UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, THE PEOPLE OF THE STATE OF CALIFORNIA, EX REL. ATTORNEY GENERAL BILL LOCKYER CALIFORNIA ENERGY COMMISSION, STATE OF CONNECTICUT, STATE OF ILLINOIS, STATE OF IOWA, STATE OF MAINE, COMMONWEALTH OF MASSACHUSETTS, STATE OF NEW HAMPSHIRE, STATE OF NEW JERSEY, STATE OF NEW MEXICO, EX REL. ATTORNEY GENERAL PATRICIA A. MADRID, STATE OF NORTH CAROLINA, COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION, STATE OF RHODE ISLAND, STATE OF VERMONT, STATE OF WISCONSIN, and CITY OF NEW YORK, Plaintiffs, v. SAMUEL W. BODMAN, AS SECRETARY OF THE UNITED STATES DEPARTMENT OF ENERGY, and UNITED STATES DEPARTMENT OF ENERGY, Defendants.	Civ. Action No. 05 CV 7807 ECF Case JUDGE SPRIZZO **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

PRELIMINARY STATEMENT

1. Plaintiffs, who are fifteen States and state energy and environmental agencies, representing over 118 million people of the United States, and the City of New York, challenge the failure of the Secretary of the United States Department of Energy (DOE) and DOE (collectively DOE or Defendants) to meet federal statutory

deadlines for strengthening energy efficiency standards under the Energy Policy and Conservation Act (EPCA or the Act), Subchapter III, 42 U.S.C. §§ 6291-6317.

2. EPCA established initial minimum energy efficiency standards for many common consumer and commercial products that use large amounts of energy, including electricity, natural gas and home heating oil. EPCA then directed DOE to meet specific timetables to review and revise these initial efficiency standards to ensure that they are set at the maximum efficiency level that is technologically feasible and economically justified. Despite Congress' explicit deadlines -- and this nation's urgent need to reduce the consumer costs and environmental impacts of energy and to increase our energy independence – DOE has missed at least one EPCA deadline for revising energy efficiency standards, and in many cases two or more, for twenty-two consumer and commercial products. DOE is as much as thirteen years behind some of these deadlines, without a final rule in sight. The covered products for which DOE has missed deadlines include energy-intensive home appliances such as furnaces, air conditioners, water heaters, dishwashers and clothes dryers, and commercial products upon which businesses depend such as motors, lighting, transformers and other common appliances. According to DOE's own estimates, the energy use reductions that these stronger standards, if promulgated, would achieve over twenty-five years are approximately equivalent to the total energy use of all American households for one to three years.

3. DOE's continuing failure to meet Congress' explicit deadlines for establishing stronger energy efficiency standards has grave impacts for consumers, the environment and energy reliability. DOE's foot-dragging results in greater – and

avoidable – energy use, causing (i) more air and water pollution and increased global warming emissions, (ii) higher electricity and natural gas bills for States and individual and business consumers, (iii) burdens on the nation's electricity grid, contributing to the potential for blackouts and brownouts, and (iv) threats to national security. As natural gas and home heating oil prices hit record high levels, the United States struggles to reduce its dependence on foreign sources of energy, and the pollution from the combustion of fossil fuel continues to contribute to unhealthy air quality and global warming, DOE's continued failure to meet its statutory obligations calls out for prompt and strong redress from this Court.

4. Congress conferred on this Court the explicit authority to order relief that will ensure DOE's compliance with all deadlines for products where DOE has violated at least one deadline for issuance of amended standards, 42 U.S.C. § 6305(a), even directing that "[t]he courts shall advance on the docket, and expedite the disposition of" deadline actions brought under EPCA. 42 U.S.C. § 6305(a)(3). Accordingly, Plaintiffs urge this Court to (a) issue a declaratory judgment pursuant to 28 U.S.C. § 2201(a) stating that DOE has failed to meet statutory deadlines and other requirements in EPCA for revised energy efficiency standards for the residential and commercial products as described in this Complaint and set forth in the chart attached hereto as Exhibit A; and (b) issue a permanent injunction pursuant to 28 U.S.C. § 2202 and 42 U.S.C. § 6305(a) requiring DOE to come into compliance with its statutory deadlines and other requirements with respect to amended efficiency standards for all such products according to an expeditious schedule to be determined and enforced by this Court.

PARTIES

A. Plaintiffs

5. Plaintiff State of New York, a sovereign state, brings this action on behalf of itself and on behalf of the people of the State of New York.

6. Plaintiff State of California, a sovereign state, brings this action on behalf of itself and on behalf of the people of the State of California.

7. Plaintiff California Energy Commission (CEC), formally denominated the State Energy Resources Conservation and Development Commission, Cal. Pub. Res. Code § 25200, brings this action on behalf of itself. The CEC was created in 1975 as California's primary energy policy and regulatory agency. See Cal. Pub. Res. Code §§ 25000-25986. One of its statutory duties is to adopt energy efficiency standards for appliances, including but not limited to the products at issue in the instant litigation. Cal. Pub. Res. Code § 25402(c)(1); see Cal. Code Regs., tit. 20, §§ 1601-02, 1605-1605.2.

8. Plaintiff State of Connecticut, a sovereign state, brings this action on behalf of itself and on behalf of the people of the State of Connecticut.

9. Plaintiff State of Illinois, a sovereign state, brings this action on behalf of itself and on behalf of the people of the State of Illinois.

10. Plaintiff State of Iowa, a sovereign state, brings this action on behalf of itself and on behalf of the people of the State of Iowa.

11. Plaintiff State of Maine, a sovereign state, brings this action on behalf of itself and on behalf of the people of the State of Maine.

12. Plaintiff Commonwealth of Massachusetts, a sovereign state, brings this action on behalf of itself and on behalf of the people of the Commonwealth of Massachusetts.

13. Plaintiff State of New Hampshire, a sovereign state, brings this action on behalf of itself and on behalf of the people of the State of New Hampshire.

14. Plaintiff State of New Jersey, a sovereign state, brings this action on behalf of itself and on behalf of the people of the State of New Jersey.

15. Plaintiff State of New Mexico, a sovereign state, brings this action on behalf of itself and on behalf of the people of the State of New Mexico.

16. Plaintiff State of North Carolina, a sovereign state, brings this action on behalf of itself and on behalf of the people of the State of North Carolina.

17. Plaintiff Commonwealth of Pennsylvania, Department of Environmental Protection, pursuant to the laws of the Commonwealth of Pennsylvania, is the agency responsible for the protection of public health and the environment. It brings this action on behalf of itself and on behalf of the people of the Commonwealth of Pennsylvania.

18. Plaintiff State of Rhode Island, a sovereign state, brings this action on behalf of itself and on behalf of the people of the State of Rhode Island.

19. Plaintiff State of Vermont, a sovereign state, brings this action on behalf of itself and on behalf of the people of the State of Vermont.

20. Plaintiff State of Wisconsin, a sovereign state, brings this action on behalf of itself and on behalf of the people of the State of Wisconsin.

21. Plaintiff City of New York ("the City") is a municipal corporation duly organized and existing under the laws of the State of New York. The City brings this

action on behalf of itself and the residents and citizens whose health, well-being and natural resources are its responsibility.

22. The Plaintiff States, state agencies, and City have strong economic, environmental, public health, and consumer interests, both on their own behalf, and, as parens patriae, on behalf of their residents, in the prompt and full compliance with the statutory deadlines and other requirements for revised energy efficiency standards set forth in EPCA. Revised energy efficiency standards will save energy (including electricity and natural gas), reduce reliance on foreign sources of energy, lower energy bills, reduce energy prices, decrease air pollution emissions and related public health impacts, reduce the likelihood of electricity shortages and blackouts and disruptions in natural gas supplies, and avoid the need to build many power plants and natural gas facilities. DOE's failure to comply with the statutory deadlines and other requirements of EPCA has harmed the Plaintiff States, state agencies, City and their citizens by delaying these benefits.

23. The States' sovereign and the States' and City's governmental and proprietary interests are adversely affected by DOE's failure to comply with EPCA. For example, Plaintiffs purchase and use many appliances such as central air conditioners, water heaters, ranges and ovens and lighting equipment at state-, or City-, owned buildings such as office buildings, maintenance yards, hospitals, park and educational facilities. The States and City already face increased energy costs for such appliances that are less efficient than they would be if DOE had complied with its duty, and will continue to face higher energy costs due to less efficient standards. In addition, many

of the Plaintiff States, such as New York and New Jersey, pay some or all of the energy bills for tenants in public housing; these bills are also higher due to DOE's failure.

24. In addition, because the Plaintiff States and City pay some or all of the medical costs of many of their residents, the increase in pollution-related respiratory and other diseases caused by DOE's failure creates additional further costs for the States and City. The States are also harmed in their sovereign capacity by DOE's failure because the increased air pollution directly caused by the increased energy use resulting from the lack of efficiency standards interferes with the States' mandate under the Clear Air Act, 42 U.S.C. §§ 7408-7410, to attain National Ambient Air Quality Standards (NAAQS) by specified dates. The City is similarly harmed, especially because the City has been designated in severe nonattainment for NAAQS standards for ozone and in nonattainment with NAAQS standards for fine particulate matter.

25. DOE's failure also harms the health and welfare, both physical and economic, of the States' and City's residents by contributing to increased air pollution and higher energy usage. The increased air pollution causes increased respiratory, cardiovascular and other diseases that harm the physical health and economic well-being of the States' and City's residents and prevents more sensitive residents from participating in outdoor recreation and enjoying other outdoor activities. The increased carbon dioxide emissions from energy generation for, and use of, inefficient appliances also exacerbates global warming, which results in increased heat injuries, ecological changes, extreme weather events and other harms. The increased energy usage harms the economic well-being of the States and the City and their residents, as does the decreased choice for purchasers of energy efficient appliances.

26. Finally, DOE's failure interferes with the plaintiffs' governmental efforts to reduce energy use, pollution, and consumer bills. States such as New York, California, Connecticut and New Jersey have enacted legislation mandating state energy efficiency standards for appliances not covered by EPCA. However, the States are generally preempted by EPCA from enacting their own state appliance energy efficiency standards for those products covered by EPCA, for which DOE is required to issue standards. 42 U.S.C. § 6297. Thus, DOE's failure to update and strengthen federal efficiency standards, coupled with EPCA's preemption clause, creates an important gap in energy efficiency efforts that is extremely difficult for the States to fill.

27. Implementation of all reasonably feasible energy efficiency measures – including but not limited to the updated standards DOE is required to promulgate – is an essential component of any long-term solution to America's energy needs in order to decrease pollution including global warming, reduce price volatility, increase the security of energy supplies, improve the reliability of the electricity grid, and enhance productivity. In the absence of a declaratory judgment and permanent injunction requiring DOE to come into compliance with its statutory obligations according to a specified and court-enforced schedule, DOE's delays are likely to continue harming the economic, environmental, public health, recreational, consumer, and energy security interests of the Plaintiffs' and their citizens.

B. Defendants

28. Defendant Samuel W. Bodman is Secretary of DOE, and is named in his official capacity. He is responsible for administration of that agency in accordance with EPCA, 42 U.S.C. §§ 6291-6318, and the Administrative Procedure Act (APA), 5 U.S.C.

§§ 551-706. DOE's headquarters are located at 1000 Independence Ave., SW, Washington, DC 20585.

29. Defendant DOE is an agency of the United States. It is the agency responsible for implementation of EPCA, 42 U.S.C. §§ 6291-6318.

JURISDICTION, NOTICE AND VENUE

30. This Court has jurisdiction over the matters raised pursuant to 42 U.S.C. §§ 6305(a) (EPCA's citizen suit provision) and 6316 (making § 6305 applicable to commercial products as well as to consumer products), 28 U.S.C. §§ 1331 (federal question), 2201 (declaratory judgment), 2202 (injunctive relief), 1361 (mandamus relief), and 1346(a)(2) (civil action against the United States), and 5 U.S.C. § 702 (providing for judicial review under the Administrative Procedure Act).

31. To the extent notice is required with respect to any of the claims herein, notice of this action was provided to the Secretary by certified mail dated July 1, 2005, with a copy to the Federal Trade Commission (FTC). See Exhibit B.

32. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(e) because the Defendants are an officer and an agency of the United States and two of the Plaintiffs (State of New York and City of New York) reside in this district.

STATEMENT OF FACTS COMMON TO ALL CLAIMS

A. The Importance of Energy Efficiency Standards

33. Electricity generation and natural gas use in the United States cause a wide range of adverse environmental impacts, including air pollution emissions that threaten public health, contribute to worldwide climate change, and cause acid rain. The impacts of electricity generation also include water pollution, including toxic mercury

pollution that harms fish and disrupts aquatic ecosystems. The extraction, production and transport of natural gas, and of fuels for electricity generation, also have major adverse environmental effects. Huge amounts of electricity and natural gas are wasted through inefficient usage, which, in turn, causes unnecessary electricity generation and natural gas use, and the pollution caused by that generation and use.

34. Creating cost-effective, technically feasible minimum efficiency standards that must be met by product manufacturers reduces electricity, home heating oil and natural gas waste and demand, and reduces air pollution, global warming and other environmental problems associated with electricity generation and fossil fuel consumption in buildings, while providing consumers with the same level of service from their products.

35. Energy efficiency standards also have important consumer benefits. Because energy efficient products use less electricity, natural gas and other fossil fuels, customers' energy bills are substantially reduced over the lifetime of the products. Moreover, by reducing energy demand, efficiency standards bring down the price of energy for all consumers, even those who have not yet purchased more efficient products. This is especially true in competitive wholesale energy markets, such as the markets for electricity in California, New York and New Jersey. In these markets, when electric demand peaks upward in the summer, the cost of the additional power generation needed to meet the incremental growth in demand increases dramatically because more costly, less efficient, and often more polluting power plants must be called upon to operate. Thus, even relatively small decreases in electricity peak demand can dramatically reduce the market price for power at that time. Similarly,

natural gas efficiency standards, by reducing natural gas demand, will reduce natural gas prices.

36. Energy efficiency standards also help consumers, and low-income consumers in particular, because they help to address the "split incentive" problem often experienced by people who rent apartments and houses: landlords have an economic incentive to buy the cheapest appliances without regard to energy efficiency, but the tenants pay the energy bills. As a result, in the absence of strong energy efficiency standards, tenants end up with unnecessarily high bills. This is a particularly acute problem in large urban areas such as New York City and Los Angeles, where many residents live in multi-family rental housing units. This "split incentive" problem also arises where developers build and sell finished homes; developers have an incentive to buy the cheapest, least-efficient appliances, without regard to energy efficiency, yet the buyers pay the higher energy bills that result. Energy efficiency standards are also particularly helpful to moderate and low-income consumers because these consumers spend more on energy as a percentage of income than other income groups, and therefore will benefit more from lower energy bills due to more efficient products.

37. Finally, energy efficiency standards help consumers by making energy efficient products the norm, rather than the exception. Standards ensure that consumers will find efficient products readily available in stores and will not have to pay a premium for them. Consumers can be assured any product they buy will meet minimum efficiency standards.

38. When implemented properly, residential and commercial efficiency standards have been one of the most successful policies used by the federal

government and the states to save energy. Based on DOE figures, energy efficiency experts from the American Council for an Energy Efficient Economy (ACEEE) calculate that the net present value to U.S. consumers of the existing federal appliance standards set forth in EPCA is nearly $200 billion – about $2,000 per household. As of 2000, federal appliance standards have already cut U.S. electricity use by about 2.5 percent and reduced carbon emissions from fossil fuel use by nearly 2 percent. These electricity savings are projected to triple by 2020 as inefficient appliances are replaced by newer ones subject to standards already in effect. These immense economic benefits do not even count the savings to consumers from energy prices that are lower than they could have been due to standards because of reductions in peak demand and a better balance between energy supply and demand. If this Court directs DOE to come into compliance with its statutory obligations, the resulting standards will add substantially to the current level of energy savings.

39. The ACEEE estimates that each year of DOE's delay in revising the delayed standards for just two of the 22 appliances at issue here – furnaces and distribution transformers – increases annual energy use by 2.2 million megawatt hours of electricity and by 10.3 billion cubic feet of natural gas, and increases carbon emissions by as much as 800,000 metric tons. DOE's compliance with its mandate for just these two standards would therefore result in annual savings of enough electricity to power about 210,000 typical U.S. homes and enough natural gas to heat about 195,000 homes. In addition, although DOE has designated these standards as "high priority" rulemakings since at least 2001, 66 Fed. Reg. 61,160 (Dec. 3, 2001), and stated its intention to issue these revised standards as early as 2003, 67 Fed. Reg. 74,105 (Dec.

9, 2002), DOE is currently eleven years behind the statutory deadline for revising the furnace standard, and almost nine years behind schedule on the transformer standard. The collective energy savings from revising efficiency standards for all twenty-two products where DOE is behind is significantly greater.

B. DOE's Statutory Obligations to Revise Energy Efficiency Standards

40. The provisions and congressional history of EPCA over the last thirty years demonstrate Congress' consistent and growing interest in ensuring timely issuance of energy efficiency standards. The first federal action on appliance standards occurred in 1975, when Congress enacted EPCA, Pub. L. No. 94-163, 89 Stat. 871 (1975), as part of a "comprehensive national energy policy." S. Rep. No. 516, 94th Congress, 1st Sess. 116 (1975) (conference report), reprinted in 1975 U.S.C.C.A.N. 1762, 1857. Two of EPCA's major purposes are "to conserve energy supplies through energy conservation programs" and "to provide for improved energy efficiency of . . . major appliances and certain other consumer products." 42 U.S.C. § 6201(4),(5). EPCA included numerous measures to increase energy efficiency in the United States. Initially, while DOE's predecessor was directed to establish test procedures and the U.S. Federal Trade Commission (FTC) was directed to establish consumer labels, EPCA only authorized, but did not direct, the adoption of energy efficiency standards for appliances. See H. Rep. No. 340, 94th Cong., 1st Sess. 95 (1975), reprinted in 1975 U.S.C.C.A.N. 1762, 1857.

41. In 1978, as part of an overhaul of national energy policy, Congress enacted the National Energy Conservation Policy Act (NECPA), Pub. L. No. 95-619, 92 Stat. 3206 (1978). Under NECPA, Congress amended EPCA to require that the newly-

created DOE establish energy efficiency standards for thirteen classes of major residential appliances. 92 Stat. 3206, 3259, 3264.

42. In 1987, after Plaintiff CEC and others successfully sued DOE for its continued failure to establish meaningful appliance energy efficiency standards, see NRDC v. Herrington, 768 F.2d 1355 (D.C. Cir. 1985), Congress passed, and President Reagan signed, the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. No. 100-12, 101 Stat. 103 (1987). NAECA further amended EPCA to establish initial energy efficiency standards for household appliances such as water heaters, clothes dryers, central air conditioners and heat pumps, and many others. 42 U.S.C. § 6295. NAECA also imposed specific requirements, deadlines and standards requiring DOE to amend and strengthen these standards periodically to ensure that efficiency levels are set at the maximum level that is technologically feasible and economically feasible. Id. § 6295(o)(2)(A). In enacting the initial statutory efficiency standards included in NAECA, Congress largely adopted a negotiated settlement between manufacturers, states, environmental and efficiency organizations, including Plaintiff CEC.

43. The consumer appliance efficiency provisions of EPCA were further amended in 1988, 1992 and 2005. See Pub. L. No. 109-58, Sec. 135, 119 Stat. 594, H.R. 6, 109th Cong., 1st Sess. (2005); Pub. L. No. 102-486, Sec. 122-23, 106 Stat. 2776, 2806-33 (1992); Pub. L. No. 100-357, Sec. 2, 102 Stat. 671, 673-74 (1988). Hereafter, this complaint uses the terms "EPCA" or the "Act" for the statute as amended through 2005.

44. In sum, in its current form, EPCA establishes mandatory efficiency standards for a broad range of consumer products, 42 U.S.C. § 6295, and also requires DOE to publish final rules by specified deadlines to determine whether to strengthen these standards, id. With respect to most consumer appliances covered by the Act, DOE is required to conduct and complete two such further rulemakings. 42 U.S.C. § 6295(c)(2), (d)(3), (e)(4), (f)(3), (g)(4), (g)(7), (h)(2), (i)(3)-(5). In most cases, the first revision is to be conducted three to five years after the initial standard set forth in the statute goes into effect, and the second revision approximately five years thereafter. See id.

45. In requiring these additional rulemakings, Congress mandated that DOE follow specific criteria for the amendment of appliance efficiency standards. Thus, the Act requires DOE to ensure that efficiency standards are "designed to achieve the maximum improvement in energy efficiency . . . which the Secretary determines is technologically feasible and economically justified." Id. at § 6295(o)(2)(A). The Act also includes an anti-backsliding provision specifying that "[t]he Secretary may not prescribe any amended standard" that "decreases the minimum required energy efficiency" of a "covered product." 42 U.S.C. § 6295(o)(1). Congress also set forth the procedures for DOE to follow in efficiency standard rulemakings. 42 U.S.C. §§ 6295(p), 6306(a).

46. Part A-1 of Subchapter III of EPCA, as amended, addresses efficiency standards for certain industrial and commercial products (hereinafter "commercial products"). 42 U.S.C. §§ 6311-6317. As with consumer products, DOE must take specified actions to determine whether to revise, and strengthen, the initial efficiency standards set by statute for the commercial products covered by EPCA. For many

commercial products, EPCA establishes initial efficiency standards and requires DOE to decide whether to strengthen them and, for others, EPCA requires DOE to determine initial efficiency according to specified criteria. 42 U.S.C. §§ 6313, 6317. The procedures specified by Congress for amending residential appliance standards, including the anti-backsliding provision described above and the standard-setting process, also apply for specified commercial products. 42 U.S.C. §§ 6313(a)(6)(B)(i), (ii); 6316(a), (b).

47. EPCA contains a "citizen suit" provision. Under this provision, "any person may commence a civil action" in a United States district court against the Secretary of DOE "in any case in which there is an alleged failure of the Secretary to comply with a nondiscretionary duty to issue a proposed or final rule according to the schedules set forth in section 6295 . . . ." 42 U.S.C. § 6305(a), (a)(3). Plaintiff States, CEC, and New York City are all "persons" within the meaning of EPCA. 42 U.S.C. § 6202(2). In addition, "any person" may commence an action against "any Federal agency . . . where there is an alleged failure of such agency to perform any act or duty under [EPCA] which is not discretionary ...." Id. § 6305(a), (a)(2). EPCA further provides that with respect to causes of action pursuant to 42 U.S.C. § 6305(a)(3) (missed schedules), "courts shall advance" such claims "on the docket and expedite the disposition of" these actions; moreover, if in such actions "the court finds that the Secretary has failed to comply with a deadline established in section 6295 of this title, the court shall have jurisdiction to order appropriate relief, including relief that will ensure the Secretary's compliance with future deadlines for the same covered products." Id. Finally, EPCA

provides that the court may award costs, including reasonable attorneys' fees, in issuing an order in a citizen suit action. 42 U.S.C. § 6305(d).

48. EPCA provides that the citizen suit provisions set forth in the consumer appliance section of the Act are also applicable to enforce DOE's statutory duties to revise energy efficiency standards for the commercial products at issue in this litigation. 42 U.S.C. § 6316(a), (b)(1).

49. The APA also applies to DOE's rulemakings on amended efficiency standards. 42 U.S.C. § 6306(a)(1). The APA governs agency rulemaking and judicial review of agency action and inaction. 5 U.S.C. §§ 551-706. It provides, in relevant part, that a "reviewing court shall . . . compel agency action unlawfully withheld or unreasonably delayed . . . ." 5 U.S.C. § 706(1) (emphasis added).

C. DOE's Prolonged Failure to Comply with EPCA's Deadlines and Obligations to Issue Revised Energy Efficiency Standards

50. Despite Congress' explicit directives to DOE requiring that it revise energy efficiency standards according to specified deadlines and requirements, DOE has failed to meet statutory deadlines with respect to both consumer and commercial products. DOE has missed at least one deadline, and in many cases two, for each of the twenty-two consumer products and commercial products at issue in this litigation.

(i) Consumer Products

51. Congress established by statute initial minimum efficiency standards for, among other consumer products, specified types of room air conditioners, central air conditioners and heat pumps, water heaters, pool heaters, direct heating equipment, furnaces (including boilers), mobile home furnaces, dishwashers, clothes dryers,

fluorescent lamp ballasts, ranges and ovens, fluorescent lamps and incandescent reflector lamps. 42 U.S.C. § 6295(c)-(i). In addition, for the products in each category, Congress directed DOE to complete two rulemakings, with specified deadlines, to determine whether to revise the initial standard. Id.

52. As set forth in more detail below, DOE has violated at least one and often two of the statutory deadlines for revised rulemakings with respect to each of the consumer products identified in this Complaint. See First through Fifteenth Causes of Action. Thus far, DOE has violated some of these deadlines by as much as thirteen years.

(ii) Commercial Products

53. Congress established by statute initial minimum efficiency standards for small and large commercial package air-conditioning and heating equipment, packaged terminal air conditioners and heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, unfired water storage tanks, and electric motors. 42 U.S.C. §§ 6313(a)(1)-(5), (b)(1). Congress directed DOE to amend these standards based either on the trigger mechanism described below or by specified deadlines. Congress also directed DOE to establish testing requirements and efficiency standards for high-intensity discharge lamps, distribution transformers, and small electric motors according to specific deadlines and requirements. 42 U.S.C. § 6317(a)-(b).

54. For each of the commercial products identified in 42 U.S.C. § 6313(a) (small and large commercial package air-conditioning and heating equipment, packaged terminal air conditioners and heat pumps, warm air furnaces, packaged boilers, storage

water heaters, instantaneous water heaters, unfired water storage tanks), DOE must promulgate revised energy efficiency standards when an amended standard for any such product is established after a specified date by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE). 42 U.S.C. § 6313(a)(6). ASHRAE is a not-for-profit organization that establishes industry efficiency standards by stakeholder consensus, at specified time periods. See www.ashrae.org.

55. With regard to the commercial products in 42 U.S.C. § 6313(a) that are addressed in this Complaint, see Causes of Action Sixteen - Eighteen, if ASHRAE amends ASHRAE Standard 90.1 after October 24, 1992, DOE is required either to (a) establish an amended uniform national standard at least as stringent as the ASHRAE standard for each effective date specified in the amended ASHRAE standard, or (b) adopt a uniform national standard more stringent than the amended ASHRAE standard if the Secretary determines by rule that a more stringent standard would result in significant additional conservation of energy, and is technologically feasible and economically justified. 42 U.S.C. §§ 6313(a)(6)(A)(i), (a)(6)(B).

56. For the commercial products specified in 42 U.S.C. § 6313(b) (various types of electric motors), DOE must twice revise the initial statutory efficiency standards, by specified deadlines. 42 U.S.C. § 6313(b)(3).

57. For the products identified in 42 U.S.C. § 6317 (high-intensity discharge lamps, distribution transformers, and small electric motors), the Act did not set initial efficiency standards. Instead, DOE must prescribe testing procedures by specified deadlines for those categories of products where DOE determines that "energy conservation standards would be technologically feasible and economically justified,

and would result in significant energy savings." 42 U.S.C. § 6317(a)(1), (b)(1). DOE must issue efficiency standards for such products eighteen months after the date on which testing requirements are prescribed. Id. § 6317(a)(2), (b)(2).

58. As set forth in more detail below, DOE has violated at least one and often more than one of the statutory deadlines and requirements with respect to amended efficiency standards for those commercial products in 42 U.S.C. §§ 6313(a)(6), 6313(b)(3), 6317(a)(1), 6317(a)(2), 6317(b)(1), and 6317(b)(2) that are identified in this Complaint. See Sixteenth through Twenty-Second Causes of Action. Thus far, DOE has violated these deadlines by more than ten years.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
(Efficiency Standards for Room Air Conditioners)

59. EPCA established an initial statutory efficiency standard for room air conditioners. 42 U.S.C. § 6295(c)(1). EPCA required DOE to publish a final rule no later than January 1, 1992 to determine if the initial statutory efficiency standard for room air conditioners should be amended. 42 U.S.C. § 6295(c)(2)(A). On September 24, 1997, more than five years after this deadline, DOE published a final rule revising and increasing the initial standard. 62 Fed. Reg. 50,122 (Sept. 24, 1997); see 10 C.F.R. § 430.32(c).

60. EPCA further required DOE to publish a second final rule to determine whether to further amend efficiency standards for room air conditioners "no later than five years after the date of publication" of the first revision – i.e, no later than September 24, 2002. 42 U.S.C. § 6295(c)(2)(B). Although almost three years have passed since

this deadline, DOE has failed to publish the second rule on amended efficiency standards for room air conditioners required by EPCA.

61. DOE has violated the statutory deadline in 42 U.S.C. § 6295(c)(2)(B) for publication of the second final rule on efficiency standards for room air conditioners. DOE has failed both "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in section 6295," id. § 6305(a)(3). DOE's failure to publish this final rule constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. §§ 706(1), (2).

SECOND CAUSE OF ACTION
(Efficiency Standards for Central Air Conditioners and Heat Pumps)

62. EPCA established initial statutory efficiency standards for central air conditioners and heat pumps at the level of Seasonal Energy Efficiency Ratio (SEER) 10 (SEER is a measurement of cooling performance efficiency) and Heating Seasonal Performance Factor (HSPF) 6.8 (HSPF is a measurement of heating performance efficiency). 42 U.S.C. § 6295(d)(1), (2). EPCA required DOE to publish a final rule no later than January 1, 1994 to determine if the initial standards should be amended. 42 U.S.C. § 6295(d)(3)(A). On January 22, 2001, more than seven years after this deadline, DOE published a final rule amending and increasing the initial standards to SEER 13 and HSPF 7.7, effective January 22, 2006. 66 Fed. Reg. 7,170 (Jan. 22, 2001).

63. In 2002, DOE rolled back the amended standards, withdrawing the final

rule and publishing a new final rule with decreased standards of SEER 12 and HSPF 7.4. 67 Fed. Reg. 36,368 (May 23, 2002). Following a challenge brought by many of the Plaintiff States and Citizen Organizations in the instant litigation, the U.S. Court of Appeals for the Second Circuit ruled that this rollback violated EPCA's anti-rollback provision, 42 U.S.C. § 6295(o)(1), and the Administrative Procedure Act. NRDC v. Abraham, 355 F.3d 179 (2d Cir. 2004). DOE then reinstated the SEER 13 and HSPF 7.7 standards, 69 Fed. Reg. 50,997 (Aug. 17, 2004), which will go into effect as originally contemplated on January 22, 2006.

64. EPCA further required that DOE publish a second final rule "no later than January 1, 2001" to determine if the revised standards for central air conditioners and heat pumps should be further amended. 42 U.S.C. § 6295(d)(3)(B). Although almost five years have passed since this deadline, DOE has failed to publish the second final rule on amended efficiency standards for central air conditioners and heat pumps required by EPCA.

65. DOE has violated the statutory deadline for publication of a second final rule on efficiency standards for central air conditioners and heat pumps, as required in 42 U.S.C. § 6295(d)(3)(B). DOE has failed both "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in section 6295," id. § 6305(a)(3). DOE's failure to publish this final rule constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

THIRD CAUSE OF ACTION
(Efficiency Standards for Water Heaters)

66. EPCA established initial statutory efficiency standards for water heaters, 42 U.S.C. § 6295(e)(1), and required DOE to publish final rules no later than January 1, 1992 to determine if the initial statutory efficiency standards for water heaters should be amended. 42 U.S.C. § 6295(e)(4)(A).

67. On January 17, 2001, nine years after the January 1, 1992 statutory deadline, DOE published a final rule revising and increasing the initial statutory efficiency standard for water heaters. 66 Fed. Reg. 4,474 (Jan. 17, 2001).

68. EPCA further required DOE to publish a second final rule to determine whether to further revise efficiency standards for water heaters by January 1, 2000. 42 U.S.C. § 6295(e)(4)(B). Although more than five years have passed since this deadline, DOE has failed to publish the second final rule on amended efficiency standards for water heaters required by EPCA.

69. DOE has violated the statutory deadline for publication of the second final rule on efficiency standards for water heaters, as required in 42 U.S.C. § 6295(e)(4)(B). DOE has failed both "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in section 6295," id. § 6305(a)(3). DOE's failure to publish this final rule constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

FOURTH CAUSE OF ACTION
(Efficiency Standards for Pool Heaters)

70. EPCA established initial statutory efficiency standards for pool heaters, 42 U.S.C. § 6295(e)(2), and required DOE to publish a final rule no later than January 1, 1992 to determine if the initial statutory efficiency standards for pool heaters should be amended. 42 U.S.C. § 6295(e)(4)(A).

71. Although more than thirteen years have passed since the statutory deadline of January 1, 1992, DOE has failed to publish the first final rule on amended efficiency standards for pool heaters required by EPCA.

72. EPCA further required DOE to publish a second final rule for pool heaters by January 1, 2000, to determine whether to further amend standards for pool heaters. 42 U.S.C. § 6295(e)(4)(B). Although more than five years have passed since this deadline, DOE has failed to publish the second final rule on amended efficiency standards for pool heaters required by EPCA.

73. DOE has violated the statutory deadlines for publishing a first and second final rule on efficiency standards for pool heaters, as required in 42 U.S.C. § 6295(e)(4)(A) and (B). DOE has failed both "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in section 6295," id. § 6305(a)(3). DOE's failure to publish these final rules constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

FIFTH CAUSE OF ACTION
(Efficiency Standards for Direct Heating Equipment)

74. EPCA established initial statutory efficiency standards for direct heating equipment, 42 U.S.C. § 6295(e)(3), and required DOE to publish final rules no later than January 1, 1992 to determine if the initial statutory efficiency standards for direct heating equipment should be amended. 42 U.S.C. § 6295(e)(4)(A).

75. Although more than thirteen years have passed since the statutory deadline of January 1, 1992, DOE has failed to publish the initial final rule on amended efficiency standards for direct heating equipment required by EPCA.

76. EPCA further required DOE to publish a second final rule by January 1, 2000, to determine whether to further amend standards for direct heating equipment. 42 U.S.C. § 6295(e)(4)(B). Although more than five years have passed since this deadline, DOE has failed to publish the second final rule on amended efficiency standards for direct heating equipment required by EPCA.

77. DOE has violated the statutory deadlines for publication of the first and second final rules on efficiency standards for direct heating equipment, as required in 42 U.S.C. § 6295(e)(4)(A) and (B). DOE has failed both "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in section 6295," id. § 6305(a)(3). DOE's failure to publish these final rules constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and

capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

SIXTH CAUSE OF ACTION
(Efficiency Standards for Furnaces
Other Than Mobile Home and Small Furnaces)

78. EPCA established initial statutory efficiency standards for furnaces (other than furnaces designed solely for installation in mobile homes) having an input of 45,000 British Thermal Units (BTUs) or more per hour and manufactured on or after January 1, 1992. 42 U.S.C. § 6295(f)(1), (f)(1)(B)(i). EPCA required DOE to publish a final rule no later than January 1, 1994 to determine if the initial statutory efficiency standards for these furnaces should be amended. 42 U.S.C. § 6295(f)(3)(B). Although more than eleven years have passed since this statutory deadline, DOE has failed to publish the first final rule on amended efficiency standards for such furnaces as required by EPCA.

79. EPCA further provided that by January 1, 2007, DOE must publish the second final rule to determine whether efficiency standards for furnaces should be further amended. 42 U.S.C. § 6295(f)(3)(C). Given that DOE has not yet published the first final rule determining whether to amend the initial statutory efficiency standards for the furnaces to which this cause of action applies, DOE is also likely to violate the January 1, 2007 deadline for publishing the second final rule on amended efficiency standards for furnaces.

80. DOE has violated the statutory deadline for publishing the first final rule on efficiency standards for those furnaces to which this cause of action applies, as required

in 42 U.S.C. § 6295(f)(3)(B), and is likely to violate its statutory deadline for publishing the second required final rule as required in 42 U.S.C. § 6295(f)(3)(C). DOE has failed both "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in section 6295," id. § 6305(a)(3). DOE's failure to publish the first required final rule constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

SEVENTH CAUSE OF ACTION
(Efficiency Standards for Small Furnaces)

81. EPCA required that for furnaces (other than furnaces designed solely for installation in mobile homes) having an input of less than 45,000 Btu per hour and manufactured on or after January 1, 1992 (hereafter "small furnaces"), DOE must publish a final rule not later than January 1, 1989 establishing an initial energy efficiency standard. 42 U.S.C. § 6295(f)(1)(B). In November 1989, almost a year after that deadline passed, DOE promulgated a rule establishing an efficiency standard for small furnaces. 54 Fed. Reg. 47,916 (Nov. 17, 1989); see also 10 C.F.R. § 430.32(e).

82. EPCA further required DOE to publish a final rule no later than January 1, 1994 to determine if the initial efficiency standard for small furnaces should be amended. 42 U.S.C. § 6295(f)(3)(B). Although more than eleven years have passed since this statutory deadline, DOE has not published the first final rule on amended efficiency standards for small furnaces required by EPCA. EPCA further provided that

by January 1, 2007, DOE shall publish a second final rule to determine whether the standard for small furnaces should be further amended. 42 U.S.C. § 6295(f)(3)(C). Given that DOE has failed to publish the initial final rule pursuant to 42 U.S.C. § 6295(f)(3)(B) determining whether to amend the initial statutory efficiency standards for small furnaces, DOE is also likely to violate the January 1, 2007 deadline for publishing the second final rule on amended efficiency standards for small furnaces.

83. DOE has violated the statutory deadline for publishing the first final rule on amended efficiency standards for small furnaces, as required in 42 U.S.C. § 6295(f)(3)(B), and is likely to violate its statutory deadline for publishing the second final rule required in 42 U.S.C. § 6295(f)(3)(C). DOE has failed both "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in section 6295," id. § 6305(a)(3). DOE's failure to publish the first required final rule constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

EIGHTH CAUSE OF ACTION
(Efficiency Standards for Mobile Home Furnaces)

84. EPCA established an initial statutory efficiency standard for furnaces designed solely for installation in mobile homes (hereafter "mobile home furnaces"). 42 U.S.C. § 6295(f)(2). EPCA required DOE to publish a final rule no later than January 1, 1992 to determine if the initial statutory efficiency standard for mobile home furnaces

should be amended. 42 U.S.C. § 6295(f)(3)(A). Although more than thirteen years have passed since this statutory deadline, DOE has failed to publish the final rule on amended efficiency standards for mobile home furnaces required by EPCA.

85. EPCA further required DOE to publish a final rule no later than January 1, 1994 to determine if the efficiency standards for furnaces, including mobile home furnaces, should be amended. 42 U.S.C. § 6295(f)(3)(B). Although more than eleven years have passed since this statutory deadline, DOE has failed to publish this further final rule on amended efficiency standards for mobile home furnaces required by EPCA.

86. Finally, EPCA further required that by January 1, 2007, DOE shall publish another final rule to determine whether efficiency standards for furnaces, including mobile home furnaces, should be amended. 42 U.S.C. § 6295(f)(3)(C). Given that DOE has not yet published a first or second final rule determining whether to amend the initial statutory efficiency standard for the mobile home furnaces, DOE is also likely to fail to meet the January 1, 2007 deadline for publishing a third final rule with respect to efficiency standards for mobile home furnaces.

87. DOE has violated its statutory deadlines for publishing the first and second final rules on efficiency standards for mobile home furnaces, as required in 42 U.S.C. § 6295(f)(3)(A) and (f)(3)(B), and is likely to violate its statutory deadline for publishing the third required final rule as required in 42 U.S.C. § 6295(f)(3)(C). DOE has thereby failed both "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in section 6295," id. § 6305(a)(3). DOE's failure to publish the first and second required final rules constitutes agency action "unlawfully

withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

NINTH CAUSE OF ACTION
(Efficiency Standards for Dishwashers)

88. EPCA established an initial statutory efficiency standard for dishwashers. 42 U.S.C. § 6295(g)(1). EPCA required that, no later than January 1, 1990, DOE was to publish a final rule determining if the standard should be amended. 42 U.S.C. § 6295(g)(4)(A). In May 1991, more than a year after the statutory deadline, DOE promulgated a final rule with respect to dishwashers. 56 Fed. Reg. 22,250 (May 14, 1991); see 10 C.F.R. § 430.32(f).

89. EPCA also required that DOE publish the second final rule no later than five years after publication of the previous final rule to determine whether to amend the standard then in effect. 42 U.S.C. § 6295(g)(4)(B). Thus, DOE was required to publish the second final rule pursuant to this provision no later than May 14, 1996. Although more than nine years have passed since that deadline, DOE has failed to publish the second rule on amended efficiency standards for dishwashers required by EPCA.

90. DOE has violated the statutory deadline for publication of the second final rule revising the energy efficiency standards for dishwashers, as required in 42 U.S.C. § 6295(g)(4)(B). DOE has thereby failed both "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in section 6295," id. §

6305(a)(3). DOE's failure to publish this final rule constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

TENTH CAUSE OF ACTION
(Efficiency Standards for Clothes Dryers)

91. EPCA established an initial statutory efficiency standard for clothes dryers. 42 U.S.C. § 6295(g)(3). EPCA required that, no later than January 1, 1990, DOE was to publish a final rule determining if the standard should be amended. 42 U.S.C. § 6295(g)(4)(A). In May 1991, more than a year after the statutory deadline, DOE promulgated a final rule with respect to clothes dryers. 56 Fed. Reg. 22,250 (May 14, 1991); see 10 C.F.R. § 430.32(h).

92. EPCA further required that DOE publish a second final rule no later than five years after publication of the previous final rule to determine whether to further amend efficiency standards for clothes dryers. 42 U.S.C. § 6295(g)(4)(B). Thus, DOE was required to publish a second final rule pursuant to this provision no later than May 14, 1996. Although more than nine years have passed since that deadline, DOE has failed to publish the second final rule on amended efficiency standards for clothes dryers required by EPCA.

93. DOE has violated the statutory deadline for publication of a second final rule revising the energy efficiency standards for clothes dryers, as required in 42 U.S.C. § 6295(g)(4)(B). DOE has failed both "to perform [an] act or duty under [EPCA] which is

not discretionary," id. § 6305(a)(2), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in section 6295," id. § 6305(a)(3). DOE's failure to publish this final rule constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

ELEVENTH CAUSE OF ACTION
(Efficiency Standards for Fluorescent Lamp Ballasts)

94. EPCA established an initial statutory efficiency standard for specified fluorescent lamp ballasts. 42 U.S.C. § 6295(g)(5). EPCA required that, no later than January 1, 1992, DOE must publish a final rule to determine if the initial statutory efficiency standard for fluorescent lamp ballasts should be amended. 42 U.S.C. § 6295(g)(7)(A). In September 2000, more than eight years after the statutory deadline, DOE promulgated a final rule with respect to fluorescent lamp ballasts. 65 Fed. Reg. 56,740 (September 19, 2000).

95. EPCA further required that DOE publish a second final rule no later than five years after the date of publication of the previous final rule to determine whether to further amend the efficiency standard for fluorescent lamp ballasts. 42 U.S.C. § 6295(g)(7)(B). Thus, DOE is required to publish a final rule pursuant to this provision no later than September 19, 2005. Given that DOE has not yet commenced a rulemaking process relating to the standard in effect for fluorescent lamp ballasts, it is inevitable that DOE will fail to meet the statutory deadline to publish the second final rule on amended efficiency standards for fluorescent lamp bulbs required by EPCA.

96. By failing to publish a final rule by September 19, 2005 determining whether to amend the standards in effect for fluorescent lamp ballasts, as required by 42 U.S.C. § 6295(g)(7)(B), DOE will have violated the statutory deadline for revising the energy efficiency standards for fluorescent lamp ballasts, as required in 42 U.S.C. § 6295(g)(7)(B). DOE will thereby have failed both "to perform an[] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in section 6295," id. § 6305(a)(3).

TWELFTH CAUSE OF ACTION
(Efficiency Standards for Ranges and Ovens)

97. EPCA established an initial statutory efficiency standard for gas and electric kitchen ranges and ovens (kitchen products). 42 U.S.C. § 6295(h)(1). EPCA required DOE to publish a final rule, no later than January 1, 1992, to determine if the initial statutory efficiency standard for kitchen products should be amended. 42 U.S.C. § 6295(h)(2)(A). Although more than thirteen years have passed since the statutory deadline, DOE has failed to publish the initial final rule on amended efficiency standards for gas kitchen products required by EPCA. See 63 Fed. Reg. 48,038 (Sept. 8, 1998) (determining not to revise the standard for electric kitchen products, but postponing action on gas kitchen products, noting that DOE has "not completed its analysis of the relevant issues").

98. EPCA further required DOE to publish the second final rule no later than January 1, 1997 to determine whether to further amend efficiency standards for gas and

electric kitchen products. 42 U.S.C. § 6295(h)(2)(B). Although more than eight years have passed since this deadline, DOE has failed to publish the second final rule on amended efficiency standards for both electric and gas kitchen products required by EPCA.

99. DOE has violated the statutory deadlines for publishing an initial final rule to determine whether to amend initial efficiency standards for gas kitchen ranges and ovens and for publishing a second final rule to determine whether to further amend efficiency standards for gas and electric kitchen ranges and ovens, as required in 42 U.S.C. § 6295(h)(2)(A) and (h)(2)(B). DOE has failed both "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in section 6295," id. § 6305(a)(3). DOE's failure to publish these final rules constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

THIRTEENTH CAUSE OF ACTION
(Efficiency Standards for Fluorescent Lamps)

100. EPCA established initial statutory efficiency standards for general service fluorescent lamps. 42 U.S.C. § 6295(i)(1)(A). EPCA also required DOE, no later than April 24, 1997, to publish a final rule to determine if the initial statutory efficiency standards for general service fluorescent lamps should be amended. 42 U.S.C. § 6295(i)(3). Although more than eight years have passed since this statutory deadline,

DOE has failed to publish the first final rule on amended efficiency standards for general service fluorescent lamps required by EPCA.

101. EPCA further required DOE, no later than April 24, 2002, to publish a second final rule regarding whether the efficiency standards in effect for general service fluorescent lamps should be further amended. 42 U.S.C. § 6295(i)(4). Although more than three years have passed since this deadline, DOE has failed to publish the second final rule on amended efficiency standards for general service fluorescent lamps required by EPCA.

102. DOE has violated the statutory deadlines in 42 U.S.C. § 6295(i)(3) and (i)(4) for publication of the first and second final rules with respect to efficiency standards for general service fluorescent lamps. DOE has failed both "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in section 6295," id. § 6305(a)(3). DOE's failure to publish these final rule constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1),(2).

FOURTEENTH CAUSE OF ACTION
(Efficiency Standards for Incandescent Reflector Lamps)

103. EPCA established initial statutory efficiency standards for certain incandescent reflector lamps. 42 U.S.C. § 6295(i)(1)(A). EPCA also required DOE, no later than April 24, 1997, to publish a first final rule to determine if the statutory

efficiency standards for incandescent reflector lamps should be amended. 42 U.S.C. § 6295(i)(3). Although more than eight years have passed since this deadline, DOE has failed to publish the first final rule on amended efficiency standards for incandescent reflector lamps required EPCA.

104. EPCA further required DOE, no later than April 24, 2002, to publish a second final rule to determine whether to further amend efficiency standards for incandescent reflector lamps. 42 U.S.C. § 6295(i)(4). Although more than three years have passed since this deadline, DOE has failed to publish the second final rule on amended efficiency standards for incandescent reflector lamps required by EPCA.

105. DOE has violated the statutory deadlines for publishing the first and second final rules on revising the energy efficiency standards for incandescent reflector lamps, as required in 42 U.S.C. § 6295(i)(3) and (i)(4). DOE has failed both "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in section 6295," id. § 6305(a)(3). DOE's failure to publish these final rules constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

FIFTEENTH CAUSE OF ACTION
(Efficiency Standards for Additional Fluorescent and Incandescent Lamps)

106. EPCA required the Federal Trade Commission (FTC) to adopt labeling rules for general service fluorescent lamps, medium base compact fluorescent lamps,

and general service incandescent lamps. 42 U.S.C. § 6294(a)(2)(C). EPCA also required to DOE to begin a rulemaking no later than 24 months after the FTC labeling rules become effective, and, no later than 18 months after beginning the rulemaking, to publish a final rule, determining whether the standards in effect for fluorescent lamps and incandescent lamps (see id. § 6295(i)(1), (i)(3)-(4) and Causes of Action Thirteen and Fourteen) should be made applicable to additional general service fluorescent and general service incandescent lamps. 42 U.S.C. § 6295(i)(5).

107. Pursuant to 42 U.S.C. § 6294(a)(2)(C), the FTC published a final rule regarding labeling of general service fluorescent lamps, medium base compact fluorescent lamps and general service incandescent lamps, and those rules became effective on May 15, 1995. 59 Fed. Reg. 25,176, 25,203-04 (May 13, 1994).

108. Given that the FTC labeling rule under 42 U.S.C. § 6294(a)(2)(C) became effective on May 15, 1995, DOE was required pursuant to 42 U.S.C. § 6295(i)(5), to initiate a rulemaking procedure no later than May 15, 1997, and to publish a final rule no later than November 15, 1998, regarding whether the standards in effect for fluorescent lamps and incandescent lamps should be made applicable to additional general service fluorescent and general service incandescent lamps. Although more than eight years have passed since the statutory deadline for initiating a rulemaking, and almost seven years have passed since the statutory deadline for publishing a final rule, DOE has failed both to initiate a rulemaking and to publish a final rule with regard to the applicability of standards to additional general service fluorescent and general service incandescent lamps as required by EPCA. Additionally, had DOE determined in a timely way that additional general service fluorescent and general service incandescent

lamps would be covered by standards, DOE would have been required to publish a further final rule no later than April 24, 2002, to publish a second final rule regarding whether the efficiency standards in effect for such additional products should be amended. 42 U.S.C. § 6295(i)(4).

109. DOE has violated the statutory deadlines for initiating a rulemaking and publishing a final rule with regard to applying standards to additional lamp products, as required by 42 U.S.C. § 6295(i)(5). DOE has failed both "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in section 6295," id. § 6305(a)(3). DOE's failure to initiate this rulemaking and publish this final rule constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

SIXTEENTH CAUSE OF ACTION
(Efficiency Standards for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps)

110. EPCA established initial statutory efficiency standards for packaged terminal air conditioners and packaged terminal heat pumps manufactured on or after January 1, 1994. 42 U.S.C. § 6313(a)(3).

111. ASHRAE amended ASHRAE Standard 90.1 on October 29, 1999, adopting standards for packaged terminal air conditioners and packaged terminal heat pumps that are more stringent than the initial statutory standards. See 66 Fed. Reg. 3,336, 3,339 (Jan. 12, 2001). The ASHRAE amended standards for packaged terminal

air conditioners and packaged terminal heat pumps were effective as of October 29, 2001. Id.

112. The ASHRAE amendment triggered DOE's statutory obligation under 42 U.S.C. § 6313(a)(6)(A)(i) and (B)(i) either to adopt the amended ASHRAE standards or to issue more stringent standards for packaged terminal air conditioners and packaged terminal heat pumps. On January 12, 2001, DOE published a final rule adopting amended ASHRAE standards for some products. 66 Fed. Reg. 3336. For packaged terminal air conditioners and packaged terminal heat pumps, DOE recognized that more stringent standards than ASHRAE for these products "may save significant additional amounts of energy and be technologically feasible and economically justified," 66 Fed. Reg. at 3,336-38. However, although almost six years have passed since ASHRAE published amended standards for packaged terminal air conditioners and packaged terminal heat pumps, almost four years since the effective date of the ASHRAE amendments, and almost five years since DOE adopted amended ASHRAE standards for other products, DOE has failed either to adopt the amended ASHRAE standards as uniform national standards or to issue more stringent standards for packaged terminal air conditioners and packaged terminal heat pumps, as required by 42 U.S.C. § 6313(a)(6)(A)(i) and (B)(i).

113. DOE has failed to meet the statutory requirement to revise the energy efficiency standards for packaged terminal air conditioners and packaged terminal heat pumps triggered by amended ASHRAE standards, as required in 42 U.S.C. § 6313(a)(6)(A)(i) and B(i). DOE has failed "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2) (made applicable to packaged terminal air

conditioners and packaged terminal heat pumps by id. § 6316(b)). DOE's failure to amend this standard constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

SEVENTEENTH CAUSE OF ACTION
(Efficiency Standards for Packaged Boilers)

114. EPCA established initial statutory energy efficiency standards for packaged boilers manufactured on or after January 1, 1994. 42 U.S.C. § 6313(a)(4).

115. ASHRAE amended ASHRAE Standard 90.1 on October 29, 1999, adopting standards for packaged boilers that are more stringent than the initial statutory standard. See 66 Fed. Reg. 3,336, 3,339 (Jan. 12, 2001). The ASHRAE amended standards for packaged boilers were effective as of October 29, 2001. Id.

116. The ASHRAE amendment triggered DOE's statutory obligation under 42 U.S.C. § 6313(a)(6)(A)(i) and (B)(i) either to adopt the amended ASHRAE standards as uniform national standards or to issue more stringent standards for packaged boilers. On January 12, 2001, DOE published a final rule adopting amended ASHRAE standards for some products. 66 Fed. Reg. 3336. For packaged boilers, DOE recognized that more stringent standards than ASHRAE for these products "may save significant additional amounts of energy and be technologically feasible and economically justified," 66 Fed. Reg. at 3,336-38. However, although almost six years have passed since ASHRAE published amended standards for packaged boilers, almost four years since the effective date of the ASHRAE amendments, and almost five

years since DOE adopted amended ASHRAE standards for other products, DOE has failed either to adopt the amended ASHRAE standards as uniform national standards or to issue more stringent standards for packaged boilers, as required by 42 U.S.C. § 6313(a)(6)(A)(i) and (B)(i).

117. DOE has failed to meet the statutory requirement to revise the efficiency standards for packaged boilers based on amended ASHRAE standards, as required in 42 U.S.C. § 6313(a)(6)(A)(i) and B(i). DOE has failed "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2) (made applicable to packaged boilers by id. § 6316(b)). DOE's failure to amend this standard constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

EIGHTEENTH CAUSE OF ACTION
(Efficiency Standards for Instantaneous Water Heaters)

118. EPCA established initial statutory efficiency standards for instantaneous water heaters manufactured on or after January 1, 1994. 42 U.S.C. § 6313(a)(5), (a)(5)(D)-(E).

119. ASHRAE amended ASHRAE Standard 90.1 on October 29, 1999, adopting standards for instantaneous water heaters that are more stringent than the initial statutory standards. See 66 Fed. Reg. 3336, 3339 (Jan. 12, 2001). The ASHRAE amended standards for instantaneous water heaters were effective as of October 29, 2001. Id.

120. The ASHRAE amendment triggered DOE's statutory obligation under 42 U.S.C. § 6316(a)(6)(A)(i) and (B)(i) either to adopt the amended ASHRAE standards or to issue more stringent standards for instantaneous water heaters. On January 12, 2001, DOE published a final rule adopting amended ASHRAE standards for some products. 66 Fed. Reg. 3336. For instantaneous water heaters, DOE recognized that more stringent standards than ASHRAE for these products "may save significant additional amounts of energy and be technologically feasible and economically justified," 66 Fed. Reg. at 3,336-38. However, although almost six years have passed since ASHRAE published amended standards for instantaneous water heaters, almost four years since the effective date of the ASHRAE amendments, and almost five years since DOE adopted amended ASHRAE standards for other products, DOE has failed either to adopt the amended ASHRAE standards as uniform national standards or to issue more stringent standards for instantaneous water heaters, as required by 42 U.S.C. § 6313(a)(6)(A)(i) and (B)(i).

121. DOE has failed to meet the statutory requirement to revise the energy efficiency standards for instantaneous water heaters based on amended ASHRAE standards, as required in 42 U.S.C. § 6313(a)(6)(A)(i) and (B)(i). DOE has thereby failed "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2) (made applicable to instantaneous water heaters by id. § 6316(b)). DOE's failure to amend this standard constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

NINETEENTH CAUSE OF ACTION
(Efficiency Standards for Electric Motors)

122. EPCA established initial statutory efficiency standards for specified types of electric motors, which are applicable, depending on the type, to motors manufactured after October 24, 1997 or October 24, 1999. 42 U.S.C. § 6313(b)(1). EPCA also required that, no later than 24 months after the standards take effect – that is, no later than October 24, 1999 for some motors and October 24, 2001 for other motors – DOE was to publish final rules determining whether the statutory efficiency standards for motors should be amended. 42 U.S.C. § 6313(b)(3)(A). Although almost six years have passed since the statutory deadline for publishing final rules for certain motors, and almost four years have passed since the statutory deadline for other motors, DOE has failed to publish initial final rules on amended efficiency standards for motors as required by EPCA.

123. EPCA required that the first amendments to the statutory efficiency standards for motors that DOE was directed to publish were to become effective five years after the effective date of the initial statutory standards. 42 U.S.C. § 6313(b)(1), (b)(3)(A). Thus, the amended standards were to become effective on October 24, 2002 for some motors and October 24, 2004 for other motors. EPCA further required that, no later than 24 months after these effective dates, DOE must publish a second final rule to determine whether to further amend efficiency standards for motors. 42 U.S.C. § 6313(b)(3)(B). Because the effective dates of the first amendments were to have been October 24, 2002, and October 24, 2004, EPCA thus required DOE to issue its second final rules by October 24, 2004 (for some motors), and October 24, 2006 (for other

motors). DOE has failed to meet the October 24, 2004 deadline for the second final rule for some motors, and given that DOE has not yet published a first final rule, DOE is almost certain to miss the October 24, 2006 deadline for the second final rule for other motors as well.

124. DOE has violated three of the four statutory deadlines for publication of final rules on amended efficiency standards for motors set forth in 42 U.S.C. § 6313(b)(3)(A) and (B), and is almost certain to violate the remaining deadline set forth in id. § 6313(b)(3)(B). DOE has failed both "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2) (made applicable to electric motors by id. § 6316(a)), and "to comply with a nondiscretionary duty to issue a . . . final rule according to the [applicable] schedules," id. § 6305(a)(3) (made applicable to electric motors by id. § 6316(a)). DOE's failure to meet these statutory deadlines for electric motors also constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

TWENTIETH CAUSE OF ACTION
(Efficiency Standards for High Intensity Discharge Lamps)

125. EPCA required DOE, no later than April 24, 1995, to "prescribe testing requirements for those high-intensity discharge lamps . . . for which [DOE] makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings." 42 U.S.C. § 6317(a)(1). Although more than ten years have passed since the deadline for

prescribing testing requirements for HID lamps, DOE has failed to prescribe such testing requirements.

126. EPCA also required that, within 18 months after the date on which the HID lamp testing requirements are prescribed by DOE pursuant to 42 U.S.C. § 6317(a)(1), DOE must publish a final rule prescribing efficiency standards for those HID lamps. 42 U.S.C. § 6317(a)(2). Because DOE has failed to comply with the statutory deadline of April 24, 1995 for establishing testing requirements for HID lamps, DOE has also failed to meet the statutory deadline for prescribing energy conservation standards for the HID lamps no more than eighteen months later – that is, no later than October 24, 1996 – under 42 U.S.C. § 6317(a)(2).

127. DOE has failed to meet the statutory requirements for establishing testing requirements and prescribing energy conservation standards for HID lamps pursuant to 42 U.S.C. §§ 6317(a)(1) and 6317(a)(2). DOE has failed "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2) (made applicable to HID lamps by id. § 6316(a)). DOE's failure to meet these statutory requirements constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

TWENTY-FIRST CAUSE OF ACTION
(Efficiency Standards for Electric Distribution Transformers)

128. EPCA required DOE, no later than April 24, 1995, to "prescribe testing requirements for those . . . distribution transformers for which [DOE] makes a

determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings." 42 U.S.C. § 6317(a)(1).

129. On October 22, 1997, DOE determined that energy conservation standards for specified distribution transformers would be technologically feasible and economically justified, and would result in significant energy savings. 62 Fed. Reg. 54809, 54816 (Oct. 22, 1997). However, DOE has failed to adopt testing requirements for such distribution transformers, despite the command in 42 U.S.C. § 6317(a)(1) that it do so by April 24, 1995.

130. EPCA also required that, within 18 months after the date on which DOE prescribed testing requirements for distribution transformers, DOE must issue a final rule prescribing efficiency standards for distribution transformers. 42 U.S.C. § 6317(a)(2). Congress thus anticipated that DOE would issue efficiency standards for distribution transformers by October 24, 1996 –18 months after the April 24, 1995 deadline for establishing testing requirements. Almost nine years after this date, DOE has failed to publish a final rule establishing efficiency standards for distribution transformers.

131. DOE has failed to meet the statutory requirements for establishing testing requirements and prescribing energy conservation standards for distribution transformers pursuant to 42 U.S.C. § 6317(a)(1) and 6317(a)(2). DOE has failed "to perform [an] act or duty under [EPCA] which is not discretionary," id. § 6305(a)(2) (made applicable to distribution transformers by id. § 6316(a)). DOE's failure to publish this final rule constitutes agency action "unlawfully withheld" and "unreasonably

delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

TWENTY-SECOND CAUSE OF ACTION
(Efficiency Standards for Small Motors)

132. EPCA required DOE, no later than April 24, 1995 "to prescribe testing requirements for those small electric motors for which [DOE] makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings." 42 U.S.C. § 6317(b)(1). Although more than ten years have passed since the deadline for prescribing testing requirements for small electric motors, DOE has failed to prescribe such testing requirements.

133. EPCA also required that, within 18 months after the date on which DOE prescribes the small electric motor testing requirements pursuant to 42 U.S.C. § 6317(b)(1), DOE must issue a final rule prescribing efficiency standards for those small electric motors. 42 U.S.C. § 6317(b)(2). Because DOE has failed to comply with the statutory deadline of establishing testing requirements for small electric motors by April 24, 1995, DOE has also failed to meet the timetable contemplated by Congress for prescribing energy conservation standards for small electric motors 18 months later – that is, by October 24, 1996 – under 42 U.S.C. § 6317(b)(2).

134. DOE has failed to meet the statutory requirements for establishing testing requirements and prescribing efficiency standards for small electric motors pursuant to 42 U.S.C. § 6317(b)(1) and (2). DOE has failed "to perform [an] act or duty under

[EPCA] which is not discretionary," id. § 6305(a)(2) (made applicable to small electric motors by id. § 6316(a)). DOE's failure to establish testing requirements and prescribe efficiency standards for small electric motors constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706(1), (2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request:

1. That this Court enter a declaratory judgment pursuant to 28 U.S.C. § 2201(a) finding that DOE has violated EPCA's deadlines and other requirements with respect to the establishment of testing procedures and amendment of energy efficiency standards for consumer products and commercial products as described above;

2. That this Court enter a permanent injunction, pursuant to 28 U.S.C. § 2202, and 42 U.S.C §§ 6305(a)(2), 6305(a)(3), 6316(a), and 6316(b)(1), and 5 U.S.C. §§ 706(1), (2), compelling DOE to undertake rulemakings in accordance with EPCA and the APA and to publish all applicable proposed and final rules with respect to testing requirements and energy efficiency standards, as described above, for each product where DOE has violated at least one deadline, according to a schedule to be issued by this Court after briefing by the parties on appropriate timetables; such a schedule should "ensure [DOE's] compliance with future deadlines" for such products, as is explicitly provided for in 42 U.S.C. § 6305(a);

3. That this Court retain continuing jurisdiction over this action to monitor and ensure compliance with such a schedule;

4. That the Plaintiffs be awarded costs of litigation, including but not limited to reasonable attorneys fees, pursuant to 42 U.S.C. § 6305(d); and

5. That Plaintiffs be granted such other and further relief that this Court deems just and equitable.

Dated: September 7, 2005

ELIOT SPITZER
ATTORNEY GENERAL
STATE OF NEW YORK

By: _____
PETER H. LEHNER (PL2290)
D. SCOTT BASSINSON (DSB 0136)
WILLIAM E. DORNBOS
Assistant Attorneys General
New York State Department of Law
The Capitol
Albany, New York 12224
212-416-8450
518-473-5843

RICHARD BLUMENTHAL
ATTORNEY GENERAL
STATE OF CONNECTICUT

By: _____
JOSÉ SUAREZ
Assistant Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

THE PEOPLE OF THE STATE OF
CALIFORNIA, EX REL.
BILL LOCKYER,
ATTORNEY GENERAL

By: Janill L. Richards (PC)
JANILL L. RICHARDS
Deputy Attorney General,
Public Rights Division, Enforcement
Section
California Attorney General's Office
1515 Clay Street, 20th Floor
P. O. Box 70550
Oakland, California 94612-0550

CALIFORNIA ENERGY COMMISSION

By: William M. Chamberlain (PC)
WILLIAM M. CHAMBERLAIN,
Chief Counsel
JONATHAN BLEES,
Assistant Chief Counsel
WILLIAM STAACK,
Staff Counsel
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street, MS 14
Sacramento, California 95814-5512

LISA MADIGAN,
ATTORNEY GENERAL
STATE OF ILLINOIS

MATTHEW DUNN, Chief, Environmental
Enforcement/
Asbestos Litigation Division

By: Ann Alexander (PC)
ANN ALEXANDER
Assistant Attorney General
and Environmental Counsel
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601

THOMAS J. MILLER
ATTORNEY GENERAL
STATE OF IOWA

TAM B. ORMISTON
DEPUTY ATTORNEY GENERAL

By: David R. Sheridan (AC)

DAVID R. SHERIDAN
Assistant Attorney General
Environmental Law Division
Lucas State Office Bldg.
321 E. 12th Street, Room 018
Des Moines, IA 50319
515-281-5351

G. STEVEN ROWE
ATTORNEY GENERAL
STATE OF MAINE

By: Gerald D. Reid (AC)

GERALD D. REID
Assistant Attorney General
Department of the Attorney General
State House Station #6
Augusta, ME 04333-0006
207-626-8545

THOMAS F. REILLY
ATTORNEY GENERAL
COMMONWEALTH OF
MASSACHUSETTS

By: I. Andrew Goldberg (AC)

I. ANDREW GOLDBERG (IG 9569)
FREDERICK D. AUGENSTERN
Assistant Attorney General
Environmental Protection Division
1 Ashburton Place, 18th Floor
Boston, Massachusetts 02108
617-727-2200 ext. 2427

KELLY A. AYOTTE
ATTORNEY GENERAL
STATE OF NEW HAMPSHIRE

By: Maureen D. Smith (PL)

MAUREEN D. SMITH
Senior Assistant Attorney General
Environmental Protection Bureau
Office of Attorney General
33 Capitol Street
Concord, NH 03301-6397
603-271–3679

PETER C. HARVEY
ATTORNEY GENERAL
STATE OF NEW JERSEY

By: Howard Geduldig (PL)

HOWARD GEDULDIG
Deputy Attorney General
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093
609-633-8109

PATRICIA A. MADRID
ATTORNEY GENERAL OF NEW MEXICO

By: Stuart M. Bluestone (PL)

STUART M. BLUESTONE
Chief Deputy Attorney General
NM Bar No. 6234
STEPHEN R. FARRIS
Assistant Attorney General
New Mexico Attorney General's Office
P. O. Drawer 1508
Santa Fe, NM 87504-1508
505-827-6000

ROY COOPER
ATTORNEY GENERAL
STATE OF NORTH CAROLINA

By: James C. Gulick (PL)

JAMES C. GULICK
Senior Deputy Attorney General
N.C. State Bar 6179
Environmental Division
North Carolina Department of Justice
P.O. Box 629
[114 West Edenton Street, Room 306A]
Raleigh, NC 27602
919-716-6940

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

SUSAN SHINKMAN
Chief Counsel

By: Robert A. Reiley (PL)

ROBERT A. REILEY
Assistant Counsel
RICHARD P. MATHER, SR.
Deputy Chief Counsel
The Rachel Carson State Office Building
P.O. Box 8464
Harrisburg, Pennsylvania 17105
717-787-0478

PATRICK C. LYNCH
ATTORNEY GENERAL
STATE OF RHODE ISLAND

By: Tricia K. Jedele (PL)

TRICIA K. JEDELE
Special Assistant Attorney General
and Environmental Advocate
Department of the Attorney General
150 South Main Street
Providence, Rhode Island 02903
401-274-4400 ext. 2400

WILLIAM H. SORRELL
ATTORNEY GENERAL
STATE OF VERMONT

By: S. Mark Sciarrotta (PL)
S. MARK SCIARROTTA (MS1771)
ERICK TITRUD
KEVIN O. LESKE
Assistant Attorneys General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609-1001
802-828-5518

PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL
STATE OF WISCONSIN

By: Thomas J. Dawson (PL)
THOMAS J. DAWSON
Assistant Attorney General
Director - Environmental Protection Unit
Wisconsin Department of Justice
17 West Main Street
Madison, Wisconsin 53707-7857
608-266-8987

MICHAEL A. CARDOZO
CORPORATION COUNSEL OF THE CITY OF
NEW YORK

By: Michael Burger (PL)
MICHAEL BURGER (MB5714)
CHRISTOPHER KING
Assistant Corporation Counsels
New York City Law Department
100 Church Street
New York, NY 10007

EXHIBIT A

CHART OF DOE APPLIANCE STANDARDS VIOLATIONS

Cause of Action	*Product Category*	*Initial statutory standard*	*First revision due*	*First revision completed*	*Second revision due*	*Second revision completed*
First	Room air conditioners	Eff. Date 1990 42 USC § 6295(c)(1)	Jan. 1992 42 USC § 6295(c)(2)(A)	Sept. 1997 (eff. Oct. 2000)	Five years after first revision completed (i.e. Sept. 2002) 42 USC § 6295(c)(2)(B)	**OVERDUE**
Second	Central air conditioners and heat pumps	Eff. Date 1992/1993 42 USC § 6295(d)(1)-(2)	Jan. 1994 42 USC § 6295(d)(3)(A)	Jan. 2001 (eff. Jan. 2006)	Jan. 2001 42 USC § 6295(d)(3)(B)	**OVERDUE**
Third	Water heaters	Eff. Date 1990 42 USC § 6295(e)(1)	Jan. 1992 42 USC § 6295(e)(4)(A)	Jan. 2001 (eff. Jan. 2004)	Jan. 2000 42 USC § 6295(e)(4)(B)	**OVERDUE**
Fourth	Pool heaters	Eff. Date 1990 42 USC § 6295(e)(2)	Jan. 1992 42 USC § 6295(e)(4)(A)	**OVERDUE**	Jan. 2000 42 USC § 6295(e)(4)(B)	**OVERDUE**
Fifth	Direct heating equipment	Eff. Date 1990 42 USC § 6295(e)(3)	Jan. 1992 42 USC § 6295(e)(4)(A)	**OVERDUE**	Jan. 2000 42 USC § 6295(e)(4)(B)	**OVERDUE**
Sixth	Furnaces and boilers	Eff. Date 1992 (for most products) 42 USC § 6295(f)(1)	Jan. 1994 42 USC § 6295(f)(3)(B)	**OVERDUE**	Jan. 2007 42 USC § 6295(f)(3)(C)	Not yet due
Seventh	Small furnaces	Not established	Initial standard due Jan. 1, 1989 42 USC § 6295(f)(1)(B)	Initial standard promulgated 1990	Jan. 1994 42 USC § 6295(f)(3)(B)	**OVERDUE**
Eighth	Mobile home furnaces	Eff. Date 1990 42 USC § 6295(f)(2)	Jan. 1992 42 USC § 6295(f)(3)(A)	**OVERDUE**	Jan. 1994 42 USC § 6295(f)(3)(B)	**OVERDUE**
Ninth	Dishwashers	Eff. Date 1988 42 USC § 6295(g)(1)	Jan. 1990 42 USC § 6295(g)(4)(A)	May 1991 (eff. May 1994)	Five years after first revision completed (i.e. May 1996) 42 USC § 6295(g)(4)(B)	**OVERDUE**
Tenth	Clothes dryers	Eff. Date 1988 42 USC § 6295(g)(3)	Jan. 1990 42 USC § 6295(g)(4)(A)	May 1991 (eff. May 1994)	Five years after first revision completed (i.e. May 1996) 42 USC § 6295(g)(4)(B)	**OVERDUE**

Cause of Action	*Product Category*	*Initial statutory standard*	*First revision due*	*First revision completed*	*Second revision due*	*Second revision completed*
Eleventh	Fluorescent lamp ballasts	Eff. Date 1990/1991 42 USC § 6295(g)(5)	Jan. 1992 42 USC § 6295(g)(7)(A)	Sept. 2000 (eff. 2005 for most products, 2010 for others)	Five years after first revision completed (i.e. Sept. 2005) 42 USC § 6295(g)(7)(B)	Will be missed since DOE has not begun work.
Twelfth	Ranges and ovens	Eff. Date 1990 42 USC § 6295(h)(1)	Jan. 1992 42 USC § 6295(h)(2)(A)	**OVERDUE FOR GAS COOKING PRODUCTS**	Jan. 1997 42 USC § 6295(h)(2)(B)	**OVERDUE**
Thirteenth	Fluorescent lamps	Eff. Date 1994/1995 42 USC § 6295(i)(1)	April 1997 42 USC § 6295(i)(3)	**OVERDUE**	April 2002 42 USC § 6295(i)(4)	**OVERDUE**
Fourteenth	Incandescent reflector lamps	Eff. Date 1995 42 USC § 6295(i)(1)	April 1997 42 USC § 6295(i)(3)	**OVERDUE**	April 2002 42 USC § 6295(i)(4)	**OVERDUE**
Fifteenth	Additional Fluorescent and Incandescent Lamps	Not established	Nov. 1997 (stds due 3.5 years after FTC labeling rule issued)[1] 42 USC § 6295(i)(5)	**OVERDUE**	April 2002 42 USC § 6295(i)(4)	**OVERDUE**
Sixteenth	Packaged terminal air-conditioners and heat pumps	Eff. Date 1994 42 USC § 6313(a)(3)	Triggered by Oct. 1999 revision to ASHRAE 90.1 42 USC § 6313(a)(6)(A)	**OVERDUE**	Triggered by next revision to ASHRAE 90.1	Not yet due
Seventeenth	Packaged boilers	Eff. Date 1994 42 USC § 6313(a)(4)	Triggered by Oct. 1999 revision to ASHRAE 90.1 42 USC § 6313(a)(6)(A)	**OVERDUE**	Triggered by next revision to ASHRAE 90.1	Not yet due
Eighteenth	Instantaneous water heaters	Eff. Date 1994 42 USC § 6313(a)(5)	Triggered by Oct. 1999 revision to ASHRAE 90.1 42 USC § 6313(a)(6)(A)	**OVERDUE**	Triggered by next revision to ASHRAE 90.1	Not yet due
Nineteenth	Motors (1 to 200 hp)	Eff. Date 1997/1999 42 USC § 6313(b)(1)	Oct. 1999/ Oct. 2001 42 USC § 6313(b)(3)(A)	**OVERDUE**	Oct. 2004/Oct. 2006	**OVERDUE**
Twentieth	High intensity discharge (HID) lamps	Not established	Testing procedure due April 1995 42 USC § 6317(a)(1)	**OVERDUE**	Standard due Oct. 1996 42 U.S.C. § 6317(a)(2)	**OVERDUE**

[1] The FTC issued its labeling rules on May 13, 1994 (58 Fed. Reg. 25,176).

Cause of Action	*Product Category*	*Initial statutory standard*	*First revision due*	*First revision completed*	*Second revision due*	*Second revision completed*
Twenty-First	Electric distribution transformers	Not established	Testing procedure due April 1995 42 USC § 6317(a)(1)	**OVERDUE**	Standard due Oct. 1996 42 U.S.C. § 6317(a)(2)	**OVERDUE**
Twenty-Second	Small motors	Not established	Testing procedure due April 1995 42 USC § 6317(b)(1)	**OVERDUE**	Standard due Oct. 1996 42 U.S.C. § 6317(b)(2)	**OVERDUE**

STATE OF NEW YORK
STATE OF CALIFORNIA
STATE OF CONNECTICUT
STATE OF ILLINOIS
STATE OF IOWA
STATE OF MAINE
COMMONWEALTH OF MASSACHUSETTS
STATE OF NEW HAMPSHIRE
STATE OF NEW JERSEY
STATE OF NEW MEXICO
STATE OF NORTH CAROLINA
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE OF RHODE ISLAND
STATE OF VERMONT
STATE OF WISCONSIN
NATURAL RESOURCES DEFENSE COUNCIL, INC.
MASSACHUSETTS UNION OF PUBLIC HOUSING TENANTS
TEXAS RATEPAYERS' ORGANIZATION TO SAVE ENERGY

July 1, 2005

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Hon. Samuel W. Bodman, Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Secretary Bodman:

We are gravely concerned about the Department of Energy's extended failure to meet statutory deadlines to promulgate revised energy efficiency standards for numerous consumer and commercial products. DOE, scientists, and industry all recognize that improved appliance efficiency standards are feasible and economical. DOE's continuing failure to meet statutory deadlines for new efficiency standards, which began over a decade ago and worsens each year, imposes higher electricity and natural gas bills on our states and consumers, burdens the nation's electricity grid, and thwarts Congress' goals of reducing energy consumption and associated costs. It also increases fossil fuel consumption, thereby increasing air pollution that harms public health and the environment and conflicting with the nation's clear interest in reducing its dependence on foreign sources of energy.

EXHIBIT B

Numerous stakeholders have raised these concerns with DOE over these delays, and have met with DOE officials several times over at least seven years, including with your predecessor Secretary Abraham, to try to get these energy efficiency rulemakings back on track. However, DOE continues to fall ever farther behind with each passing year. Indeed, although the Administration's National Energy Plan relies heavily on new efficiency standards to solve the nation's energy problems, DOE has not issued any appliance standard increasing efficiency since January 2001.

We cannot countenance further delays in DOE's establishment of appliance efficiency standards. We respectfully request that DOE agree to a binding schedule to come into prompt compliance with its statutory obligations for the issuance of efficiency standards. In the absence of such a commitment by DOE, we intend to commence litigation to compel DOE to comply with all applicable deadlines and requirements for the issuance of revised efficiency standards for consumer and commercial products.

Consumer and Environmental Importance of Efficiency Standards

Appliance and equipment efficiency standards have been one of the most successful policies used by the federal government and the states to save energy. These standards not only save energy but also reduce pollution, improve electric system reliability, and lower energy bills for consumers and businesses. The decreased pollution, in turn, enhances public health, lowers health care costs, and reduces acid rain, smog, global warming, and other harms -- all while cutting consumer energy bills.

Based on DOE figures, energy efficiency experts calculate that existing federal appliance standards will save U.S. consumers nearly $200 billion in lower energy costs by 2030 – about $2,000 per household.[1] As of 2000, federal appliance standards had already cut U.S. electricity use by about 2.5 percent and reduced carbon emissions from fossil fuel use by nearly 2 percent.[2] These electricity savings are projected to triple by 2020 as inefficient appliances are replaced by newer ones subject to standards already in effect. If DOE gets back on schedule for rulemakings, which is our goal, the resulting standards will add substantially to the current level of savings. These immense economic benefits do not even count the savings to consumers from lower energy prices that result from a better balance between energy supply and demand.

The American Council for Energy Efficient Economy (ACEEE) estimates that each year of delay in revising just three of the standards (those for furnaces, large commercial air

[1] S. Nadel, A. deLaski, J. Kliesch, A. Shipley, E. Osann, and C. Harak, *Powerful Priorities: Updating Energy Efficiency Standards for Residential Furnaces, Commercial Air Conditioners, and Distribution Transformers* (ACEEE, September 2004), 7.

[2] Id. at 71; see also H. Geller, T Kubo, and S. Nadel, *Overall Savings from Federal Appliance and Equipment Efficiency Standards* (ACEEE, February 2001).

conditioners, and dedicated transformers) increases annual energy use by 3.3 million megawatt hours of electricity and by 11 billion cubic feet of natural gas. Those savings alone are enough electricity to power about 330,000 typical U.S. homes and enough natural gas to heat about 170,000 homes.[3] Despite DOE's recognition that these are "high priority" rules, the Department is six to eleven years behind the statutory schedule.

DOE's Legal Deadlines and Obligations

Under the Energy Policy and Conservation Act (EPCA), 42 U.S.C. § 6291 et seq., as amended in 1978, 1987 (when the National Appliance Efficiency Conservation Act [NAECA] was adopted) and 1992, Congress established initial federal energy efficiency standards for almost two dozen consumer and commercial products. Congress also imposed upon DOE the nondiscretionary duty to propose and complete rulemakings by specified deadlines to consider revising these standards. For the most part, states have been preempted from establishing their own efficiency standards for products regulated by DOE, making timely and full implementation of the law by DOE all the more important.

When considering whether to revise an efficiency standard for consumer products, DOE must select that standard that is "designed to achieve the maximum improvement in energy efficiency ... which the Secretary determines is technologically feasible and economically justified." 42 U.S.C. § 6295(o)(2)(A). DOE lacks authority to weaken an energy efficiency standard once it has been established by Congress or by a subsequent rulemaking. 42 U.S.C. § 6295(o)(1). NRDC v. Abraham, 355 F.3d 179 (2d Cir. 2004). To date, DOE has failed to meet its statutory deadlines for revisions of efficiency standards for consumer products including the following: furnaces and boilers, dishwashers, clothes dryers, ranges and ovens, room air conditioners, central air conditioners and heat pumps, water heaters, pool heaters, direct heating equipment, general service incandescent light bulbs, fluorescent lamps, and incandescent reflector lamps.

DOE is also responsible for considering and granting petitions for further amended standards for covered products if evidence is presented that any such standard would result in significant conservation of energy and is technologically feasible and cost effective. DOE recently granted such a petition with respect to residential refrigerators, creating a legal obligation for DOE to amend the standard for this product in a timely fashion. DOE has not yet commenced a rulemaking for revising this standard.

For most types of commercial equipment covered by the statute, as with consumer products, DOE must periodically revise the initial efficiency standards set by statute. Again, DOE may not weaken efficiency standards for commercial products. 42 U.S.C. § 6313(a)(6)(B)(ii). For commercial heating and cooling products, Congress has established that

[3] S. Nadel, et al., 6-7.

DOE's standard revision requirements are triggered by revisions of the American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc. ("ASHRAE"), a non-profit organization that establishes industry efficiency standards by stakeholder consensus. 42 U.S.C. § 6313. The statute requires that DOE revise efficiency standards for specified products if and when ASHRAE amends any of its standards, and that DOE either adopt the ASHRAE standard or establish a more stringent standard if a more stringent standard "would result in significant additional conservation of energy and is technologically feasible and economically justified." 42 U.S.C. § 6313(a)(6)(A). If DOE establishes the amended ASHRAE standard, it must do so for each effective date specified in the ASHRAE standard, and the standard must go into effect on or after specified periods after the ASHRAE effective dates. Id. If DOE determines that a more stringent standard is required, such a standard must go into effect on or after four years after such a determination is published in the Federal Register. 42 U.S.C. § 6313(a)(6)(C).

ASHRAE issued its amended ASHRAE/IES Standard 90.1 in 1999 – a set of efficiency standards for various products – and thereby triggered DOE's responsibilities to either adopt these standards, or to issue more stringent ones, for specified commercial products. In the six years since ASHRAE issued its revised standards, DOE has failed to adopt either the ASHRAE revised standards or more stringent standards for the following commercial products: most commercial packaged air-conditioners and heat pumps (65-240 kBtu), commercial packaged air-conditioners and heat pumps (under 65 kBtu), packaged terminal air-conditioners and heat pumps, packaged boilers, and instantaneous water heaters.

DOE has also failed to meet its statutory deadlines for establishing initial efficiency standards for electric motors, 42 U.S.C. § 6313(b), as well as distribution transformers, 42 U.S.C. § 6317(a). Finally, DOE has failed to meet its statutory deadlines for issuing testing requirements and initial standards for high-intensity discharge lamps and small electric motors, 42 U.S.C. § 6317(a), (b).

In sum, despite explicit statutory deadlines and requirements for issuing efficiency standards for many consumer and commercial products, DOE has fallen increasingly far behind schedule over the course of several administrations. As set forth above and in the attached chart, DOE has failed to meet one or more statutory deadlines for revising or establishing standards for more than 20 categories of consumer and commercial products. In some cases, DOE is more than ten years behind schedule.

Conclusion

Regrettably, DOE's prolonged failure to issue revised appliance efficiency standards has harmed, and will continue to harm, consumers, the environment, and electric reliability in the United States. DOE's failure to comply with the explicit deadlines and mandates of federal law, including 42 U.S.C. §§ 6295, 6313, and 6317, subject it to suit under 42 U.S.C. § 6305(a) and § 6316, and/or the Administrative Procedure Act. Accordingly, to the extent required, we hereby provide notice of our intent to pursue such litigation. Other parties not signatories to this letter may also join this litigation with respect to the same claims covered by this letter.

As noted above, we wish to achieve full and timely implementation of Congress's mandates for enhanced efficiency standards and will resort to litigation only if necessary. Therefore, we are willing to work with DOE promptly to establish a binding schedule – set forth in a court-approved consent decree – under which DOE will issue these standards. If you wish to discuss this option with us, please call Peter Lehner, Chief of the Environmental Protection Bureau for the New York Attorney General's Office, at 212-416-8450.

Sincerely,

ELIOT SPITZER
ATTORNEY GENERAL
STATE OF NEW YORK

By: _____

PETER H. LEHNER
Assistant Attorney General
120 Broadway
New York, NY 10271
212-416-8450
D. SCOTT BASSINSON
Assistant Attorney General
The Capitol
Albany, New York 12224
518-473-5843

BILL LOCKYER
ATTORNEY GENERAL OF THE
STATE OF CALIFORNIA

By: Tom Greene (by dsb)
TOM GREENE
Chief Assistant Attorney General,
Public Rights Division
California Attorney General's Office
1300 "I" Street
P. O. Box 944255
Sacramento, California 94244-2550

RICHARD BLUMENTHAL
ATTORNEY GENERAL
STATE OF CONNECTICUT

By: Jose Suarez (by dsb)
JOSÉ SUAREZ
Assistant Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

LISA MADIGAN,
ATTORNEY GENERAL
STATE OF ILLINOIS

MATTHEW DUNN, Chief, Environmental
Enforcement/ Asbestos Litigation Division

By: Ann Alexander (by dsb)
ANN ALEXANDER
Assistant Attorney General
and Environmental Counsel
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601

THOMAS J. MILLER
ATTORNEY GENERAL
STATE OF IOWA

TAM B. ORMISTON
DEPUTY ATTORNEY GENERAL

By: David R. Sheridan (by dsh)
DAVID R. SHERIDAN
Assistant Attorney General
Environmental Law Division
Lucas State Office Bldg.
321 E. 12th Street, Room 018
Des Moines, IA 50319

G. STEVEN ROWE
ATTORNEY GENERAL
STATE OF MAINE

By: Gerald D. Reid (by dsh)
GERALD D. REID
Assistant Attorney General
Department of the Attorney General
State House Station #6
Augusta, ME 04333-0006

THOMAS F. REILLY
ATTORNEY GENERAL
COMMONWEALTH OF MASSACHUSETTS

By: Frederick D. Augenstern (by dsh)
FREDERICK D. AUGENSTERN
Assistant Attorney General
Environmental Protection Division
1 Ashburton Place, 18th Floor
Boston, Massachusetts 02108

KELLY A. AYOTTE
ATTORNEY GENERAL
STATE OF NEW HAMPSHIRE

By: Maureen D. Smith (by dsb)
MAUREEN D. SMITH
Senior Assistant Attorney General
Environmental Protection Bureau
Office of Attorney General
33 Capitol Street
Concord, NH 03301-6397

PETER C. HARVEY
ATTORNEY GENERAL
STATE OF NEW JERSEY

By: Howard Geduldig (by dsb)
HOWARD GEDULDIG
Deputy Attorney General
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093

PATRICIA A. MADRID
ATTORNEY GENERAL OF NEW MEXICO

By: Stuart M. Bluestone (by dsb)
STUART M. BLUESTONE
Chief Deputy Attorney General
New Mexico Attorney General's Office
P. O. Drawer 1508
Santa Fe, NM 87504-1508

ROY COOPER
ATTORNEY GENERAL
STATE OF NORTH CAROLINA

By: James C. Gulick (by dth)

JAMES C. GULICK
Senior Deputy Attorney General
Environmental Division
North Carolina Department of Justice
9001 Mail Service Center
[114 West Edenton Street, Room 306A]
Raleigh, NC 27699-9001

FOR THE COMMONWEALTH OF
PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION
SUSAN SHINKMAN
CHIEF COUNSEL

By: Robert A. Reiley (by dth)

ROBERT A. REILEY, Assistant Counsel
The Rachel Carson State Office Building
P.O. Box 8464
Harrisburg, Pennsylvania 17105

PATRICK C. LYNCH
ATTORNEY GENERAL
STATE OF RHODE ISLAND

By: Tricia K. Jedele (by dth)

TRICIA K. JEDELE
Special Assistant Attorney General
Department of the Attorney General
150 South Main Street
Providence, Rhode Island 02903

WILLIAM H. SORRELL
ATTORNEY GENERAL
STATE OF VERMONT

By: Erick Titrud (by dsh)

ERICK TITRUD
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609-1001

PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL
STATE OF WISCONSIN

By: Thomas J. Dawson (by dsh)

THOMAS J. DAWSON
Assistant Attorney General
Director - Environmental Protection Unit
Wisconsin Department of Justice
17 West Main Street
Madison, Wisconsin 53707-7857

MASSACHUSETTS UNION OF PUBLIC
HOUSING TENANTS, TEXAS RATEPAYERS'
ORGANIZATION TO SAVE ENERGY

By: Charles Harak, Esq. (by dsh)

CHARLES HARAK, ESQ.
NATIONAL CONSUMER LAW CENTER
77 Summer St., 10th Fl.
Boston, MA 02110-1006

NATURAL RESOURCES DEFENSE
COUNCIL INC.

By: Katherine Kennedy (by dsl)

KATHERINE KENNEDY
NATURAL RESOURCES DEFENSE COUNCIL
40 West 20th Street
New York, New York 10011

cc: David Garman
Under Secretary of Energy for
Energy, Science and Environment
Energy Efficiency and Renewable Energy
Mail Stop EE-1
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Federal Trade Commission
Attention: William Blumenthal, General Counsel
Office of the General Counsel
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

CHART OF DOE APPLIANCE STANDARDS VIOLATIONS

Product Category	*Initial statutory standard*	*First revision (or initial standard) due*	*First revision completed*	*Second revision due*	*Second revision completed*
Room air conditioners	Eff. Date 1990 42 USC § 6295(c)(1)	Jan. 1992 42 USC § 6295(c)(2)(A)	Sept. 1997 (eff. Oct. 2000)	Five years after first revision completed (i.e. Sept. 2002) 42 USC § 6295(c)(2)(B)	OVERDUE
Central air conditioners and heat pumps	Eff. Date 1992/1993 42 USC § 6295(d)(1)-(2)	Jan. 1994 42 USC § 6295(d)(3)(A)	Jan. 2001 (eff. Jan. 2006)	Jan. 2001 42 USC § 6295(d)(3)(B)	OVERDUE
Water heaters	Eff. Date 1990 42 USC § 6295(e)(1)	Jan. 1992 42 USC § 6295(e)(4)(A)	Jan. 2001 (eff. Jan. 2004)	Jan. 2000 42 USC § 6295(e)(4)(B)	OVERDUE
Pool heaters	Eff. Date 1990 42 USC § 6295(e)(2)	Jan. 1992 42 USC § 6295(e)(4)(A)	OVERDUE	Jan. 2000 42 USC § 6295(e)(4)(B)	OVERDUE
Direct heating equipment	Eff. Date 1990 42 USC § 6295(e)(3)	Jan. 1992 42 USC § 6295(e)(4)(A)	OVERDUE	Jan. 2000 42 USC § 6295(e)(4)(B)	OVERDUE
Furnaces and boilers	Eff. Date 1992 (for most products) 42 USC § 6295(f)(1)	Jan. 1994 42 USC § 6295(f)(3)(B)	OVERDUE	Jan. 2007 42 USC § 6295(f)(3)(C)	Not yet due
Small furnaces	Not established	Jan. 1989 42 USC § 6295(f)(1)(B)	1990	Jan. 1994 42 USC § 6295(f)(3)(B)	OVERDUE
Mobile home furnaces	Eff. Date 1990 42 USC § 6295(f)(2)	Jan. 1992 42 USC § 6295(f)(3)(A)	OVERDUE	Jan. 1994 42 USC § 6295(f)(3)(B)	OVERDUE
Dishwashers	Eff. Date 1988 42 USC § 6295(g)(1)	Jan. 1990 42 USC § 6295(g)(4)(A)	May 1991 (eff. May 1994)	Five years after first revision completed (i.e. May 1996) 42 USC § 6295(g)(4)(B)	OVERDUE
Clothes dryers	Eff. Date 1988 42 USC § 6295(g)(3)	Jan. 1990 42 USC § 6295(g)(4)(A)	May 1991 (eff. May 1994)	Five years after first revision completed (i.e. May 1996) 42 USC § 6295(g)(4)(B)	OVERDUE

Product Category	*Initial statutory standard*	*First revision (or initial standard) due*	*First revision completed*	*Second revision due*	*Second revision completed*
General service incandescent light bulbs	Not established	Nov. 1997 (stds due 3.5 years after FTC labeling rule issued)[1] 42 USC § 6295(i)(5)	OVERDUE	April 2002 42 USC § 6295(i)(4)	OVERDUE
Ranges and ovens	Eff. Date 1990 42 USC § 6295(h)(1)	Jan. 1992 42 USC § 6295(h)(2)(A)	OVERDUE FOR GAS COOKING PRODUCTS	Jan. 1997 42 USC § 6295(h)(2)(B)	OVERDUE
Fluorescent lamp ballasts	Eff. Date 1990/1991 42 USC § 6295(g)(5)	Jan. 1992 42 USC § 6295(g)(7)(A)	Sept. 2000 (eff. 2005 for most products, 2010 for others)	Five years after first revision completed (i.e. Sept. 2005) 42 USC § 6295(g)(7)(B)	Will be missed since DOE has not begun work.
Fluorescent lamps	Eff. Date 1994/1995 42 USC § 6295(i)(1)	April 1997 42 USC § 6295(i)(3)	OVERDUE	April 2002 42 USC § 6295(i)(4)	OVERDUE
Incandescent reflector lamps	Eff. Date 1995 42 USC § 6295(i)(1)	April 1997 42 USC § 6295(i)(3)	OVERDUE	April 2002 42 USC § 6295(i)(4)	OVERDUE
Motors (1 to 200 hp)	Eff. Date 1997/1999 42 USC § 6313(b)(1)	Oct. 1999/ Oct. 2001 42 USC § 6313(b)(3)(A)	OVERDUE	Two years after first revision takes effect 42 USC § 6313(b)(3)(B)	Not yet due
High intensity discharge (HID) lamps	Not established	Oct. 1996 42 USC § 6317(a)(1)-(2)	OVERDUE	Not required	Not applicable
Electric distribution transformers	Not established	Oct. 1996 42 USC § 6317(a)(1)-(2)	OVERDUE	Not required	Not applicable
Small motors	Not established	Oct. 1996 42 USC § 6317(b)(1)-(2)	OVERDUE	Not required	Not applicable
Commercial packaged air-conditioners and heat pumps (65 – 240 kBtu)	Eff. Date 1994 42 USC § 6313(a)(1)-(2)	Triggered by Oct. 1999 revision to ASHRAE 90.1 42 USC § 6313(a)(6)(A)	OVERDUE	Triggered by next revision to ASHRAE 90.1	Not yet due

[1] The FTC issued its labeling rules on May 13, 1994 (58 Fed. Reg. 25,176), just one month later than required by law.

Product Category	*Initial statutory standard*	*First revision (or initial standard) due*	*First revision completed*	*Second revision due*	*Second revision completed*
Commercial packaged air-conditioners and heat pumps (under 65 kBtu)	Eff. Date 1994 42 USC § 6313(a)(1)	Triggered by Oct. 1999 revision to ASHRAE 90.1. 42 USC § 6313(a)(6)(A)	OVERDUE	Triggered by next revision to ASHRAE 90.1	Not yet due
Packaged terminal air-conditioners and heat pumps	Eff. Date 1994 42 USC § 6313(a)(3)	Triggered by Oct. 1999 revision to ASHRAE 90.1 42 USC § 6313(a)(6)(A)	OVERDUE	Triggered by next revision to ASHRAE 90.1	Not yet due
Warm air furnaces	Eff. Date 1994 42 USC § 6313(a)(4)	Triggered by Oct. 1999 revision to ASHRAE 90.1 42 USC § 6313(a)(6)(A)	Jan. 2001 (eff. Oct. 2003)	Triggered by next revision to ASHRAE 90.1	Not yet due
Packaged boilers	Eff. Date 1994 42 USC § 6313(a)(4)	Triggered by Oct. 1999 revision to ASHRAE 90.1 42 USC § 6313(a)(6)(A)	OVERDUE	Triggered by next revision to ASHRAE 90.1	Not yet due
Instantaneous water heaters	Eff. Date 1994 42 USC § 6313(a)(5)	Triggered by Oct. 1999 revision to ASHRAE 90.1 42 USC § 6313(a)(6)(A)	OVERDUE	Triggered by next revision to ASHRAE 90.1	Not yet due