COMMENTS OF THE STATES OF CALIFORNIA, CONNECTICUT, ILLINOIS, MINNESOTA, OREGON, VERMONT, AND WASHINGTON; THE COMMONWEALTH OF MASSACHUSETTS; AND THE CITY OF NEW YORK

March 13, 2025

Comments submitted *via* regulations.gov

Ms. Julia Hegarty
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RE: Docket No. EERE-2017-BT-STD-0019
RIN 1904-AF65
"Energy Conservation Program: Energy Conservation Standards for Consumer Gas-fired Instantaneous Water Heaters," 90 Fed. Reg. 9,951 (Feb. 20, 2025).

The undersigned states ("States") respectfully submit this comment on the U.S. Department of Energy's ("DOE's") action purporting to delay the effective date of the energy conservation standards for gas-fired instantaneous water heaters, 89 Fed. Reg. 105,188 (Dec. 26, 2024) (the "Final Rule"). On February 20, 2025, DOE issued a subsequent rule purporting to delay the effective date of the Final Rule to March 21, 2025, and requested comment on the impacts of this delay, and on potential further delays of the effective date of the Final Rule, as well as the legal, factual, or policy issues raised by the Final Rule. 90 Fed. Reg. 9,951 (Feb. 20, 2025) (the "Delay Rule").

The States oppose any attempt to delay or weaken the Final Rule. The States have a strong interest in reducing the economic and environmental costs of energy use, and support DOE's adoption of product standards for gas-fired instantaneous water heaters because such standards are both technically feasible and economically justified. *See* 42 U.S.C. § 6313(a)(6). The Energy Policy and Conservation Act's ("EPCA's") anti-backsliding provision prohibits DOE from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. *See* 42 U.S.C. § 6295(o)(1). The provision prohibits DOE from weakening or delaying efficiency standards once they are published in the Federal Register. *NRDC v. Abraham*, 355 F.3d 179, 197 (2d Cir. 2004).

Even if EPCA did not bar DOE from delaying standards after issuing them, the Delay Rule is invalid. First, DOE points to no legal authority for the Delay Rule, instead citing only a Presidential Memorandum announcing a ''Regulatory Freeze Pending Review," an unlawful edict that conflicts with EPCA. It is well settled that the President does not have the authority to overrule a congressional statute. *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952) ("[T]he Constitution is neither silent nor equivocal about who shall make laws

which the President is to execute."). Second, DOE's assertion that the notice "is exempt from notice and comment because it constitutes a rule of procedure under [5 U.S.C. § 553(b)(A)]," 90 Fed. Reg. at 9,951, is incorrect and ignores that the Delay Rule directly affects the substantive rights of the regulated community. Courts have defined agency procedural rules as the "technical regulation of the form of agency action and proceedings . . . which merely prescribes order and formality in the transaction of . . . business." *Pickus v. U.S. Bd. of Parole*, 507 F.2d 1107, 1113-14 (D.C. Cir. 1974). The exception excludes any action which, like the Delay Rule, "is likely to have considerable impact on ultimate agency decisions" or that "substantially affects the rights of those over whom the agency exercises authority." *Id*. at 1114. The Delay Rule does not qualify as a rule of procedure because it is not a process rule for conducting DOE business. It is instead a substantive rulemaking altering the effective date of industry-wide regulation that will substantially affect the rights of the regulated community; thus, the Delay Rule is subject to notice and comment. *See, e.g.*, *Clean Air Council v. Pruitt*, 862 F.3d 1, 6 (D.C. Cir. 2017) (an agency order "delaying [a] rule's effective date … [is] tantamount to amending or revoking a rule[,]" which must go through notice and comment).

Finally, no legal, factual, or policy issues raised by the Final Rule justify delaying its effective date. The standards adopted in the Final Rule align with recommendations submitted jointly by a coalition of water heater manufacturers, consumer advocates, and other interested parties. *See* 89 Fed. Reg. at 105,278-79 (2024). The standards realize significant energy savings and are projected to reduce carbon dioxide emissions by 32 million metric tons, translating to savings of up to $3.1 billion for consumers over thirty years. *See id.* at 105,278, 105,201. The standards also ensure that manufacturers can market multiple efficiency levels to meet varying consumer needs. *See id.* at 105,231 (projecting base-case efficiency distribution in 2030). Lastly, the Final Rule adheres to DOE's longstanding view that gas-wasting appliances do not merit special protection under EPCA. *See id.* at 105,206-10; 75 Fed. Reg. 20,112, 20,138 (Apr. 16, 2010) (treating condensing gas water heaters as a technology option to increase efficiency, and not as a separate class of appliances).

DOE's delay of the effective date and preview of a further delay, combined with the contemporaneous announcement from DOE that it "is creating a new energy efficiency category for natural gas tankless water heaters" to "exempt[] these products from the Biden-Harris Administration's onerous rules," will encourage manufacturers to forego or delay investments needed to comply with the lawful updated standards in the Final Rule that by its terms became effective on March 11, 2025. *See* Press Release, "Energy Department Acts to Lower Prices and Increase Consumer Choice with Household Appliances" (Feb. 14, 2025), *at* https://www.energy.gov/articles/energy-department-acts-lower-prices-and-increase-consumer-choice-household-appliances.

For the foregoing reasons, the undersigned States urge DOE to comply with its statutory obligation to keep federal energy conservation standards up to date and cease its unlawful efforts to delay or further delay the effective date of standards for gas-fired instantaneous water heaters.

Thank you for the opportunity to comment.

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RE: Docket No. EERE-2017-BT-STD-009
RIN 1904-AD79
"Energy Conservation Program: Energy Conservation Standards for Walk-In Coolers and Walk-In Freezers," 90 Fed. Reg. 9,951 (Feb. 20, 2025).

The undersigned states ("States") respectfully submit this comment on the U.S. Department of Energy's ("DOE's") action purporting to delay the effective date of the energy conservation standards for walk-in coolers and walk-in freezers, 89 Fed. Reg. 104,616 (Dec. 23, 2024) (the "Final Rule"). On February 20, 2025, DOE issued a subsequent rule purporting to delay the effective date of the Final Rule to March 21, 2025, and requested comment on the impacts of this delay, and on potential further delays of the effective date of the Final Rule, as well as the legal, factual, or policy issues raised by the Final Rule. 90 Fed. Reg. 9,951 (Feb. 20, 2025) (the "Delay Rule").

The States oppose any attempt to delay or weaken the Final Rule. The States have a strong interest in reducing the economic and environmental costs of energy use, and support DOE's adoption of product standards for walk-in coolers and walk-in freezers because such standards are both technically feasible and economically justified. *See* 42 U.S.C. § 6313(a)(6). The Energy Policy and Conservation Act's ("EPCA's") anti-backsliding provision prohibits DOE from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. *See* 42 U.S.C. § 6295(o)(1). The provision prohibits DOE from weakening or delaying efficiency standards once they are published in the Federal Register. *NRDC v. Abraham*, 355 F.3d 179, 197 (2d Cir. 2004).

Even if EPCA did not bar DOE from delaying standards after issuing them, the Delay Rule is invalid. First, DOE points to no legal authority for the Delay Rule, instead citing only a Presidential Memorandum announcing a ''Regulatory Freeze Pending Review," an unlawful edict that conflicts with EPCA. It is well settled that the President does not have the authority to overrule a congressional statute. *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952) ("[T]he Constitution is neither silent nor equivocal about who shall make laws

which the President is to execute."). Second, DOE's assertion that the notice "is exempt from notice and comment because it constitutes a rule of procedure under [5 U.S.C. § 553(b)(A)]," 90 Fed. Reg. at 9,951, is incorrect and ignores that the Delay Rule directly affects the substantive rights of the regulated community. Courts have defined agency procedural rules as the "technical regulation of the form of agency action and proceedings . . . which merely prescribes order and formality in the transaction of . . . business." *Pickus v. U.S. Bd. of Parole*, 507 F.2d 1107, 1113-14 (D.C. Cir. 1974). The exception excludes any action which, like the Delay Rule, "is likely to have considerable impact on ultimate agency decisions" or that "substantially affects the rights of those over whom the agency exercises authority." *Id*. at 1114. The Delay Rule does not qualify as a rule of procedure because it is not a process rule for conducting DOE business. It is instead a substantive rulemaking altering the effective date of industry-wide regulation that will substantially affect the rights of the regulated community; thus, the Delay Rule is subject to notice and comment. *See, e.g.*, *Clean Air Council v. Pruitt*, 862 F.3d 1, 6 (D.C. Cir. 2017) (an agency order "delaying [a] rule's effective date … [is] tantamount to amending or revoking a rule[,]" which must go through notice and comment).

Finally, no legal, factual, or policy issues raised by the Final Rule justify delaying its effective date. The standards adopted in the Final Rule align with recommendations submitted jointly by a coalition of refrigeration equipment manufacturers, consumer advocates, and other interested parties. The standards realize significant energy savings and are projected to reduce carbon dioxide emissions by 29 million metric tons, translating to savings of up to $6.5 billion for consumers over thirty years. *See* 89 Fed. Reg. at 104,621-22 (2024). DOE's delay of the effective date and preview of a further delay will encourage manufacturers to forego or delay investments needed to comply with the lawful updated standards in the Final Rule that by its terms became effective on March 11, 2025.

For the foregoing reasons, the undersigned States urge DOE to comply with its statutory obligation to keep federal energy conservation standards up to date and cease its unlawful efforts to delay or further delay the effective date of standards for walk-in coolers and walk-in freezers.

Thank you for the opportunity to comment.

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