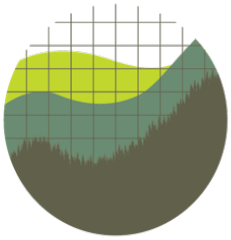

Institute *for*
Policy Integrity
NEW YORK UNIVERSITY SCHOOL OF LAW

August 21, 2026

To: Department of Energy

Re: Energy Conservation Program: Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment, 91 Fed. Reg. 42,034 (July 7, 2026) (Docket ID No. EERE-2025-BT-STD-0001)

The Institute for Policy Integrity at New York University School of Law (Policy Integrity)[1] respectfully submits the following comments to the Department of Energy (DOE) regarding its proposed changes to the Process Rule.[2] Policy Integrity is a nonpartisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy.

DOE proposes to alter its procedures for prescribing energy conservation standards for consumer products and commercial equipment under the Energy Policy and Conservation Act of 1975 (EPCA), as amended.[3] This comment identifies five legal flaws in DOE's proposal.

- **DOE violates EPCA by failing to consider environmental benefits.** EPCA requires DOE to consider "the need for national energy and water conservation." The best reading of that provision mandates that DOE consider the environmental benefits of such conservation. By failing to respect this requirement, DOE acts unlawfully.
- **DOE arbitrarily and capriciously favors deregulation over regulation by proposing to make the Process Rule binding only for actions that "increase stringency."** DOE's "bifurcated approach" reflects an opportunistic consideration of the Process Rule's costs and benefits, one inconsistent with the statutory scheme.
- **DOE arbitrarily and capriciously changes its position in proposing to make the process rule binding only for actions that "increase stringency."** DOE previously acknowledged that mandatory imposition of the Process Rule's requirements would increase the risk of missing statutory deadlines. Now, however, DOE overlooks—and indeed apparently invites—that same risk.
- **DOE unlawfully proposes numeric thresholds for defining whether energy savings are "not . . . significant."** "Significance" should instead be weighed by considering all important costs and benefits.

[1] This document does not purport to present the views, if any, of New York University School of Law.

[2] 91 Fed. Reg. 42,034 (July 7, 2026) [hereinafter Process Rule].

[3] 42 U.S.C. § 6291, *et seq.*;42 U.S.C. § 6311, *et seq.*

- **DOE arbitrarily and capriciously adopts a "walk up" approach to determining whether standards are economically justified**, which inherently conflicts with the statutory mandate to "achieve the *maximum* improvement in energy efficiency."

I. DOE Violates EPCA by Failing to Consider Environmental Benefits.

"[A]gency action is lawful only if it rests 'on a consideration of the relevant factors.'"[4] EPCA instructs, in pertinent part:

> (B)(i) In determining whether [an energy-conservation standard] is economically justified, the Secretary shall . . . determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—. . .
>
> (VI) the need for national energy and water conservation . . . [5]

DOE narrowly construes "the need for national energy and water conservation." It describes this factor as encompassing only considerations of "energy security" and "the reliability of the electricity system."[6] DOE implies that its interpretation reflects "the best reading of the statute, consistent with *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024)."

DOE is mistaken: the "best reading" of "the need for national energy and water conservation" encompasses the environmental benefits of conservation.

Statutory interpretation must "always" start with "the text of the statute."[7] Because EPCA does not define "need," that word takes its "ordinary meaning."[8] "Need" is a "relative term," the precise significance of which varies with context.[9] Here, context makes clear that "the need for national energy and water conservation" encompasses the national need to protect the environment.

Consider first the context in which the factor entered EPCA. "When administrative . . . interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative . . . interpretations as well."[10] Congress first directed DOE to consider "the need of the Nation to conserve energy" when establishing energy-conservation standards in 1978.[11] In so doing, Congress transplanted identical language from elsewhere in the statute: Elsewhere, EPCA directed the Department of Transportation (DOT) to consider "the need of the Nation to conserve

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[4] Michigan v. EPA, 576 U.S. 743, 750 (2015) (quoting Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)).

[5] 42 U.S.C. § 6295(o)(2)(B)(i).

[6] Process Rule, 91 Fed. Reg.at 42,057.

[7] Bartenwerfer v. Buckley, 598 U.S. 69, 74 (2023) (quotation marks omitted).

[8] Taniguchi v. Kan Pac. Saipan, Ltd., 566 U.S. 560, 566 (2012); *see also* Watson v. Republican Nat'l Comm., 146 S. Ct. 2165, 2172 (2026).

[9] *Id.*

[10] Bragdon v. Abbott, 524 U.S. 624, 645 (1998).

[11] National Energy Conservation Policy Act § 422, Pub. L. 95-619, 92 Stat. 3206, 3260 (1978).

energy" when setting corporate average fuel-economy standards.[12] From the first such standards, promulgated in 1977, DOT interpreted that language to "require[] consideration" of the "environmental . . . implications."[13] Because this interpretation preceded *Chevron* deference, it represented DOT's best reading of "the need of the Nation to conserve energy." In using the same language to guide energy-conservation standards for appliances and equipment the next year, **Congress ratified the understanding that "need" included environmental considerations**.

Congress's subsequent actions reinforced that ratification. First in 1986, and then again in 1988, the U.S. Court of Appeals for the D.C. Circuit recognized DOT's interpretation of the need-to-conserve factor, without suggesting it ran afoul of the statute.[14] And in 1987 and 1992, **Congress tweaked the factor's language without altering its substance**, first rephrasing it as "the need for national energy conservation,"[15] and then inserting "and water."[16] Those drafting choices evince Congress's understanding that energy conservation was "need[ed]" in part because of its environmental benefits.

"Statutory context" confirms this interpretation.[17] For example, in 1975, Congress also included in EPCA a provision to promote "consumer awareness" to "encourage the conservation of energy in the use of consumer products."[18] Congress instructed DOE to coordinate in this effort with, among others, "environmental organizations." **Congress clearly recognized since the creation of DOE's authority in 1975 that the conservation of energy was inherently connected with environmental outcomes**. Other provisions in EPCA also tied energy conservation directly to "environmental impacts."[19]

Similarly, a nearby EPCA provision expressly links energy conservation to environmental benefits. In authorizing the Energy Star program, Congress directed DOE "to identify and promote" "products . . . that meet the highest energy conservation standards" "in order to reduce energy consumption, improve energy security, and reduce pollution."[20] Energy Star "products" can and do include "covered products" subject to energy-conservation standards.[21] Reducing pollution is as much a benefit of meeting minimum energy-conservation standards as it is of meeting the highest ones. DOE offers no reason why Congress would recognize that benefit in connection with

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[12] Energy Policy and Conservation Act § 502, Pub. L. 94-163, 89 Stat. 871, 905 (1975).

[13] 42 Fed. Reg. 63,184, 63,188 (1977).

[14] Center for Auto Safety v. NHTSA, 793 F.2d 1322, 1325 n. 12 (D.C. Cir. 1986); Public Citizen v. NHTSA, 848 F.2d 256, 262–63 n. 27 (D.C. Cir. 1988).

[15] *See* National Appliance Energy Conservation Act of 1987 § 3, Pub. L. 100-12, 101 Stat. 103, 114 (1987).

[16] *See* Energy Policy Act of 1992 § 123, Pub L. 102-486, 106 Stat. 2776, 2829 (1992).

[17] Medina v. Planned Parenthood S. Atl., 606 U.S. 357, 379 (2025).

[18] 42 U.S.C. § 6307(a); Pub. L. 94–163, title III, § 337, Dec. 22, 1975, 89 Stat. 931.

[19] Pub. L. 94–163, title III, § 361(a), Dec. 22, 1975, 89 Stat. 932 ("Congress finds that the development and implementation by States of laws, policies, programs, and procedures to conserve and to improve efficiency in the use of energy will have an immediate and substantial effect in reducing the rate of growth of energy demand and in minimizing the adverse social, economic, political, and environmental impacts of increasing energy consumption.").

[20] 42 U.S.C. § 6294a(a).

[21] *See* 42 U.S.C. § 6292, § 6295(o).

Energy Star but not with energy-conservation standards. And, indeed, none exists. Reading "need" to include environmental need "better harmonizes" EPCA's various related provisions.[22] Though Congress could have elaborated through statutory amendments that "need" obviously includes environmental considerations, given the clear case law and statutory context, such a clarifying amendment would have been unnecessary surplusage.

Finally, precedent precludes any suggestion that DOE may *not* consider environmental benefits as part of the "need for national energy and water conservation." The U.S. Court of Appeals for the Seventh Circuit has squarely rejected any such reading, explaining that it had "no doubt that Congress intended that DOE have the authority under EPCA" to consider such benefits.[23] That holding remains "subject to statutory *stare decisis*" even after *Loper Bright*.[24]

II. DOE Arbitrarily Favors Deregulation Over Regulation by Proposing to Make the Process Rule Binding Only for Actions That "Increase Stringency."

The Process Rule is also substantively arbitrary and capricious. "One of the basic procedural requirements of administrative rulemaking is that an agency must give adequate reasons for its decisions," lest the rule be arbitrary and capricious.[25] Accordingly, "[t]he agency 'must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'"[26] "[A]n agency cannot simply ignore 'an important aspect of the problem"[27] Nor may it "inconsistently and opportunistically fram[e] the costs and benefits of the rule."[28]

DOE proposes a "bifurcated approach" to the binding effect of the Process Rule[29]: For "regulatory actions" (those that "may increase [energy-conservation standard] stringency relative to existing requirements"), the Process Rule will be binding upon DOE.[30] In contrast, for "certain deregulatory actions" and "determinations not to further regulate," DOE will retain discretion to apply the Process Rule's provisions "as may be appropriate in any particular action."[31]

DOE's approach is unlawful. **In proposing to make the Process Rule binding only upon "regulatory actions," DOE opportunistically overlooks those actions' potential benefits.** In justifying the bifurcated approach, DOE relies upon the potential costs of regulatory actions to consumers and manufacturers. It explains, for example, that regulatory actions "may adversely affect consumers by pricing them out of the market for new or replacement appliances or

[22] Republic of Sudan v. Harrison, 587 U.S. 1, 15 (2019).
[23] Zero Zone, Inc. v. United States Dep't of Energy, 832 F.3d 654, 677 (7th Cir. 2016).
[24] Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412 (2024).
[25] Encino Motorcars, LLC v. Navarro, 579 U.S. 211, 221 (2016).
[26] *Id.* (quoting *State Farm*, 463 U.S. at 43).
[27] *State Farm*, 463 U.S. at 43.
[28] Bus. Roundtable v. SEC, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011).
[29] Process Rule, 91 Fed. Reg. at 42,045.
[30] *Id.* at 42,043.
[31] *Id.* at 42,045.

eliminating useful characteristics of covered products," and that such actions "often increase manufacturer costs."[32] By contrast, DOE nowhere acknowledges that more-stringent energy-conservation standards may also have benefits, including environmental benefits.

That lopsided analysis is arbitrary. For every cost that the proposal averts, it may also prevent a countervailing benefit. DOE may conclude that averted costs outweigh the prevented benefits only by predetermining that some relevant set of regulatory actions are not cost-benefit justified. But DOE provides no reason—let alone "adequate reasons"—for such a judgment.[33]

III. DOE Arbitrarily Changes Its Position in Proposing to Make the Process Rule Binding Only for Actions That "Increase Stringency."

"When an agency changes its position, it must (among other things) provide a "reasoned explanation for the change," including for "disregarding facts and circumstances that underlay" the "prior policy."[34]

DOE fails to meet this standard. DOE previously acknowledged that mandatory imposition of the Process Rule's requirements increased the risk of missing statutory deadlines. In 2024, the agency concluded that extra-statutory process requirements should "guide, but not bind" the agency.[35] "[A]llowing DOE to tailor its rulemaking procedures to fit the specific facts and circumstances" of particular rulemakings, DOE explained, would "improve [its] ability to meet" its "obligations and deadlines" under EPCA.[36] The agency noted litigation alleging that it had "failed to meet rulemaking deadlines for 25 different consumer products and commercial equipment."[37] These allegations were "particularly salient" to whether such burdens should be mandatory.[38]

Now, however, DOE wholly overlooks these risks. **DOE nowhere refers either to the risk that increased procedural burdens might cause DOE to miss its statutory deadlines, or to the associated risk of litigation.** To the contrary, a DOE press release announcing the Process Rule was entitled, "Trump Administration Moves to Permanently End Green New Scam Appliance Mandates."[39] As the Secretary of Energy explained, DOE sought "to permanently end home appliance and equipment mandates that raise costs and disrupt consumer choice."[40] Whether DOE

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[32] *Id.* at 42,044.

[33] *Encino Motorcars*, 579 U.S. at 221.

[34] Food & Drug Admin. v. Wages & White Lion Invs., L.L.C., 604 U.S. 542, 568, 569 (2025) (quotation marks omitted).

[35] Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 89 Fed. Reg. 24,340, 24,357 (Apr. 8, 2024).

[36] *Id.*

[37] *Id.* at 24,341.

[38] *Id.*

[39] DOE, *Trump Administration Moves to Permanently End Green New Scam Appliance Mandates* (July 2, 2026), https://perma.cc/2GD3-NZN3.

[40] *Id.*

must promulgate new energy-conservation standards is for Congress to decide, not for DOE. DOE may not "disregar[d]" its statutory deadlines in imposing new rulemaking procedures.[41]

IV. DOE Unlawfully Proposes Numeric Thresholds for Defining Whether Energy Savings Are "Not . . . Significant."

DOE proposes to classify any energy savings amounting to less than a 10% reduction in full-fuel-cycle (FFC) energy use over a 30-year period or a 2 quad reduction in FFC energy use over a 30-year period as "not . . . significant" under the statute.[42] Setting such thresholds regardless of the costs and benefits of individual standards makes no economic sense and is contrary to congressional intent. What if, for example, a newly technologically feasible and otherwise economically justified standard would reduce a product's energy consumption by 9.99%, or save 1.99 quads of energy, and do so all for the incredibly low price tag of $1? It is unreasonable to assume that a statute like EPCA, aimed at advancing the national need for energy conservation, would bar such a standard on the grounds of insignificance. Indeed, as the U.S. Court of Appeals for the District of Columbia Circuit held, **Congress did not intend for the agency to pass up an essentially "cost-free chance to save energy."**[43] The D.C. Circuit elaborated that significance could be evaluated by comparing whether the "value" of the energy savings "outweighed" the "cost."[44]

Contrary to the assumption DOE makes here, **there is no single numerical threshold at which energy savings suddenly and obviously stop being "significant." Rather, "significant" is a relative term**, a comparator that implicitly calls for the balancing of factors. As the U.S. Supreme Court has indicated, comparative terms that "admit[ ] of degree" like "significant," "minimize," or "reasonable" typically should be assessed by comparing costs and benefits, because "whether it is 'reasonable' to bear a particular cost may well depend on the resulting benefits."[45]

To take one example, DOE's energy conservation standards for dehumidifiers, finalized in 2016, were projected to save 0.3 quads over a 30-year period, representing a savings of 7.4% relative to the products' baseline energy use.[46] Presumably, such standards would not pass DOE's newly proposed thresholds. Yet those standards were projected to save consumers $2.71 billion and reduce 18.6 million metric tons of carbon dioxide, thereby reducing $600 million in climate damages (not to mention reducing $70 million in human health and environmental damages from

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[41] *Wages & White Lion*, 604 U.S. at 569 (quotation marks omitted).

[42] Process Rule, 91 Fed. Reg. at 42,049.

[43] NRDC v. Herrington, 768 F.2d 1355, 1373 (D.C. Cir. 1985) ("We think it unlikely that the Congress that enacted NECPA and its four related energy statutes intended DOE to throw away a cost-free chance to save energy unless the amount of energy saved was genuinely trivial.").

[44] *Id.* at 1373 n.19 (discussing administrative costs and other costs, and concluding that "If . . . the value of saving small amounts of energy was outweighed by the cost and trouble of undertaking any appliance program at all, DOE might be justified in determining that those small savings were not significant.").

[45] Entergy Corp. v. Riverkeeper, Inc., 556 U.S. 208, 225–26 (2009).

[46] 81 Fed. Reg. 38,338, 38,340 (June 13, 2016).

emissions of nitrogen oxides, plus reducing thousands of tons of sulfur dioxide and methane, as well as significant mercury emissions).[47] For many dehumidifiers, the payback period for consumers would be less than half a year.[48]

Similarly, consider the energy conservation standards finalized for commercial warm air furnaces in 2016.[49] The lifetime energy savings for furnaces purchased in 2023-2048 were estimated at 0.23 quads, or a 0.8% total savings. Under the Process Rule's arbitrary thresholds, this energy conservation standard could not have been adopted.[50] Yet the standard is estimated to reduce 12.4 million metric tons of carbon dioxide (then valued at over $350 million in climate benefits), as well as significant reductions in criteria pollutants (with health benefits valued at $110-$243 million)—all while saving consumers $1 billion (with an average payback period for consumers under 2 years).[51] If the numerical thresholds blocked future standards of similar magnitude,[52] the United States would forgo collectively large net consumer savings along with billions of dollars in climate benefits. These are precisely the kinds of "cost-free chance[s] to save energy" and to advance the national need for conservation that courts have said that Congress did not intend for DOE to pass up.[53]

Indeed, as the example above shows, energy conservation standards falling under the numerical thresholds still deliver not just significant climate benefits, but significant health benefits and consumer savings as well. Both $110-$243 million in health benefits and $1 billion in consumer savings are surely significant sums—particularly in light of the additional unquantified health benefits not reflected in those figures.[54] Both health benefits and consumer savings should be weighed as key factors, along with climate benefits, in assessing the significance of energy savings.[55]

The idea that such energy savings would not be "significant," or that Congress intended to block an energy conservation standard that would achieve such important cost-savings for consumers and environmental benefits, is unreasonable. DOE's argument that its proposed thresholds are

[47] *Id.* Values are calculated at a 3% discount rate.

[48] *Id.* at 38,339 (showing the payback period for portable dehumidifiers of under 50 pints per day at 0.4-0.5 years).

[49] 81 Fed. Reg. 2419, 2426 (Jan. 15, 2016); see also id. at 2508 (table V-26, showing both primary energy and FFC energy cumulative savings at TSL 2).

[50] See *id.* at 2508, 2520–21 (showing that TSL 1 would have also been below the thresholds).

[51] *Id.* at 2426, 2509, 2520–21 (tables I-7, V-30, V-44, and V-45; reporting values at 3% discount rate).

[52] *See, e.g.*, 81 Fed. Reg. 4368, 4371 (Jan. 26, 2016) (finalizing standards for pumps, achieving energy savings of 0.29 quads (equal to a 1% reduction) and so delivering $1.1 billion in net consumer savings plus "significant environmental benefits," including $500 million in climate benefits).

[53] *See Herrington*, 768 F.2d at 1373.

[54] *Compare* 81 Fed. Reg. at 2523 (showing annualized consumer savings of up to $81 million per year and annualized monetized health benefits of up to $17.61 million per year, plus unquantified health benefits), *with* Exec. Order 12,866 § 3(f)(1) (Oct. 4, 1993) (defining any regulatory action with a $100 million annual effect as "significant").

[55] *See Entergy Corp.*, 556 U.S. at 225–26.

necessary to avoid the costs of "complying with frequent incremental changes"[56] is also a red herring: Congress has already determined that a six-year review cycle is appropriate.[57] Consequently, DOE's proposed definition and thresholds are unreasonable.

V. DOE Arbitrarily Adopts a "Walk Up" Approach to Determining Whether Standards Are Economically Justified.

DOE proposes to switch from a "walk down" approach to assessing candidate levels of efficiency improvements to instead a "walk up" approach. The walk down approach starts with the highest efficiency improvement, assesses whether it is technologically feasible and economically justified, and if not moves down to the next highest level. The walk up approach instead starts with the lowest efficiency improvement and moves incrementally up until a standard is no longer technologically feasible or economically justified.

Moving to a walk up approach would violate DOE's statutory responsibility to "achieve the maximum improvement in energy efficiency."[58] This is obvious from a simple example. Consider a hypothetical appliance with three candidate efficiency improvement levels with the following illustrative costs and energy savings:

Current Walk-Down Approach (start at top) ⬇	Hypothetical Efficiency Improvement Levels	Illustrative Cost of Efficiency Improvement	Illustrative Energy Savings	**Net Savings**	Proposed Walk-Up Approach (start at bottom) ⬆
Step 1: TSL 3 passes ✅ and is selected.	TSL 3	$350 million	$500 million	**+$150 million**	TSL 3 is never considered.
	TSL 2	$300 million	$250 million	**-$50 million**	Step 2: TSL 2 does not pass. ⛔ TSL 1 is selected.
	TSL 1	$100 million	$200 million	**+$100 million**	Step 1: TSL 1 passes ✅; continue up to higher TSL. ⬆

[56] Process Rule, 91 Fed. Reg. at 42,049.
[57] 42 U.S.C. § 6295(m)(1).
[58] 42 U.S.C. § 6295(o)(2)(A).

In this illustrative scenario, the proposed walk up approach rejects TSL 2 and so selects TSL 1 without even considering TSL 3. It therefore fails to achieve the maximum improvement in energy efficiency, in violation of the statute. DOE fails to explain how it could meet its statutory mandate through a walk up approach.

Sincerely,

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