decision to rescind the existing water use standards for residential clothes washers is based both on its conclusion that the existing standards are not economically justified and on "a new policy to reduce regulatory burden wherever possible." Proposed Rescission, 90 Fed. Reg. at 20,891. As discussed below, in advancing those positions, DOE fails to offer a rational explanation, or indeed any analytical support; fails to consider relevant factors; and fails to adequately address the fact that its conclusions are contrary to previous findings and the evidence it relied upon in making those findings. *See generally* Proposed Rescission, 90 Fed. Reg. 20,890. Moreover, DOE fails to consider reliance interests in the existing water conservation standards, incorrectly asserting that such interests do not exist. *See* Proposed Rescission, 90 Fed. Reg. 20,891.

a. DOE Fails to Show that the Water Use Standards for Residential Clothes Washers are Not Economically Justified.

DOE bases the Proposed Rescission in part on its conclusion that the water conservation standards it seeks to rescind are not economically justified. DOE's conclusion relies on three assumptions: (1) that the standards lengthen the time it takes to wash clothes; (2) that the standards are not consistent with the need for national water conservation; and (3) that consumers are best situated to decide whether a given product is economically justified, as that is precisely what the free market does best. *See* Proposed Rescission, 90 Fed. Reg. at 20,891.

DOE's economic justification analysis is flawed, as it fails to provide a rational explanation of, or any analytical support for, its conclusion. For example, DOE does not adequately explain how the standards would lengthen the time residential clothes washers take to wash clothes, or provide any analytical support for such a conclusion. Instead, DOE merely cites an inapposite Federal Register notice for a final rule establishing a new product class for residential *dishwashers*. Proposed Rescission, 90 Fed. Reg. at 20,891; *see also* New Product Class for Residential Dishwashers, 85 Fed. Reg. 68,723, 68,727 (Oct. 30, 2020). Nothing in the residential *dishwashers* final rule supports DOE's conclusion that water conservation standards for residential *clothes washers* lengthen the time it takes to wash clothes. Moreover, DOE specifically noted in its 2012 rulemaking for residential clothes washers that manufacturers had reported the new efficiency levels "would not result in an increased cycle time for units within any of the product classes," a conclusion "supported by DOE analysis of test data and published product literature." May 2012 Rule, 77 Fed. Reg. at 32,336. DOE again confirmed, when issuing

the 2024 Standards, that the amended standards would not increase cycle time. Mar. 2024 Rule, 89 Fed. Reg. at 19,107. Thus, DOE's own previous determinations undercut the conclusion that the regulatory water use restrictions lessen the utility of clothes washers by lengthening the time it takes to wash clothes.

DOE also does not explain how the standards are inconsistent with the need for national water conservation, or provide any analytical support for such a conclusion. Similarly, DOE fails to explain how consumer choice is relevant to whether a water use standard is economically justified.

Moreover, DOE's economic justification analysis fails to consider the factors Congress directed DOE to consider. In deciding whether a proposed standard is economically justified, EPCA provides that DOE must determine whether the benefits of the standard exceed the burdens. 42 U.S.C. §§ 6295(o)(2)(B)(i), 6316(a). DOE must make that determination by considering the following seven statutory factors: (1) "the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard"; (2) "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"; (3) "the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard"; (4) "any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard"; (5) "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"; (6) "the need for national energy and water conservation"; and (7) "other factors the Secretary considers relevant." 42 U.S.C. § 6295(o)(2)(B)(i). In proposing to amend the water use standards for residential clothes washers, DOE fails to consider any of the specifically identified factors. Without addressing these factors, DOE's conclusion that water conservation standards are not "economically justified" is arbitrary and capricious.

Nor does DOE adequately justify its changed position regarding the economic justification of the 2012 Standards and the 2024 Standards. In adopting the 2012 Standards and the 2024 Standards, DOE relied upon an extensive factual record demonstrating that the standards were economically justified. DOE determined that the 2012 Standards resulted in life-cycle cost savings for consumers, as well as net national benefits of between $1.20 billion per year and $1.75 billion per year. May 2012 Rule, 77 Fed. Reg. at 32,310-11. DOE also determined that the 2024 Standards resulted in life-cycle cost savings for consumers, as well as net national benefits of between $442.5 million and $623.0 million per year. Mar. 2024 Rule, 89 Fed. Reg. at 19,088-89, 19,030. Ultimately, DOE determined that the 2024 Standards were economically justified because the benefits would outweigh the burdens. Mar. 2024 Rule, 89 Fed. Reg. at 19,031. In proposing to rescind the amended standards, DOE completely fails to consider its past conclusions or show that there are good reasons for the new policy. *See FCC v. Fox*, 556 U.S. at 515.

b. DOE Does Not Explain How Reducing Regulatory Burdens Would Justify the Proposed Rescission.

DOE states the Proposed Rescission is based on its "new policy to reduce regulatory burden wherever possible." Proposed Rescission, 90 Fed. Reg. 20,891. Yet DOE fails to explain how its new policy is consistent with the provisions of EPCA that relate to the amendment of energy and water conservation standards. Moreover, DOE fails to explain how the new policy can be a relevant consideration for DOE under EPCA. Finally, DOE has failed to explain why the new policy weighs in favor of rescinding the standards here, or to provide adequate support for its application. Without providing such an explanation, DOE's explanation for relying on its new policy is arbitrary and capricious. *See FCC v. Fox*, 556 U.S. at 515.

c. DOE Fails to Consider Reliance Interests.

When an agency changes positions, it must consider reliance interests. *Id.* Here, DOE has not considered reliance interests, because it believes there is "no reliance interest in an unlawful regulation." Proposed Rescission, 90 Fed. Reg. at 20,860.

As discussed above, the current regulations are not unlawful and should not be rescinded, because to do so would violate the APA. *See id.* However, even if the current regulations were unlawful, this would not exempt DOE from assessing and considering reliance interests. *See* Proposed Rescission, 90 Fed. Reg. at 20,891; *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1 (2020). In that case, the Supreme Court rejected similar reasoning advanced by the Department of Homeland Security ("DHS"). DHS had rescinded the Deferred Action for Childhood Arrivals memorandum ("DACA") without considering reliance interests because, according to DHS, DACA was unlawful and therefore consideration of reliance interests was unnecessary. *Id.* at 31-33. The Supreme Court rejected this reasoning, holding that DHS's failure to consider whether there were reliance interests was arbitrary and capricious in violation of the APA. *Id.* at 30. The Court concluded that, as the government was "'not writing on a blank slate,' it was required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." *Id.* at 33 (emphasis omitted).

Ultimately, the Proposed Rescission undermines the interests of manufacturers of residential clothes washers, which have made product investments in reliance on existing water use and energy conservation standards and properly understood that energy efficiency standards would only be strengthened, not weakened. *See Nat. Res. Def. Council, Inc. v. Abraham,* 355 F.3d at 197 (pointing out that "unfettered agency discretion to amend standards [downward] . . . would completely undermine any sense of certainty on the part of manufacturers as to the required energy efficiency standards at a given time"). The Proposed Rescission would not only promote uncertainty in the market and punish manufacturers that have invested in producing compliant clothes washers, it would also invite an influx of less efficient products from

companies that would undercut those manufacturers on price. In sum, DOE's failure to consider manufacturers' legitimate reliance on the standards DOE is proposing to rescind is arbitrary and capricious.

III. DOE Has Failed to Evaluate the Environmental Impacts of its Proposed Rescission, as Required under NEPA.

Because the Proposed Rescission has not been subject to any environmental review, DOE has failed to comply with NEPA. DOE states it is considering whether the Proposed Rescission qualifies for the categorical exclusion applicable to "Actions to Conserve Energy or Water" ("Categorical Exclusion B5.1"), and thus may avoid environmental review under NEPA. Proposed Rescission, 90 Fed. Reg. at 20,892; *see also* 10 C.F.R. pt. 1021, app. B, B5.1. However, Categorical Exclusion B5.1 does not apply to rulemakings that would "have the potential to cause a significant increase in energy consumption in a state or region." 10 C.F.R. pt. 1021, app. B, B5.1(b)(4). DOE's records for the 2012 Standards and the 2024 Standards demonstrate that the Proposed Rescission would increase maximum allowable energy and water use for residential clothes washers, and that it thus has the potential to cause a significant increase in energy and water consumption in a state or region. *See* May 2012 Rule, 77 Fed. Reg. at 32,309; Mar. 2024 Rule, 89 Fed. Reg. at 19,027. As such, the Proposed Rescission is not exempt from review under NEPA under either Categorical Exclusion B5.1 or any other categorical exclusion, and reliance on Categorical Exclusion B5.1 is arbitrary and capricious. Moreover, DOE must take into account the cumulative impacts from its multiple pending proposals to repeal energy and water efficiency standards pursuant to NEPA. Accordingly, before it can propose to rescind existing amended water use standards for residential clothes washers, DOE must undertake the necessary NEPA review of its rulemaking; its failure to have done so is arbitrary and capricious. *See New York v. NRC*, 681 F.3d 471, 476-78 (2d Cir. 2012) (vacating agency's rulemaking, which the court considered to be a major federal action, because of deficient NEPA review).

IV. The Proposed Rescission Must Be Analyzed under the Regulatory Flexibility Act.

In 2012, when DOE published the water efficiency standards it now proposes to rescind, the agency conducted a regulatory flexibility analysis in addition to extensive analysis of the rule's economic impacts as required by EPCA. May 2012 Rule, 77 Fed. Reg. at 32,358-70, 32,376-77. The agency's conclusion that the Proposed Rescission will "not have a significant economic impact on a substantial number of small entities" because it "eliminates standards," lacks any factual support and is otherwise arbitrary and capricious. Proposed Rescission, 90 Fed. Reg. at 20,891. DOE must therefore prepare a regulatory flexibility analysis for this proposal.

V. The Proposed Rescission Would Have a Significant Impact on Energy Use and Must Be Analyzed under EO 13211.

The Proposed Rescission would remove regulations that were estimated, collectively, to avoid the use of 4.92 trillion gallons of water. *See* May 2012 Rule, 77 Fed. Reg. at 32,310; Mar. 2024 Rule, 89 Fed. Reg. at 19,028. As noted above, the amount of water a residential clothes washer uses directly impacts the amount of energy the equipment uses because it impacts the amount of water-heating energy the equipment will use. *See* Mar. 2024 Rule, 89 Fed. Reg. at 19,043. The Proposed Rescission would void many of those savings, yet DOE has determined that it "would not have a significant adverse effect on the supply, distribution, or use of energy" and that a Statement of Energy Effects under EO 13211 is not required. Proposed Rescission, 90 Fed. Reg. at 20,893. That conclusion is unmoored from DOE's previous finding of significant energy and water savings from promulgating the standards now proposed for rescission and lacks any factual support. The conclusion is therefore arbitrary and capricious, and DOE must prepare the analysis required by EO 13211 for this regulatory action.

VI. Conclusion

The Proposed Rescission is illegal and contrary to the interests of consumers, manufacturers, and the public. For the reasons set forth above, the undersigned Attorneys General and local government urge DOE to withdraw the Proposed Rescission and comply with EPCA, the APA, and NEPA.

Respectfully submitted,

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ Elizabeth Song
ELIZABETH SONG
JAMIE JEFFERSON
TAYLOR WETZEL
JINA J. KIM
Deputy Attorneys General
Laura Zuckerman
Supervising Deputy Attorney General
300 South Spring Street
Los Angeles, CA 90013
Telephone: (213) 269-6221
Email: elizabeth.song@doj.ca.gov

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN
Attorney General

/s/ Steven J. Goldstein
STEVEN J. GOLDSTEIN
ROBERT N. BREWER
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6414
Email: sgoldstein@oag.state.md.us

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ Timothy Hoffman
TIMOTHY HOFFMAN
LAURA MIRMAN-HESLIN
CHRISTOPHER GORE
Assistant Attorneys General
MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ Daniel M. Salton
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
(860) 808-5250
Email: daniel.salton@ct.gov

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ Christian Harned
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General

/s/ Jason E. James
Jason E. James
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General

/s/ Scott W. Boak
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
Email: scott.boak@maine.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

Alyssa Bixby-Lawson
ALYSSA BIXBY-LAWSON
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
(651) 300-0904
Email: Alyssa.Bixby-Lawson@ag.state.mn.us

FOR THE PEOPLE OF THE STATE OF MICHIGAN

DANA NESSEL
Attorney General

/s/ Benjamin C. Houston
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
Email: HoustonB1@michigan.gov

FOR THE STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL

/s/ Jack A. Ventura
Jack A. Ventura
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ Paul Garrahan
PAUL GARRAHAN
Attorney-in-Charge, Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Email: Paul.Garrahan@doj.oregon.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ Steve Scheele
STEPHEN SCHEELE
Assistant Attorney General, Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ Hannah Yindra
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Email: Hannah.Yindra@vermont.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ I. Andrew Goldberg
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ Brian Caldwell
Brian Caldwell
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 727-6211 (desk)
(202) 445-1952 (cell)
Email: brian.caldwell@dc.gov

Comments of the Attorneys General of Maryland, California, New York, the City of New York, Connecticut, Illinois, Maine, Massachusetts, Michigan, Minnesota, New Jersey, Oregon, Vermont, Washington, and the District of Columbia

July 15, 2025

Submitted via Regulations.gov

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

Re: Energy Conservation Program: Energy Conservation Standards for Commercial Prerinse Spray Valves
Docket No. EERE-2025-BT-STD-0008
RIN 1904-AF78

The undersigned offices of state attorneys general and local government offer the following comments in opposition to the U.S. Department of Energy's (DOE) proposed rescission of existing energy conservation standards for commercial prerinse spray valves (CPSVs) under the Energy Policy and Conservation Act (EPCA), 42 U.S.C. §§ 6291-6374e, 90 Fed. Reg. 20935 (May. 16, 2025) (the Proposed Rescission).

The Proposed Rescission would remove existing water use standards for CPSVs, codified at 10 C.F.R. § 431.266, returning instead to the statutory baseline for those appliances, located at 42 U.S.C. § 6295(dd). DOE justifies these changes on a "tentati[ve] determin[ation] that the current regulations are unlawful, that they are not economically justified, and that they are inconsistent with the policy of maximally reducing regulatory burdens." 90 Fed. Reg. at 20936. In short, DOE is wrong on all counts. EPCA provides the agency with authority to regulate water use from CPSVs and the agency's other bases for rescinding the regulations both conflict with EPCA's clear purpose and lack any support in the record. As governmental entities committed to safeguarding consumer interests, protecting public health and the environment, and addressing climate change, we urge DOE to withdraw this harmful proposal.

I. DOE is wrong, EPCA authorizes it to regulate the water use of CPSVs.

DOE largely justifies the Proposed Recission on an assertion that it "appears to lack authority to regulate the water use of CPSVs entirely." 90 Fed. Reg. at 20936. The agency offers no analysis to support this position which runs contrary to previous DOE statements on the matter and cannot withstand a diligent reading of the statute.

Water use standards for CPSVs were added directly to EPCA by the Energy Policy Act of 2005, 42 USC § 6295(dd), and DOE codified those requirements at 10 C.F.R. § 431.266 on

October 18, 2005, 70 Fed. Reg. 60407. Once a rule is issued "establishing or amending a *standard*", it triggers the statutorily prescribed timeline for amending those requirements. 42 U.S.C. § 6295(m). Importantly, that provision does not use the term "energy efficiency standard" or "water use standard", rather it uses the unmodified term "standard" which is most accurately read to incorporate both energy efficiency and water use, providing a clear instruction that the promulgation of any regulations concerning water or energy use must be revisited on the timeline established therein. 42 U.S.C. § 6295(m). *See also* Energy Conservation Program: Energy Conservation Standards for Residential Clothes Washers, 89 Fed. Reg. 19026, 19032 (Mar. 15, 2024).

That commonsense view of the statute is further solidified by analysis of the Act's history and structure, which the Proposed Recission fails to mention. When Congress passed the Energy Conservation Act in 1975 it was solely focused on energy conservation from a narrow list of consumer products. In the Energy Policy Act of 1992 Congress amended the list of covered products to include showerheads, faucets, water closets and urinals, and explicitly expanded DOE's authority to regulate water use for those products. Energy Policy Act of 1992, Pub. L. 102-486, sec. 123 (Oct. 24, 1992). In subsequent legislation, Congress added standards for additional products to section 6295 without making conforming changes to either the definition of "energy conservation standard" at section 6291(6) or "covered product" at section 6292. The statutory water use standard for CPSVs was one such addition made by the Energy Policy Act of 2005. Energy Policy Act of 2005, 119 Stat. 594, sec. 135 (Aug. 8, 2005).

As DOE has previously acknowledged, the best reading of the statute is that Congress intended products added directly to 6295 to be "covered products" and all standards, even those for "water use", to be included in the term "energy conservation standard". 89 Fed. Reg. at 19033. A narrower reading would effectively exempt these products from other important parts of the statutory scheme, including the prohibition on manufacturers distributing non-compliant products in commerce. *Id*. ("It would defeat congressional intent to allow a manufacturer to distribute a product, e.g., a CPSV or ceiling fan, that violates an applicable energy conservation standard that Congress prescribed simply because Congress added that product directly to 42 U.S.C. § 6295 without also updating the list of covered products in 42 U.S.C. § 6292(a).").

That reading also makes practical sense as the amount of water used by CPSVs directly implicates energy use. That linkage was acknowledged by EPA's voluntary WaterSense program for CPSVs, the predecessor to DOE's current CPSV standards, which estimated that a high-efficiency CPSV would save the average commercial kitchen $65/year in water costs and either $40/year or $130/year in energy cost depending on the kitchen's fuel source for heating water. U.S. EPA, *Pre-Rinse Spray Valves*, https://www.epa.gov/watersense/pre-rinse-spray-valves. And DOE itself recognized the significant energy savings from the current standards when it promulgated those regulations in 2016. *See* Energy Conservation Program: Energy Conservation Standards for Commercial Prerinse Spray Valves, 81 Fed. Reg. 4748, 4750 (Jan. 27, 2016).

II. The Proposed Recission Violates EPCA.

Congress enacted EPCA to "conserve energy supplies through energy conservation programs and… the regulation of certain energy uses," and "to conserve water by improving the water efficiency of certain plumbing products and appliances." 42 U.S.C. § 6201(5), (8). The Act provides a detailed set of instructions for how DOE is to achieve those goals. DOE is required to promulgate conservation standards for covered products that will achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified, 42 U.S.C. § 6295(o)(2)(A), and once a standard is published DOE is prohibited from weakening it, 42 U.S.C. § 6295(o)(1). *See also NRDC v. Abraham*, 355 F.3d 179, 197 (2004) ("In sum, subsection (o)(1), when read as a whole and in the context of the regulatory scheme established by Congress in section 325 of the EPCA [42 U.S.C. § 6295], unambiguously operates to constrain DOE's ability to amend efficiency standards once they are published.").

The Proposed Recission violates the anti-backsliding provision, 42 U.S.C. § 6295(o)(1) on its face as it would raise the allowable flow rate for CPSVs to 1.6 gallons per minute regardless of product class.[1] With no way to argue otherwise, DOE instead argues that "the anti-backsliding provision… does not apply because [it] only applies to water use 'in the case of showerheads, faucets, water closets, or urinals." 90 Fed. Reg. at 20936. But that single sentence lacks any analysis, runs contrary to the best reading of the statute, and reverses the agency's previous position without any reasoned explanation.

Moreover, the presumed inapplicability of the anti-backsliding provision does not in any way justify the Proposed Recission. At most, a conclusion that the anti-backsliding provision is inapplicable would signal that DOE has the latitude to weaken the standards, but it would not compel such an approach. And any decision to weaken the standards would still conflict with EPCA's conservation mandate. 42 U.S.C. § 6201. *See also NRDC v. Abraham*, 355 F.3d at 197. Indeed, DOE admits that the "proposed recissions are not designed to achieve a maximum reduction in energy efficiency," 90 Fed. Reg. at 20936, but does not identify the source of its authority to promulgate such a rule.[2]

III. The Proposed Recission Violates the APA.

a. The Department's reasoning is arbitrary and capricious.

The APA requires that an agency provide a "reasoned explanation for its action," *F.C.C. v. Fox Television Stations, Inc.*, 566 U.S. 502, 515 (2009), and establish a "rational connection between the facts found and the choice made," *Burlington Truck Lines, Inc. v. United States*, 371

[1] The current regulations differentiate between CPSVs with spray forces less than 5.0 ounce-force, between 5.0 and 8.0 ounce-force, and above 8.0 ounce-force to establish maximum flow rates of 1.00, 1.20, and 1.28 gallons per minute respectively. 10 C.F.R. § 431.266.

[2] DOE's wording here is unclear. The States understand, given DOE's subsequent citation to 42 U.S.C. § 6295(p)(1) that the agency means that the proposed recission is not designed to achieve the "maximum improvement in energy efficiency or maximum reduction in energy use." If DOE truly meant what it said, however, than the states would argue that the proposed recission does in fact represent the maximum *reduction* in energy efficiency possible as it reverts to the Congressionally created floor for CPSV efficiency. 42 U.S.C. § 6295(dd).

U.S. 156, 168 (1962). *See also Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). DOE has utterly failed to meet that standard here.

DOE asserts that recission "is consistent with the Secretary's proposed policy of reducing regulatory burdens." 90 Fed. Reg. at 20936. But a desire to reduce regulatory burdens is not a reasoned basis for rescinding a provision that has been in place for over nine years. Moreover, DOE has not identified its "proposed policy of reducing regulatory burdens" with enough specificity to allow thorough public comment on this point and the policy itself is identified only as "proposed" meaning it has not yet been finalized. DOE has also failed to explain how the "proposed policy" relates to the Proposed Recission and how it aligns with Congressional policy established in EPCA.

DOE also justifies the Proposed Recission on the belief that it "would support energy and water abundance, allowing Americans to produce and consume as much energy and water as they see fit." 90 Fed. Reg. at 20936. Nonsense. The existing regulations were projected to save Americans 100 trillion Btu of energy and 119.57 billion gallons of water over a thirty-year period. 81 Fed. Reg. at 4750. Those savings translated to cost savings of up to $1.48 billion. *Id.* EPA separately estimated the savings to businesses from adopting CPSVs meeting these standards as part of its voluntary WaterSense program. Those estimates included annual water savings of 7,000 gallons/year translating to $110-$200 annually depending on the type of energy used for hot water. U.S. EPA, *Pre-Rinse Spray Valves*, https://www.epa.gov/watersense/pre-rinse-spray-valves.

Removing these standards will mean that CPSVs use significantly more water and energy each year. That in turn increases costs for businesses using CPSVs and decreases the resources available for other uses. Recission does not support "abundance" it limits it. Moreover, the Department's goal of "allowing Americans to produce and consume as much energy and water as they see fit," is in tension with EPCA's express purposes "to provide for improved energy efficiency," and "to conserve water by improving the water efficiency of certain plumbing products and appliances." 42 U.S.C. § 6201(5), (8).[3] By substituting its own policies for those established by Congress, DOE acts *ultra vires*.

b. DOE fails to grapple with its previous positions or account for reliance interests.

An agency must "display awareness that it is changing position" and "show that there are good reasons for the new policy." *FCC v. Fox*, 566 U.S. at 515. It must also "be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account." *Id*. DOE has not shown the awareness that it is changing position or sufficiently considered reliance interests as required by the APA.

DOE now claims that the existing standards "are not economically justified," but it has offered no analysis to support that conclusion which is contrary to its position in earlier CPSV

[3] To be clear, EPCA does not limit how much energy and water Americans use. It does, however, ensure that there is a floor set for the utility delivered by each unit of energy or water used by a covered product. In other words, it ensures that Americans are not wasting money or resources to perform a function that could be done more efficiently.

rulemakings. 90 Fed. Reg. at 20936. When DOE promulgated the existing standards in 2016 it conducted an extensive review of the regulations' costs and benefits and concluded that "the benefits to the nation of the standards… outweigh the burdens". 81 Fed. Reg. at 4752. That analysis detailed significant savings in water and energy use over a thirty-year period following the standards' adoption which dwarfed the costs to manufacturers from implementing the standards. *Id*. DOE has not shown any awareness of this previous analysis, much less provided any new evidence that could justify its proposed departure from the conclusions it reached in 2016. *See FCC v. Fox*, 566 U.S. at 515.

Similarly, DOE has made no attempt to evaluate the reliance interests that have developed in response to the existing standards. The 2016 rulemaking expected that some manufacturers would have to make investments to comply with the new standards yet nowhere in the Proposed Recission does DOE evaluate those investments. Nor does DOE show any awareness that rescinding the regulations now would be even more harmful than having failed to promulgate them in the first place. Starting in 2013 EPA ran a highly successful WaterSense labeling program for CPSVs which yielded significant energy and water savings and helped incentivize manufacturers to produce more efficient models. U.S. EPA, *Pre-Rinse Spray Valves*, https://www.epa.gov/watersense/pre-rinse-spray-valves. EPA sunset that program when the existing DOE regulations went into effect in 2019. *Id*.

c. DOE has failed to provide any support for rescinding the existing standards.

When DOE adopted the current standards for CPSVs in 2016 it conducted extensive analysis of the regulation's impact on manufacturers, product users, energy and water use, and associated pollution. Indeed, the record for that rulemaking included a life cycle cost model, government regulatory impact model, technical support documents, engineering analysis, and national impact analysis modeling. *See* Docket EERE-2014-BT-STD-0027, available at https://www.regulations.gov/docket/EERE-2014-BT-STD-0027/document. Here, by contrast, DOE has offered no facts and prepared no analysis to support rescinding the very same standards. The Proposed Recission is therefore arbitrary and capricious because there is no evidence provided to show that the agency made a "rational connection between the facts found and the choice made." *State Farm*, 463 U.S. at 43. The failure to produce such evidence also falls short of statutory requirements. *See* 42 U.S.C. § 6295(o)(2) (providing specific factors that DOE must consider when determining standard is "economically justified".).

IV. The Proposed Recission must be analyzed under the Regulatory Flexibility Act.

In 2016, when DOE published the CPSV standards it now proposes to rescind, the agency conducted a regulatory flexibility analysis in addition to extensive analysis of the rule's economic impacts as required by EPCA. *See* 81 Fed. Reg. at 4797-99. The regulatory flexibility analysis identified nine small businesses engaged in the manufacture of roughly 83% of all CPSV models on the market. 81 Fed. Reg. at 4797. The agency's conclusion that the Proposed Recission will "not have a significant economic impact on a substantial number of small entities" because it "eliminates amended water conservation standards," lacks any factual support, is

otherwise arbitrary and capricious, and is contrary to DOE's previous position. 90 Fed. Reg. at 20936. DOE must therefore prepare a regulatory flexibility analysis for this proposal.

V. The Proposed Recission would have a significant impact on energy use and must be analyzed under EO 13211.

The Proposed Recission would remove regulations that were estimated to avoid the use of 100 trillion Btu of energy and 119.57 billion gallons of water over a thirty-year period. 81 Fed. Reg. at 4750. The Proposed Rescission will void many of those savings yet DOE "has tentatively determined that [recission] would not have a significant adverse effect on the supply, distribution, or use of energy" and that a Statement of Energy Effects under EO 13211 is not required. 90 Fed. Reg. at 20937. That conclusion is unmoored from DOE's previous finding of significant energy savings from promulgating the standards now proposed for recission and lacks any factual support. The conclusion is therefore arbitrary and capricious, and DOE must prepare the analysis required by EO 13211 for this regulatory action.

VI. The Proposed Recission must be evaluated under NEPA.

DOE suggests that the Proposed Rescission may avoid environmental review under NEPA because it qualifies for the categorical exclusion applicable to "Actions to Conserve Energy or Water" ("Categorical Exclusion B5.1"). 90 Fed. Reg. at 20927; see also 10 C.F.R. pt. 1021, subpt. D, app. B, B5.1. But that categorical exclusion clearly does not apply here.

Categorical exclusion B5.1 does not apply to rulemakings that would "have the potential to cause a significant increase in energy consumption in a state or region." 10 C.F.R. pt. 1021, subpt. D, app. B, B5.1(b). Again, both common sense and the extensive record developed in support of the existing standards indicate that returning to the statutory water use standards for CPSVs would result in significant lost energy and water savings. 81 Fed. Reg. at 4750. As such, the Proposed Rescission is not exempt from review under NEPA under Categorical Exclusion B5.1.

VII. Conclusion.

The Proposed Recission is illegal and contrary to the interests of consumers, manufacturers, and the general public. DOE is wrong to conclude that the existing standards for commercial prerinse spray valves were unlawfully promulgated and has mustered no independent support to otherwise justify their removal. Moreover, DOE has failed to comply with a number of procedural requirements that would further illuminate the environmental and energy impacts of repealing these regulations. DOE must therefore withdraw the Proposed Recission.

Respectfully Submitted,

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN
Attorney General

/s/ *Steven J. Goldstein*
STEVEN J. GOLDSTEIN
ROBERT N. BREWER
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
Tel: 410-576-6414
Email: sgoldstein@oag.state.md.us

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ Jamie Jefferson
JAMIE JEFFERSON
TAYLOR WETZEL
JINA J. KIM
ELIZABETH SONG
Deputy Attorneys General
LAURA ZUCKERMAN
Supervising Deputy Attorney General
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, California 94610
Email: Jamie.Jefferson@doj.ca.gov

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ Timothy Hoffman
TIMOTHY HOFFMAN
LAURA MIRMAN-HESLIN
CHRISTOPHER GORE
Assistant Attorneys General
MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ Christian Harned
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ Daniel M. Salton
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
Tel: (860) 808-5250
Email: daniel.salton@ct.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General

/s/ Jason E. James
JASON E. JAMES
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Tel: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General

/s/ Scott W. Boak
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
Email: scott.boak@maine.gov

FOR THE PEOPLE OF THE STATE OF MICHIGAN

/s/ Benjamin C. Houston
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
Tel: (517) 335-7664
Email: HoustonB1@michigan.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

/s/ Alyssa Bixby-Lawson
ALYSSA BIXBY-LAWSON
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
Tel: (651) 300-0904
Email: Alyssa.Bixby-Lawson@ag.state.mn.us

FOR STATE OF NEW JERSEY

MATTHEW J. PLATKIN
Attorney General

/s/ Jack A. Ventura
JACK A. VENTURA
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ Paul Garrahan
PAUL GARRAHAN
Attorney-in-Charge, Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
Tel: (503) 947-4540
Email: Paul.Garrahan@doj.oregon.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ Hannah Yindra
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Email: Hannah.Yindra@vermont.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ Steve Scheele
STEPHEN SCHEELE
Assistant Attorney General, Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ I. Andrew Goldberg
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ *Brian Caldwell*
BRIAN CALDWELL
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
Tel: (202) 727-6211 (desk)
Tel: (202) 445-1952 (cell)
Email: brian.caldwell@dc.gov

COMMENTS OF THE ATTORNEYS GENERAL OF THE STATE OF CALIFORNIA, NEW YORK, MARYLAND, THE CITY OF NEW YORK, THE STATE OF CONNECTICUT, ILLINOIS, MAINE, MICHIGAN, MINNESOTA, NEW JERSEY, OREGON, VERMONT, WASHINGTON, THE COMMONWEALTH OF MASSACHUSETTS, AND THE DISTRICT OF COLUMBIA

July 15, 2025

Submitted via regulations.gov

Appliance and Equipment Standards Program
Building Technologies Office
U.S. Department of Energy

Re: Energy Conservation Standards for Conventional Ovens
Docket No. EERE–2025–BT–STD–0012
RIN 1904-AF82

The undersigned offices of state attorneys general and local government offer the following comments in opposition to the U.S. Department of Energy's ("DOE") proposed rescission of existing energy conservation standards for conventional ovens under the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. §§ 6295 *et seq*. Energy Conservation Standards for Conventional Ovens, 90 Fed. Reg. 20885 (proposed May 16, 2025) (the "Proposed Rescission"). The Proposed Rescission contemplates vacating existing energy conservation standards for conventional ovens, codified at 10 C.F.R. 430.32(j)(2), and returning to the initial statutory standards for those appliances, located at 42 U.S.C. § 6295(h)(1). As governmental entities committed to safeguarding consumer interests, including reducing energy-related costs, protecting public health and the environment, and addressing climate change, we urge DOE to withdraw the Proposed Rescission because it violates EPCA and fails to comply with the Administrative Procedures Act ("APA"), 5 U.S.C. § 551 *et seq*., and the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4347.

I. The Proposed Rescission Violates EPCA.

The Proposed Rescission is illegal and must be withdrawn because it violates EPCA's anti-backsliding provision. Congress enacted EPCA to "conserve energy supplies through energy conservation programs and…the regulation of certain energy uses" and to "provide for improved energy efficiency of…major appliances." 42 U.S.C. § 6201(4), (5). In furtherance of these purposes, Congress required that any energy conservation standard promulgated by DOE under EPCA's appliance program achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 42 U.S.C. § 6295(o)(2)(A). Once such a standard is in place, Congress prohibited DOE from weakening the energy conservation standard for that appliance. 42 U.S.C. § 6295(o)(1). Despite these clear Congressional directives, the Proposed Rescission seeks to weaken the energy conservation standards for ovens, which DOE has already determined are technologically feasible and economically justified, even though the existing standards provide clear consumer and public benefits. *See* Energy Conservation Standards for Certain Consumer Products (Dishwashers, Dehumidifiers, Microwave Ovens, and Electric and Gas Kitchen Ranges and Ovens) and for Certain Commercial and Industrial Equipment (Commercial Clothes Washers), 74 Fed. Reg. 16040 (Apr. 8, 2009) ("2009 Rule"); Energy Conservation Standards for Consumer Conventional Cooking Products, 89 Fed. Reg. 11434 (Feb. 14, 2024) ("Feb. 2024 Rule"); Energy

Conservation Standards for Consumer Conventional Cooking Products, 89 Fed. Reg. 65520 (Aug. 12, 2024) ("Aug. 2024 Rule").

The existing energy conservation standards for conventional consumer ovens were lawfully enacted. In 2009, DOE amended the statutory energy conservation standards for gas ovens manufactured after April 8, 2012, to prohibit those products from being equipped with a constant burning pilot light. 2009 Rule, 74 Fed. Reg. at 16041; *see also* 10 C.F.R. 430.32(j)(2)(i) (the "2009 Standards"). DOE determined that the 2009 Standards would result in 0.14 quadrillion British thermal units ("quads") of energy savings during the analysis period, the equivalent of eliminating the need for 62 megawatts of generating capacity.[1] 2009 Rule, 74 Fed. Reg. at 16043. In 2024, DOE further amended the energy conservation standards for gas and electric ovens manufactured after January 30, 2028, to require that their controls systems not be equipped with a linear power supply.[2] Feb. 2024 Rule, 89 Fed. Reg. at 11436; Aug. 2024 Rule, 89 Fed. Reg. at 65523; 10 C.F.R. 430.32(j)(2)(ii) (the "2024 Standards"). DOE determined that the 2024 Standards would result in 0.22 quads of energy savings, a 2% reduction in energy use as compared to a scenario without the amended standards, while saving consumers between $63.3 and $95.6 million per year during the analysis period.[3] Feb. 2024 Rule, 89 Fed. Reg. at 11437, 11440. Having previously found that the amended energy conservation standards for ovens would result in these energy savings, DOE's proposal to rescind the 2009 and 2024 Standards in favor of the statutory requirements would clearly "increase[] the maximum allowable energy use" of ovens in violation of Section 6295(o)(1), and are not "designed to achieve the maximum improvement in energy efficiency" in violation of Section 6295(o)(2)(A). *See also NRDC v. Abraham*, 355 F.3d 179, 197 (2d Cir. 2004) (after DOE promulgates a final rule amending an energy conservation standard, "subsection (o)(1) operates to restrict DOE's discretionary ability to amend standards downward thereafter.").

II. The Proposed Rescission Violates the APA.

Even if the Proposed Rescission did not violate EPCA's anti-backsliding provision, it violates the APA and must be withdrawn because it is devoid of any rational explanation, lacks any analytical support, is contrary to DOE's previous findings and the evidence DOE relied upon in making those findings, fails to consider factors Congress directed DOE to consider, and is therefore arbitrary and capricious. To comply with the APA, DOE is required to provide a "reasoned explanation for its action" and a "rational connection between the facts found and the choice made." *F.C.C. v. Fox Television Stations, Inc.*, 566 U.S. 502 (2009). As such, an "agency must examine the relevant data and articulate a satisfactory explanation for its actions." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Where an agency changes its position, as DOE it proposes here, the agency must "display awareness that it is changing position," "show that there are good reasons for the new policy," and "be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account." *FCC v. Fox TV Stations, Inc*., 556 U.S. 502, 515 (2009). Agency actions that do not include these considerations are arbitrary and capricious. *Id*.

---

[1] DOE adopted the 2009 Standards concurrently with its amended energy conservation standards for conventional cooking tops under the umbrella of "cooking products." The energy savings and environmental and health benefits discussed in this comment represent DOE's findings of the aggregate benefits of the amended standards for cooking products.

[2] Critically, the amended energy conservation standards were the product of a joint agreement between groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility. *See* Aug. 2024 Rule, 89 Fed. Reg. at 65522.

[3] The savings and benefits discussed for DOE's 2024 Standards similarly represent the aggregate benefits of its amended standards for cooking products, which included amended standards for conventional cooking tops.

DOE provides two equally unavailing reasons for its Proposed Rescission: a conclusory assertion that the existing standards are not economically justifiable and because of "a new policy to reduce regulatory burden wherever possible." Proposed Rescission, 90 Fed. Reg. at 20886. In advancing those positions, DOE fails to offer a rational explanation or any analytical support, fails to address that the conclusions in the Proposed Rescission are contrary to its previous findings and the evidence it relies in making those findings, and fails to consider relevant statutory factors.

A. DOE Fails to Offer a Rational Explanation for the Proposed Rescission.

The Proposed Rescission contains no analysis or explanation supporting DOE's conclusion that the 2009 and 2024 Standards are not economically justified, and any such conclusion is plainly contradicted by DOE's own record and prior determinations. In adopting both the 2009 and 2024 Standards, DOE relied upon an extensive factual record demonstrating that the Standards were both technologically feasible and economically justified. DOE determined that the 2009 Standards resulted in life-cycle cost savings for consumers as well as net national benefits of between $20 and $57 million per year. 2009 Rule, 74 Fed. Reg. at 16043-44, 16052. Among DOE's findings for the 2009 Standards were significant environmental benefits, including avoided emissions of 13.7 million tons of carbon dioxide, 6.1 kilotons of nitrogen oxides, and 0.15 tons of mercury. 2009 Rule, 74 Fed. Reg. at 16043. DOE determined that the 2024 Standards also resulted in life-cycle cost and annual savings for consumers as well as net national benefits of between $92.6 and $122.7 million per year. Feb. 2024 Rule, 89 Fed. Reg. at 11440, 11439, 11446-48; Aug. 2024 Rule, 89 Fed. Reg at 65522. Among DOE's findings for the 2024 Standards were significant environmental benefits, including avoided emissions of 3.99 million metric tons of carbon dioxide, 1.15 thousand tons of sulfur dioxide, 7.61 thousand tons of nitrogen oxides, 34.70 thousand tons of methane, 0.04 thousand tons of nitrous oxide, and 0.01 tons of mercury. Feb. 2024 Rule, 89 Fed. Reg. at 11437. DOE further found the amended standards would result in health benefits of between $160 and $420 million in savings due to decreased emissions of fine particulate matter (PM2.5), sulfur dioxide, and nitrogen oxides. Feb. 2024 Rule, 89 Fed. Reg. at 11438. DOE's determinations for these Standards were rational, relying upon rigorous analyses of the economic and health impacts of its proposals and considering comments received from trade associations representing manufacturers, energy and environmental advocates, consumer groups, and utilities. DOE's own record and prior determinations demonstrate that the Proposed Rescission is likely to *increase* consumer, environmental, and health costs while burdening national energy supplies.

Nor does DOE's asserted new policy to reduce regulatory burdens provide adequate support for the Proposed Rescission, as DOE fails to provide the reasoned explanation necessary to justify so drastic a change in position. *See FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 515 (2009) (an agency must provide a detailed justification for a change in policy when "its new policy rests upon factual findings that contradict those which underlay its prior policy"). No policy rationale, however, could allow DOE to rescind the 2009 and 2024 Standards in violation of EPCA's anti-backsliding provision.

B. DOE Fails to Apply Statutory Factors to Determine if an Amended Energy Conservation Standard is Economically Justified.

The Proposed Rescission also violates the APA because DOE fails to analyze the statutory factors Congress directed DOE to consider when determining if an amended energy conservation standard is economically justified. As noted above, Congress directed DOE to consider whether a proposed amended energy conservation standard is economically justified, *see* 42 U.S.C. § 6295(o)(2)(A), meaning that the benefits of the standard exceed its burdens. 42 U.S.C. § 6295(o)(2)(B)(i). To reach a determination that a proposed standard is economically justified, DOE must consider seven statutory factors: (1) "the economic

impact of the standard on the manufacturers and on the consumers of the products subject to such standard"; (2) "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"; (3) "the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard"; (4) "any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard"; (5) "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"; (6) "the need for national energy and water conservation"; and (7) "other factors the Secretary considers relevant." *Id*. DOE failed to consider any of these Congressionally-mandated factors in the Proposed Rescission, either to support its conclusion that the 2009 and 2024 Standards are not economically justified or to satisfy its obligation to find that the proposed amended standards are economically justified. The Proposed Rescission is therefore arbitrary and capricious.

C. DOE Fails to Consider Reliance Interests.

When an agency changes its position, it must consider reliance interests. *FCC v. Fox TV Stations, Inc.*, 556 U.S. at 515 (an agency must provide a "detailed justification" when its prior position "engendered serious reliance interests that must be taken into account"). The Proposed Rescission is arbitrary and capricious because it reflects no consideration of the reliance interests engendered by the existing Standards. The existing Standards provide clear and direct benefits to our constituents that will be lost if DOE finalizes the Proposed Rescission. The Proposed Rescission will increase consumers' energy costs, degrade public health, and result in emissions of harmful pollutants that contribute to climate change. These negative impacts will be particularly harmful to low-income and minority communities, which are not only more likely to experience energy insecurity but also suffer disproportionately from asthma and other negative health outcomes associated with air pollution.[4] And ultimately, the Proposed Rescission undermines the interests of manufacturers of conventional ovens who have made product investments in reliance on existing energy conservation standards. *See Abraham,* 355 F.3d at 197 (pointing out that "unfettered agency discretion to amend standards [downward] . . . would completely undermine any sense of certainty on the part of manufacturers as to the required energy efficiency standards at a given time"). The Proposed Rescission would not only promote uncertainty in the market and punish manufacturers who have invested in producing compliant ovens, it would also invite less efficient products from sources that would undercut those manufacturers.

D. DOE Must Analyze the Proposed Rescission Under the National Environmental Policy Act because it Does Not Qualify for a Categorical Exclusion.

DOE wrongly suggests that the Proposed Rescission may avoid environmental review under NEPA because it qualifies for the categorical exclusion applicable to "Actions to Conserve Energy or Water." Proposed Rescission, 90 Fed. Reg. at 20887; *see also* 10 C.F.R. part 1021, subpart D, appendix B, B5.1. DOE's suggestion that the Proposed Rescission qualifies for that categorical exclusion is plainly without merit. That categorical exclusion does not apply to rulemakings which would "have the potential to cause a significant increase in energy consumption in a state or region." 10 C.F.R. part 1021, subpart D, appendix

[4] *See*, *e.g.*, Eva Luara Siegel et al., "Energy Insecurity Indicators Associated With Increased Odds Of Respiratory, Mental Health, And Cardiovascular Conditions," 43 HEALTH AFFAIRS 2, 260-268 (Feb. 2024), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2023.01052; Iyad Kheirbek et al., "$PM_{2.5}$ and Ozone Health Impacts and Disparities in New York City: Sensitivity to Spatial and Temporal Resolution," 12 AIR QUALITY & ATMOSPHERIC HEALTH 473 (2012); NYC Health + Hospitals, Community Needs Assessment, 22 (2022), https://hhinternet.blob.core.windows.net/uploads/2022/07/community-health-needs-asssessment-2022.pdf.

B, B5.1(b). On DOE's own record, the Proposed Rescission allows for an increase in the maximum allowable energy use for ovens and has the potential to cause a significant increase in energy consumption in a state or region.[5] 2009 Rule, 74 Fed. Reg. at 16043; Feb. 2024 Rule, 89 Fed. Reg. at 11437, 11440. More fundamentally, no categorical exclusion is available for actions, like the Proposed Rescission, that "threaten a violation of statutory [or] regulatory . . . requirements of DOE." 10 C.F.R. part 1021, subpart D, appendix B, B(1). Were DOE to finalize the Proposed Rescission without preparing an environmental review in accordance with the requirements of NEPA, it would violate the APA as arbitrary and capricious and an abuse of discretion. *See Bark v. U.S. Forest Serv.*, 958 F.3d 865, 869 (9th Cir. 2020) (the APA "provides the governing standard for courts reviewing an agency's compliance with NEPA"). Simply put, the Proposed Rescission cannot qualify for any categorical exclusion, and DOE must prepare a review of its proposal in accordance with the requirements of NEPA.

III. Conclusion.

The Proposed Rescission is illegal and contrary to the interests of consumers, manufacturers, and the general public. We urge DOE to withdraw the Proposed Rescission.

Respectfully submitted,

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ Christian Harned
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

[5] And because this proposal would have a significant adverse effect on energy use, DOE's assertion that it is not required to prepare and submit a Statement of Energy Effects pursuant to Executive Order 13211, *see* Proposed Rescission, 90 Fed. Reg. at 20888, is without merit as well.

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ Jamie Jefferson
JAMIE JEFFERSON
TAYLOR WETZEL
JINA J. KIM
ELIZABETH SONG
Deputy Attorneys General
LAURA ZUCKERMAN
Supervising Deputy Attorney General
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, California 94610
Email: Jamie.Jefferson@doj.ca.gov

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ Timothy Hoffman
TIMOTHY HOFFMAN
LAURA MIRMAN-HESLIN
CHRISTOPHER GORE
Assistant Attorneys General
MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE STATE OF MARYLAND

Anthony G. Brown
Attorney General

/s/ Steven J. Goldstein
Steven J. Goldstein
Robert N. Brewer
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6414
Email: sgoldstein@oag.state.md.us

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ Daniel M. Salton
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
(860) 808-5250
Email: daniel.salton@ct.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General

/s/ Scott W. Boak
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
Email: scott.boak@maine.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General

/s/ Jason E. James
Jason E. James
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE PEOPLE OF THE STATE OF MICHIGAN

/s/ Benjamin C. Houston
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
Email: HoustonB1@michigan.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

/s/ Alyssa Bixby-Lawson
ALYSSA BIXBY-LAWSON
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
(651) 300-0904
Email: Alyssa.Bixby-Lawson@ag.state.mn.us

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ Paul Garrahan
PAUL GARRAHAN
Attorney-in-Charge, Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Email: Paul.Garrahan@doj.oregon.gov

FOR STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL

/s/ Jack A. Ventura
Jack A. Ventura
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ Hannah Yindra
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Email: Hannah.Yindra@vermont.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ Steve Scheele
STEPHEN SCHEELE
Assistant Attorney General, Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ Brian Caldwell
Brian Caldwell
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 727-6211 (desk)
(202) 445-1952 (cell)
Email: brian.caldwell@dc.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ I. Andrew Goldberg
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

COMMENTS OF THE ATTORNEYS GENERAL OF THE STATE OF CALIFORNIA, NEW YORK, MARYLAND, THE CITY OF NEW YORK, THE STATE OF CONNECTICUT, ILLINOIS, MAINE, MICHIGAN, MINNESOTA, NEW JERSEY, OREGON, VERMONT, WASHINGTON, THE COMMONWEALTH OF MASSACHUSETTS, AND THE DISTRICT OF COLUMBIA

July 15, 2025

Submitted via regulations.gov

Appliance and Equipment Standards Program
Building Technologies Office
U.S. Department of Energy

Re: Energy Conservation Standards for Conventional Cooking Tops
Docket No. EERE–2025–BT–STD–0011
RIN 1904-AF81

The undersigned offices of state attorneys general and local government offer the following comments in opposition to the U.S. Department of Energy's ("DOE") proposed rescission of existing energy conservation standards for conventional consumer cooking tops under the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. §§ 6295 *et seq*. Energy Conservation Standards for Conventional Cooking Tops, 90 Fed. Reg. 20882 (proposed May 16, 2025) (the "Proposed Rescission"). The Proposed Rescission contemplates vacating existing energy conservation standards for conventional cooking tops, codified at 10 C.F.R. 430.32(j)(1),[1] and returning to the initial statutory standards for those appliances, located at 42 U.S.C. § 6295(h)(1). As governmental entities committed to safeguarding consumer interests, including reducing energy-related costs, protecting public health and the environment, and addressing climate change, we urge DOE to withdraw the Proposed Rescission because it violates EPCA and fails to comply with the Administrative Procedures Act ("APA"), 5 U.S.C. § 551 *et seq*., and the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4347.

I. The Proposed Rescission Violates EPCA.

The Proposed Rescission is illegal and must be withdrawn because it violates EPCA's anti-backsliding provision. Congress enacted EPCA to "conserve energy supplies through energy conservation programs and…the regulation of certain energy uses" and to "provide for improved energy efficiency of…major appliances." 42 U.S.C. § 6201(4), (5). In furtherance of these purposes, Congress required that any energy conservation standard promulgated by DOE under EPCA's appliance program achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 42 U.S.C. § 6295(o)(2)(A). Once such a standard is in place, Congress prohibited DOE from weakening the energy conservation standard for that appliance. 42 U.S.C. § 6295(o)(1). Despite these clear Congressional directives, the Proposed Rescission seeks to weaken the energy conservation standards for cooking tops,

[1] Though the Proposed Rescission identifies only the design requirements codified at 10 C.F.R. 430.32(j)(1)(ii), which sets forth design standards currently in effect for gas portable indoor conventional cooking tops, the text of the Proposed Rescission suggests a broader proposal to "rescind the regulatory design requirements for conventional cooking tops manufactured on or after January 1, 1990." Proposed Rescission, 90 Fed. Reg. at 20882.

which DOE has already determined are technologically feasible and economically justified, even though the existing standards provide clear consumer and public benefits. *See* Energy Conservation Standards for Certain Consumer Products (Dishwashers, Dehumidifiers, Microwave Ovens, and Electric and Gas Kitchen Ranges and Ovens) and for Certain Commercial and Industrial Equipment (Commercial Clothes Washers), 74 Fed. Reg. 16040 (Apr. 8, 2009) ("2009 Rule"); Energy Conservation Standards for Consumer Conventional Cooking Products, 89 Fed. Reg. 11434 (Feb. 14, 2024) ("Feb. 2024 Rule"); Energy Conservation Standards for Consumer Conventional Cooking Products, 89 Fed. Reg. 65520 (Aug. 12, 2024) ("Aug. 2024 Rule").

The existing energy conservation standards for conventional consumer cooking tops were lawfully enacted. In 2009, DOE amended the statutory energy conservation standards for certain gas cooking tops manufactured after April 8, 2012, to prohibit those products from being equipped with a constant burning pilot light. 2009 Rule, 74 Fed. Reg. at 16041; *see also* 10 C.F.R. 430.32(j)(1)(i)-(ii) (the "2009 Standards"). DOE determined that the 2009 Standards would result in 0.14 quadrillion British thermal units ("quads") of energy savings during the analysis period, the equivalent of eliminating the need for 62 megawatts of generating capacity.[2] 2009 Rule, 74 Fed. Reg. at 16043. In 2024, DOE further amended the energy conservation standards for all cooking tops manufactured after January 30, 2028, to require compliance with performance standards setting maximum integrated annual energy consumption.[3] Feb. 2024 Rule, 89 Fed. Reg. at 11435-36; Aug. 2024 Rule, 89 Fed. Reg. at 65522; 10 C.F.R. 430.32(j)(1)(iii) (the "2024 Standards"). DOE determined that the 2024 Standards would result in 0.22 quads of energy savings, a 2% reduction in energy use as compared to a scenario without the amended standards, while saving consumers between $63.3 and $95.6 million per year during the analysis period.[4] Feb. 2024 Rule, 89 Fed. Reg. at 11437, 11440. Having previously found that the amended energy conservation standards for cooking tops would result in these energy savings, DOE's proposal to rescind the 2009 and 2024 Standards in favor of the statutory requirements would clearly "increase[] the maximum allowable energy use" of cooking tops in violation of Section 6295(o)(1), and are not "designed to achieve the maximum improvement in energy efficiency" in violation of Section 6295(o)(2)(A). *See also NRDC v. Abraham*, 355 F.3d 179, 197 (2d Cir. 2004) (after DOE promulgates a final rule amending an energy conservation standard, "subsection (o)(1) operates to restrict DOE's discretionary ability to amend standards downward thereafter").

II. The Proposed Rescission Violates the APA.

Even if the Proposed Rescission did not violate EPCA's anti-backsliding provision, it violates the APA and must be withdrawn because it is devoid of any rational explanation, lacks any analytical support, is contrary to DOE's previous findings and the evidence DOE relied upon in making those findings, fails to consider factors Congress directed DOE to consider, and is therefore arbitrary and capricious. To comply with the APA, DOE is required to provide a "reasoned explanation for its action" and a "rational connection between the facts found and the choice made." *F.C.C. v. Fox Television Stations, Inc.*, 566 U.S. 502 (2009). As such, an "agency must examine the relevant data and articulate a satisfactory explanation for its actions." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Where

[2] DOE adopted the 2009 Standards concurrently with its amended energy conservation standards for conventional ovens under the umbrella of "cooking products." The energy savings and environmental and health benefits discussed in this comment represent DOE's findings of the aggregate benefits of the amended standards for cooking products.

[3] Critically, the amended energy conservation standards were the product of a joint agreement between groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility. *See* Aug. 2024 Rule, 89 Fed. Reg. at 65522.

[4] The savings and benefits discussed for DOE's 2024 Standards similarly represent the aggregate benefits of its amended standards for cooking products, which included amended standards for conventional ovens.

an agency changes its position, as DOE it proposes here, the agency must "display awareness that it is changing position," "show that there are good reasons for the new policy," and "be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account." *FCC v. Fox TV Stations, Inc*., 556 U.S. 502, 515 (2009). Agency actions that do not include these considerations are arbitrary and capricious. *Id*.

DOE provides two equally unavailing reasons for its Proposed Rescission: a conclusory assertion that the existing standards are not economically justifiable and because of "a new policy to reduce regulatory burden wherever possible." Proposed Rescission, 90 Fed. Reg. at 20884. In advancing those positions, DOE fails to offer a rational explanation or any analytical support, fails to address that the conclusions in the Proposed Rescission are contrary to its previous findings and the evidence it relies in making those findings, and fails to consider relevant statutory factors.

A. DOE Fails to Offer a Rational Explanation for the Proposed Rescission.

The Proposed Rescission contains no analysis or explanation supporting DOE's conclusion that the 2009 and 2024 Standards are not economically justified, and any such conclusion is plainly contradicted by DOE's own record and prior determinations. In adopting both the 2009 and 2024 Standards, DOE relied upon an extensive factual record demonstrating that the Standards were both technologically feasible and economically justified. DOE determined that the 2009 Standards resulted in life-cycle cost savings for consumers as well as net national benefits of between $20 and $57 million per year. 2009 Rule, 74 Fed. Reg. at 16043-44, 16052. Among DOE's findings for the 2009 Standards were significant environmental benefits, including avoided emissions of 13.7 million tons of carbon dioxide, 6.1 kilotons of nitrogen oxides, and 0.15 tons of mercury. 2009 Rule, 74 Fed. Reg. at 16043. DOE also determined that the 2024 Standards resulted in life-cycle cost and annual savings for consumers as well as net national benefits of between $92.6 and $122.7 million per year. Feb. 2024 Rule, 89 Fed. Reg. at 11440, 11439, 11446-48; Aug. 2024 Rule, 89 Fed. Reg at 65522. Among DOE's findings for the 2024 Standards were significant environmental benefits, including avoided emissions of 3.99 million metric tons of carbon dioxide, 1.15 thousand tons of sulfur dioxide, 7.61 thousand tons of nitrogen oxides, 34.70 thousand tons of methane, 0.04 thousand tons of nitrous oxide, and 0.01 tons of mercury. Feb. 2024 Rule, 89 Fed. Reg. at 11437. DOE further found the amended standards would result in health benefits of between $160 and $420 million in savings due to decreased emissions of fine particulate matter (PM2.5), sulfur dioxide, and nitrogen oxides. Feb. 2024 Rule, 89 Fed. Reg. at 11438. DOE's determinations for these Standards were rational, relying upon rigorous analyses of the economic and health impacts of its proposals and considering comments received from trade associations representing manufacturers, energy and environmental advocates, consumer groups, and utilities. DOE's own record and prior determinations demonstrate that the Proposed Rescission is likely to *increase* consumer, environmental, and health costs while burdening national energy supplies.

Nor does DOE's asserted new policy to reduce regulatory burdens provide adequate support for the Proposed Rescission, as DOE fails to provide the reasoned explanation necessary to justify so drastic a change in position. *See FCC v. Fox TV Stations, Inc*., 556 U.S. at 515 (an agency must provide a detailed justification for a change in policy when "its new policy rests upon factual findings that contradict those which underlay its prior policy"). No policy rationale, however, could allow DOE to rescind the 2009 and 2024 Standards in violation of EPCA's anti-backsliding provision.

B. DOE Fails to Apply Statutory Factors to Determine if an Amended Energy Conservation Standard is Economically Justified.

The Proposed Rescission also violates the APA because DOE fails to analyze the statutory factors Congress directed DOE to consider when determining if an amended energy conservation standard is economically justified. As noted above, Congress directed DOE to consider whether a proposed amended energy conservation standard is economically justified, *see* 42 U.S.C. § 6295(o)(2)(A), meaning that the benefits of the standard exceed its burdens. 42 U.S.C. § 6295(o)(2)(B)(i). To reach a determination that a proposed standard is economically justified, DOE must consider seven statutory factors: (1) "the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard"; (2) "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"; (3) "the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard"; (4) "any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard"; (5) "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"; (6) "the need for national energy and water conservation"; and (7) "other factors the Secretary considers relevant." *Id*. DOE failed to consider any of these Congressionally-mandated factors in the Proposed Rescission, either to support its conclusion that the 2009 and 2024 Standards are not economically justified or to satisfy its obligation to find that the proposed amended standards are economically justified. The Proposed Rescission is therefore arbitrary and capricious.

C. DOE Fails to Consider Reliance Interests.

When an agency changes its position, it must consider reliance interests. *FCC v. Fox TV Stations, Inc.*, 556 U.S. at 515 (an agency must provide a "detailed justification" when its prior position "engendered serious reliance interests that must be taken into account"). The Proposed Rescission is arbitrary and capricious because it reflects no consideration of the reliance interests engendered by the existing Standards. The existing Standards provide clear and direct benefits to our constituents that will be lost if DOE finalizes the Proposed Rescission. The Proposed Rescission will increase consumers' energy costs, degrade public health, and result in emissions of harmful pollutants that contribute to climate change. These negative impacts will be particularly harmful to low-income and minority communities, which are not only more likely to experience energy insecurity but also suffer disproportionately from asthma and other negative health outcomes associated with air pollution.[5] And ultimately, the Proposed Rescission undermines the interests of manufacturers of cooking tops who have made product investments in reliance on existing energy conservation standards. *See Abraham,* 355 F.3d at 197 (pointing out that "unfettered agency discretion to amend standards [downward] . . . would completely undermine any sense of certainty on the part of manufacturers as to the required energy efficiency standards at a given time"). The Proposed Rescission would not only promote uncertainty in the market and punish manufacturers who have invested in producing compliant cooking tops, it would also invite less efficient products from sources that would undercut those manufacturers.

---

[5] *See*, *e.g.*, Eva Luara Siegel et al., "Energy Insecurity Indicators Associated With Increased Odds Of Respiratory, Mental Health, And Cardiovascular Conditions," 43 HEALTH AFFAIRS 2, 260-268 (Feb. 2024), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2023.01052; Iyad Kheirbek et al., "$PM_{2.5}$ and Ozone Health Impacts and Disparities in New York City: Sensitivity to Spatial and Temporal Resolution," 12 AIR QUALITY & ATMOSPHERIC HEALTH 473 (2012); NYC Health + Hospitals, Community Needs Assessment, 22 (2022), https://hhinternet.blob.core.windows.net/uploads/2022/07/community-health-needs-asssessment-2022.pdf.

D. DOE Must Analyze the Proposed Rescission Under the National Environmental Policy Act because it Does Not Qualify for a Categorical Exclusion.

DOE wrongly suggests that the Proposed Rescission may avoid environmental review under NEPA because it qualifies for the categorical exclusion applicable to "Actions to Conserve Energy or Water." Proposed Rescission, 90 Fed. Reg. at 20882; *see also* 10 C.F.R. part 1021, subpart D, appendix B, B5.1. DOE's suggestion that the Proposed Rescission qualifies for that categorical exclusion is plainly without merit. That categorical exclusion does not apply to rulemakings which would "have the potential to cause a significant increase in energy consumption in a state or region." 10 C.F.R. part 1021, subpart D, appendix B, B5.1(b). On DOE's own record, the Proposed Rescission allows for an increase in the maximum allowable energy use for cooking tops and has the potential to cause a significant increase in energy consumption in a state or region.[6] 2009 Rule, 74 Fed. Reg. at 16043; Feb. 2024 Rule, 89 Fed. Reg. at 11437, 11440. More fundamentally, no categorical exclusion is available for actions, like the Proposed Rescission, that "threaten a violation of statutory [or] regulatory . . . requirements of DOE." 10 C.F.R. part 1021, subpart D, appendix B, B(1). Were DOE to finalize the Proposed Rescission without preparing an environmental review in accordance with the requirements of NEPA, it would violate the APA as arbitrary and capricious and an abuse of discretion. *See Bark v. U.S. Forest Serv.*, 958 F.3d 865, 869 (9th Cir. 2020) (the APA "provides the governing standard for courts reviewing an agency's compliance with NEPA"). Simply put, the Proposed Rescission cannot qualify for any categorical exclusion, and DOE must prepare a review of its proposal in accordance with the requirements of NEPA.

III. Conclusion.

The Proposed Rescission is illegal and contrary to the interests of consumers, manufacturers, and the general public. We urge DOE to withdraw the Proposed Rescission.

Respectfully submitted,

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ Christian Harned
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

[6] And because this proposal would have a significant adverse effect on energy use, DOE's assertion that it is not required to prepare and submit a Statement of Energy Effects pursuant to Executive Order 13211, *see* Proposed Rescission, 90 Fed. Reg. at 20883, is without merit as well.

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ Jamie Jefferson
JAMIE JEFFERSON
TAYLOR WETZEL
JINA J. KIM
ELIZABETH SONG
Deputy Attorneys General
LAURA ZUCKERMAN
Supervising Deputy Attorney General
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, California 94610
Email: Jamie.Jefferson@doj.ca.gov

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ Timothy Hoffman
TIMOTHY HOFFMAN
LAURA MIRMAN-HESLIN
CHRISTOPHER GORE
Assistant Attorneys General
MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE STATE OF MARYLAND

Anthony G. Brown
Attorney General

/s/ Steven J. Goldstein
Steven J. Goldstein
Robert N. Brewer
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6414
Email: sgoldstein@oag.state.md.us

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ Daniel M. Salton
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
(860) 808-5250
Email: daniel.salton@ct.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General

/s/ Scott W. Boak
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
Email: scott.boak@maine.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General

/s/ Jason E. James
Jason E. James
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE PEOPLE OF THE STATE OF MICHIGAN

/s/ Benjamin C. Houston
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
Email: HoustonB1@michigan.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

/s/ Alyssa Bixby-Lawson
ALYSSA BIXBY-LAWSON
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
(651) 300-0904
Email: Alyssa.Bixby-Lawson@ag.state.mn.us

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ Paul Garrahan
PAUL GARRAHAN
Attorney-in-Charge, Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Email: Paul.Garrahan@doj.oregon.gov

FOR STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL

/s/ Jack A. Ventura
Jack A. Ventura
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ Hannah Yindra
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Email: Hannah.Yindra@vermont.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ Steve Scheele
STEPHEN SCHEELE
Assistant Attorney General, Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ Brian Caldwell
Brian Caldwell
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 727-6211 (desk)
(202) 445-1952 (cell)
Email: brian.caldwell@dc.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ I. Andrew Goldberg
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

COMMENTS OF THE ATTORNEYS GENERAL OF THE STATE OF CALIFORNIA, NEW YORK, MARYLAND, THE CITY OF NEW YORK, THE STATE OF CONNECTICUT, ILLINOIS, MAINE, MICHIGAN, MINNESOTA, NEW JERSEY, OREGON, VERMONT, WASHINGTON, THE COMMONWEALTH OF MASSACHUSETTS, AND THE DISTRICT OF COLUMBIA

July 15, 2025

Submitted via regulations.gov

Appliance and Equipment Standards Program
Building Technologies Office
U.S. Department of Energy

Re: Energy Conservation Standards for Dehumidifiers
Docket No. EERE–202025–BT–STD–0013
RIN 1904-AF83

The undersigned offices of state attorneys general and local government offer the following comments in opposition to the U.S. Department of Energy's ("DOE") proposed rescission of existing energy conservation standards for dehumidifiers under the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. §§ 6295 *et seq*. Rescinding the Amended Energy Conservation Standards for Dehumidifiers, 90 Fed. Reg. 20864 (proposed May 16, 2025) (the "Proposed Rescission"). The Proposed Rescission contemplates vacating existing energy conservation standards for dehumidifiers, codified at 10 C.F.R. 430.32(v), and returning to the initial statutory standards for those appliances, located at 42 U.S.C. § 6295(cc)(2). As governmental entities committed to safeguarding consumer interests, including reducing energy-related costs, protecting public health and the environment, and addressing climate change, we urge DOE to withdraw the Proposed Rescission because it violates EPCA and fails to comply with the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 551 *et seq*., and the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4347.

I. The Proposed Rescission Violates EPCA.

The Proposed Rescission is illegal and must be withdrawn because it violates EPCA's anti-backsliding provision. Congress enacted EPCA to "conserve energy supplies through energy conservation programs and…the regulation of certain energy uses" and to "provide for improved energy efficiency of…major appliances." 42 U.S.C. § 6201(4), (5). In furtherance of these purposes, Congress required that any energy conservation standard promulgated by DOE under EPCA's appliance program achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 42 U.S.C. § 6295(o)(2)(A). Once such a standard is in place, Congress prohibited DOE from weakening the energy conservation standard for that appliance. 42 U.S.C. § 6295(o)(1). Despite these clear Congressional directives, the Proposed Rescission seeks to weaken the energy conservation standards for dehumidifiers, which DOE has already determined are technologically feasible and economically justified, even though the existing standards provide clear consumer and public benefits. *See* Energy Conservation Standards for Dehumidifiers, 81 Fed. Reg. 38338 (Jun. 13, 2016) (the "2016 Rule").

The existing energy conservation standards for conventional consumer dehumidifiers were lawfully enacted. In 2016, DOE amended the statutory energy conservation standards for dehumidifiers. 2016 Rule,

81 Fed. Reg. at 38338; *see also* 10 C.F.R. 430.32(v) (the "Existing Standards"). DOE determined that the Existing Standards would result in 0.30 quadrillion British thermal units ("quads") of energy savings, a 7.4% reduction in energy use compared with the statutory standards, while saving consumers between $1.28 and $2.71 billion during the analysis period. 2016 Rule, 81 Fed. Reg. at 38340. DOE acknowledges that the Proposed Rescission will increase energy use, stating that it will allow Americans to "consume as much energy as they desire." Proposed Rescission, 90 Fed. Reg. at 20865. Having previously found that the amended energy conservation standards for dehumidifiers would result in these consumer and energy savings, DOE's proposal to rescind the Existing Standards in favor of the statutory requirements would clearly "increase[] the maximum allowable energy use" of dehumidifiers in violation of Section 6295(o)(1), and are not "designed to achieve the maximum improvement in energy efficiency" in violation of Section 6295(o)(2)(A).

DOE attempts to evade EPCA's clear prohibition on backsliding by concluding that dehumidifiers are not a "covered product" subject to Section 6295(o)(1). But DOE reaches the exact opposite conclusion in its proposal to rescind standards for a similarly situated appliance, external power supplies, which Congress also codified directly into 42 U.S.C. § 6295. *See* Energy Conservation Standards for External Power Supplies, 90 Fed. Reg. 20900 (proposed May 16, 2025) (stating that energy conservation standards for external power supplies are subject to EPCA's anti-backsliding provision). If DOE's reading were correct, it would lack the authority to promulgate the Proposed Rescission at all, as it only has authority to amend standards for "covered products." *See* 42 U.S.C. §§ 6295(o)(2)(A), 6295(p)(1). DOE cannot pick and choose which provisions apply to dehumidifiers. Instead, having previously promulgated a final rule amending the energy conservation standard for dehumidifiers, "subsection (o)(1) operates to restrict DOE's discretionary ability to amend standards downward thereafter."). *NRDC v. Abraham*, 355 F.3d 179, 197 (2d Cir. 2004).

II. The Proposed Rescission Violates the APA.

Even if the Proposed Rescission did not violate EPCA's anti-backsliding provision, it violates the APA and must be withdrawn because it is devoid of any rational explanation, lacks any analytical support, is contrary to DOE's previous findings and the evidence DOE relied upon in making those findings, fails to consider factors Congress directed DOE to consider, and is therefore arbitrary and capricious. To comply with the APA, DOE is required to provide a "reasoned explanation for its action" and a "rational connection between the facts found and the choice made." *F.C.C. v. Fox Television Stations, Inc.*, 566 U.S. 502 (2009). As such, an "agency must examine the relevant data and articulate a satisfactory explanation for its actions." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Where an agency changes its position, as DOE it proposes here, the agency must "display awareness that it is changing position," "show that there are good reasons for the new policy," and "be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account." *FCC v. Fox TV Stations, Inc*., 556 U.S. 502, 515 (2009). Agency actions that do not include these considerations are arbitrary and capricious. *Id*.

DOE provides two equally unavailing reasons for its Proposed Rescission: a conclusory assertion that the existing standards are not economically justifiable and because of "a new policy to reduce regulatory burden wherever possible." Proposed Rescission, 90 Fed. Reg. at 20865. In advancing those positions, DOE fails to offer a rational explanation or any analytical support, fails to address that the conclusions in the Proposed Rescission are contrary to its previous findings and the evidence it relies in making those findings, and fails to consider relevant statutory factors.

A. DOE Fails to Offer a Rational Explanation for the Proposed Rescission.

The Proposed Rescission contains no analysis or explanation supporting DOE's conclusion that the Existing Standards are not economically justified, and any such conclusion is plainly contradicted by DOE's own record and prior determinations. In adopting both the Existing Standards, DOE relied upon an extensive factual record demonstrating that the Standards were both technologically feasible and economically justified. DOE determined that the Existing Standards resulted in significant life-cycle cost savings for consumers as well as net national benefits of between $163 and $189 million per year. 2016 Rule, 81 Fed. Reg. at 38339, 38341, 38371-38383. DOE also found substantial environmental and health benefits, including avoided emissions of 18.6 million metric tons of carbon dioxide, 11 thousand tons of sulfur dioxide, 33.1 tons of nitrogen oxides, 77.9 thousand tons of methane, 0.23 thousand tons of nitrous oxide, and 0.04 tons of mercury. 2016 Rule, 81 Fed. Reg. at 38340. DOE's determinations were rational, relying upon rigorous analyses of the economic, environmental, and health impacts of its proposals and considering comments received from appliance manufacturers and trade groups representing manufacturers, energy and environmental advocates, consumer groups, and utilities. *See* 2016 Rule, 81 Fed. Reg. at 38348-38371. DOE's own record and prior determination demonstrates that the Proposed Rescission is likely to *increase* consumer costs and burden national energy supplies.

Nor does DOE's asserted new policy to reduce regulatory burdens provide adequate support for the Proposed Rescission, as DOE fails to provide the reasoned explanation necessary to justify so drastic a change in position. *See FCC v. Fox TV Stations, Inc*., 556 U.S. at 515 (an agency must provide a detailed justification for a change in policy when "its new policy rests upon factual findings that contradict those which underlay its prior policy"). No policy rationale, however, could allow DOE to rescind the Existing Standards in violation of EPCA's anti-backsliding provision.

B. DOE Fails to Apply Statutory Factors to Determine if an Amended Energy Conservation Standard is Economically Justified.

The Proposed Rescission also violates the APA because DOE fails to analyze the statutory factors Congress directed DOE to consider when determining if an amended energy conservation standard is economically justified. As noted above, Congress directed DOE to consider whether a proposed amended energy conservation standard is economically justified, *see* 42 U.S.C. § 6295(o)(2)(A), meaning that the benefits of the standard exceed its burdens. 42 U.S.C. § 6295(o)(2)(B)(i). To reach a determination that a proposed standard is economically justified, DOE must consider seven statutory factors: (1) "the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard"; (2) "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"; (3) "the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard"; (4) "any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard"; (5) "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"; (6) "the need for national energy and water conservation"; and (7) "other factors the Secretary considers relevant." *Id*. DOE failed to consider any of these Congressionally-mandated factors in the Proposed Rescission, either to support its conclusion that the 2009 and 2024 Standards are not economically justified or to satisfy its obligation to find that the proposed amended standards are economically justified. The Proposed Rescission is therefore arbitrary and capricious.

C. DOE Fails to Consider Reliance Interests.

When an agency changes its position, it must consider reliance interests. *FCC v. Fox TV Stations, Inc.*, 556 U.S. at 515 (an agency must provide a "detailed justification" when its prior position "engendered serious reliance interests that must be taken into account"). The Proposed Rescission is arbitrary and capricious because it reflects no consideration of the reliance interests engendered by the existing Standards. The Existing Standards provide clear and direct benefits to our constituents that will be lost if DOE finalizes the Proposed Rescission. The Proposed Rescission will increase consumers' energy costs, degrade public health, and result in emissions of harmful pollutants that contribute to climate change. These negative impacts will be particularly harmful to low-income and minority communities, which are not only more likely to experience energy insecurity but also suffer disproportionately from asthma and other negative health outcomes associated with air pollution.[1] And ultimately, the Proposed Rescission undermines the interests of manufacturers of dehumidifiers who have made product investments in reliance on existing energy conservation standards. *See Abraham,* 355 F.3d at 197 (pointing out that "unfettered agency discretion to amend standards [downward] . . . would completely undermine any sense of certainty on the part of manufacturers as to the required energy efficiency standards at a given time"). The Proposed Rescission would not only promote uncertainty in the market and punish manufacturers who have invested in producing compliant dehumidifiers, it would also invite less efficient products from sources that would undercut those manufacturers.

D. DOE Must Analyze the Proposed Rescission Under the NEPA because it Does Not Qualify for a Categorical Exclusion.

DOE wrongly suggests that the Proposed Rescission may avoid environmental review under NEPA because it qualifies for the categorical exclusion applicable to "Actions to Conserve Energy or Water." Proposed Rescission, 90 Fed. Reg. at 20865; *see also* 10 C.F.R. part 1021, subpart D, appendix B, B5.1. DOE's suggestion that the Proposed Rescission qualifies for that categorical exclusion is plainly without merit. That categorical exclusion does not apply to rulemakings which would "have the potential to cause a significant increase in energy consumption in a state or region." 10 C.F.R. part 1021, subpart D, appendix B, B5.1(b). On DOE's own record, the Proposed Rescission allows for an increase in the maximum allowable energy use for dehumidifiers and has the potential to cause a significant increase in energy consumption in a state or region.[2] 2016 Rule, 81 Fed. Reg. at 38340. That appears to be the point, as DOE states that the Proposed Rescission would allow Americans to "consume as much energy as they desire." Proposed Rescission, 90 Fed. Reg. at 20865. More fundamentally, no categorical exclusion is available for actions, like the Proposed Rescission, that "threaten a violation of statutory [or] regulatory . . . requirements of DOE." 10 C.F.R. part 1021, subpart D, appendix B, B(1). Were DOE to finalized the Proposed Rescission without preparing an environmental review in accordance with the requirements of NEPA, it would violate the APA as arbitrary and capricious and an abuse of discretion. *See Bark v. U.S. Forest Serv.*, 958 F.3d 865, 869 (9th Cir. 2009) (the APA "provides the governing standard for courts reviewing an agency's compliance with NEPA"). Simply put, the Proposed Rescission cannot qualify for a categorical

[1] *See*, *e.g.*, Eva Luara Siegel et al., "Energy Insecurity Indicators Associated With Increased Odds Of Respiratory, Mental Health, And Cardiovascular Conditions," 43 HEALTH AFFAIRS 2, 260-268 (Feb. 2024), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2023.01052; Iyad Kheirbek et al., "$PM_{2.5}$ and Ozone Health Impacts and Disparities in New York City: Sensitivity to Spatial and Temporal Resolution," 12 AIR QUALITY & ATMOSPHERIC HEALTH 473 (2012); NYC Health + Hospitals, Community Needs Assessment, 22 (2022), https://hhinternet.blob.core.windows.net/uploads/2022/07/community-health-needs-asssessment-2022.pdf.

[2] And because this proposal would have a significant adverse effect on energy use, DOE's assertion that it is not required to prepare and submit a Statement of Energy Effects pursuant to Executive Order 13211, *see* Proposed Rescission, 90 Fed. Reg. at 20866-67, is without merit as well.

exclusion, and DOE must prepare a review of the Proposed Rescission in accordance with the requirements of NEPA.

III. Conclusion.

The Proposed Rescission is illegal and contrary to the interests of consumers, manufacturers, and the general public. We urge DOE to withdraw the Proposed Rescission.

Respectfully submitted,

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ Christian Harned
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ Jamie Jefferson
JAMIE JEFFERSON
TAYLOR WETZEL
JINA J. KIM
ELIZABETH SONG
Deputy Attorneys General
LAURA ZUCKERMAN
Supervising Deputy Attorney General
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, California 94610
Email: Jamie.Jefferson@doj.ca.gov

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN
Attorney General

/s/ Steven J. Goldstein
STEVEN J. GOLDSTEIN
ROBERT N. BREWER
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6414
Email: sgoldstein@oag.state.md.us

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ Timothy Hoffman
TIMOTHY HOFFMAN
LAURA MIRMAN-HESLIN
CHRISTOPHER GORE
Assistant Attorneys General
MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ Daniel M. Salton
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
(860) 808-5250
Email: daniel.salton@ct.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General

/s/ Scott W. Boak
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
Email: scott.boak@maine.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General

/s/ Jason E. James
Jason E. James
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE PEOPLE OF THE STATE OF MICHIGAN

/s/ Benjamin C. Houston
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
Email: HoustonB1@michigan.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

/s/ Alyssa Bixby-Lawson
ALYSSA BIXBY-LAWSON
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
(651) 300-0904
Email: Alyssa.Bixby-Lawson@ag.state.mn.us

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ Paul Garrahan
PAUL GARRAHAN
Attorney-in-Charge, Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Email: Paul.Garrahan@doj.oregon.gov

FOR STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL

/s/ Jack A. Ventura
Jack A. Ventura
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ Hannah Yindra
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Email: Hannah.Yindra@vermont.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ Steve Scheele
STEPHEN SCHEELE
Assistant Attorney General, Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ Brian Caldwell
Brian Caldwell
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 727-6211 (desk)
(202) 445-1952 (cell)
Email: brian.caldwell@dc.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ I. Andrew Goldberg
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

Comments of the Attorneys General of the State of California, New York, Maryland, the City of New York, the State of Connecticut, Illinois, Maine, Michigan, Minnesota, New Jersey, Oregon, Vermont, Washington, the Commonwealth of Massachusetts, and the District of Columbia

July 15, 2025

Submitted via Regulations.gov

Appliance and Equipment Standards Program
Building Technologies Office
U.S. Department of Energy

Re: Energy Conservation Program: Energy Conservation Standards for Automatic Commercial Ice Makers
Docket No. EERE-2025-BT-STD-0015 (RIN 1904-AF85)

The undersigned offices of state attorneys general and local governments offer the following comments in opposition to the U.S. Department of Energy's ("DOE") proposed rescission of existing water use standards for automatic commercial ice makers ("ACIMs") under the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. §§ 6295 *et seq*. 90 Fed. Reg. 20919 (May 16, 2025) (the "Proposed Rescission"). The Proposed Rescission would remove the existing water conservation standards for ACIMs, codified at 10 C.F.R. 431.136, and return to the initial statutory standards for those appliances, located at 42 U.S.C. § 6313(d)(1).

DOE has not sufficiently justified the Proposed Rescission. The agency's main reason for rescinding these standards is a "tentative[] determin[ation] that [it] lacks authority to regulate the water use of ACIMs." 90 Fed. Reg. at 20920. But such a conclusion runs counter to even a cursory reading of the statute and EPCA's history. DOE's other reasons for repealing the standards (e.g., that "the secretary is proposing a new policy to reduce regulatory burden wherever possible," and that recission "would support energy and water abundance") also fall flat. In short, the Proposed Rescission is illegal and must be withdrawn because it violates EPCA, the Administrative Procedures Act, 5 U.S.C. §§ 551 *et seq.*, and, if finalized as proposed under a categorical exclusion to environmental review, NEPA, 42 U.S.C. §§ 4321 *et seq.*

1. DOE Has Authority to Promulgate Water Efficiency Regulations for ACIMs.

DOE asserts that it lacks authority to regulate the water use of ACIMs. 90 Fed. Reg. at 20920-21. According to DOE, the agency lacks authority to regulate water use because 42 U.S.C. § 6311(18) defines "energy conservation standard" to refer only to "the efficiency of electric motors and pumps and certain other industrial equipment in order to conserve the energy resources of the nation," to the exclusion of water conservation. *Id.* DOE then takes the position that 42 U.S.C. § 6313 only allows DOE to amend energy standards. 90 Fed. Reg. at 20921.

DOE's citation to these provisions of EPCA is inapposite to the question at hand. DOE's authority to amend the standards under 42 U.S.C. § 6313(d)(1), including water conservation standards, is unambiguously established by 42 U.S.C. § 6313(d).

By its plain language, the agency's regulatory authority under section 6313(d) clearly applies to all "standards" for the conservation of condenser water and energy for ACIMs. 42 U.S.C. § 6313(d). That provision sets forth standards for conserving both energy and water use by ACIMs. *See* 42 U.S.C. § 6313(d)(1). Section 6313(d)(3) then directs DOE to publish a final rule, no later than January 1, 2015, determining whether the "standards established under paragraph (1)" should be amended. By using the term "standards," as opposed to "energy efficiency standards," 42 U.S.C. § 6313(d)(3) clearly refers to both the energy efficiency standards and the water conservation standards in 42 U.S.C. § 6313(d)(1). And by referring to both types of standards, 42 U.S.C. § 6313(d)(3) makes clear that the DOE Secretary has authority to amend the water conservation standards for ACIMs.

2. DOE's Proposed Rescission is Arbitrary and Capricious.

DOE's Proposed Rescission is devoid of any rational explanation, lacks any analytical support, fails to consider relevant factors, including the factors Congress directed DOE to consider, and is contrary to previous DOE findings and the evidence DOE relied upon in promulgating the operative ACIM regulations. *See* 80 Fed. Reg. 4646 (Jan. 28, 2015) (the "2015 Standards"). To comply with the APA, DOE is required to provide a "reasoned explanation for its action," *F.C.C. v. Fox Television Stations, Inc.*, 566 U.S. 502, 515 (2009), and a "rational connection between the facts found and the choice made," *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962). As such, an "agency must examine the relevant data and articulate a satisfactory explanation for its action." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). And where it has changed its position, as DOE has here, an agency must also "display awareness that it is changing position" and show "that there are good reasons for it . . . ." *F.C.C. v. Fox*, 566 U.S. at 515 (emphasis removed). Additionally, when an agency changes course, it must be cognizant that longstanding policies may have "engendered serious reliance interests that must be taken into account." *Id.* "It would be arbitrary or capricious to ignore such matters." *Id.*

a. The Proposed Rescission Unlawfully Departs from the 2015 Standards and Statutory Requirements.

DOE is indisputably bound here by 42 U.S.C. § 6313(d)(4), which requires that any "final rule [regarding ACIMs] shall establish standards at the maximum level that is technically feasible and economically justified, as provided in [42 U.S.C. § 6295(o)-(p)]." In adopting the 2015 Standards, DOE relied upon an extensive factual record demonstrating that the standards were both technologically feasible and economically justified. 80 Fed. Reg. 4646. DOE found that the 2015 "amended standards … would save a significant amount of energy": 0.18 quads of BTU, or savings of 8% of the energy that would otherwise be used under the statutory standards.

Id. at 4649. DOE also determined that the 2015 Standards resulted in life-cycle cost savings for consumers as well as cumulative net national benefits of $430 million to $942 million. *Id.* DOE also found substantial environmental and health benefits, including avoided emissions of 10.9 million metric tons of carbon dioxide, 16.2 thousand tons of nitrogen oxides, 100 tons of nitrous oxide, 47.4 thousand tons of methane, 0.03 tons of mercury, and 9.3 thousand tons of sulfur dioxide. *Id.* "DOE [] concluded that the standards in [the 2015] final rule represent the maximum improvement in energy efficiency that is both technologically feasible and economically justified, and would result in significant conservation of energy." *Id.* at 4651. DOE's determinations were rational, relying upon rigorous analyses of the economic and health impacts of its proposals and considering comments received from trade associations representing manufacturers, energy and environmental advocates, and utilities. *See, e.g.*, *id.* at 4660, 4668, 4670.

DOE has made no effort to engage with its previous findings concerning the standards that it now seeks to rescind, in violation of the APA. *See F.C.C. v. Fox,* 566 U.S. at 515. DOE merely offers its claim that the anti-backsliding provision at 42 U.S.C. § 6295(o)(1) does not apply to ACIMs, but this piece of tenuous statutory interpretation is not alone a sufficient factual basis for doing so now. DOE must reckon with its previous findings regarding the technological and economic justifications for the standards that it now plans to rescind, regardless of the anti-backsliding provision's applicability.

Indeed, in its 2015 rulemaking, DOE similarly maintained that the anti-backsliding provision of 42 U.S.C. § 6295(o) did not apply to water condenser use in ACIMs, over the objection of multiple comments. 80 Fed. Reg. at 4668-69. Accordingly, DOE contended that it "likewise has the option to allow increases in condenser water use, if this is a cost-effective way to improve energy efficiency." *Id.* at 4669. But DOE went on to specifically note that it "determined that increasing condenser water use standards to allow for more water flow in order to reduce energy use is *not* cost-effective." *Id.* at 4676 (emphasis added). DOE offers no independent evidence, reasoning, or justification for contradicting this conclusion in the Proposed Rescission, and its failure to do so is a violation of both its immediate statutory requirements, *see* 42 U.S.C. § 6313(d)(4), and its general procedural duties, *see, e.g.*, *F.C.C. v. Fox*, 566 U.S. at 515.

b. The Proposed Rescission is Contrary to Law and Devoid of Independent Justification.

DOE's Proposed Rescission fails to consider statutorily established factors for setting ACIM standards. 42 U.S.C. § 6313(d)(4) (requiring that standard must be set at "the maximum level that is technically feasible and economically justified"). In deciding whether a proposed standard is economically justified, EPCA provides that DOE must determine whether the benefits of the standard exceed its burdens. 42 U.S.C. §§ 6295(o)(2)(B)(i), 6313(d)(4). DOE must make that determination by considering the following seven statutory factors:

> (1) "the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard"; (2) "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"; (3) "the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard"; (4) "any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard"; (5) "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"; (6) "the need for national energy and water conservation"; and (7) "other factors the Secretary considers relevant."

42 U.S.C. § 6295(o)(2)(B)(i). In proposing to rescind the 2015 maximum condenser water use standards for ACIMs, DOE fails to consider any of the identified factors.

Unlike the 2015 Standards, DOE's justification for the Proposed Rescission rests on little more than the conclusory and erroneous contention that it did not have authority to promulgate the 2015 Standards. 90 Fed. Reg. at 20920. Because the text of 42 U.S.C. § 6313(d)(2)-(3) roundly forecloses this reading, DOE must offer some other justification for rescinding those standards. They have not done so.

Instead, DOE offers a cursory interpretation of 42 U.S.C. § 6295(o)(1) that would allow it to relax previously promulgated water condenser standards. But concluding that DOE *can* weaken current standards does not constitute a sufficient independent basis for concluding that it *should* do so now. Regardless of whether it has the statutory authority to relax condenser water standards for ACIMs, DOE must offer some reasoning as to why it believes such a standard is preferable to the 2015 Standards, and that analysis must account for the statutory factors EPCA directs the agency to consider. "An agency may not . . . depart from a prior policy *sub silentio* or simply disregard rules that are still on the books." *F.C.C. v. Fox*, 566 U.S. at 515. DOE has not so much as gestured at any evidence, analysis, or justification that could be construed as meeting the bare minimum of its requirements under EPCA, the APA, *State Farm*, *F.C.C. v. Fox*, or their progeny. *See, e.g.*, 566 U.S. 502; 463 U.S. 29.

In that way, the Proposed Recission stands in sharp contrast to the 2015 Standards. The Final Rule establishing the 2015 Standards involved over four years of agency deliberations, the release of multiple technical support documents for public inspection and comment, complex engineering and data analysis to justify the standards, and occupied over 100 pages in the Federal Register as published. *See generally* 80 Fed. Reg. 4646. The Proposed Rescission contains all of six paragraphs of discussion, citing nary a single figure or study analyzing the impact of its action. In lieu of any reasoned fact-finding or rigorous analysis of the financial, environmental,

or resource costs and benefits of its Proposed Rescission, DOE relies merely on its "new policy to reduce regulatory burden wherever possible." 90 Fed. Reg. at 20921. Without more, or even the slightest acknowledgement of its statutory requirements under EPCA and the APA, DOE's Proposed Rescission may not stand.

3. DOE must review the Proposed Recission under NEPA.

DOE's suggestion that the Proposed Recission may avoid environmental review under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*, because it may qualify for a categorical exclusion applicable to "Actions to Conserve Energy or Water" is plainly without merit. 90 Fed. Reg. at 20921; *see also* 10 C.F.R. part 1021, subpart D, appendix B, B5.1 [*hereinafter* Categorical Exclusion B5.1]. That categorical exclusion applies only to "[a]ctions to conserve energy or water" and which "demonstrate potential energy or water conservation," and even then only to certain types of rulemakings. Categorical Exclusion B5.1. And, only those "rulemakings that establish energy conservation standards for consumer products and industrial equipment," that do *not* "have the potential to cause a significant change in manufacturing infrastructure" or "involve significant unresolved conflicts concerning alternative uses of available resources" are eligible for exclusion. *Id.*

First, the Proposed Rescission notably does *not* address the energy efficiency standards for ACIMs, only the water condenser regulations promulgated in the 2015 Standards, taking it definitionally outside of the scope of covered "energy conservation standards" for purposes of the exception in Categorical Exclusion B5.1. Second, by changing the water efficiency standards for ACIMs less than ten years after the 2015 Standards went into effect, DOE has made no showing that the Proposed Rescission does not have the potential to impact reliance interests in the previous standards or "[h]ave the potential to cause a significant change in manufacturing infrastructure" in response to the rescission, in plain violation of Categorical Exclusion B5.1(b)(1). Third, the Proposed Rescission clearly implicates the "use[] of available resources" by increasing the maximum water condenser usage for a range of ACIMs, in violation of Categorical Exclusion B5.1(b)(2).

As such, the Proposed Rescission is not exempt from review under NEPA under Categorical Exclusion B5.1 or any other categorical exclusion. Indeed, exempting the Proposed Rescission, which would curtail the significant environmental benefits attributed to the 2015 Standards, from NEPA review under Categorical Exclusion B5.1 would be plainly contrary to the spirit and purpose of that exclusion. DOE must undertake the necessary NEPA review of its rulemaking, and its failure to do so is arbitrary and capricious. *New York v. Nuclear Regulatory Commission*, 681 F.3d 471, 476-78 (2d Cir. 2012) (vacating agency's rulemaking, which the court considered to be a major federal action, because of deficient NEPA review).

4. Conclusion

In conclusion, DOE's Proposed Rescission is untenable under the plain text of EPCA and basic principles of administrative law. DOE is clearly authorized by 42 U.S.C. § 6313(d) to regulate water use by ACIMs, and it lawfully promulgated the ACIM water condenser regulations at issue here in 2015 following years of rigorous fact-finding, analysis, and public engagement. By now adopting a contrary and erroneous reading of its authority under that statute and failing to offer even a scintilla of data or analysis justifying the rescission of those standards, the Proposed Recission epitomizes the concept of arbitrary and capricious agency action. We therefore urge DOE to withdraw the Proposed Recission.

Respectfully submitted,

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN
Attorney General of Maryland

/s/ Robert N. Brewer
ROBERT N. BREWER
STEVEN J. GOLDSTEIN
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6924
Email: rbrewer@oag.state.md.us

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ Jamie Jefferson
JAMIE JEFFERSON
TAYLOR WETZEL
JINA J. KIM
ELIZABETH SONG
Deputy Attorneys General
LAURA ZUCKERMAN
Supervising Deputy Attorney General
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, California 94610
Email: Jamie.Jefferson@doj.ca.gov

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ Timothy Hoffman
TIMOTHY HOFFMAN
LAURA MIRMAN-HESLIN
CHRISTOPHER GORE
Assistant Attorneys General
MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ Daniel M. Salton
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
(860) 808-5250
Email: daniel.salton@ct.gov

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ Christian Harned
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General

/s/ Jason E. James
JASON E. JAMES
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General

/s/ Scott W. Boak
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
Email: scott.boak@maine.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

/s/ Alyssa Bixby-Lawson
ALYSSA BIXBY-LAWSON
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
(651) 300-0904
Email: Alyssa.Bixby-Lawson@ag.state.mn.us

FOR THE PEOPLE OF THE STATE OF MICHIGAN

/s/ Benjamin C. Houston
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
Email: HoustonB1@michigan.gov

FOR STATE OF NEW JERSEY

MATTHEW J. PLATKIN
Attorney General

/s/ Jack A. Ventura
JACK A. VENTURA
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ Paul Garrahan
PAUL GARRAHAN
Attorney-in-Charge, Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Email: Paul.Garrahan@doj.oregon.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ Steve Scheele
STEPHEN SCHEELE
Assistant Attorney General, Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ Hannah Yindra
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Email: Hannah.Yindra@vermont.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ I. Andrew Goldberg
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ Brian Caldwell
BRIAN CALDWELL
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 727-6211 (desk)
(202) 445-1952 (cell)
Email: brian.caldwell@dc.gov

COMMENTS OF ATTORNEYS GENERAL OF NEW YORK, CALIFORNIA, CONNECTICUT, ILLINOIS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEW JERSEY, OREGON, VERMONT, WASHINGTON, THE COMMONWEALTH OF MASSACHUSETTS, THE DISTRICT OF COLUMBIA, AND THE CITY OF NEW YORK

July 15, 2025

Comments submitted via regulations.gov

Mr. David Taggart
U.S. Department of Energy
Office of the General Counsel, GC-1
1000 Independence Avenue SW
Washington, D.C. 20585-0121

Re: Docket No. EERE-2025-BT-STD-0017
RIN 1904-AF87
"Energy Conservation Program: Rescinding the Efficiency Standards for Battery Chargers," 90 Fed. Reg. 20868 (May 16, 2025).

The undersigned offices of State Attorneys General and local governments submit these comments on the U.S. Department of Energy's (DOE) proposal to rescind the efficiency standards for battery chargers, which DOE asserts will effectively remove battery chargers from the Energy Conservation Program under the Energy Policy and Conservation Act, 42 U.S.C. § 6201, *et seq.* (EPCA). 90 Fed. Reg. 20868 (May 16, 2025) (the Proposed Recission). As governmental entities committed to reducing energy-related costs, including consumer costs, ratepayer costs, and the costs associated with the negative impacts of greenhouse gas and other pollutant emissions, we support robust, cost-effective energy conservation standards for consumer appliances, and rely upon such standards to reduce these costs and reduce energy demand and harmful pollutants.

The Proposed Recission is illegal for multiple reasons. First, the proposal is arbitrary and capricious in violation of the Administrative Procedure Act (APA) because it is devoid of any rational explanation, lacks analytical support, and runs counter to DOE's previous determinations and the evidence before the agency. Second, the Proposed Recission violates EPCA's anti-backsliding provision, which applies to battery chargers. Third, the proposal is not exempt from the National Environmental Policy Act (NEPA) or Executive Order 13211, and therefore an

environmental analysis must be conducted and a Statement of Energy Effects must be prepared.

First, the Proposed Recission is arbitrary and capricious in violation of the APA, 5 U.S.C. § 706(2)(A). An agency action is arbitrary or capricious where it is not "reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). An agency must provide "a satisfactory explanation for its action, including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (*State Farm*) (internal citation and quotation marks omitted). Additionally, agencies must offer "genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public." *Dep't of Commerce v. New York*, 588 U.S. 752, 785 (2019). Agencies may not rely on explanations that are "incongruent with what the record reveals about the agency's priorities and decisionmaking process." *Id.* Further, when an agency changes its existing policy, it must provide "a more detailed justification than what would suffice for a new policy created on a blank slate" when "its new policy rests upon factual findings that contradict those which underlay its prior policy." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (*Fox*). An "unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016) (internal citation and quotation marks omitted).

Here, DOE gives the following one-sentence explanation for the Proposed Recission: "After a reevaluation of the battery charger standards, pursuant to the authority in 42 U.S.C. § 6295(u)(1)(E)(i)(II), the Secretary has tentatively determined that no energy conservation standard for battery chargers is economically justified." 90 Fed. Reg. at 20869. DOE fails to provide *any* other details, let alone any analysis to support its new conclusion that the conservation standards are not economically justified. Needless to say, DOE's proposal does not provide "a satisfactory explanation for its action," nor does it provide "a rational connection between the facts found and the choice made." *See State Farm*, 463 U.S. at 43.

The Proposed Recission is in stark contrast to DOE's previous and well-supported conclusion that the battery charger energy conservation standards are economically justified. In 2016, DOE established the current battery charger conservation standards after a four-year rulemaking proceeding. *See* 81 Fed. Reg. 38266 (June 13, 2016). DOE concluded that the standards represent "the maximum improvement in energy efficiency that is technologically feasible and economically

justified, and would result in significant conservation of energy." *Id*. at 38270. The final rule was supported by a 678-page technical support document providing the technical analyses and results supporting the development of the conservation standards. Technical Support Document, EERE-2008-BT-STD-0005-0257, (June 2016), https://www.regulations.gov/document/EERE-2008-BT-STD-0005-0257. From these analyses, DOE concluded that over the course of 30 years (2018 through 2047), the standards would save an estimated 0.173 quadrillion British thermal units (quads) of energy, equivalent to a savings of 11.2 percent relative to the energy use of battery charges without conservation standards. *Id*. at 1-1. DOE also found that "the standards for battery chargers are projected to yield significant environmental benefits" including a reduction of CO_2 emissions through 2030 "equivalent to the emissions resulting from the annual electricity use of approximately 600,000 homes." 81 Fed. Reg. at 38268. Using a 7-percent discount rate, DOE determined that the estimated cost of the standards is $9 million per year in increased equipment costs, while the estimated benefits are $68 million per year in reduced equipment operating costs, $20 million per year in CO_2 reductions, and $1.92 million per year in reduced NO_x emissions. This leads to a net benefit of $81 million per year. Using a 3-percent discount rate, the net benefit of the standards is $88 million per year. *Id*. at 38329-30. The Proposed Recission does not provide any new information that would change these findings, nor does it provide "a more detailed justification," *Fox*, 556 U.S. at 515, for DOE's new position that the standards are not economically justified. And DOE's change of position, now proposing to withdraw energy conservation standards for battery chargers, requires the agency to consider reliance interests. DOE's proposal fails to do this, rendering the proposal arbitrary and capricious for this reason as well. *See Fox,* 556 U.S. at 515.

Second, the Proposed Recission is illegal and must be withdrawn because it violates EPCA's anti-backsliding provision. Congress enacted EPCA to "conserve energy supplies through energy conservation programs and . . . the regulation of certain energy uses" and to "provide for improved energy efficiency of . . . major appliances." 42 U.S.C. § 6201(4), (5). In furtherance of these purposes, Congress required that any energy conservation standard promulgated by DOE under EPCA's appliance program achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 42 U.S.C. § 6295(o)(2)(A). Once such a standard is in place, Congress prohibited DOE from weakening the energy conservation standard for that appliance. 42 U.S.C. § 6295(o)(1); *see Nat. Res. Def. Council v. Abraham*, 355 F.3d 179, 187 (2d Cir. 2004) (DOE cannot "amend the standards so as to weaken efficiency requirements."). The Proposed Recission

violates this clear Congressional directive by seeking to weaken the energy conservation standards for battery chargers, despite the fact that DOE has already determined the standards to be technologically feasible and economically justified.

DOE's proposal is directly at odds with the EPCA "appliance program's goal of steadily increasing the energy efficiency of covered products." *Abraham,* 335 F.3d at 197. No provision of EPCA authorizes DOE to declassify covered products or rescind existing energy conservation standards. Viewed as a proposed amendment to existing standards, DOE's proposal is subject to the provisions in 42 U.S.C. §§ 6295(o)(2) and (p), requiring DOE to determine that the amended standards are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. This DOE has failed to do.

The Proposed Recission states that battery chargers "do not appear to be a 'covered product' under Section 6292(a) and have no statutory minimum standard." 90 Fed. Reg. at 20869. This is incorrect. Section 309 of the Energy Independence and Security Act of 2007 amended EPCA by directing DOE to prescribe, by rule, definitions and test procedures for the power use of battery chargers (42 U.S.C. § 6295(u)(1)), and to issue a final rule that prescribes energy conservation standards for battery chargers or classes of battery chargers or to determine that no energy conservation standard is technologically feasible and economically justified (42 U.S.C. § 6295(u)(1)(E)). In 2016, DOE issued energy conservation standards for battery chargers, finding such standards technologically feasible and economically justified. 81 Fed. Reg. 38266. DOE noted "[a] product that meets the definition of a battery charger as stated in 10 C.F.R. 430.2 (and that charges a product that is consistent with EPCA's consumer product definition) is a covered product under the scope of this rulemaking and subject to Federal preemption in a manner consistent with 42 U.S.C. 6295(ii) and 6297." *Id.* at 38281. Accordingly, battery chargers are covered products and EPCA's anti-backsliding provision applies to them. And DOE's change of position as to EPCA coverage for battery chargers again requires the agency to consider reliance interests, which DOE's proposal fails to do, also rendering the proposal arbitrary and capricious for this reason. *See Fox,* 556 U.S. at 515.

Third, DOE suggests that the Proposed Recission may avoid environmental review under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq*., because it may qualify for the categorical exclusion applicable to "Actions to Conserve Energy or Water." 90 Fed. Reg. at 20870; *see also* 10 C.F.R. part 1021, subpart D, appendix B, B5.1. DOE's suggestion that the Proposed Recission may qualify for a categorical exclusion is plainly without merit. That categorical

exclusion does not apply to rulemakings that would "have the potential to cause a significant increase in energy consumption in a state or region." 10 C.F.R. part 1021, subpart D, appendix B, B5.1(b)(4). On DOE's own record, the Proposed Recission allows for an increase in the maximum allowable energy use for battery chargers. Without the current conservation standards, battery chargers would use 11.2 percent more energy. *See* 81 Fed. Reg. at 38268. Therefore, eliminating the standards has the potential to cause a significant increase in energy consumption in a state or region and the categorical exclusion does not apply. And because this proposal would have a significant adverse effect on energy use, DOE's assertion that it is not required to prepare and submit a Statement of Energy Effects pursuant to Executive Order 13211 (*see* 90 Fed. Reg. at 20871) is without merit as well.

DOE's Proposed Recission would also undermine the interests of the undersigned governmental entities who have relied on DOE's prior interpretation for reduced costs associated with energy demand and pollutant emissions, and the interests of manufacturers of battery chargers who have made product investments in reliance on energy conservation standards that steadily increase the efficiency of covered products. *See Abraham,* 355 F.3d at 197 (pointing out that "unfettered agency discretion to amend standards [downward] . . . would completely undermine any sense of certainty on the part of manufacturers as to the required energy efficiency standards at a given time"). The Proposed Recission would not only promote uncertainty in the market and punish manufacturers who have invested in producing compliant battery chargers, it would also invite less efficient products from sources that would undercut those manufacturers. The Proposed Recission is illegal and contrary to the interests of consumers, manufacturers, the undersigned governmental entities, and the general public. We urge DOE to withdraw the Proposed Recission.

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ *Timothy Hoffman*
TIMOTHY HOFFMAN
CHRISTOPHER GORE
LAURA MIRMAN-HESLIN
Assistant Attorneys General

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ *Jamie Jefferson*
JAMIE JEFFERSON
TAYLOR WETZEL
JINA J. KIM
ELIZABETH SONG
Deputy Attorneys General

MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ *Daniel M. Salton*
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
(860) 808-5250
daniel.salton@ct.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General of Maine

/s/ *Scott W. Boak*
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
scott.boak@maine.gov

LAURA ZUCKERMAN
Supervising Deputy Attorney General
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, California 94610
Email: Jamie.Jefferson@doj.ca.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

/s/ *Jason E. James*
Jason E. James
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN
Attorney General

/s/ *Steven J. Goldstein*
Steven J. Goldstein
Robert N. Brewer
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6414
sgoldstein@oag.state.md.us

FOR THE PEOPLE OF THE STATE OF MICHIGAN

DANA NESSEL
Attorney General

/s/ *Benjamin C. Houston*
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
HoustonB1@michigan.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

/s/ *Alyssa Bixby-Lawson*
Alyssa Bixby-Lawson
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
(651) 300-0904
Alyssa.Bixby-Lawson@ag.state.mn.us

FOR THE STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

/s/ *Jack A. Ventura*
Jack A. Ventura
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ *Paul Garrahan*
PAUL GARRAHAN
Attorney-in-Charge
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Paul.Garrahan@doj.oregon.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ *Hannah Yindra*
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Hannah.Yindra@vermont.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ *I. Andrew Goldberg*
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ *Steve Scheele*
STEPHEN SCHEELE
Assistant Attorney General,
Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental
Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ *Christian Harned*
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ *Brian Caldwell*
Brian Caldwell
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 727-6211 (desk)
(202) 445-1952 (cell)
Email: brian.caldwell@dc.gov

COMMENTS OF ATTORNEYS GENERAL OF NEW YORK, CALIFORNIA, CONNECTICUT, ILLINOIS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEW JERSEY, OREGON, VERMONT, WASHINGTON, THE COMMONWEALTH OF MASSACHUSETTS, THE DISTRICT OF COLUMBIA, AND THE CITY OF NEW YORK

July 15, 2025

Comments submitted via regulations.gov

Mr. David Taggart
U.S. Department of Energy
Office of the General Counsel, GC-11000
1000 Independence Avenue SW
Washington, D.C. 20585-0121

Re: Docket No. EERE-2025-BT-STD-0019
RIN 1904-AF89
"Energy Conservation Program: Energy Conservation Standards for Compact Residential Clothes Washers,"
90 Fed. Reg. 20905 (May 16, 2025).

The undersigned offices of State Attorneys General and local governments submit these comments on the U.S. Department of Energy's (DOE) proposal to rescind the energy conservation standards for compact residential clothes washers, eliminating in their entirety the efficiency requirements for compact residential clothes washers, *see* 90 Fed. Reg. at 20905-09. As governmental entities committed to reducing energy-related costs, including consumer costs, ratepayer costs, and the costs associated with the negative impacts of greenhouse gas and other pollutant emissions, we support robust, cost-effective energy conservation standards for consumer appliances, and rely upon such standards to reduce these costs and reduce energy demand and harmful pollutants.

DOE's proposal is illegal for multiple reasons. As detailed below, the proposal is devoid of any rational explanation and lacks analytical support, is not in accordance with federal statutes including the Energy Policy and Conservation Act, 42 U.S.C. § 6201, *et seq. (*EPCA), and arbitrarily and capriciously runs counter to DOE's previous determinations and the evidence before the agency, rendering the proposal unlawful under the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.* (APA).

I. The Proposed Recission of Energy Conservation Standards is Not Supported by EPCA, a Reasonable Explanation, or by the Rulemaking Record, Rendering it Arbitrary and Capricious Under the APA.

DOE advances several explanations for its proposal but none of them have legal merit. First, DOE states that it "has statutory authority to amend the standards for standard-size clothes washers, but not other clothes washers," referencing 42 U.S.C. § 6295(g)(9)(A) and (B), and that such authority would require "a determination to classify compact clothes washers as a consumer product under 42 U.S.C. [§] 6292(b)." 90 Fed. Reg. at 20905-06. However, DOE fails to recognize that 42 U.S.C § 6295(g)(9)(A) and (B) were added by Congress as amendments to EPCA in the Energy Independence and Security Act of 2007, 110 P.L. 140, 121 Stat. 1492 (EISA). DOE's proposal omits significant legislative and regulatory history, predating the 2007 EISA amendments, demonstrating that compact residential clothes washers have been regulated under EPCA as consumer products since 1987.

In the National Appliance Energy Conservation Act of 1987, 100 P.L. 12, 101 Stat. 103 (NAECA), Congress amended EPCA by, *inter alia*, codifying energy conservation standards in the form of a design requirement for *all* clothes washers, both standard and compact sizes. *See* 42 U.S.C. § 6295(g)(2). DOE subsequently amended these 1987 NAECA energy conservation standards in rulemakings adopting performance standards for certain compact clothes washers. In 1991, DOE finalized the product class for compact top-loading clothes washers, setting amended energy conservation standards that DOE determined would result in significant conservation of energy, were technologically feasible and economically justified, and would result in significant pollutant emissions reductions. *See* Final Rule Regarding Energy Conservation Standards for Three Types of Consumer Products, 56 Fed. Reg. 22250, 22270-71 (May 14, 1991). And in 2012, DOE added a product class for compact front-loading clothes washers, setting amended energy conservation standards that DOE again determined would result in significant conservation of energy, were technologically feasible and economically justified, and would result in significant pollutant emissions reductions. *See* Energy Conservation Standards for Residential Clothes Washers, 77 Fed. Reg. 32308, 32310-12 (May 31, 2012).

The 2007 EISA amendments to EPCA adding 42 U.S.C. § 6295(g)(A) and (B) do not support DOE's proposal. In 42 U.S.C. § 6295(g)(9)(A), Congress prescribed amended energy conservation standards for standard-size residential clothes

washers, but did not amend the standards for compact models that DOE established in 1991. In 42 U.S.C. § 6295(g)(9)(B), Congress ordered DOE to "determine[] whether to amend the standards in effect for clothes washers." DOE's 1991 standards for compact residential clothes washers were in effect in 2007 and remained in effect until DOE lawfully updated them in 2012. And in 2024, DOE amended energy conservation standards for compact residential clothes washers by issuing a direct final rule updating the compact capacity threshold for front-loading washers. *See* Energy Conservation Standards for Residential Clothes Washers, 89 Fed. Reg. 19026, 19045 (March 15, 2014). Once again DOE determined that these standards would result in significant conservation of energy, were technologically feasible and economically justified, and would result in significant pollutant emissions reductions. *See* 89 Fed. Reg. at 19028-31. Thus, all three of DOE's previous standard-setting rulemakings for compact residential clothes washers were authorized under EPCA, contrary to DOE's assertions in its current proposal.

II. The Proposal's Contention That Energy Conservation Standards Are Not Economically Justified is Not Supported by a Reasonable Explanation or by the Rulemaking Record, Rendering it Arbitrary and Capricious Under the APA.

DOE's second explanation for its proposal, that "the efficiency standards for compact washers are not economically justified," 90 Fed. Reg. at 20906, lacks any analytical support and completely disregards the factual bases underlying the agency's previous determinations that those standards *are* economically justified. DOE's 1991, 2012 and 2024 rulemakings, described above, established energy conservation standards for compact residential clothes washers and each relied on an extensive record to determine that the standards were economically justified. DOE's failures to either address the agency's prior factual findings, adequately justify the proposal's contradiction of them, examine important factors, or otherwise provide a reasonable explanation that rationally connects the facts before the agency with the proposal, render DOE's proposal arbitrary and capricious and otherwise not in accordance with the law under the APA, 5 U.S.C. § 706(2)(A). *See Motor Vehicle Manufacturers Ass'n of U.S., Inc. v. State Farm Mutual Insurance Co,* 463 U.S. 29, 43 (1983) (*State Farm*); *FCC v. Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (*Fox*).

DOE's proposal also asserts that energy conservation standards for compact residential clothes washers are not economically justified because "the efficiency standards appear to lessen the utility of clothes washers by lengthening the time it takes to wash clothes," 90 Fed. Reg. at 20906. This assertion lacks analytical support and is belied by the agency's previous compact clothes washer rulemakings,

where DOE determined that the energy conservation standards established would *not* lessen the utility or performance of clothes washers. *See* 56 Fed. Reg. at 22269; 77 Fed. Reg. at 32325; and 89 Fed. Reg at 19100. DOE's disregard of these previous record-based findings without detailed justification similarly renders its proposal arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A). *See State Farm,* 463 U.S. at 43; *Fox,* 556 U.S. at 515. Nor does DOE's reference to a 2020 rule concerning dishwashers support DOE's proposal (*see* 85 Fed. Reg. at 68267, referenced by DOE in 90 Fed. Reg at 20906). That rule, where DOE established a product class for short-cycle dishwashers, was subsequently revoked by DOE. *See* Product Classes for Residential Dishwashers, Residential Clothes Washers, and Consumer Clothes Dryers, 87 Fed. Reg. 105408 (December 27, 2024). As part of that revocation DOE examined the cycle lengths of numerous appliances, including clothes washers, and concluded that consumer utility had not been adversely impacted by existing standards. *See* 87 Fed. Reg. at 105428-49.

In addition, DOE maintains that energy conservation standards for compact residential clothes washers are not economically justified because "the regulations are not consistent with the need for national water conservation." 90 Fed. Reg. at 20986. DOE provides no analytical support for this assertion, which is contrary to the agency's findings from its previous compact residential clothes washer rulemakings that national benefits from the standards included significant savings of water. *See* 77 Fed. Reg. 32310; 89 Fed. Reg. at 19028. Again, DOE's disregard of these previous record-based findings without detailed justification renders its current proposal arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A). *See State Farm,* 463 U.S. at 43; *Fox,* 556 U.S. at 515.

DOE's final explanation for its contention that energy conservation standards for compact residential clothes washers are not economically justified states that "[c]onsumers are best situated to decide whether a given product is economically justified, as that is precisely what the free market does best." 90 Fed. Reg. at 20986. Once again DOE's conclusory assertion is bereft of any analysis. And the agency's current avowal of faith in markets does not excuse DOE from the requirements that Congress prescribed in EPCA.

III. The Proposal Violates EPCA.

DOE's proposal is directly at odds with the EPCA "appliance program's goal of steadily increasing the energy efficiency of covered products." *NRDC v. Abraham,* 335 F.3d 179, 197 (2d Cir. 2004). No provision of EPCA authorizes DOE to declassify covered products or rescind existing energy conservation standards. Viewed as a proposed amendment to existing standards, DOE's proposal is subject

to the provisions in 42 U.S.C. §§ 6295(o)(2) and (p), requiring DOE to determine that the amended standards are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. This DOE has failed to do.

DOE's third explanation for its proposal to rescind energy conservation standards for compact residential clothes washers is the agency's "new policy to reduce regulatory burden . . . [that] would support energy and water abundance, allowing Americans to produce and consume as much energy and water as they desire," *see* 90 Fed. Reg. at 20896. Besides being inconsistent with its avowed concern, in the same proposal, over "the need for national water conservation," *id.*, this policy proclamation by DOE of unlimited energy and water consumption demonstrates the agency's blatant disregard of the factors Congress intended DOE to consider in EPCA, rendering the proposal arbitrary and capricious for this reason as well. *See* APA, 5 U.S.C. § 706(2); *State Farm,* 463 U.S. at 43. Fundamentally, EPCA was enacted to conserve energy through conservation programs and improved energy efficiency for consumer products and appliances. *See* 42 U.S.C. § 6201(4), (5). The 'unlimited energy consumption' explanation for DOE's proposal is simply "unmoored from the purposes and concerns" of EPCA, and "therefore cannot pass muster under ordinary principles of administrative law." *Judulang v. Holder,* 565 U.S. 42, 64 (2011).

Further, upon DOE's publication of energy conservation standards for compact residential clothes washers in 1991, 2012 and 2024, EPCA's "anti-backsliding" provision, 42 U.S.C. § 6295(o)(1) (EPCA section 325(o)(1)), "operates to restrict DOE's discretionary ability to amend standards downward thereafter." *Abraham,* 335 F.3d at 197. Here, DOE's proposal is prohibited by 42 U.S.C. § 6295(o)(1), for as conceded by DOE in *Abraham*, that provision "constrain[s] [DOE's] ability to weaken a standard in a newly initiated rulemaking proceeding to amend or rescind a standard." *Abraham,* 355 F.3d at 203. DOE previously determined that *without* the 1991 standards an additional .57 quadrillion British thermal units (quads) of energy would be expended during the analysis period (*see* 56 Fed. Reg. at 22270-71), *without* the 2012 standards and additional 2.04 quads of energy would be expended during the analysis period (*see* 77 Fed. Reg. at 32310), and *without* the 2024 standards an additional .067 quads of energy would be expended during the analysis period (*see* 89 Fed. Reg. at 19028). Therefore, DOE's proposal clearly "increases the maximum allowable energy use," in violation of 42 U.S.C. § 6295(o)(1), and is not "designed to achieve the maximum improvement in energy efficiency," in violation of 42 U.S.C. § 6295(o)(2)(A).

IV. The Proposal is Not Excluded from Environmental Review Under NEPA, is Contrary to the Interests of the Undersigned Governmental Entities, and Promotes Market Uncertainty.

Accordingly, because the proposal has the potential to cause a significant increase in energy consumption, DOE's suggestion that its proposal somehow qualifies for categorical exclusions from review under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (NEPA) (*see* 90 Fed. Reg. at 20906, referencing 10 CFR part 1021, subpart D, appendices A and B, B5.1, "Actions to conserve energy or water") is plainly without legal merit. Such exclusions are not available for actions, like DOE's proposal, that "threaten a violation of applicable statutory [or] regulatory . . . requirements of DOE," or which would "have the potential to cause a significant increase in energy consumption in a state or region." 10 C.F.R. part 1021, subpart D, appendix B, B(1), B5.1(b)(4). And because these proposals would have a significant adverse effect on energy use, DOE's assertion that it is not required to prepare and submit a Statement of Energy Effects pursuant to Executive Order 13211 (*see* 90 Fed. Reg. at 20907) is without legal merit as well.

As the above-described history of DOE's compact residential clothes washer rulemakings demonstrates, the agency's regulations to date concerning compact residential clothes washers have been established in compliance with applicable legal requirements, including under EPCA. Accordingly, DOE's current contention that "there is no reliance interest in an unlawful regulation," 90 Fed. Reg. at 20906, is inapposite, as is DOE's citation to *Dep't of Homeland Sec. v. Regents of the Univ. of California,* 591 U.S. 1, 32 (2020). There Court rejected similar reasoning advanced by the federal agency and held that the failure to consider reliance interests was arbitrary and capricious under the APA. *See Dep't of Homeland Sec.,* 591 U.S. at 30, 33. Thus, DOE's changes of position as to EPCA coverage, energy conservation standards, and economic justification for compact residential clothes washers all require the agency to consider reliance interests. DOE's proposal fails to do so, rendering the proposal arbitrary and capricious. *See Fox,* 556 U.S. at 515.

DOE's proposal would also undermine the interests of the undersigned governmental entities who have relied on DOE's prior interpretation for reduced costs associated with energy demand and pollutant emissions, and the interests of manufacturers of compact residential clothes washers who have made product investments in reliance on energy conservation standards that steadily increase the efficiency of covered products. *See Abraham,* 355 F.3d at 197 (pointing out that

"unfettered agency discretion to amend standards [downward] . . . would completely undermine any sense of certainty on the part of manufacturers as to the required energy efficiency standards at a given time"). Here DOE's proposal would not only promote market uncertainty and punish manufacturers who have invested in energy efficient compact residential clothes washers, DOE's proposal also invites less efficient products from sources, foreign and domestic, that would undercut those manufacturers.

In conclusion, DOE's proposal is illegal and contrary to the interests of consumers of compact residential clothes washers, product manufacturers, the undersigned governmental entities, and the general public. We urge DOE to withdraw this proposal.

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ *Timothy Hoffman*
TIMOTHY HOFFMAN
CHRISTOPHER GORE
LAURA MIRMAN-HESLIN
Assistant Attorneys General
MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ *Jamie Jefferson*
JAMIE JEFFERSON
TAYLOR WETZEL
JINA J. KIM
ELIZABETH SONG
Deputy Attorneys General
LAURA ZUCKERMAN
Supervising Deputy Attorney General
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, California 94610
Email: Jamie.Jefferson@doj.ca.gov

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ *Daniel M. Salton*
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
(860) 808-5250
daniel.salton@ct.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

/s/ *Jason E. James*
Jason E. James
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General of Maine

/s/ *Scott W. Boak*
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
scott.boak@maine.gov

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN
Attorney General

/s/ *Steven J. Goldstein*
Steven J. Goldstein
Robert N. Brewer
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6414
sgoldstein@oag.state.md.us

FOR THE PEOPLE OF THE STATE OF MICHIGAN

DANA NESSEL
Attorney General

/s/ *Benjamin C. Houston*
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
HoustonB1@michigan.gov

FOR THE STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

/s/ *Jack A. Ventura*
Jack A. Ventura
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

/s/ *Alyssa Bixby-Lawson*
Alyssa Bixby-Lawson
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
(651) 300-0904
Alyssa.Bixby-Lawson@ag.state.mn.us

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ *Paul Garrahan*
PAUL GARRAHAN
Attorney-in-Charge
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Paul.Garrahan@doj.oregon.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ *Hannah Yindra*
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Hannah.Yindra@vermont.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ *I. Andrew Goldberg*
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ *Steve Scheele*
STEPHEN SCHEELE
Assistant Attorney General,
Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental
Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ *Christian Harned*
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ *Brian Caldwell*
Brian Caldwell
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 727-6211 (desk)
(202) 445-1952 (cell)
Email: brian.caldwell@dc.gov

COMMENTS OF ATTORNEYS GENERAL OF NEW YORK, CALIFORNIA, CONNECTICUT, ILLINOIS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEW JERSEY, OREGON, VERMONT, WASHINGTON, THE COMMONWEALTH OF MASSACHUSETTS, THE DISTRICT OF COLUMBIA, AND THE CITY OF NEW YORK

July 15, 2025

Comments submitted via regulations.gov

Mr. David Taggart
U.S. Department of Energy
Office of the General Counsel, GC-1
1000 Independence Avenue SW
Washington, D.C. 20585-0121

Re: Docket No. EERE-2025-BT-STD-0014
RIN 1904-AF84
"Energy Conservation Program: Energy Conservation Program: Energy Conservation Standards for Microwave Ovens,"
90 Fed. Reg. 20895 (May 16, 2025).

The undersigned offices of State Attorneys General and local governments submit these comments on the U.S. Department of Energy's (DOE) proposal to rescind the energy conservation standards for microwave ovens, eliminating in their entirety the efficiency requirements for microwave ovens, *see* 90 Fed. Reg. at 20895-99. As governmental entities committed to reducing energy-related costs, including consumer costs, ratepayer costs, and the costs associated with the negative impacts of greenhouse gas and other pollutant emissions, we support robust, cost-effective energy conservation standards for consumer appliances, and rely upon such standards to reduce these costs and reduce energy demand and harmful pollutants.

DOE's proposal is illegal for multiple reasons. As detailed below, the proposal is devoid of any rational explanation and lacks analytical support, is not in accordance with federal statutes including the Energy Policy and Conservation Act, 42 U.S.C. § 6201, *et seq. (*EPCA), and arbitrarily and capriciously runs counter to DOE's previous determinations and the evidence before the agency, rendering the proposal unlawful under the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.* (APA).

I. The Proposal's Contention That Microwave Ovens are Not Covered Products is Not Supported by EPCA, a Reasonable Explanation, or by the Rulemaking Record, Rendering it Arbitrary and Capricious Under the APA.

In its proposal DOE states that microwave ovens are not a covered product under EPCA because they "are not a consumer product type specified in [42 U.S.C] section 6292, which lists kitchen ranges and ovens." 90 Fed. Reg. at 20896. DOE further states that "[m]icrowave ovens have not been determined by the Secretary to be a covered product. Nor are microwave ovens specifically discussed in 42 U.S.C. § 6295(h) [Standards for kitchen ranges and ovens]." 90 Fed. Reg. at 20896. While the proposal notes that "[o]n September 8, 1998, DOE published . . . a Final Rule amending its regulations to substitute the term 'kitchen ranges and ovens' with 'cooking products,'" *id.,* DOE omits entirely important parts of that rulemaking, and fails to address the agency's own significant and substantial regulatory history, from long before and long after 1998, demonstrating that microwave ovens are indeed an EPCA-covered product.

In its 1977 proposal to establish certain test procedures, DOE determined that "[c]onventional ranges, conventional cooking tops, conventional ovens, *microwave ovens,* and microwave conventional ranges are classes included within the type designated by [EPCA] as 'kitchen ranges and ovens.'" 42 Fed. Reg. 65576 (Dec. 30, 1977) (emphasis added). Then in its 1978 Final Rule, DOE codified at 10 CFR 430.2 the definition of microwave ovens as "*a class of kitchen ranges and ovens* which is a household cooking appliance consisting of a compartment designed to cook or heat food by means of microwave energy." 43 Fed. Reg. 20108, 20119 (May 10, 1978) (emphasis added). And in 1990, DOE acknowledged that under EPCA microwave ovens constitute a product class within kitchen ranges and ovens. *See* 55 Fed. Reg. 39624, 39627 (Sept. 28, 1990) (Advanced Notice of Proposed Rulemaking Regarding Energy Conservation Standards for 9 Types of Consumer Products).

DOE's previous determination, definition and acknowledgment that microwave ovens are an EPCA-covered class of kitchen ranges and ovens are all prelude to the 1998 rulemaking, summarily referenced in DOE's current proposal, entitled "Energy Conservation Standards for Electric Cooking Products (Electric Cooktops, Electric Self-Cleaning Ovens, and *Microwave Ovens*), 63 Fed. Reg. 480328

(Sept. 8, 1998) (emphasis added). Along with determining at that time not to set new energy conservation standards for these products, DOE amended 10 CFR 430.2 to change the product name "kitchen ranges and ovens" to "cooking products," explaining that:

> This change is made because the term "kitchen ranges and ovens" does not accurately describe the products considered which include microwave ovens, conventional ranges, cooktops, and ovens. To be consistent with this change, the Department is adding a regulatory definition of "cooking products" that is the same as the existing definition of "kitchen ranges and ovens" to Title 10 CFR Part 430.2.

63 Fed. Reg. at 40852.

Having previously determined that microwave ovens are a class of EPCA-covered kitchen ranges and ovens, now renamed *by DOE* as cooking products yet bearing the same definition, DOE cannot now reasonably contend that the agency's own clarifying name change somehow removes microwave ovens from EPCA coverage. The contention in DOE's current proposal suggesting otherwise is false, misleading and purely semantic. This asserted basis for DOE's proposal is belied by longstanding agency regulatory history, which DOE chooses to ignore. DOE's failures to address the agency's prior factual findings, adequately justify the proposal's contradiction of them, examine important factors, or provide a reasonable explanation that rationally connects the facts before the agency with the proposal, render DOE's proposal arbitrary and capricious and otherwise not in accordance with law under the APA, 5 U.S.C. § 706(2)(A). *See Motor Vehicle Manufacturers Ass'n of U.S. v. State Farm Mutual Insurance Co.,* 463 U.S. 29, 43, 51 (1983) (*State Farm*); *FCC v. Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (*Fox*). In addition, DOE's change of position as to EPCA coverage of microwave ovens requires the agency to consider reliance interests, which DOE's proposal fails to do, rendering the proposal arbitrary and capricious for this reason as well. *See Fox,* 556 U.S. at 515.

II. The Proposed Recission of Energy Conservation Standards is Not Supported by EPCA, a Reasonable Explanation, or by the Rulemaking Record, Rendering it Arbitrary and Capricious Under the APA.

DOE further attempts to justify its current proposal to rescind all energy conservation standards for microwave ovens by asserting that it would "allow[] Americans to produce and consume as much energy as they desire." 90 Fed. Reg. at 20896. This assertion by DOE demonstrates its blatant disregard of the factors Congress intended DOE to consider in EPCA, rendering the proposal arbitrary and

capricious for this reason as well. *See* APA, 5 U.S.C. § 706(2); *State Farm,* 463 U.S. at 43. Fundamentally, EPCA was enacted to conserve energy through conservation programs and improved energy efficiency for consumer products and appliances. *See* 42 U.S.C. § 6201(4), (5). The 'unlimited energy consumption' explanation for DOE's proposal is simply "unmoored from the purposes and concerns" of EPCA, and "therefore cannot pass muster under ordinary principles of administrative law." *Judulang v. Holder,* 565 U.S. 42, 64 (2011).

DOE's proposal also completely disregards without detailed justification or consideration of reliance interests the agency's previous detailed, record-based findings in 2013, and more recently in 2023, supporting the setting of energy conservation standards for microwave ovens, similarly rendering the proposal arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A). *See State Farm,* 463 U.S. at 43; *Fox,* 556 U.S. at 515. In its Final Rule, "Energy Conservation Standards for Standby Mode and Off Mode for Microwave Ovens," 78 Fed. Reg. 36316 (June 17, 2013), DOE determined based on an extensive record that energy conservation standards for microwave ovens in standby and off modes would result in significant conservation of energy, and are technologically feasible and economically justified. DOE's analysis, summarized in 78 Fed. Reg. at 36317-20, found that these standards would save consumers between $1.53 billion and $3.38 billion in net reduced product operating costs over 30 years of product sales. 78 Fed. Reg. at 36317. DOE also found that adoption of the standards would save .48 quadrillion British thermal units (quads) of energy during the analysis period, equivalent to the annual primary energy usage of 70,000 households. *Id.* DOE further determined that the national benefits from these standards include cumulative emission reductions of approximately 38.11 million metric tons of carbon dioxide, 27.14 thousand tons of sulfur dioxide, 32.67 thousand tons of nitrogen oxides and .095 tons of mercury. 78 Fed. Reg. at 36317-18.

More recently, in 2023, DOE published its Final Rule "Energy Conservation Standards for Microwave Ovens," 88 Fed. Reg. 39912 (June 20, 2023), and in it determined that these standards would result in significant conservation of energy, and are technologically feasible and economically justified. DOE's detailed analysis, based on an extensive record and summarized in 88 Fed. Reg. at 39913-16, found that these standards would save consumers between $ .21 billion and $ .43 billion in net reduced product operating costs over 30 years of product sales. 88 Fed. Reg. at 39914. DOE also found that adoption of these standards would save .06 quads of energy during the analysis period, a savings of 19 percent relative to the energy use without the standards. *Id.* at 39913. DOE further determined that the national benefits from these standards include cumulative emission reductions of

approximately 1.87 million metric tons of carbon dioxide, .85 thousand tons of nitrogen oxides, 2.88 thousand tons of nitrogen oxides, 12.64 thousand tons of methane, .02 thousand tons of nitrous oxide and .005 tons of mercury. *Id.* at 39914. In addition, DOE estimated the present value of the health benefits from these standards at between $.07 billion and $.17 billion. *Id.*

DOE's contention in its proposal that the current energy conservation standards for microwave ovens are not economically justified, 90 Fed. Reg. at 20896, lacks any analytical support. Moreover, this contention by DOE is overwhelmingly contradicted by the agency's detailed, record-based 2013 and 2023 findings (*see above*).

III. The Proposal Violates EPCA.

DOE's proposal is also directly at odds with the EPCA "appliance program's goal of steadily increasing the energy efficiency of covered products." *NRDC v. Abraham,* 335 F.3d 179, 197 (2d Cir. 2004). No provision of EPCA authorizes DOE to declassify covered products or rescind existing energy conservation standards. Viewed as a proposed amendment to existing standards, DOE's proposal is subject to the provisions in 42 U.S.C. §§ 6295(o)(2) and (p), requiring DOE to determine that the amended standards are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. This DOE has failed to do, and a "policy of maximally reducing regulatory burdens," *see* 90 Fed. Reg. at 20896, does not relieve DOE of these statutory requirements.

Further, upon DOE's publication of energy conservation standards for microwave ovens in 2013, and again in 2023, EPCA's "anti-backsliding" provision, 42 U.S.C. § 6295(o)(1) (EPCA section 325(o)(1)), "operates to restrict DOE's discretionary ability to amend standards downward thereafter." *Abraham,* 335 F.3d at 197. Here, DOE's proposal is prohibited by 42 U.S.C. § 6295(o)(1), for as conceded by DOE in *Abraham*, that provision "constrain[s] [DOE's] ability to weaken a standard in a newly initiated rulemaking proceeding to amend or rescind a standard." *Abraham,* 355 F.3d at 203. Having previously determined that *without* the 2013 microwave ovens energy conservation standards an additional .48 quads of energy would be expended during the analysis period, *see* 78 Fed. Reg. at 36317, and *without* the 2023 standards and additional .06 quads of energy would be expended during the analysis period, *see* 88 Fed. Reg. at 39913, DOE's proposal clearly "increases the maximum allowable energy use," in violation of 42 U.S.C. § 6295(o)(1), and is not "designed to achieve the maximum improvement in energy efficiency," in violation of 42 U.S.C. § 6295(o)(2)(A).

IV. The Proposal is Not Excluded from Environmental Review Under NEPA, is Contrary to the Interests of the Undersigned Governmental Entities, and Promotes Market Uncertainty.

Accordingly, because the proposal has the potential to cause a significant increase in energy consumption, DOE's suggestion that its proposal somehow qualifies for categorical exclusions from review under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq*. (NEPA) (*see* 90 Fed. Reg. at 20896, referencing 10 CFR part 1021, subpart D, appendices A and B, B5.1, "Actions to conserve energy or water") is plainly without legal merit. Such exclusions are not available for actions, like DOE's proposal, that "threaten a violation of applicable statutory [or] regulatory . . . requirements of DOE," or which would "have the potential to cause a significant increase in energy consumption in a state or region." 10 C.F.R. part 1021, subpart D, appendix B, B(1), B5.1(b)(4). And because these proposals would have a significant adverse effect on energy use, DOE's assertion that it is not required to prepare and submit a Statement of Energy Effects pursuant to Executive Order 13211 (*see* 90 Fed. Reg. at 20897-98) is without legal merit as well.

As the above-described history of DOE's microwave ovens rulemaking demonstrates, the agency's regulations to date concerning microwave ovens have been established in compliance with applicable legal requirements, including under EPCA. Accordingly, DOE's current contention that "there is no reliance interest in an unlawful regulation," 90 Fed. Reg. at 20896, is inapposite, as is DOE's citation to *Dep't of Homeland Sec. v. Regents of the Univ. of California,* 591 U.S. 1, 32 (2020). There Court rejected similar reasoning advanced by the federal agency and held that the failure to consider reliance interests was arbitrary and capricious under the APA. *See Dep't of Homeland Sec.,* 591 U.S. at 30, 33. Thus, DOE's changes of position as to EPCA coverage, energy conservation standards, and economic justification for microwave ovens all require the agency to consider reliance interests. DOE's proposal fails to do so, rendering the proposal arbitrary and capricious. *See Fox,* 556 U.S. at 515.

DOE's proposal would also undermine the interests of the undersigned governmental entities who have relied on DOE's prior interpretation for reduced costs associated with energy demand and pollutant emissions, and the interests of manufacturers of microwave ovens who have made product investments in reliance on energy conservation standards that steadily increase the efficiency of covered products. *See Abraham,* 355 F.3d at 197 (pointing out that "unfettered agency discretion to amend standards [downward] . . . would completely undermine any

sense of certainty on the part of manufacturers as to the required energy efficiency standards at a given time"). Here DOE's proposals would not only promote market uncertainty and punish manufacturers who have invested in energy efficient microwave ovens, DOE's proposals also invite less efficient products from sources, foreign and domestic, that would undercut those manufacturers.

In conclusion, DOE's proposal is illegal and contrary to the interests of consumers of microwave ovens, product manufacturers, the undersigned governmental entities, and the general public. We urge DOE to withdraw this proposal.

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ *Timothy Hoffman*
TIMOTHY HOFFMAN
CHRISTOPHER GORE
LAURA MIRMAN-HESLIN
Assistant Attorneys General
MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ *Jamie Jefferson*
JAMIE JEFFERSON
TAYLOR WETZEL
JINA J. KIM
ELIZABETH SONG
Deputy Attorneys General
LAURA ZUCKERMAN
Supervising Deputy Attorney General
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, California 94610
Email: Jamie.Jefferson@doj.ca.gov

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ *Daniel M. Salton*
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
(860) 808-5250
daniel.salton@ct.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

/s/ *Jason E. James*
Jason E. James
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General of Maine

/s/ *Scott W. Boak*
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
scott.boak@maine.gov

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN
Attorney General

/s/ *Steven J. Goldstein*
Steven J. Goldstein
Robert N. Brewer
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6414
sgoldstein@oag.state.md.us

FOR THE PEOPLE OF THE STATE OF MICHIGAN

DANA NESSEL
Attorney General

/s/ *Benjamin C. Houston*
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
HoustonB1@michigan.gov

FOR THE STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

/s/ *Jack A. Ventura*
Jack A. Ventura
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

/s/ *Alyssa Bixby-Lawson*
Alyssa Bixby-Lawson
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
(651) 300-0904
Alyssa.Bixby-Lawson@ag.state.mn.us

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ *Paul Garrahan*
PAUL GARRAHAN
Attorney-in-Charge
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Paul.Garrahan@doj.oregon.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ *Hannah Yindra*
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Hannah.Yindra@vermont.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ *I. Andrew Goldberg*
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ *Steve Scheele*
STEPHEN SCHEELE
Assistant Attorney General,
Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental
Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ *Christian Harned*
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ *Brian Caldwell*
Brian Caldwell
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 727-6211 (desk)
(202) 445-1952 (cell)
Email: brian.caldwell@dc.gov

COMMENTS OF ATTORNEYS GENERAL OF NEW YORK, CALIFORNIA, CONNECTICUT, ILLINOIS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEW JERSEY, OREGON, VERMONT, WASHINGTON, THE COMMONWEALTH OF MASSACHUSETTS, THE DISTRICT OF COLUMBIA, AND THE CITY OF NEW YORK

July 15, 2025

Comments submitted via regulations.gov

Mr. David Taggart
U.S. Department of Energy
Office of the General Counsel, GC-1
1000 Independence Avenue SW
Washington, D.C. 20585-0121

Re: Docket No. EERE-2025-BT-DET-0016
RIN 1904-AF86
"Energy Conservation Program: Proposed Withdrawal of Determination of Air Cleaners as a Covered Consumer Product," 90 Fed. Reg. 20835 (May 16, 2025).

The undersigned offices of State Attorneys General and local governments submit these comments on the U.S. Department of Energy's (DOE) proposal to withdraw DOE's previous determination of Air Cleaners as covered consumer products under the Energy Policy and Conservation Act, 42 U.S.C. § 6201, *et seq*. (EPCA). This proposal includes DOE's proposal to "withdraw the applicable test procedures, certification requirements, and energy conservation standards for air cleaners." 90 Fed. Reg. at 20837. As governmental entities committed to reducing energy-related costs, including consumer costs, ratepayer costs, and the costs associated with the negative impacts of greenhouse gas and other pollutant emissions, we support robust, cost-effective energy conservation standards for consumer appliances, and rely upon such standards to reduce these costs and reduce energy demand and harmful pollutants.

DOE's proposal is illegal for multiple reasons. As detailed below, the proposal is devoid of any rational explanation and lacks analytical support, is not in accordance with federal statutes, including EPCA, and arbitrarily and capriciously runs counter to DOE's previous determinations and the evidence before the agency,

rendering the proposal unlawful under the Administrative Procedure Act, 5 U.S.C. § 551, *et seq*. (APA).

I. The Proposed Withdrawal of Product Coverage is Not Supported by a Reasonable Explanation or by the Rulemaking Record, Rendering it Arbitrary and Capricious Under the APA.

DOE's conclusory explanation for its proposal is that it "has reevaluated whether including air cleaners as a covered product is necessary and appropriate to carry out the purposes of EPCA," and that "there are other avenues to conserve energy supplies than classifying air cleaners as a covered product and establishing standards." 90 Fed. Reg. at 20836. DOE observes that the Secretary "*may* classify" a type of consumer product as an EPCA-covered product "if certain requirements are met," *id.*, referencing 42 U.S.C. § 6292(b). Yet DOE's proposal disregards the factual bases underlying the agency's recent determination, made under that very statutory provision, to classify air cleaners as a covered product. And the proposal completely disregards DOE's more recent detailed findings supporting the setting of energy conservation standards for air cleaners. These failures to either address the agency's prior factual findings, adequately justify the proposal's contradiction of them, examine important factors, or otherwise provide a reasonable explanation that rationally connects the facts before the agency with the proposed action, render DOE's proposal arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A). *See Motor Vehicle Manufacturers Ass'n of U.S., Inc. v. State Farm Mutual Insurance Co,* 463 U.S. 29, 43 (1983) (*State Farm*); *FCC v. Fox Television Stations, Inc,* 556 U.S. 502, 515 (2009) (*Fox*). In addition, DOE's change of position as to EPCA coverage of air cleaners requires the agency to consider reliance interests. DOE's proposal fails to do, rendering the proposal arbitrary and capricious for this reason as well. *See Fox,* 556 U.S. at 515.

Fundamentally, EPCA was enacted to conserve energy through conservation programs and improved energy efficiency for consumer products and appliances. *See* 42 U.S.C. § 6201(4), (5). DOE determined in 2022 that air cleaners met 42 U.S.C. § 6292(b)'s requirements for classification as covered products, finding that coverage was necessary and appropriate to carry out the purposes of EPCA, and that the average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours per year. *See* Final Determination of Air Cleaners as a Covered Consumer Product, 87 Fed. Reg. 42297 (July 15, 2022). DOE conducted a rigorous analysis in making its coverage determination, reviewing the most recent product, product shipment and market data for air cleaners. *See* 87 Fed. Reg. at 42299-42305. DOE also took into account comments received from trade associations, efficiency organizations, and manufacturers; these commenters all

supported coverage of air cleaners under EPCA. *Id.* at 42299. DOE's proposal to withdraw coverage for air cleaners is plainly contradicted, without reasonable explanation, by the agency's prior determination.

II. The Proposed Withdrawal of Energy Conservation Standards, Test Procedures and Certification Requirements is Not Supported by a Reasonable Explanation or by the Rulemaking Record, Rendering it Arbitrary and Capricious Under the APA.

DOE's perfunctory proposal to also withdraw energy conservation standards, test procedures and certification requirements for air cleaners is similarly bereft of any factual support or sound reasoning, and is belied by the extensive record underlying the agency's 2023 Direct Final Rule, "Energy Conservation Standards for Air Cleaners," 88 Fed. Reg. 21752 (April 11, 2023). These standards were based on recommendations by Joint Stakeholders representing manufacturers, energy and environmental advocates, and consumer groups. In adopting them DOE's analysis found that the standards would result in significant energy savings, and are technologically feasible and economically justified. *See* 88 Fed. Reg. at 21753-57. DOE calculated that adoption of these standards would save a significant amount of energy, amounting to 1.80 quadrillion British thermal units (quads) of energy saved over the 30-year analysis period, representing a 27 percent savings relative to the energy use of air cleaners without the standards. *Id.* at 21754. DOE further calculated that the standards would save consumers between $5.8 billion and $13.7 billion in net reduced product operating costs over 30 years of product sales. *Id.* DOE also determined that national benefits from these air cleaners standards include cumulative emission reductions of 57.7 million metric tons of carbon dioxide, 24.2 thousand tons of sulfur dioxide, 91.2 thousand tons of nitrogen oxides, 0.5 thousand tons of nitrous oxide and 0.2 tons of mercury. *Id.* In addition, DOE estimated that monetary health benefits from the standards would be between $1.8 billion and $4.7 billion. *Id.* at 21755.

DOE's failure to even acknowledge the agency's previous, painstaking work developing energy conservation standards for Air Cleaners demonstrates the unseriousness of DOE's current proposal. Its complete lack of any analytical support stands in stark contrast to the agency's detailed, record-based 2023 findings, highlighting the arbitrariness and capriciousness of the proposal under the APA, 5 U.S.C. § 706(2)(A). *See State Farm,* 463 U.S. at 43; *Fox,* 556 U.S. at 515. And DOE's change of position, now proposing to withdraw energy conservation standards for Air Cleaners, requires the agency to consider reliance interests. Again, DOE's proposal fails to do, rendering the proposal arbitrary and capricious for this reason. *See Fox,* 556 U.S. at 515.

III. The Proposal Violates EPCA.

DOE's proposal is also directly at odds with the EPCA "appliance program's goal of steadily increasing the energy efficiency of covered products." *NRDC v. Abraham,* 335 F.3d 179, 197 (2d Cir. 2004). No provision of EPCA authorizes DOE to declassify covered products or withdraw existing energy conservation standards. Viewed as a proposed amendment to existing standards, DOE's proposal is subject to the provisions in 42 U.S.C. §§ 6295(o)(2) and (p), requiring DOE to determine that the amended standards are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. This DOE has failed to do.

Further, upon DOE's publication of energy conservation standards for air cleaners in 2023, EPCA's "anti-backsliding" provision, 42 U.S.C. § 6295(o)(1) (EPCA section 325(o)(1)), "operates to restrict DOE's discretionary ability to amend standards downward thereafter." *Abraham,* 335 F.3d at 197. Here, DOE's proposals are prohibited by 42 U.S.C. § 6295(o)(1), for as conceded by DOE in *Abraham*, that provision "constrain[s] [DOE's] ability to weaken a standard in a newly initiated rulemaking proceeding to amend or rescind a standard." *Abraham,* 355 F.3d at 203. Having previously determined that *without* the 2023 air cleaners energy conservation standards an additional 1.8 quads of energy would be expended during the analysis period, *see* 88 Fed. Reg. at 21754, DOE's proposal clearly "increases the maximum allowable energy use," in violation of 42 U.S.C. § 6295(o)(1), and is not "designed to achieve the maximum improvement in energy efficiency," in violation of 42 U.S.C. § 6295(o)(2)(A).

IV. The Proposal is Not Excluded from Environmental Review Under NEPA, is Contrary to the Interests of the Undersigned Governmental Entities, and Promotes Market Uncertainty.

Accordingly, because the proposal has the potential to cause a significant increase in energy consumption, DOE's suggestion that its proposal somehow qualifies for categorical exclusions from review under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (NEPA) (*see* 90 Fed. Reg. at 20837, referencing 10 CFR part 1021, subpart D, appendices A and B, B5.1, "Actions to conserve energy or water") is plainly without legal merit. Such exclusions are not available for actions, like DOE's proposal, that "threaten a violation of statutory [or] regulatory . . . requirements of DOE," or which would "have the potential to cause a significant increase in energy consumption in a state or region." 10 CFR part 1021, subpart D, appendix B, B(1), B5.1(b)(4). And because this proposal would have a significant adverse effect on energy use, DOE's assertion that it is not required to

prepare and submit a Statement of Energy Effects pursuant to Executive Order 13211 (90 Fed. Reg. at 20838) is without legal merit as well.

DOE's proposal would also undermine the interests of the undersigned governmental entities who have relied on DOE's prior interpretation for reduced costs associated with energy demand and pollutant emissions, and the interests of manufacturers of air cleaners who have made product investments in reliance on energy conservation standards that steadily increase the efficiency of covered products. *See Abraham,* 355 F.3d at 197 (pointing out that "unfettered agency discretion to amend standards [downward] . . . would completely undermine any sense of certainty on the part of manufacturers as to the required energy efficiency standards at a given time"). Here DOE's proposals would not only promote market uncertainty and punish manufacturers who have invested in energy efficient air cleaners, DOE's proposals also invite less efficient products from sources, foreign and domestic, that would undercut those manufacturers.

In conclusion, DOE's proposal is illegal and contrary to the interests of consumers of air cleaners, product manufacturers, the undersigned governmental entities, and the general public. We urge DOE to withdraw this proposal.

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ *Timothy Hoffman*
TIMOTHY HOFFMAN
CHRISTOPHER GORE
LAURA MIRMAN-HESLIN
Assistant Attorneys General
MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ *Jamie Jefferson*
JAMIE JEFFERSON
TAYLOR WETZEL
JINA J. KIM
ELIZABETH SONG
Deputy Attorneys General
LAURA ZUCKERMAN
Supervising Deputy Attorney General
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, California 94610
Email: Jamie.Jefferson@doj.ca.gov

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ *Daniel M. Salton*
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
(860) 808-5250
daniel.salton@ct.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

/s/ *Jason E. James*
Jason E. James
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General of Maine

/s/ *Scott W. Boak*
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
scott.boak@maine.gov

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN
Attorney General

/s/ *Steven J. Goldstein*
Steven J. Goldstein
Robert N. Brewer
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6414
sgoldstein@oag.state.md.us

FOR THE PEOPLE OF THE STATE OF MICHIGAN

DANA NESSEL
Attorney General

/s/ *Benjamin C. Houston*
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
HoustonB1@michigan.gov

FOR THE STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

/s/ *Jack A. Ventura*
Jack A. Ventura
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

/s/ *Alyssa Bixby-Lawson*
Alyssa Bixby-Lawson
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
(651) 300-0904
Alyssa.Bixby-Lawson@ag.state.mn.us

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ *Paul Garrahan*
PAUL GARRAHAN
Attorney-in-Charge
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Paul.Garrahan@doj.oregon.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ *Hannah Yindra*
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Hannah.Yindra@vermont.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ *I. Andrew Goldberg*
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ *Steve Scheele*
STEPHEN SCHEELE
Assistant Attorney General,
Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental
Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ *Christian Harned*
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ *Brian Caldwell*
Brian Caldwell
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 727-6211 (desk)
(202) 445-1952 (cell)
Email: brian.caldwell@dc.gov

COMMENTS OF ATTORNEYS GENERAL OF NEW YORK, CALIFORNIA, CONNECTICUT, ILLINOIS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEW JERSEY, OREGON, VERMONT, WASHINGTON, THE COMMONWEALTH OF MASSACHUSETTS, THE DISTRICT OF COLUMBIA, AND THE CITY OF NEW YORK

July 15, 2025

Comments submitted via regulations.gov

Mr. David Taggart
U.S. Department of Energy
Office of the General Counsel, GC-1
1000 Independence Avenue SW
Washington, D.C. 20585-0121

Re: Docket No. EERE-2025-BT-DET-0007
RIN 1904-AF77
"Energy Conservation Program: Proposed Withdrawal of Determination of Compressors as a Covered Equipment,"
90 Fed. Reg. 20849 (May 16, 2025).

The undersigned offices of State Attorneys General and local governments submit these comments on the U.S. Department of Energy's (DOE) proposal to withdraw DOE's prior determination classifying compressors as covered equipment under the Energy Policy and Conservation Act, 42 U.S.C. § 6201, *et seq.* (EPCA). The proposal includes DOE's proposal to withdraw applicable test procedures, certification requirements, and energy conservation standards for compressors. 90 Fed. Reg. at 20849-50. As governmental entities committed to reducing energy-related costs, including consumer costs, ratepayer costs, and the costs associated with the negative impacts of greenhouse gas and other pollutant emissions, we support robust, cost-effective energy conservation standards for consumer appliances and industrial equipment, and rely upon such standards to reduce these costs and reduce energy demand and harmful pollutants.

DOE's proposal is illegal for multiple reasons. As detailed below, the proposal is devoid of any rational explanation and lacks analytical support, is contrary to EPCA's terms and purpose, and arbitrarily and capriciously runs counter to DOE's previous determinations and the evidence before the agency, rendering it unlawful under the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.* (APA).

I. The Proposed Withdrawal of Equipment Coverage is Not Supported by a Reasonable Explanation or by the Rulemaking Record, Rendering it Arbitrary and Capricious Under the APA.

DOE's explanation for its proposal is that it "has reevaluated whether including compressors as a covered equipment is necessary to carry out the purpose of Part A–1 of EPCA [42 U.S.C. §§ 6311-6317]," and "tentatively determined that it is unnecessary to include compressors as covered equipment." 90 Fed. Reg at 20850. DOE states that its proposal is "consistent with a policy to classify industrial equipment as covered equipment only if energy conservation standards will significantly increase the energy resources of the nation, without compromising the performance of industrial products," and that "the inclusion of compressors does not meet that standard." *Id.* DOE further states that the proposal is "consistent with the Secretary's position that regulatory burdens should be reduced wherever possible, consistent with DOE's statutory obligations." *Id.*

In its proposal DOE observes that the Secretary "*may* classify" a type of industrial equipment as EPCA-covered equipment "if certain requirements are met," *id.*, referencing 42 U.S.C. § 6312(b). Yet DOE's proposal disregards the factual bases underlying the agency's prior determination, made under that very statutory provision, to classify compressors as covered equipment. And the proposal completely disregards DOE's more recent detailed findings supporting the setting of energy conservation standards for compressors. These failures to either address the agency's prior factual findings, adequately justify the proposal's contradiction of them, examine important factors, or otherwise provide a reasonable explanation that rationally connects the facts before the agency with the proposed action, render DOE's proposal arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A). *See Motor Vehicle Manufacturers Ass'n of U.S., Inc. v. State Farm Mutual Insurance Co,* 463 U.S. 29, 43 (1983) (*State Farm*); *FCC v. Fox Television Stations, Inc,* 556 U.S. 502, 515 (2009) (*Fox*). In addition, DOE's change of position as to EPCA coverage of compressors requires the agency to consider reliance interests. DOE's proposal fails to do, rendering the proposal arbitrary and capricious for this reason as well. *See Fox,* 556 U.S. at 515.

Fundamentally, EPCA was enacted to conserve energy through conservation programs and improved energy efficiency for consumer products and appliances. *See* 42 U.S.C. § 6201(4), (5). DOE determined in 2016 that compressors met the requirements of 42 U.S.C. §§ 6311(2)(B)(i) and 6312(b) for classification as EPCA-

covered equipment, finding that including compressors as covered equipment was necessary to carry out the purposes of Part A-1 of EPCA. *See* Energy Conservation Program for Consumer Products and Industrial Equipment: Final Determination of Compressors as Covered Equipment, 81 Fed. Reg. 79991 (November 15, 2016). DOE conducted a rigorous analysis in making its coverage determination, reviewing detailed technical equipment information and considering comments received from trade associations, manufacturers, environmental and energy efficiency organizations, and utilities. *See* 81 Fed. Reg. at 71992-96.

DOE's about-face proposal to now withdraw coverage for compressors is plainly contradicted, without reasonable explanation, by the agency's prior coverage determination. DOE's assertion, without analysis or factual support, that "it is unnecessary to include compressors as covered equipment," 90 Fed. Reg. at 20850, is, as explained above, arbitrary and capricious under applicable law. Similarly, DOE provides no analysis, factual support or legal justification for its assertion that withdrawing EPCA coverage for compressors is "consistent with a policy to classify industrial equipment as covered equipment only if energy conservation standards will significantly increase the energy resources of the nation, without compromising the performance of industrial products." *Id.* DOE's proposal completely disregards the actual requirements established by Congress in EPCA for making equipment coverage determinations, and for establishing energy conservation standards.

II. The Proposed Withdrawal of Energy Conservation Standards, Test Procedures and Certification Requirements is Not Supported by a Reasonable Explanation or by the Rulemaking Record, Rendering it Arbitrary and Capricious Under the APA.

DOE's perfunctory proposal to withdraw energy conservation standards, test procedures and certification requirements for compressors is, like its proposal to withdraw EPCA coverage for compressors, bereft of any factual support or sound reasoning, and is belied by the extensive record underlying the agency's 2020 Final Rule, "Energy Conservation Program: Energy Conservation Standards for Air Compressors," 85 Fed. Reg. 1504 (January 10, 2020). Based on an extensive record and detailed analysis DOE found that these energy conservation standards would result in significant energy savings, are technologically feasible and economically justified as required by EPCA, 42 U.S.C. §§ 6295(o)(2)(A), 6316(a), 6295(o)(3)(B), and 6316(a). *See* "Synopsis of the Final Rule," 85 Fed. Reg. at 1505-08. DOE determined that adoption of these standards would save a significant amount of energy, amounting to .16 quadrillion British thermal units (quads) of energy saved over the 30-year analysis period, representing a .6 percent savings relative to the

energy use of compressors without the standards. *See* 85 Fed. Reg. at 1506. DOE further determined that the standards would save consumers between $ .2 billion and $ .4 billion in net reduced product operating costs over 30 years of product sales. *Id.* In addition, DOE determined that national benefits from these compressor standards include cumulative emission reductions over the analysis period of 8.2 million metric tons of carbon dioxide, 6.5 thousand tons of sulfur dioxide, 11 tons of nitrogen oxides, 48.8 thousand tons of methane, 0.1 thousand tons of nitrous oxide and 0.2 tons of mercury. *Id.*

DOE's failure to even acknowledge the agency's previous, painstaking work developing energy conservation standards for compressors demonstrates the unseriousness of DOE's current proposal. Its complete lack of any analytical support stands in stark contrast to the agency's detailed, record-based 2020 findings, highlighting the arbitrariness and capriciousness of the proposal under the APA, 5 U.S.C. § 706(2)(A). *See State Farm,* 463 U.S. at 43; *Fox,* 556 U.S. at 515. And DOE's change of position, now proposing to withdraw energy conservation standards for compressors, requires the agency to consider reliance interests. DOE's proposal fails to do so, again rendering the proposal arbitrary and capricious for this reason. *See Fox,* 556 U.S. at 515.

III. The Proposal Violates EPCA.

DOE's proposal is also directly at odds with the EPCA "appliance program's goal of steadily increasing the energy efficiency of covered products." *NRDC v. Abraham,* 335 F.3d 179, 197 (2d Cir. 2004). No provision of EPCA authorizes DOE to declassify covered products or withdraw existing energy conservation standards. Viewed as a proposed amendment to existing standards, DOE's proposal is subject to the provisions in 42 U.S.C. §§ 6295(o)(2) and (p), requiring DOE to determine that the amended standards are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. This DOE has failed to do; s*ee* 42 U.S.C. § 6316(a) (making the provisions of 42 U.S.C. § 6295 (l) through (s) applicable to Part A-1 of EPCA).

Further, upon DOE's publication of energy conservation standards for compressors in 2020, EPCA's "anti-backsliding" provision, 42 U.S.C. §§ 6295(o)(1), "operates to restrict DOE's discretionary ability to amend standards downward thereafter." *Abraham,* 335 F.3d at 197. Here, DOE's proposal is prohibited by 42 U.S.C. § 6295(o)(1), for as conceded by DOE in *Abraham*, that provision "constrain[s] [DOE's] ability to weaken a standard in a newly initiated rulemaking proceeding to amend or rescind a standard." *Abraham,* 355 F.3d at 203. In addition,

42 U.S.C. § 6313(a)(6)(B)(iii)(I) contains a similar anti-backsliding provision that also operates to prohibit DOE's proposal. Having previously determined that *without* the 2020 compressor energy conservation standards an additional .16 quads of energy would be expended during the analysis period, *see* 85 Fed. Reg. at 1506, DOE's proposal clearly "increases the maximum allowable energy use," in violation of 42 U.S.C. § 6295(o)(1), and is not "designed to achieve the maximum improvement in energy efficiency," in violation of 42 U.S.C. § 6295(o)(2)(A). And no "position that regulatory burdens should be reduced wherever possible," 90 Fed. Reg. at 20850, makes DOE's proposal "consistent with DOE's statutory obligations," *id.*, because for the reasons stated herein the proposal is plainly *inconsistent* with those obligations and illegal for multiple reasons.

IV. The Proposal is Not Excluded from Environmental Review Under NEPA, is Contrary to the Interests of the Undersigned Governmental Entities, and Promotes Market Uncertainty.

Accordingly, because the proposal has the potential to cause a significant increase in energy consumption, DOE's suggestion that its proposal somehow qualifies for categorical exclusions from review under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (NEPA) (*see* 85 Fed. Reg. at 20850, referencing 10 CFR part 1021, subpart D, appendices A and B, B5.1, "Actions to conserve energy or water") is plainly without legal merit. Such exclusions are not available for actions, like DOE's proposals, that "threaten a violation of statutory [or] regulatory . . . requirements of DOE," or which would "have the potential to cause a significant increase in energy consumption in a state or region." 10 CFR part 1021, subpart D, appendix B, B(1), B5.1(b)(4). And because the proposal would have a significant adverse effect on energy use, DOE's assertion that it is not required to prepare and submit a Statement of Energy Effects pursuant to Executive Order 13211 (85 Fed. Reg. at 20851) is without legal merit as well.

DOE's proposal would also undermine the interests of the undersigned governmental entities who have relied on DOE's prior interpretation for reduced costs associated with energy demand and pollutant emissions, and the interests of manufacturers of compressors who have made product investments in reliance on energy conservation standards that steadily increase the efficiency of covered products. *See Abraham,* 355 F.3d at 197 (pointing out that "unfettered agency discretion to amend standards [downward] . . . would completely undermine any sense of certainty on the part of manufacturers as to the required energy efficiency standards at a given time"). Here DOE's proposal would not only promote market uncertainty and punish manufacturers who have invested in energy efficient

compressors, DOE's proposal also invites less efficient products from sources, foreign and domestic, that would undercut those manufacturers.

In conclusion, DOE's proposal is illegal and contrary to the interests of consumers of compressors, product manufacturers, the undersigned governmental entities, and the general public. We urge DOE to withdraw this proposal.

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ *Timothy Hoffman*
TIMOTHY HOFFMAN
CHRISTOPHER GORE
LAURA MIRMAN-HESLIN
Assistant Attorneys General
MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ *Jamie Jefferson*
JAMIE JEFFERSON
TAYLOR WETZEL
JINA J. KIM
ELIZABETH SONG
Deputy Attorneys General
LAURA ZUCKERMAN
Supervising Deputy Attorney General
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, California 94610
Email: Jamie.Jefferson@doj.ca.gov

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ *Daniel M. Salton*
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
(860) 808-5250
daniel.salton@ct.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

/s/ *Jason E. James*
Jason E. James
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General of Maine

/s/ *Scott W. Boak*
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
scott.boak@maine.gov

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN
Attorney General

/s/ *Steven J. Goldstein*
Steven J. Goldstein
Robert N. Brewer
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6414
sgoldstein@oag.state.md.us

FOR THE PEOPLE OF THE STATE OF MICHIGAN
DANA NESSEL
Attorney General

/s/ *Benjamin C. Houston*
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
HoustonB1@michigan.gov

FOR THE STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
/s/ *Jack A. Ventura*
Jack A. Ventura
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF MINNESOTA
KEITH ELLISON
Attorney General

/s/ *Alyssa Bixby-Lawson*
Alyssa Bixby-Lawson
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
(651) 300-0904
Alyssa.Bixby-Lawson@ag.state.mn.us

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ *Paul Garrahan*
PAUL GARRAHAN
Attorney-in-Charge
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Paul.Garrahan@doj.oregon.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ *Hannah Yindra*
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Hannah.Yindra@vermont.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ *I. Andrew Goldberg*
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ *Steve Scheele*
STEPHEN SCHEELE
Assistant Attorney General,
Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental
Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ *Christian Harned*
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ *Brian Caldwell*
Brian Caldwell
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 727-6211 (desk)
(202) 445-1952 (cell)
Email: brian.caldwell@dc.gov

COMMENTS OF ATTORNEYS GENERAL OF NEW YORK, CALIFORNIA, CONNECTICUT, ILLINOIS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEW JERSEY, OREGON, VERMONT, WASHINGTON, THE COMMONWEALTH OF MASSACHUSETTS, THE DISTRICT OF COLUMBIA, AND THE CITY OF NEW YORK

July 15, 2025

Comments submitted via regulations.gov

Mr. David Taggart
U.S. Department of Energy
Office of the General Counsel, GC-1
1000 Independence Avenue SW
Washington, D.C. 20585-0121

Re: Docket No. EERE-2025-BT-DET-0009
RIN 1904-AF79
"Energy Conservation Program: Proposed Withdrawal of Determination of Miscellaneous Refrigeration Products as a Covered Consumer Product,"
90 Fed. Reg. 20840 (May 16, 2025).

The undersigned offices of State Attorneys General and local governments submit these comments on the U.S. Department of Energy's (DOE) proposal to withdraw DOE's previous determination of Miscellaneous Refrigeration Products (MREFs) as covered consumer products under the Energy Policy and Conservation Act, 42 U.S.C. § 6201, *et seq.* (EPCA). This proposal includes DOE's proposal to "withdraw the applicable test procedures, certification requirements, and energy conservation standards for MREFs." 90 Fed. Reg. at 20842. As governmental entities committed to reducing energy-related costs, including consumer costs, ratepayer costs, and the costs associated with the negative impacts of greenhouse gas and other pollutant emissions, we support robust, cost-effective energy conservation standards for consumer appliances, and rely upon such standards to reduce these costs and reduce energy demand and harmful pollutants.

DOE's proposal is illegal for multiple reasons. As detailed below, the proposal is devoid of any rational explanation and lacks analytical support, is not in accordance with federal statutes, including EPCA, and arbitrarily and capriciously runs counter to DOE's previous determinations and the evidence before the agency, rendering the proposal unlawful under the Administrative Procedure Act, 5 U.S.C. § 551, *et seq*. (APA).

I. The Proposed Withdrawal of Product Coverage is Not Supported by a Reasonable Explanation or by the Rulemaking Record, Rendering it Arbitrary and Capricious Under the APA.

DOE's conclusory explanation for its proposal is that "it has reevaluated whether including MREFs as a covered product is necessary and appropriate to carry out the purposes of EPCA," and that "there are other avenues to conserve energy supplies than classifying MREFs as a covered product and establishing standards." 90 Fed. Reg. at 20841-42. DOE observes that the Secretary "*may* classify" a type of consumer product as an EPCA-covered product if certain requirements are met, 90 Fed. Reg. at 20842, referencing 42 U.S.C. § 6292(b). Yet DOE's proposal disregards the factual bases underlying the agency's previous determination, made under that very statutory provision, to classify MREFs as a covered product. And the proposal completely disregards DOE's more recent detailed findings supporting the setting of energy conservation standards for MREFs. These failures to either address the agency's prior factual findings, adequately justify the proposal's contradiction of them, examine important factors, or otherwise provide a reasonable explanation that rationally connects the facts before the agency with the proposal, render DOE's proposal arbitrary and capricious and otherwise not in accordance with the law under the APA, 5 U.S.C. § 706(2)(A). *See Motor Vehicle Manufacturers Ass'n of U.S., Inc. v. State Farm Mutual Insurance Co,* 463 U.S. 29, 43 (1983) (*State Farm*); *FCC v. Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (*Fox*). In addition, DOE's change of position as to EPCA coverage of MREFs requires the agency to consider reliance interests, which DOE's proposal fails to do, also rendering the proposal arbitrary and capricious. *See Fox,* 556 U.S. at 515.

Fundamentally, EPCA was enacted to conserve energy through conservation programs and improved energy efficiency for consumer products and appliances. *See* 42 U.S.C. § 6201(4), (5). DOE determined in 2016 that MREFs met 42 U.S.C. §

6292(b)'s requirements for classification as covered products, finding that coverage was necessary and appropriate to carry out the purposes of EPCA, and that the average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours per year. 81 Fed. Reg. 46768 (July 18, 2016). DOE conducted a rigorous analysis in making its coverage determination, reviewing the most recent product, product shipment, and market data for MREFs. *See* 81 Fed. Reg. at 46772-75. DOE also took into account input received from a MREFs Working Group consisting of trade associations, efficiency organizations, and manufacturers. These Working Group members all supported coverage of MREFs under EPCA. *Id.* at 46770. DOE's proposal to withdraw coverage for MREFs is plainly contradicted, without reasonable explanation, by the agency's prior determination.

II. The Proposed Withdrawal of Energy Conservation Standards, Test Procedures and Certification Requirements is Not Supported by a Reasonable Explanation or by the Rulemaking Record, Rendering it Arbitrary and Capricious Under the APA.

DOE's proposal also completely disregards the agency's previous detailed findings in 2016, and more recently in 2024, supporting the setting of energy conservation standards for MREFs, similarly rendering the proposal arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A). *See State Farm,* 463 U.S. at 43; *Fox,* 556 U.S. at 515. In its Final Rule, "Energy Conservation Standards for Miscellaneous Refrigeration Products," 81 Fed. Reg. 75194 (Oct. 28, 2016), DOE determined based on an extensive record that energy conservation standards for MREFs would result in significant conservation of energy, and are technologically feasible and economically justified. DOE's analysis, summarized in 81 Fed. Reg. at 75195-99, found that these standards would save consumers between $4.78 billion and $11.02 billion in net reduced product operating costs over 30 years of product sales. *Id.* at 75197. DOE further determined that adoption of these standards would save a significant amount of energy, amounting to 1.5 quadrillion British thermal units (quads) of energy during the analysis period, representing a savings of 58 percent relative to the energy use of these products without the standards. *Id.* DOE further determined that the national benefits from these standards include cumulative emission reductions of approximately 91.8 million metric tons of carbon dioxide, 54.0 thousand tons of sulfur dioxide, 164.0 thousand tons of nitrogen oxides and .02 tons of mercury. *Id.*

More recently in 2024, DOE published its Direct Final Rule "Energy Conservation Standards for Miscellaneous Refrigeration Products," 89 Fed. Reg. 38762 (May 7, 2024). In its Direct Final rule, DOE determined that amended standards for MREFs, jointly proposed by groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility, would result in significant conservation of energy, and are technologically feasible and economically justified. DOE's detailed analysis, based on an extensive record and summarized in 89 Fed. Reg. at 38763-70, found that these amended standards would save consumers between $.17 billion and $.77 billion in net reduced product operating costs over 30 years of product sales. *Id.* at 38765. DOE further determined that adoption of the amended standards would save .37 quads of energy during the analysis period, representing a savings of 26 percent relative to the energy use without the amended standards. *Id.* In addition, DOE determined that the national benefits from these amended standards include cumulative emission reductions of approximately 5.85 million metric tons of carbon dioxide, 1.84 thousand tons of nitrogen oxides, 10.77 thousand tons of nitrogen oxides, 48.64 thousand tons of methane, .06 thousand tons of nitrous oxide and .01 tons of mercury. *Id.* DOE estimated the present value of the health benefits from these standards at between $.24 billion and $.62 billion. *Id.*

DOE's failure to even acknowledge the agency's previous, painstaking work developing energy conservation standards for MREFs demonstrates the unseriousness of DOE's current proposal. Its complete lack of any analytical support stands in stark contrast to the agency's detailed, record-based 2016 and 2024 findings, highlighting the arbitrariness and capriciousness of the proposal under the APA, 5 U.S.C. § 706(2)(A). *See State Farm,* 463 U.S. at 43; *Fox,* 556 U.S. at 515. And DOE's change of position, now proposing to withdraw energy conservation standards for MREFs, requires the agency to consider reliance interests. DOE's proposal fails to do so, rendering the proposal arbitrary and capricious for this reason as well. *See Fox,* 556 U.S. at 515.

III. The Proposal Violates EPCA.

DOE's proposal is also directly at odds with the EPCA "appliance program's goal of steadily increasing the energy efficiency of covered products." *NRDC v. Abraham,* 335 F.3d 179, 197 (2d Cir. 2004). No provision of EPCA authorizes DOE to declassify covered products or withdraw existing energy conservation standards. Viewed as a proposed amendment to existing standards, DOE's proposal is subject

to the provisions in 42 U.S.C. §§ 6295(o)(2) and (p), requiring DOE to determine that the amended standards are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. This DOE has failed to do.

Further, upon DOE's publication of energy conservation standards for MREFs in 2016, and again in 2024, EPCA's "anti-backsliding" provision, 42 U.S.C. § 6295(o)(1) (EPCA section 325(o)(1)), "operates to restrict DOE's discretionary ability to amend standards downward thereafter." *Abraham,* 335 F.3d at 197. Here, DOE's proposal is prohibited by 42 U.S.C. § 6295(o)(1), for as conceded by DOE in *Abraham*, that provision "constrain[s] [DOE's] ability to weaken a standard in a newly initiated rulemaking proceeding to amend or rescind a standard." *Abraham,* 355 F.3d at 203. Having previously determined that *without* the 2016 MREFs energy conservation standards an additional 1.5 quads of energy would be expended during the analysis period, *see* 81 Fed. Reg. at 75197, and *without* the 2024 amended standards an additional .37 quads of energy would be expended during the analysis period, *see* 89 Fed. Reg. at 38765, DOE's proposal clearly "increases the maximum allowable energy use," in violation of 42 U.S.C. § 6295(o)(1), and is not "designed to achieve the maximum improvement in energy efficiency," in violation of 42 U.S.C. § 6295(o)(2)(A).

IV. The Proposal is Not Excluded from Environmental Review Under NEPA, is Contrary to the Interests of the Undersigned Governmental Entities, and Promotes Market Uncertainty.

Accordingly, because the proposal has the potential to cause a significant increase in energy consumption, DOE's suggestion that its proposal somehow qualifies for categorical exclusions from review under the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* (NEPA) (*see* 90 Fed. Reg. at 20842, referencing 10 C.F.R. part 1021, subpart D, appendices A and B, B5.1, "Actions to conserve energy or water"), is plainly without legal merit. Such exclusions are not available for actions, like DOE's proposal, that "threaten a violation of applicable statutory [or] regulatory . . . requirements of DOE," or which would "have the potential to cause a significant increase in energy consumption in a state or region." 10 CFR part 1021, subpart D, appendix B, B(1), B5.1(b)(4). And because its proposal would have a significant adverse effect on energy use, DOE's assertion that it is not required to prepare and submit a Statement of Energy Effects pursuant to Executive Order 13211 (*see* 90 Fed. Reg. at 20843) is without legal merit as well.

DOE's proposal would also undermine the interests of the undersigned governmental entities who have relied on DOE's prior interpretation for reduced costs associated with energy demand and pollutant emissions, and the interests of manufacturers of MREFs who have made product investments in reliance on energy conservation standards that steadily increase the efficiency of covered products. *See Abraham*, 355 F.3d at 197 (pointing out that "unfettered agency discretion to amend standards [downward] would completely undermine any sense of certainty on the part of the manufacturers as to the required energy efficiency standards at a given time."). Here DOE's proposal would not only promote market uncertainty and punish manufacturers who have invested in energy efficient MREFs, DOE's proposal also invites less efficient products from sources, foreign and domestic, that would undercut those manufacturers.

In conclusion, DOE's proposal is illegal and contrary to the interests of consumers of MREFs, product manufacturers, the undersigned governmental entities, and the general public. We urge DOE to withdraw this proposal.

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ *Timothy Hoffman*
TIMOTHY HOFFMAN
CHRISTOPHER GORE
LAURA MIRMAN-HESLIN
Assistant Attorneys General
MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ *Jamie Jefferson*
JAMIE JEFFERSON
TAYLOR WETZEL
JINA J. KIM
ELIZABETH SONG
Deputy Attorneys General
LAURA ZUCKERMAN
Supervising Deputy Attorney General
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, California 94610
Email: Jamie.Jefferson@doj.ca.gov

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ *Daniel M. Salton*
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
(860) 808-5250
daniel.salton@ct.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General of Maine

/s/ *Scott W. Boak*
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
scott.boak@maine.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

/s/ *Jason E. James*
Jason E. James
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN
Attorney General

/s/ *Steven J. Goldstein*
Steven J. Goldstein
Robert N. Brewer
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6414
sgoldstein@oag.state.md.us

FOR THE PEOPLE OF THE STATE OF MICHIGAN

DANA NESSEL
Attorney General

/s/ *Benjamin C. Houston*
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
HoustonB1@michigan.gov

FOR THE STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

/s/ *Jack A. Ventura*
Jack A. Ventura
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

/s/ *Alyssa Bixby-Lawson*
Alyssa Bixby-Lawson
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
(651) 300-0904
Alyssa.Bixby-Lawson@ag.state.mn.us

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ *Paul Garrahan*
PAUL GARRAHAN
Attorney-in-Charge
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Paul.Garrahan@doj.oregon.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ *Hannah Yindra*
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Hannah.Yindra@vermont.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ *I. Andrew Goldberg*
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ *Steve Scheele*
STEPHEN SCHEELE
Assistant Attorney General,
Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental
Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ *Christian Harned*
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ *Brian Caldwell*
Brian Caldwell
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 727-6211 (desk)
(202) 445-1952 (cell)
Email: brian.caldwell@dc.gov

COMMENTS OF ATTORNEYS GENERAL OF NEW YORK, CALIFORNIA, CONNECTICUT, ILLINOIS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEW JERSEY, OREGON, VERMONT, WASHINGTON, THE COMMONWEALTH OF MASSACHUSETTS, THE DISTRICT OF COLUMBIA, AND THE CITY OF NEW YORK

July 15, 2025

Comments submitted via regulations.gov

Mr. David Taggart
U.S. Department of Energy
Office of the General Counsel, GC-1
1000 Independence Avenue SW
Washington, D.C. 20585-0121

Re: Docket No. EERE-2025-BT-DET-0024
RIN 1904-AF94
"Energy Conservation Program: Proposed Withdrawal of Determination of Portable Air Conditioners as a Covered Consumer Product,"
90 Fed. Reg. 20876 (May 16, 2025).

The undersigned offices of State Attorneys General and local governments submit these comments on the U.S. Department of Energy's (DOE) proposal to withdraw DOE's previous determination of Portable Air Conditioners (portable ACs) as covered products under the Energy Policy and Conservation Act, 42 U.S.C. § 6201, *et seq,* (EPCA). This proposal includes DOE's proposal to "withdraw the applicable energy conservation standards for portable ACs," 90 Fed. Reg. at 20877. As governmental entities committed to reducing energy-related costs, including consumer product costs, ratepayer costs and the negative impacts of greenhouse gas emissions and other pollutants, we support stringent, cost-effective energy efficiency standards for consumer appliances, and rely upon such standards to reduce these costs and reduce energy demand and harmful pollutants.

DOE's proposal is illegal for multiple reasons. As detailed below, the proposal is devoid of any rational explanation and lacks analytical support, is not in accordance with federal statutes, including EPCA, and arbitrarily and capriciously runs counter to DOE's previous determinations and the evidence before the agency,

rendering the proposal unlawful under the Administrative Procedure Act, 5 U.S.C. § 551, *et seq*. (APA).

I. The Proposed Withdrawal of Product Coverage is Not Supported by a Reasonable Explanation or by the Rulemaking Record, Rendering it Arbitrary and Capricious Under the APA.

DOE's conclusory explanation for its proposal to withdraw coverage for portable ACs is that it "has reevaluated its prior determination of whether including portable ACs as a covered product is necessary and appropriate to carry out the purposes of EPCA," and that "there are other avenues to conserve energy supplies than classifying portable ACs as a covered product and establishing standards." 90 Fed. Reg. at 20877. DOE observes that the Secretary "*may* classify" a type of consumer product as an EPCA-covered product "if certain requirements are met," *id.*, referencing 42 U.S.C. § 6292(b). Yet DOE's proposal disregards the factual basis for its previous determination, made under that very statutory provision, to classify portable ACs as a covered product. And the proposal completely disregards DOE's more recent detailed findings supporting the setting of energy conservation standards for portable ACs. These failures to either address the agency's prior factual findings, adequately justify the proposal's contradiction of them, examine important factors, or otherwise provide a reasonable explanation that rationally connects the facts before the agency with the proposal, render DOE's proposal arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A). *See Motor Vehicle Manufacturers Ass'n of U.S., Inc. v. State Farm Mutual Insurance Co*, 463 U.S. 29, 43 (1983) (*State Farm*); *FCC v. Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (*Fox*). In addition, DOE's change of position as to EPCA coverage of portable ACs requires the agency to consider reliance interests, which DOE's proposal fails to do, rendering the proposal arbitrary and capricious for this reason as well. *See Fox,* 556 U.S. at 515.

Fundamentally, EPCA was enacted to conserve energy though conservation programs and improved energy efficiency standards for consumer products and appliances. *See* 42 U.S.C. § 6201(4), (5). DOE determined in 2016 that portable ACs met 42 U.S.C. § 6292(b)'s requirements for classification as covered products, finding that coverage was necessary and appropriate to carry out the purposes of EPCA, and that the average annual per-household energy use by such products is likely to exceed 100 kilowatt-hours per year. *See* Determination of Portable Air Conditioners as a Covered Consumer Product, 81 Fed. Reg. 22514 (April 18, 2016). DOE conducted a rigorous analysis in making its coverage determination, reviewing the most recent product, product shipment, and market data for portable ACs. *See* 81 Fed. Reg. at 22515-17. DOE also took into account numerous public comments,

including from trade associations, manufacturers, energy efficiency organizations, and consumer groups. *Id.* DOE's current proposal to withdraw coverage for portable ACs is plainly contradicted, without reasonable explanation, by the agency's prior determination.

II. The Proposed Withdrawal of Energy Conservation Standards is Not Supported by a Reasonable Explanation or by the Rulemaking Record, Rendering it Arbitrary and Capricious Under the APA.

DOE's proposal to withdraw applicable energy conservation standards for portable ACs is similarly bereft of analysis, and belied by the extensive record underlying the agency's 2020 Final Rule, "Energy Conservation Standards for Portable Air Conditioners," 85 Fed. Reg. 1378 (January 10, 2020). DOE determined based on an extensive record that energy conservation standards for portable ACs would result in significant conservation of energy, and are technologically feasible and economically justified. DOE's analysis, summarized in 81 Fed. Reg. at 1379-83, found that these standards would save consumers between $1.25 billion and $3.06 billion in net reduced product operating costs over 30 years of product sales. *Id.* at 1380. DOE also determined that adoption of the standards would save a significant amount of energy, amounting to .49 quadrillion British thermal units (quads) of energy during the analysis period, a savings of 6.4 percent relative to the energy use without the standards. *Id.* DOE further determined that the national benefits from these portable ACs standards include cumulative emission reductions of 25.6 million metric tons of carbon dioxide, 16.4 thousand tons of sulfur dioxide, 32.2 tons of nitrogen oxides, 124.8 thousand tons of methane, 0.4 thousand tons of nitrous oxide, and .06 tons of mercury. *Id.* at 1381.

DOE's failure to even acknowledge the agency's previous, painstaking work developing energy conservation standards for portable ACs demonstrates the unseriousness of DOE's current proposal. Its complete lack of any analytical support stands in stark contrast to the agency's detailed, record-based 2020 findings, highlighting the arbitrariness and capriciousness of the proposal under the APA, 5 U.S.C. § 706(2)(A). *See State Farm,* 463 U.S. at 43; *Fox,* 556 U.S. at 515. And DOE's change of position, now proposing to withdraw energy conservation standards for portable ACs, requires the agency to consider reliance interests. Again, DOE's proposal fails to do, rendering the proposal arbitrary and capricious for this reason. *See Fox,* 556 U.S. at 515.

III. The Proposal Violates EPCA.

DOE's proposal is also directly at odds with the EPCA "appliance program's goal of steadily increasing the energy efficiency of covered products." *NRDC v. Abraham,* 335 F.3d 179, 197 (2d Cir. 2004). No provision of EPCA authorizes DOE to declassify covered products or withdraw existing energy conservation standards. Viewed as a proposed amendment to existing standards, DOE's proposal is subject to the provisions in 42 U.S.C. §§ 6295(o)(2) and (p), requiring DOE to determine that the amended standards are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. This DOE has failed to do.

Further, upon DOE's publication of energy conservation standards for portable ACs in 2020, EPCA's "anti-backsliding" provision, 42 U.S.C. § 6295(o)(1) (EPCA section 325(o)(1)), "operates to restrict DOE's discretionary ability to amend standards downward thereafter." *Abraham,* 335 F.3d at 197. Here, DOE's proposal is prohibited by 42 U.S.C. § 6295(o)(1), for as conceded by DOE in *Abraham*, that provision "constrain[s] [DOE's] ability to weaken a standard in a newly initiated rulemaking proceeding to amend or rescind a standard." *Abraham,* 355 F.3d at 203. Having previously determined that *without* the 2020 portable ACs energy conservation standards an additional .49 quads of energy would be expended during the analysis period, *see* 85 Fed. Reg. at 1380, DOE's proposal clearly "increases the maximum allowable energy use," in violation of 42 U.S.C. § 6295(o)(1), and is not "designed to achieve the maximum improvement in energy efficiency," in violation of 42 U.S.C. § 6295(o)(2)(A).

IV. The Proposal is Not Excluded from Environmental Review Under NEPA, is Contrary to the Interests of the Undersigned Governmental Entities, and Promotes Market Uncertainty.

Accordingly, because the proposal has the potential to cause a significant increase in energy consumption, DOE's suggestion that its proposal somehow qualifies for categorical exclusions from review under the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* (NEPA) (*see* 90 Fed. Reg. at 20878, referencing 10 CFR part 1021, subpart D, appendices A and B, B5.1, "Actions to conserve energy or water") is plainly without legal merit. Such exclusions are not available for actions, like DOE's proposals, that "threaten a violation of applicable statutory [or] regulatory . . . requirements of DOE," or which would "have the potential to cause a significant increase in energy consumption in a state or region." 10 C.F.R. part 1021, subpart D, appendix B, B(1), B5.1(b)(4). And because these proposals would have a significant adverse effect on energy use, DOE's assertion that it is not

required to prepare and submit a Statement of Energy Effects pursuant to Executive Order 13211 (*see* 90 Fed. Reg. at 20879) is without legal merit as well.

DOE's proposal would also undermine the interests of the undersigned governmental entities who have relied on DOE's prior interpretation for reduced costs associated with energy demand and pollutant emissions, and the interests of manufacturers of portable ACs who have made product investments in reliance on energy conservation standards that steadily increase the efficiency of covered products. *See Abraham,* 355 F.3d at 197 (pointing out that "unfettered agency discretion to amend standards [downward] . . . would completely undermine any sense of certainty on the part of manufacturers as to the required energy efficiency standards at a given time"). Here DOE's proposal would not only promote market uncertainty and punish manufacturers who have invested in energy efficient portable ACs, DOE's proposal also invites less efficient products from sources, foreign and domestic, that would undercut those manufacturers.

In conclusion, DOE's proposal is illegal and contrary to the interests of consumers of portable ACs, product manufacturers, the undersigned governmental entities, and the general public. We urge DOE to withdraw this proposal.

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/ *Timothy Hoffman*
TIMOTHY HOFFMAN
CHRISTOPHER GORE
LAURA MIRMAN-HESLIN
Assistant Attorneys General
MICHAEL J. MYERS
Senior Counsel
Office of the Attorney General
Environmental Protection Bureau
350 Main Street, Suite 300A
Buffalo, NY 14202
Tel: (716) 853-8465
Email: Timothy.Hoffman@ag.ny.gov

FOR THE STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

/s/ *Jamie Jefferson*
JAMIE JEFFERSON
TAYLOR WETZEL
JINA J. KIM
ELIZABETH SONG
Deputy Attorneys General
LAURA ZUCKERMAN
Supervising Deputy Attorney General
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, California 94610
Email: Jamie.Jefferson@doj.ca.gov

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ *Daniel M. Salton*
DANIEL M. SALTON
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06107
(860) 808-5250
daniel.salton@ct.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

/s/ *Jason E. James*
Jason E. James
Assistant Attorney General
Office of the Attorney General
Environmental Bureau
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General of Maine

/s/ *Scott W. Boak*
SCOTT W. BOAK
Assistant Attorney General
Chief, Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
scott.boak@maine.gov

FOR THE STATE OF MARYLAND

ANTHONY G.BROWN
Attorney General

/s/ *Steven J. Goldstein*
Steven J. Goldstein
Robert N. Brewer
Assistant Attorneys General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
410-576-6414
sgoldstein@oag.state.md.us

FOR THE PEOPLE OF THE STATE OF MICHIGAN

DANA NESSEL
Attorney General

/s/ *Benjamin C. Houston*
BENJAMIN C. HOUSTON
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Menne Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
HoustonB1@michigan.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

/s/ *Alyssa Bixby-Lawson*
Alyssa Bixby-Lawson
Special Assistant Attorney General
Environmental & Natural Resources Division
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 600, Saint Paul, MN 55101
(651) 300-0904
Alyssa.Bixby-Lawson@ag.state.mn.us

FOR THE STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

/s/ *Jack A. Ventura*
Jack A. Ventura
Deputy Attorney General
Department of Law & Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
Tel: 609-900-0602
Email: Jack.Ventura@law.njoag.gov

FOR THE STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ *Paul Garrahan*
PAUL GARRAHAN
Attorney-in-Charge
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Paul.Garrahan@doj.oregon.gov

FOR THE STATE OF VERMONT

CHARITY R. CLARK
Attorney General

/s/ *Hannah Yindra*
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Hannah.Yindra@vermont.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General

/s/ *I. Andrew Goldberg*
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

FOR THE STATE OF WASHINGTON

NICK BROWN
Attorney General

/s/ *Steve Scheele*
STEPHEN SCHEELE
Assistant Attorney General,
Agriculture & Health Div.
SARAH REYNEVELD
Section Chief, Environmental
Protection Div.
Office of the Attorney General
State of Washington
P.O. Box 40109
Olympia, WA 98504
Telephone: (360) 586-6500
Email: steve.scheele@atg.wa.gov

FOR THE CITY OF NEW YORK

MURIEL GOODE-TRUFANT
Corporation Counsel

/s/ *Christian Harned*
CHRISTIAN C. HARNED
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-1676
Email: chharned@law.nyc.gov

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General

/s/ *Brian Caldwell*
Brian Caldwell
Senior Assistant Attorney General
Public Advocacy Division
Housing and Environmental Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 727-6211 (desk)
(202) 445-1952 (cell)
Email: brian.caldwell@dc.gov