

1 XAVIER BECERRA
 Attorney General of California
 2 SUSAN S. FIERING
 Supervising Deputy Attorney General
 3 JAMIE JEFFERSON (SBN: 197142)
 SOMERSET PERRY (SBN: 293316)
 4 Deputy Attorneys General
 1515 Clay Street, 20th Floor
 5 P.O. Box 70550
 Oakland, CA 94612-0550
 6 Telephone: (510) 879-0852
 Fax: (510) 622-2270
 7 E-mail: Jamie.Jefferson@doj.ca.gov
 Attorneys for the People of the State of California, ex
 8 rel. Attorney General Xavier Becerra

9 *[Additional counsel for plaintiffs listed on signature*
 10 *page]*

11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 **THE PEOPLE OF THE STATE OF**
 15 **CALIFORNIA, BY AND THROUGH**
 16 **ATTORNEY GENERAL XAVIER**
 17 **BECCERRA, STATE OF NEW YORK,**
 18 **STATE OF CONNECTICUT, STATE OF**
 19 **ILLINOIS, STATE OF MAINE, STATE**
 20 **OF MARYLAND, COMMONWEALTH**
 21 **OF MASSACHUSETTS, STATE OF**
 22 **OREGON, COMMONWEALTH OF**
 23 **PENNSYLVANIA, STATE OF**
 24 **VERMONT, STATE OF WASHINGTON,**
 25 **and CITY OF NEW YORK,**

26 Plaintiffs,

27 v.

28 **JAMES R. PERRY, AS SECRETARY OF**
UNITED STATES DEPARTMENT OF
ENERGY, and THE UNITED STATES
DEPARTMENT OF ENERGY,

Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

(Administrative Procedure Act, 5 U.S.C. § 551 et seq.; Federal Register Act, 44 U.S.C. § 1503 et seq.; Energy Policy and Conservation Act, 42 U.S.C. § 6291 et seq.)

INTRODUCTION

1
2 1. The People of the State of California, the States of New York, Washington, Maine,
3 Connecticut, Illinois, Vermont, Oregon, Maryland, the Commonwealths of Massachusetts and
4 Pennsylvania, and the City of New York (hereinafter “Plaintiffs”), representing over 114 million
5 people in the United States, challenge the failure of the United States Department of Energy
6 (“DOE”) to publish finalized energy-efficiency standards (“New Standards”) as final rules in the
7 Federal Register for five categories of appliances and industrial equipment – portable air
8 conditioners, uninterruptible power supplies, air compressors, walk-in coolers and freezers, and
9 commercial packaged boilers – in violation of its non-discretionary duty under the Energy Policy
10 and Conservation Act (“EPCA”), 42 U.S.C. §§ 6291 et seq., its implementing regulations, the
11 Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551 et seq., and the Federal Register Act
12 (“FRA”), 44 U.S.C. §§ 1503 et seq.

13 2. EPCA prescribes energy efficiency standards for a variety of consumer, commercial
14 and industrial equipment. The statute establishes initial minimum energy efficiency standards for
15 many products, and directs DOE to meet specific timetables for periodic review and revision of
16 those standards to ensure that they are set at the maximum efficiency level that is technologically
17 feasible and economically justified.

18 3. Energy efficiency standards are highly technical and complex. To avoid errors in
19 those standards, DOE has established an error correction process to alert the agency to
20 “typographical,” “calculation,” or “numbering” errors – before a rule is published in the Federal
21 Register, triggering EPCA’s anti-backsliding provisions. 10 C.F.R. § 430.5 (“Error Correction
22 Rule”). DOE is relying on the Error Correction Rule to avoid publishing the New Standards in
23 the Federal Register, preventing them from taking effect.

24 4. After years of substantive review and analysis by DOE and interested stakeholders, in
25 December 2016, DOE’s Acting Assistant Secretary for Energy Efficiency signed and dated the
26 New Standards¹ as final rules and posted them for pre-publication error correction review in

27 ¹ Energy Conservation Standards for Portable Air Conditioners, Docket No. EERE-2013-
28 BT-STD-0033 (posted Dec. 28, 2016); Energy Conservation Standards for Uninterruptible Power
(continued...)

1 accordance with 10 C.F.R § 430.5. Even though the 45-day period for submission of correction
2 requests under the Error Correction Rule closed, and the 30-day period for DOE's submission of
3 the rules for publication to the Office of Federal Register ("OFR") passed, DOE has not
4 submitted the New Standards to the OFR for publication. DOE's failure to do so is a violation of
5 EPCA, the APA, and the FRA.

6 5. For three of the product categories (portable air conditioners, uninterruptible power
7 supplies, and air compressors), DOE currently has no federal energy efficiency standard in effect.
8 In the case of walk-in coolers and freezers, EPCA requires DOE to have amended the existing
9 standard by 2012. For uninterruptible power supplies, EPCA requires DOE to have enacted a new
10 standard by 2011. These standards are overdue, making the indefinite further delay of the New
11 Standards all the more egregious.

12 6. DOE's failure to perform its non-discretionary duty to publish the New Standards
13 directly harms Plaintiffs' interests by adversely impacting the environment, consumers,
14 economies, public health, natural resources, energy efficiency strategies, and climate change
15 reduction goals of each Plaintiff. It is estimated that the New Standards for these five categories
16 of products could conserve an additional 5.8 quads² of energy by 2035, reducing carbon dioxide
17 emissions by over 26 million metric tons per year, the equivalent of taking nearly 5.5 million cars
18 off the road each year, and saving \$24 billion over 30 years.

19 7. Accordingly, Plaintiffs seek a declaration pursuant to 28 U.S.C. § 2201(a) that DOE
20 has failed to submit the New Standards for publication within the required timeframe (30 days
21 after the 45-day correction request period) in violation of EPCA, 42 U.S.C. § 6313; 10 C.F.R §
22 430.5(f), the APA, 5 U.S.C. § 552(a)(1)(D), and the FRA, 44 U.S.C. § 1503; and that DOE has

23 (...continued)

24 Supplies, Docket No. EERE-2016-BT-STD-0022 (posted Dec. 28, 2016); Energy Conservation
25 Standards for Air Compressors, Docket No. EERE-2013-BT-STD-0040 (posted Dec. 5, 2016);
26 Energy Conservation Standards for Walk-in Cooler and Freezer Refrigeration Systems, Docket
27 No. EERE-2015-BT-STD-0016 (posted Dec. 28, 2016); Energy Conservation Standards for
28 Commercial Packaged Boilers, Docket No. EERE-2013-BT-STD-0030 (posted Dec. 28, 2016).

² A quad is defined as one quadrillion Btu (1,000,000,000,000,000 Btu) by the DOE.
Glossary of Energy Related Terms, Office of Energy Efficiency and Renewable Energy (accessed
June 7, 2017 9:15 AM), <https://energy.gov/eere/energybasics/articles/glossary-energy-related-terms#Q>.

1 failed to meet its statutory obligation to revise standards for walk-in coolers and freezers and to
2 enact standards for uninterruptible power supplies by applicable statutory deadlines in violation
3 of EPCA, 42 U.S.C. § 6305(a)(3). Plaintiffs also seek a permanent injunction pursuant to 42
4 U.S.C. §§ 6305(a) and 6316(a)-(b) requiring DOE to immediately publish the New Standards as
5 final rules.

6 **PARTIES**

7 **A. Plaintiffs**

8 8. Plaintiff the People of the State of California bring this action by and through
9 Attorney General Xavier Becerra. The Attorney General is the chief law enforcement officer of
10 the State and has the authority to file civil actions in order to protect public rights and interests,
11 including actions to protect the natural resources of the State. *See* Cal. Const., art. V, § 13; Cal.
12 Gov. Code §§ 12600-12612. This challenge is brought pursuant to the Attorney General's
13 independent constitutional, statutory, and common law authority to represent the public interest.

14 9. Plaintiff State of New York is a sovereign entity and brings this action by and through
15 Eric T. Schneiderman, Attorney General, to protect its own sovereign and proprietary rights, and
16 as *parens patriae* on behalf of its affected citizens and residents.

17 10. Plaintiff State of Washington is a sovereign entity and brings this action to protect its
18 own sovereign and proprietary rights, and as *parens patriae* on behalf of its affected citizens and
19 residents. The Attorney General is the chief legal adviser to the State of Washington. The
20 Attorney General's powers and duties include acting in federal court on matters of public
21 concern. This challenge is brought pursuant to the Attorney General's independent constitutional,
22 statutory, and common law authority to bring suit and obtain relief on behalf of the State of
23 Washington.

24 11. Plaintiff the People of the State of Maine bring this action by and through Attorney
25 General Janet Mills. The Attorney General is a constitutional officer with statutory authority to
26 file civil actions in which the State is a party, and common law authority to institute such actions
27 as she deems necessary for the protection of public rights. Constitution of Maine, Art. IX, § 11; 5
28

1 M.R.S. §§ 191; 192 (2015); *Superintendent of Ins. v. Attorney General*, 558 A.2d 1197, 1199
2 (Me. 1989).

3 12. Plaintiff the State of Connecticut brings this action by and through its Attorney
4 General George Jepsen on behalf of its citizens and natural resources.

5 13. Plaintiff the People of the State of Illinois bring this action by and through Attorney
6 General Lisa Madigan. The Attorney General is the chief legal officer of the State of Illinois, Ill.
7 Const., Art. V, § 15, and “has the prerogative of conducting legal affairs for the State.” *Envtl.*
8 *Prot. Agency v. Pollution Control Bd.*, 372 N.E.2d 50, 51 (Ill. 1977). She has common law
9 authority to represent the People of the State of Illinois and “an obligation to represent the
10 interests of the People so as to ensure a healthful environment for all the citizens of the
11 State.” *People v. NL Industries*, 604 N.E. 2d 349, 358 (Ill. 1992).

12 14. Plaintiff the State of Vermont brings this action by and through Vermont Attorney
13 General Thomas J. Donovan, Jr. The Attorney General is the State of Vermont’s chief legal
14 counsel and is vested with broad authority and powers to protect the State’s citizens. Vt. Stat.
15 Ann. tit. 3, § 152 (Attorney General “may represent the state in all civil and criminal matters as at
16 common law and as allowed by statute”). The Attorney General appears for Vermont in all cases
17 in which Vermont is a party, or when the interests of Vermont so require; and has “general
18 supervision of matters and actions” for Vermont. *Id.*, §§ 157, 159. This action is brought
19 pursuant to the Attorney General’s authority to protect the interests of Vermont.

20 15. Plaintiff the State of Oregon is a sovereign entity and brings this action to protect its
21 sovereign and proprietary rights. The Attorney General is the chief legal officer of the State of
22 Oregon. The Attorney General's duties include acting in federal court when requested by any state
23 officer when, in the discretion of the Attorney General, the action may be necessary or advisable
24 to protect the interests of the state. ORS 180.160(1)(d). The Oregon Department of Energy,
25 established as a state agency by the Oregon Legislature pursuant to ORS Chapter 469, has
26 requested that the Attorney General bring this suit to protect Oregon’s sovereign and proprietary
27 interest in energy conservation.

28

1 16. Plaintiff the State of Maryland, is a sovereign state represented by and through
2 Maryland Attorney General Brian Frosh. The Attorney General is the chief law enforcement
3 officer of Maryland and has the authority to file civil actions on behalf of Maryland and the
4 people of Maryland in the federal courts on matters of public concern. These matters include the
5 federal government's action or inaction that threatens the public interest and welfare of the
6 residents of the State, including acts that harm the environment and natural resources of
7 Maryland. 2017 Md. Laws J.R. 1; Md. Const., Art. V, § 3.

8 17. Plaintiff the Commonwealth of Massachusetts brings this action by and through
9 Massachusetts Attorney General Maura Healey. Attorney General Healey is the chief legal
10 officer of the Commonwealth and is authorized to bring this action on behalf of the
11 Commonwealth, on behalf of ratepayers in the Commonwealth, and, as *parens patriae*, on behalf
12 of the residents of the Commonwealth, pursuant to her statutory authority under Mass. Gen. L. ch.
13 12, §§ 11D and 11E.

14 18. Plaintiff Commonwealth of Pennsylvania brings this action by and through Attorney
15 General Josh Shapiro, "the chief law officer of the Commonwealth," to protect its own sovereign
16 and proprietary rights and, separately, as *parens patriae* on behalf of its affected citizens and
17 residents. Pa. Const., Art. IV, sec. 4.1. Attorney General Shapiro is authorized to bring this action
18 on behalf of the Commonwealth pursuant to his statutory authority under 71 P.S. § 732-204.

19 19. Plaintiff City of New York brings this action by and through its counsel, Zachary W.
20 Carter, Corporation Counsel of the City of New York. The City of New York is a municipal
21 corporation organized under the laws of the State of New York. The Corporation Counsel has the
22 right to bring actions to maintain, defend and establish the rights, interest or demands of the City
23 or the People thereof. New York City Charter § 394(c).

24 20. Plaintiffs' interests. Plaintiffs collectively have significant proprietary and sovereign
25 interests in increased energy efficiency and reduced energy use within their jurisdictions, in
26 protecting their populations and environments, and in enforcing their laws designed to foster
27 energy efficiency and reduce climate change related impacts. Those interests and efforts are
28 undermined by DOE's failure to publish the New Standards in the Federal Register as final rules.

1 The New Standards save energy, lower energy bills, reduce air pollution emissions and related
2 public health impacts, produce a more reliable energy grid, reduce the likelihood of electricity
3 shortages and blackouts, and alleviate the need to build new power plants. Each of the Plaintiffs
4 relies on energy efficiency regulations as a key part of its strategy to reduce climate change-
5 related impacts and achieve its greenhouse gas (“GHG”) reduction goals. DOE’s failure to
6 publish the efficiency standards for air compressors, commercial packaged boilers, walk-in cooler
7 and freezer refrigeration systems, portable air conditioners, and uninterruptible power supplies
8 harms Plaintiffs by delaying the energy efficiency benefits the New Standards achieve. In the
9 absence of a declaratory judgment and permanent injunction requiring DOE to publish the New
10 Standards as final in the Federal Register, this delay will continue to cause the aforementioned
11 harms to Plaintiffs and is likely to continue indefinitely.

12 21. California. California seeks to protect its sovereign and proprietary interests in
13 achieving the State’s objectives to reduce GHG emissions and increase energy efficiency.
14 California law establishes targets to reduce the State’s GHG emissions to 1990 levels by 2020 and
15 to 40 percent below 1990 levels by 2030. *See* California Global Warming Solutions Act of 2006
16 (Assembly Bill 32, Chapter 488, September 27, 2006 and Senate Bill 32, Chapter 249, September
17 8, 2016); Cal. Health & Safety Code § 38500-38599. To achieve the 2030 target, the California
18 legislature has directed the State Energy Resources Conservation and Development Commission
19 (“California Energy Commission” or “CEC”) to double energy efficiency savings in electricity
20 and natural gas final end uses by 2030. *See* Clean Energy and Pollution Reduction Act of 2015
21 (Senate Bill 350, Chapter 547, October 7, 2015), Cal. Pub. Res. Code § 25310; *see also* Cal. Pub.
22 Res. Code § 25402 (mandating that the CEC reduce the wasteful, uneconomic, inefficient, or
23 unnecessary consumption of energy through the adoption of building and appliance energy
24 efficiency standards). In addition to the State’s climate-related laws that prioritize energy
25 efficiency for reducing GHGs emissions, energy efficiency is a key component to helping
26 California manage an aging energy infrastructure and meeting the State’s growing electricity
27 needs. *See* California Energy Commission, 2016 Integrated Energy Policy Report Update, at p. 8,
28 <http://docketpublic.energy.ca.gov/PublicDocuments/16-IEPR->

1 01/TN216281_20170228T131538_Final_2016_Integrated_Energy_Policy_Report_Update_Com
2 plete_Repo.pdf; *see also* California Energy Commission, 2007 Integrated Energy Policy Report,
3 at p. 3, [http://www.energy.ca.gov/2007publications/CEC-100-2007-008/CEC-100-2007-008-
5 CMF.PDF](http://www.energy.ca.gov/2007publications/CEC-100-2007-008/CEC-100-2007-008-
4 CMF.PDF) (describing California’s “loading order,” which mandates using energy efficiency and
6 demand response before new power plants to meet the State’s growing energy demand). Energy
7 efficiency standards have helped kept California’s per capita electricity consumption relatively
8 flat when compared to states without efficiency standards. DOE’s failure to finalize the New
Standards stalls California’s efforts to reach its energy efficiency and GHG reduction goals.

9 22. New York. Among the interests that New York seeks to protect are its sovereign and
10 proprietary interests in maintaining a clean, resilient, and affordable energy system for itself and
11 its citizens. N.Y. Energy Law § 3-101. New York’s 2015 State Energy Plan identifies several key
12 clean energy goals for the year 2030 which include a 40 percent reduction in GHG emissions
13 from 1990 levels, increasing the percentage of total energy produced from renewable energy
14 sources to 50 percent, and a 600 trillion British thermal unit increase in state-wide energy
15 efficiency gains. N.Y. Pub. Serv. Comm’n, Case 15-E-0302, Order (August 1, 2016). In order to
16 achieve these goals, New York has adopted a Clean Energy Standard outlining regulatory
17 programs and policies to facilitate the transition to more sustainable energy sources and
18 aggressively pursue energy efficiency. *Ibid*. The Clean Energy Standard builds upon New
19 York’s earlier efforts to boost efficiency, such as the state’s implementation of its Energy
20 Efficiency Portfolio Standard which sought to reduce total electricity consumption in the state 15
21 percent by 2015. N.Y. Pub. Serv. Comm’n, Case 07-M-0548, Energy Efficiency Portfolio
22 Standard, Order (June 23, 2008). DOE’s failure to timely promulgate energy efficiency standards
23 is inconsistent with and undermines these efforts by New York State.

24 23. Maine. Maine seeks to protect its sovereign and proprietary interest in achieving a
25 clean and affordable energy system for itself and its citizens. The Maine Legislature has declared
26 that air pollution and acid deposition present a severe threat to Maine’s natural resources, public
27 health, and economy. (38 M.R.S. § 581 (2015); 38 § M.R.S. 603-B (2015)). Reducing electrical
28 consumption nationally will assist in reducing air pollution from utilities to the south and west

1 whose emissions significantly impact Maine. On top of this threat, Maine has above average
2 energy costs and an industrial sector that consumes more than 30 percent of the State's electricity.
3 Governor's Energy Office, Maine Comprehensive Energy Plan Update ("Maine Energy Plan"),
4 18-19 (Feb. 2016). The high cost of energy is viewed as the single greatest challenge to growing
5 Maine's economy. *Id.* at 19. In an effort to lower energy costs and reduce pollution, Maine's
6 clean energy goals include reducing GHG emissions to 10 percent below 1990 levels by 2020 (38
7 M.R.S. § 576 (2)(2015), investing in energy efficiency programs, (Maine Energy Plan, at 17-21),
8 reducing energy consumption in state owned facilities, (5 M.R.S. § 1764-A (2015), and
9 committing to renewable energy (Maine Energy Plan, at 45). DOE's failure to timely promulgate
10 energy efficiency standards has negative economic and environmental consequences for Maine
11 and undermines Maine's energy policies that rely on energy efficiency gains.

12 24. Connecticut. The State of Connecticut has undertaken extensive efforts to increase
13 energy efficiency and reduce energy consumption, efforts which are undermined by DOE's failure
14 to timely promulgate these energy efficiency standards. Connecticut has enacted legislation
15 supporting the conservation of energy and continues to act to protect its sovereign interests and
16 the goals outlined in its statutorily required state comprehensive energy plan that specifically
17 targets energy efficiency and demand reduction. Connecticut General Statutes Sections 16a-1,
18 16a-3d, 16a-35k. In addition, Connecticut has extensive programs targeting residential and
19 commercial energy efficiency and spends up to \$246 million annually to reduce energy
20 consumption. Connecticut General Statutes Sections 16a-46e through 46j.

21 25. Illinois. Among the interests that Illinois seeks to protect is its public policy "to
22 provide and maintain a healthful environment for the benefit of this and future generations." Ill.
23 Const., Art. XI, § 1. The Illinois General Assembly has found that the health, welfare, and
24 prosperity of all Illinois citizens requires adequate, reliable, affordable, efficient, and
25 environmentally sustainable electric service. 20 ILCS 3855/1-5. In 2016 Illinois enacted
26 legislation to update and expand its existing renewable power and energy efficiency
27 standards. *See* Public Act 99-0906. Illinois has established a renewable energy goal of 25
28 percent by 2025 and an energy efficiency goal of 21.5 percent cumulative persisting annual

1 savings by 2030 in the state's largest utility area. 20 ILCS 3855/1-75(c)(1)(B), 220 ILCS 5/8-
2 103B(b-5). DOE's failure to timely promulgate energy efficiency standards is inconsistent with
3 and undermines Illinois' pursuit of a clean and efficient electric sector.

4 26. Vermont. Among the interests that Vermont seeks to protect are its sovereign and
5 proprietary interests in meeting renewable energy goals and maintaining an energy policy that
6 reduces global climate change, develops viable markets for energy efficiency products, and
7 assures "efficient use of energy resources" to the "greatest extent practicable." Vt. Stat. Ann. tit.
8 30, §§ 202a, 8001(a); *see also id.* §§ 209(d), 218c (providing goals and requirements for energy
9 efficiency and conservation programs, including development of "comprehensive energy
10 efficiency programs"). Specifically, Vermont's Department of Public Service (DPS) represents
11 the public interest in energy and telecommunications matters. *See generally id.*, § 2. Toward that
12 end, the DPS is charged with preparing a "State Comprehensive Energy Plan" to implement the
13 State's energy policy. *Id.*, § 202b. Energy efficiency is a key component of that plan, including
14 extensive recommendations specific to efficiency programs. 2016 State of Vermont
15 Comprehensive Energy Plan, § 10.2 Electric Energy Efficiency, <https://goo.gl/Uh48nR>; *see also*
16 Vermont Residential Building Energy Code Handbook 9-20 (2015), <https://goo.gl/QkznQ8>
17 (providing basic requirements for residential construction, including numerous efficiency
18 measures). State of Vermont DPS, Efficiency (2017), <https://goo.gl/7KgQpq>. DPS also oversees
19 two energy efficiency utilities that deliver efficiency services to consumers throughout Vermont.
20 DOE's failure to timely publish energy efficiency standards is inconsistent with Vermont's goals
21 and makes it more difficult to achieve energy efficiency to the greatest extent practicable.

22 27. Oregon. The State of Oregon has numerous sovereign and proprietary programs and
23 goals designed to increase energy efficiency. The promotion of energy conservation is a part of
24 the Oregon Department of Energy's core mission and authority. ORS 469.010(1)(b). Oregon has
25 adopted its own energy efficiency standards for various categories of products. ORS 469.229 -
26 .261. Oregon also requires its large investor-owned electric utilities to identify and capture all
27 cost effective electric efficiency improvements in their service territories. ORS 757.600 - .689.
28 With respect to publicly-owned buildings, Oregon has set a goal of 20 percent energy use

1 reduction in all state-owned buildings by 2023, and has established a funding mechanism to
2 increase energy efficiency in schools. ORS 276.900 - .915; ORS 757.600 - .689. In addition,
3 Oregon is a part of the Northwest Power and Conservation Council. In its Seventh Power Plan,
4 the Northwest Power and Conservation Council calls for the region to pursue cost-effective
5 energy efficiency to meet all electricity load growth through 2030. In addition to meeting the
6 region's future electricity needs, the Council considers efficiency to be the single largest source of
7 new peaking capacity. Northwest Power and Conservation Council Seventh Northwest Power
8 Plan, Executive Summary (available at: <https://www.nwcouncil.org/energy/powerplan/7/plan>).
9 The federal appliance efficiency standards are essential to meeting the targets of the Seventh
10 Power Plan. *Id.* at Appendix F, p. F-3. The federal standards will also help Oregon meet its
11 greenhouse gas emission reduction goals. 2007 Or. Laws Ch. 907. As such, Oregon is interested
12 in ensuring that the EPCA standards at issue are duly published in accordance with DOE's non-
13 discretionary duty.

14 28. Maryland. The State of Maryland has a compelling interest in bringing this action as
15 a means of furthering its energy efficiency and energy reduction, and environmental protection
16 goals. Specifically, Maryland has devoted significant time and resources to increase energy
17 efficiency and reduce energy use. Under the EmPOWER Maryland Energy Efficiency Act of
18 2008, for example, the State originally set a goal of achieving a 15 percent reduction in energy
19 consumption and a 15 percent reduction in peak electricity demand by 2015. Md. Code Ann.,
20 Pub. Util. Cos. § 7-211. Recent legislation extended the program by stating that to the extent the
21 Maryland Public Service Commission determines that cost-effective energy efficiency and
22 conservation programs and services are available, the Commission shall require each electric
23 company to procure or provide for its customers cost-effective energy efficiency and conservation
24 programs and services with projected and verifiable electricity savings that are designed on a
25 trajectory to achieve a targeted annual incremental gross energy savings of at least 2.0 percent per
26 year, calculated as a percentage of the electric company's 2016 weather-normalized gross retail
27 sales and electricity losses. Maryland's Public Service Commission has six open and active
28 dockets (PSC Case Nos. 9153, 9154, 9155, 9156, 9157, and 9362) focused on evaluating and

1 approving utility plans and progress toward achieving the energy efficiency targets established
2 under the Act. Maryland's Jane E. Lawton Conservation Loan Program provides low interest
3 loans to promote energy conservation and energy efficiency in the State. Md. Code Ann., State
4 Gov't §§ 9-20A-01, *et. seq.* Also, Maryland's Strategic Energy Investment Program and Fund
5 provides financial and other assistance and incentives to promote cost-effective energy efficiency
6 and conservation measures in the State. DOE's failure to promulgate energy efficiency standards
7 in accordance with EPCA is inconsistent with Maryland's efforts in this regard. Additionally, the
8 economic and environmental benefits from DOE energy efficiency standards, such as those at
9 issue in this matter, result in utility cost savings for Maryland residents, and constitute feasible
10 and economical ways to significantly reduce carbon dioxide and other GHG emissions. Maryland
11 seeks to ensure that these national standards become effective as a critical component of the
12 State's broader efforts to reduce air pollution. Greenhouse gas emissions pose a significant threat
13 to public health and climate stability. Maryland, like other states, has enacted GHG emission
14 limitations across various sectors of the State's economy. *See, e.g.*, Md. Code Ann., Envir., § 2-
15 1204 (requiring Maryland to reduce statewide GHG emissions by 25 percent from 2006 levels by
16 2020), Md. Code Ann., Envir., §§ 2-1102 and 1103 (requiring the Maryland Department of the
17 Environment to establish a low emissions vehicle program by adopting California's emissions
18 standards), Md. Code Ann., Pub. Utilities § 7-703 (Maryland's renewable energy portfolio
19 standard), Md. Code Ann., Envir., § 2-1301 (establishing the Maryland Commission on Climate
20 Change), § 7-211 (requiring Maryland gas and electric companies to develop and implement
21 programs and services to encourage and promote energy efficiency and conservation of energy);
22 Md. Code Ann., Envir., § 2-1002(g). Thus, DOE's failure to promulgate energy efficiency
23 standards in accordance with EPCA is further inconsistent with Maryland's efforts to prevent and
24 mitigate climate change harms, and to protect State citizens from other forms of dangerous air
25 pollution.

26 29. Commonwealth of Massachusetts. The Commonwealth of Massachusetts has vital
27 interests that are compromised by DOE's failure timely to submit for publication these final rules
28 that strengthen energy efficiency standards for the subject product categories. To reduce energy

1 costs and to protect public health (including reducing respiratory disease in vulnerable infants and
2 young children in Massachusetts) and the climate by reducing air pollutant and GHG emissions
3 from the electric sector, Massachusetts has implemented many laws that mandate, and secure the
4 many benefits of, energy efficiency. Since passage of the Electricity Restructuring Act of 1997,
5 1997 Mass. Acts ch. 164, electric investor-owned utilities in the Commonwealth have been
6 required to implement energy efficiency programs so that today more than 2 percent of
7 Massachusetts' annual electricity needs are met through efficiency. *2016 State Energy Efficiency*
8 *Scorecard*, American Council for an Energy-Efficient Economy (Sept. 26, 2016). In 2005,
9 Massachusetts amended its appliance standards law, Mass. Gen. L. ch. 25B, to set more stringent
10 efficiency standards for certain appliances and equipment. St. 2005, c. 139, An Act Establishing
11 Minimum Energy-Efficiency Standards for Certain Products. The Green Communities Act, 2008
12 Mass. Acts ch. 169, mandates that Massachusetts procure "all available energy efficiency and
13 demand reduction resources that are cost effective or less expensive than supply," Mass. Gen. L.
14 ch. 25, § 21(b)(1), which was set at 2.93 percent of retail electric sales and 1.24 percent of retail
15 gas sales in 2016, and increases through 2018. *Three-Year Energy Efficiency Plan for 2016*
16 *through 2018*, D.P.U. 15-160 through 15-169, p. 14 (Jan. 28, 2016). In 2008, Massachusetts also
17 enacted the Global Warming Solutions Act, 2008 Mass. Acts ch. 298, requiring an economy-wide
18 state GHG reduction target between 10 percent and 25 percent below 1990 levels by 2020, with a
19 goal of an 80 percent reduction by 2050, while significantly committing the state to energy
20 efficiency. Mass. Gen. L. ch. 21N, added by St. 2008, c. 298, § 6, eff. Nov. 5, 2008. In 2010, the
21 Commonwealth set the 2020 target at 25 percent below statewide 1990 GHG levels. *See*
22 *Determination of Greenhouse Gas Limit for 2020* (Dec. 28, 2010),
23 <http://www.mass.gov/eea/docs/eea/energy/2020-ghg-limit-dec29-2010.pdf>. And the
24 Commonwealth has developed its Clean Energy and Climate Plan for 2020, requiring reduced
25 fossil fuel use in buildings through, among others, the increased efficiency of equipment,
26 including appliances. Massachusetts building codes also set high standards for energy efficiency
27 performance. For these efforts, Massachusetts has earned for six consecutive years the number
28 one ranking by the American Council for an Energy-Efficient Economy as the leading state in

1 energy efficiency. DOE's failure timely to promulgate the subject energy efficiency standards for
2 these commonly used consumer and commercial products widely available in Massachusetts, is
3 inconsistent with, and undermines, Massachusetts' multifaceted efforts to increase
4 energy efficiency in the Commonwealth.

5 30. Pennsylvania. The Pennsylvania Constitution provides that the people "have a right to
6 clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of
7 the environment" and obligates the Commonwealth to "conserve and maintain" Pennsylvania's
8 natural resources. Pa. Const. art. I, § 27. Consistent with this obligation, the Commonwealth has
9 a special interest in energy conservation and encourages the use of energy efficient appliances
10 and equipment. For example, the Pennsylvania Department of Environmental Protection, the
11 Commonwealth's primary environmental agency, implements a number of energy conservation
12 and efficiency programs under statutes such as the Energy Development Authority Law, 71 P.S. §
13 720.1 et seq., and the Small Business and Household Pollution Prevention Program Act, 35 P.S. §
14 6029.201 et seq. By 2035, delay of these rules would lead to an increased consumption of 1 TWh
15 of electricity and 1 TBtu of gas, an increased output of 0.5MMT of CO₂, and additional costs of
16 \$113 million per year in the Commonwealth. Cumulatively, by 2050, delay would lead to 0.24
17 quads of increased energy consumption, 12.42 MMT of additional CO₂ emissions, and \$2.86
18 billion in additional costs. DOE's failure to strengthen energy efficiency standards for the
19 product categories in violation of the EPCA undermines the Commonwealth's interest in
20 encouraging energy conservation and efficiency and will lead to increased energy consumption
21 and pollution in Pennsylvania, degrading the constitutional rights of Pennsylvanians "to clean air,
22 pure water, and to the preservation of the natural, scenic, historic and esthetic values of the
23 environment".

24 31. City of New York. Among the interests the City of New York seeks to protect is its
25 governmental and proprietary interest in ensuring a clean, affordable, resilient, and reliable
26 energy. As a low-lying coastal community with 520 miles of coastline, which has already
27 experienced the devastating effects of climate change, the City of New York has a compelling
28 interest in ensuring the reduction of GHGs to mitigate against climate change. The City of

1 New York has committed to a GHG reduction goal of 80 percent by 2050 and any additional
2 reductions needed to meet its share of the Paris Agreement reduction goals. *See* One New York:
3 The Plan for a Strong and Just City (2015), 166-71 (outlining reductions needed from the power
4 sector to meet this goal); City of New York Office of the Mayor Executive Order No. 26 of 2017
5 (directing the Mayor's Office of Sustainability and city agencies to create a citywide plan by
6 September 30, 2017 to advance the Paris Agreement's goal of limiting global temperature
7 increases to 1.5° Celsius above pre-industrial levels). Energy efficiency standards for appliances
8 help the City of New York meet these important goals. Accordingly, DOE's failure to improve
9 energy efficiency standards as required by EPCA is contrary to New York City's interests and
10 efforts in this regard.

11 32. The state and municipal Plaintiffs also have strong proprietary interests in improving
12 energy efficiency and ensuring that DOE complies with EPCA. For example, many of the
13 Plaintiffs purchase and use the appliances for which DOE has developed updated efficiency
14 standards. These appliances are used in state- or city-owned office buildings, warehouses,
15 maintenance shops, hospitals, and residential care or educational facilities. Plaintiffs will face
16 increased energy costs if DOE fails to publish the five New Standards. In addition, some of the
17 Plaintiff states, such as New York, provide direct financial assistance to low income households
18 to reduce energy costs, which may be higher in the absence of efficiency standards such as DOE's
19 new standard for portable air conditioners. Many states also pay for some or all of the medical
20 costs of many of their residents. Increased pollution due to less efficient products can lead to
21 negative health effects which in turn result in increased need for medical care and higher medical
22 costs.

23 **B. Defendants**

24 33. Defendant James Richard Perry is Secretary of DOE, and is named in his official
25 capacity. He is responsible for the administration of that agency in accordance with EPCA, 42
26 U.S.C. §§ 6291-6317, and the APA, 5 U.S.C. §§ 551-706. Under EPCA, he is responsible for
27 promulgating the energy efficiency standards at issue in this case. 42 U.S.C. §§ 6313(b)(4)(B),
28 6313(c)(5)(A), 6313(f)(4)(A).

1 34. Defendant DOE is an agency of the United States. DOE's headquarters are located at
2 1000 Independence Ave., SW, Washington, DC 20585. It is the agency responsible for the
3 implementation of EPCA, 42 U.S.C. §§ 6291-6317.

4 **JURISDICTION, NOTICE, AND VENUE**

5 35. This Court has jurisdiction over matters raised pursuant to 42 U.S.C. §§ 6305(a)(2)-
6 (3) (EPCA's citizen suit provision), and § 6316, and 5 U.S.C. § 702. In addition, the Court has
7 jurisdiction based on 28 U.S.C. § 1331 (action arising under the laws of the United States), §
8 1346(a)(2) (civil action against the United States).

9 36. This Court has the authority to grant the requested declaratory and injunctive relief
10 pursuant to § 2201 (declaratory judgment), § 2202 (injunctive relief), 42 U.S.C. § 6305(a)(2)-(3),
11 and 5 U.S.C. §§ 702-706 (providing for judicial review under the APA).

12 37. An actual controversy exists between the parties within the meaning of 28 U.S.C. §
13 2201(a), and this court may grant declaratory relief, injunctive relief and other relief pursuant to
14 28 U.S.C. §§ 1361,1346, 2201-2202, and 5 U.S.C. §§ 704-706 (providing for judicial review
15 under the APA).

16 38. To the extent notice is required with respect to any of the claims herein (42 U.S.C. §
17 6305(b)(2)), notice of this action was provided to the Secretary by certified mail dated April 3,
18 2017 with a copy to the Federal Trade Commission. *See* Exhibit A.

19 39. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(e)
20 because this is the judicial district in which Plaintiff People of the State of California, ex rel.
21 Attorney General Xavier Becerra resides, and this action seeks relief against an agency of the
22 United States and officials acting in their official capacities.

23 40. Pursuant to Local Rule 3-2(c) and (d), assignment to the Oakland Division is
24 appropriate because the assigned attorneys representing Plaintiff People of California are based in
25 the Attorney General's Oakland office.

26 **STATUTORY AND FACTUAL BACKGROUND**

27 **A. The Energy Policy Conservation Act**

28

1 41. Energy efficiency standards are one of the most cost-effective tools available to the
2 federal government to achieve large-scale energy conservation. Energy efficiency standards
3 reduce the adverse environmental impacts of energy consumption, such as air, land, and water
4 pollution associated with fossil fuel extraction and electricity generation, without compromising
5 product performance.

6 42. EPCA establishes mandatory efficiency standards for a broad range of consumer,
7 commercial, and industrial products, and requires DOE to periodically review such standards to
8 determine whether they should be amended. *See* 42 U.S.C. §§ 6295, 6313.

9 43. In requiring DOE to set and revise energy efficiency standards, Congress mandated
10 that DOE follow specific criteria. Thus, the Act requires DOE to ensure that efficiency standards
11 are “designed to achieve the maximum improvement in energy efficiency . . . which the Secretary
12 determines is technologically feasible and economically justified.” *Id.* § 6295(o)(2)(A); *see also*
13 *id.* §§ 6313(b)(3)(A)(ii), (f)(4)(A), 6316(a)-(b), (e)(1)(A). The Act also includes an anti-
14 backsliding provision specifying that “[t]he Secretary may not prescribe any amended standard”
15 that “decreases the minimum required energy efficiency” of a “covered product.” *Id.* §§
16 6295(o)(1), 6316(a)-(b), (e)(1)(A). Congress also set forth the procedures for DOE to follow in
17 efficiency standard rulemakings. *Id.* §§ 6295(p), 6306(a), 6316(a)-(b).

18 44. With respect to most products covered by EPCA, DOE is required to conduct and
19 complete further rulemakings to determine whether existing standards should be updated. *Id.*
20 EPCA mandates that DOE review energy efficiency standards every six years and determine
21 either that the standards do not need to be amended, (42 U.S.C. § 6313(a)(6)(c)(i)(I)), or issue a
22 notice of proposed rulemaking for revised standards. 42 U.S.C. § 6313(a)(6)(C).

23 45. DOE estimates that, by 2030, federal product energy standards will save a total of 120
24 quads of energy, or about twenty percent more energy than the United States uses in a year. Over
25 the same time period, these energy standards will save energy customers a total of \$1.6 trillion.
26 The existing standards also provide substantial pollution reductions, including reducing climate
27 change pollution by 6.5 billion tons of carbon dioxide, the same amount as taking all automobiles
28 worldwide off the roads for nearly a year and half.

1 **B. EPCA’s Error Correction Rule**

2 46. DOE published the proposed Error Correction Rule in the Federal Register on May 5,
3 2016, and adopted it on August 24, 2016, with an effective date as of September 30, 2016. *See* 10
4 C.F.R. § 430.5.

5 47. As explained by its preamble, the Error Correction Rule is intended to avoid the
6 potentially significant repercussions of an error caused by the complexity of the energy standards,
7 given EPCA’s anti-backsliding provision. 81 Fed. Reg. 26,998-26,999. As the energy efficiency
8 rules are highly technical and complex, it is “conceivable” that a standard as issued would contain
9 an error. *Id.* Once a rule is published, DOE is prohibited by statute from correcting that error if it
10 would result in a less stringent efficiency standard. 42 U.S.C. § 6295(o)(1).

11 48. In order to avoid the potential unintended effects caused by an error enshrined in
12 future regulation through the anti-backsliding provision, the Error Correction Rule provides a
13 procedure for the identification and correction of such errors prior to publication in the Federal
14 Register.

15 49. Under the Error Correction Rule, an “Error” is “an aspect of the regulatory text of a
16 rule that is inconsistent with what the Secretary intended regarding the rule at the time of
17 posting.” 10 C.F.R. § 430.5(b) (“Error”). This could include the following types of errors:

18 a. “a typographical mistake that causes the regulatory text to differ from how the preamble
19 to the rule describes the rule.”

20 b. “a calculation mistake that causes the numerical value of an energy conservation
21 standard to differ from what technical support documents would justify.”

22 c. “a numbering mistake that causes a cross-reference to lead to the wrong text.” *Id.*

23 50. Under the Error Correction Rule’s procedure, once DOE has completed the
24 substantive consideration of a rule, DOE posts the finalized rule on a publicly-accessible website
25 to allow for public review. 10 C.F.R. § 430.5(c)(1). The posted version of the rule includes a
26 disclaimer requesting that the public notify the DOE of any “typographical or other errors” in the
27 posted rule within 45 calendar days. 10 C.F.R. § 430.5(c)(3). The Secretary is directed not to
28 publish the rule during the 45 calendar days following posting. 10 C.F.R. § 430.5(c)(2).

1 51. During the 45 days following posting, interested members of the public may submit
2 requests for error correction. 10 C.F.R. § 430.5(d)(1). The request must identify the error “with
3 particularity” and must provide a corrected substitute text or state that the requestor is unable to
4 do so and explain why. 10 C.F.R. § 430.5(d)(2)(i).

5 52. Disagreement with substantive policy choices made by the Secretary is not a valid
6 basis for an error request. 10 C.F.R. § 430.5(d)(2)(ii). Evidence substantiating a request must be
7 in the record of the rulemaking itself; the Secretary will not consider new evidence. 10 C.F.R. §
8 430.5(d)(3).

9 53. Under the Error Correction Rule, the Secretary may respond to an error correction
10 request, or address an error identified by the Secretary, by submitting to the OFR either a
11 corrected rule or the rule as originally posted. 10 C.F.R. § 430.5(e).

12 54. After the 45-day period prescribed by 10 C.F.R. § 430.5(c)(1) and referenced by 10
13 C.F.R. § 430.5(d)(1) has expired, the Secretary must take one of three actions under 10 C.F.R. §
14 430.5(f):

15 a. If the Secretary has received properly filed requests but determines not to make any
16 corrections, the Secretary must submit the rule to OFR for publication as it was originally posted.
17 10 C.F.R. § 430.5(f)(1).

18 b. If the Secretary receives no properly submitted requests and no errors are identified
19 by the Secretary, the Secretary must submit the rule to OFR for publication as it was originally
20 posted “in due course.” 10 C.F.R. 430.5(f)(2).

21 c. If the Secretary receives a properly filed request and determines a correction is
22 necessary, the Secretary will submit a corrected rule to OFR for publication within 30 days of the
23 expiration of the 45-day period, absent “extenuating circumstances.” 10 C.F.R. § 430.5(f)(3).

24 55. Thus, if the Secretary does not make any error corrections, he must submit the
25 originally posted rule to the OFR for publication. 10 C.F.R. § 430.5(f)(1)-(2). If the Secretary
26 does receive error correction requests that justify modifying the text of the rule, the Secretary
27 must make those corrections and submit the corrected rule to OFR within 30 days of the
28 expiration of the error review period. 10 C.F.R. § 430.5(f)(3).

1 56. Only under “extenuating circumstances,” such as where an error correction request
2 pertains to a “particularly complex engineering analysis” or involves a time-consuming error
3 correction (81 Fed. Reg. 57,745, 57,750 (Aug. 24, 2016)), is DOE authorized to delay submission
4 of a corrected rule for publication. 10 C.F.R. § 430.5(f)(3). *Id.* at 57,750-51 (“this flexibility will
5 ensure DOE has sufficient time to . . . make any necessary corrections . . . *prior to its publication*
6 in the Federal Register” (emphasis added)).

7 57. DOE does not dispute that it has a duty under the APA to publish in the Federal
8 Register the standards that it posts for error correction: “DOE recognizes that it has an obligation
9 under the Administrative Procedure Act to publish a ‘rule,’ as defined in this part, in the Federal
10 Register.” 81 Fed. Reg. at 27,001.

11 58. Thus, regardless of the complexity of an alleged error or DOE’s ultimate
12 determination as to whether correction is warranted, the Error Correction Rule requires DOE to
13 submit posted, final energy efficiency rules to OFR for publication. 10 C.F.R. § 430.5(f).
14 Notably, the Error Correction Rule does not give DOE an option to do nothing.

15 59. The New Standards at issue in this case are currently awaiting their mandated
16 publication after undergoing the error review period prescribed by the Error Correction Rule. 10
17 C.F.R. § 430.5.

18 **C. Judicial Review under EPCA**

19 60. EPCA contains a “citizen suit” provision. Under this provision, “any person may
20 commence a civil action” in a United States district court against the Secretary of DOE “in any
21 case in which there is an alleged failure of the Secretary to comply with a nondiscretionary duty
22 to issue a proposed or final rule according to the schedules set forth in [EPCA].” 42 U.S.C. §
23 6305(a), (a)(2), (a)(3), 6316(a)-(b).

24 61. Plaintiffs are “persons” within the meaning of EPCA and its citizen suit provision. *Id.*
25 § 6202(2)(C).

26 62. EPCA further provides that, with respect to causes of action pursuant to 42 U.S.C. §
27 6305(a)(3), “courts shall advance on the docket, and expedite the disposition of” these actions. “If
28 the court finds that the Secretary has failed to comply with a deadline established in [EPCA],” the

1 court “shall have jurisdiction to order appropriate relief, including relief that will ensure the
2 Secretary’s compliance with future deadlines for the same covered product.” *Id.* § 6305(a).
3 Finally, EPCA provides that the court may award costs, including reasonable attorneys’ fees, in
4 issuing an order in a citizen suit action. *Id.* § 6305(d).

5 **D. The Administrative Procedure Act**

6 63. The Administrative Procedure Act, as amended by the Freedom of Information Act, 5
7 U.S.C. § 552, provides that federal agencies like DOE shall publish “substantive rules of general
8 applicability” in the Federal Register for guidance to the public. 5 U.S.C. § 552(a)(1)(D).

9 64. The Administrative Procedure Act, 5 U.S.C. § 702, provides that a person suffering
10 legal wrong because of agency action or adversely affected or aggrieved by agency action is
11 entitled to judicial review.

12 65. The Administrative Procedure Act, 5 U.S.C. § 555(b), provides that each agency shall
13 conclude matters “within a reasonable time.”

14 66. The Administrative Procedure Act, 5 U.S.C. § 704, provides that final agency action
15 for which there is no other adequate remedy in a court is subject to judicial review.

16 67. The scope of review under the APA provides that a reviewing court shall: “(1)
17 compel agency action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and
18 set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an abuse of
19 discretion, otherwise not in accordance with law; [or] without observance of procedure required
20 by law.” 5 U.S.C. § 706. The APA defines “agency action” to include “the whole or a part of an
21 agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.”
22 *Id.* § 551(13).

23 **E. Federal Register Act**

24 68. The Federal Register Act, 44 U.S.C. §§ 1501 et seq., created the Federal Register as
25 the official daily publication for presidential documents, executive agency rules and notice
26 documents, and established a central location for filing documents for public inspection. The
27 FRA established the basic structure of the federal regulatory system, and mandates which federal
28 agency documents shall be published in the Federal Register. 44 U.S.C. § 1505(a).

1 **F. DOE's Five New Standards Undergoing Error Review**

2 69. In December 2016, DOE completed its substantive analysis for the five New
3 Standards in compliance with EPCA, 42 U.S.C. §§ 6291 et seq. DOE determined that the new
4 energy conservation standards would result in significant conservation of energy, yield significant
5 environmental benefits, and were technologically feasible, and economically justified. The New
6 Standards for air compressors, commercial packaged boilers, portable air conditioners, walk-in
7 coolers and freezers, and uninterruptible power supplies were signed as “final rules” and each was
8 posted for pre-publication error review pursuant to EPCA. 10 C.F.R. § 430.5.

9 a. Air Compressors. Air compressors convert power (e.g., electricity, gas, diesel) into
10 potential energy stored in pressurized air. Air compressors are used in a variety of applications,
11 such as powering pneumatic tools and providing clean pressurized air for small and large
12 industrial processes. On November 15, 2016, DOE determined that air compressors met the
13 criteria to be regulated as “covered industrial equipment” under EPCA. 81 Fed Reg. 79,991.
14 There is currently no federal energy standard for air compressors. DOE posted the new air
15 compressor standard for error review on December 5, 2016, with a response date of January 19,
16 2017. *See* [https://energy.gov/sites/prod/files/2016/12/f34/
17 Compressors_Standards_Final_Rule.pdf](https://energy.gov/sites/prod/files/2016/12/f34/Compressors_Standards_Final_Rule.pdf).

18 b. Commercial Packaged Boilers. Commercial packaged boilers are commonly used in
19 heating commercial and multi-family buildings. Commercial packaged boilers are regulated as
20 covered industrial equipment under EPCA. 42 U.S.C. § 6311(1)(J). EPCA mandates that DOE
21 review energy efficiency standards every six years and determine either that the standards do not
22 need to be amended (42 U.S.C. § 6313(a)(6)(C)(i)(I)) or issue a notice of proposed rulemaking
23 for revised standards. 42 U.S.C. § 6313(a)(6)(C). DOE last amended its energy conservation
24 standards for commercial packaged boilers on July 22, 2009. 74 Fed. Reg. 36,312. DOE posted
25 the new commercial package boiler standard for error review on December 28, 2016 with a
26 response date of February 11, 2017. *See* [https://energy.gov/sites/prod/files/2016/12/
27 f34/CPB_ECS_Final_Rule.pdf](https://energy.gov/sites/prod/files/2016/12/f34/CPB_ECS_Final_Rule.pdf).

28

1 c. Portable Air Conditioners. Portable air conditioners are typically wheeled, floor
2 standing units that cool indoor air in an enclosed space by exhausting the hot condensed air out
3 through a flexible window duct. On April 18, 2016, DOE determined that portable air
4 conditioners were covered consumer products under EPCA. 81 Fed. Reg. 22,514. Currently,
5 there is no federal energy conservation standard for portable air conditioners. DOE posted the
6 new portable air conditioners standard for error review on December 28, 2016, with a response
7 date of February 11, 2017. *See* [https://energy.gov/sites/prod/files/2016/12/f34/
8 PAC_ECS_Final_Rule.pdf](https://energy.gov/sites/prod/files/2016/12/f34/PAC_ECS_Final_Rule.pdf).

9 d. Uninterruptible Power Supplies. Uninterruptible power supplies are a class of battery
10 chargers that provide back-up power supply to batteries in electronic products which are sensitive
11 to power outages and/or fluctuations in electricity supply, such as personal computers. 10 C.F.R.
12 § 430.32. Presently, there is no energy efficiency standard for uninterruptible power supplies.
13 EPCA requires that DOE issue a final rule establishing energy conservation standards for battery
14 chargers by July 1, 2011. 42 U.S.C. § 6295(u)(1)(E)(i) (II). DOE posted the new uninterruptible
15 power supply standard for error review on December 28, 2016, with a response date of February
16 11, 2017. *See* [https://energy.gov/sites/prod/files/
17 2016/12/f34/UPS_ECS_Final_Rule.pdf](https://energy.gov/sites/prod/files/2016/12/f34/UPS_ECS_Final_Rule.pdf).

18 e. Walk-in Coolers and Freezers. Walk-in coolers and freezers are large, insulated,
19 refrigerated spaces with access doors that are used for temporary storage of refrigerated or frozen
20 food. EPCA established an initial statutory efficiency standard for walk-in coolers and freezers,
21 42 U.S.C. § 6313(f)(1)-(3), and directed DOE to publish updated “performance-based standards”
22 for walk-in coolers and freezers that “achieve the maximum improvement in energy that the
23 Secretary determines is technologically feasible and economically justified” by no later than
24 January 1, 2012. 42 U.S.C. § 6313(f)(4)(A). In June 2014 DOE published a final rule
25 establishing energy efficiency standards for walk-in coolers and freezers, 79 Fed. Reg. 32,050
26 (June 3, 2014). However, the standards for six of the nineteen classes of walk-in coolers and
27 freezers from DOE’s 2014 rulemaking were vacated by court order. *Lennox Int’l v. DOE*, No. 14-
28 60535 (5th Cir.). As a result, DOE convened a working group to develop performance standards
to replace the invalidated standards. On December 28, 2016, DOE posted for error correction

1 review a final rule establishing consensus standards for the six classes of walk-in coolers and
2 freezers that lacked updated standards as a result of *Lennox Int'l v. DOE*. See
3 https://energy.gov/sites/prod/files/2016/12/f34/WICF_ECS_Final_Rule_0.pdf.

4 **CLAIMS FOR RELIEF**

5 **FIRST CLAIM FOR RELIEF**

6 (Violation of EPCA, 42 U.S.C. § 6305, § 6313, 42 U.S.C. §§ 6291 et seq.)
7 (DOE has Failed to Publish the New Standards in the Federal Register in Violation of EPCA's
8 Error Correction Rule, 10 C.F.R. §§ 430.5 et seq.)

9 70. Plaintiffs incorporate by reference all the preceding paragraphs.

10 71. DOE posted the new air compressor standards for error review on its publicly
11 accessible website on December 5, 2016. 10 C.F.R. § 430.5(c)(1).

12 72. DOE posted the new commercial packaged boilers, portable air conditioners,
13 uninterruptible power supplies, and walk-in coolers and freezers standards for error review on its
14 publicly accessible website on December 28, 2016. 10 C.F.R. § 430.5(c)(1).

15 73. During the 45-day review period, DOE received no requests for correction related to
16 the air compressors, portable air conditioners, uninterruptible power supplies, and walk-in coolers
17 and freezers standards. 10 C.F.R. § 430.5(c)(3).

18 74. While DOE did receive several requests for correction on the new standard for
19 commercial packaged boilers, those requests did not identify typographic, numbering, or
20 calculation mistakes meant to be addressed by the Error Correction Rule. 10 C.F.R. §
21 430.5(d)(2)(i); 10 C.F.R. § 430.5(d)(3); 10 C.F.R. § 430.5(b).

22 75. The 45-day error review period for the New Standards expired on January 20, 2017
23 (air compressors) and February 11, 2017 (commercial packaged boilers, portable air conditioners,
24 uninterruptible power supplies, and walk-in coolers and freezers). 10 C.F.R. § 430.5(c)(1).

25 76. The subsequent 30-day error correction period for the New Standards expired on
26 February 19, 2017 (air compressors) and March 13, 2017 (commercial packaged boilers, portable
27 air conditioners, uninterruptible power supplies, and walk-in coolers and freezers). 10 C.F.R. §
28 430.5(d)(1).

1 77. DOE has failed to take any of the following non-discretionary actions in violation of
2 EPCA, 10 C.F.R. § 430.5(f), related to the New Standards:

3 a. If the Secretary has received properly filed requests but determines not to
4 make any corrections, the Secretary must submit the rule for publication as it was
5 originally posted. 10 C.F.R. § 430.5(f)(1).

6 b. If the Secretary receives no properly submitted requests and no errors are
7 identified by the Secretary, the Secretary must submit the rule to OFR for
8 publication as it was originally posted “in due course.” 10 C.F.R. 430.5(f)(2).

9 c. If the Secretary receives a properly filed request and determines a
10 correction is necessary, the Secretary will submit a corrected rule to OFR
11 publication within 30 days of the expiration of the 45-day period, absent
12 “extenuating circumstances.” 10 C.F.R. § 430.5(f)(3).

13 78. Regardless of the outcome of the error correction process, DOE was required to send
14 the New Standards either as posted or as corrected to the OFR for publication. 10 C.F.R. §
15 430.5(f)(1)-(2).

16 79. Therefore, even under the scenario giving DOE the most time to submit the New
17 Standards for publication, DOE was required to submit the new standard for air compressors to
18 the OFR by February 21, 2017.

19 80. Similarly, DOE was required to submit the new standards for commercial packaged
20 boilers, walk-in coolers and freezers, portable air conditioners, and uninterruptible power supplies
21 to the OFR by March 15, 2017.

22 81. DOE has not submitted the New Standards to OFR for publication. As a result, the
23 New Standards are not effective.

24 82. DOE’s failure to submit the New Standards to the OFR for publication violates 10
25 C.F.R. § 430.5(f) and therefore constitutes a failure to perform a non-discretionary duty under
26 EPCA, 42 U.S.C. § 6305(a)(2).

27 **SECOND CLAIM FOR RELIEF**

28 (Violation of EPCA, 42 U.S.C. § 6305(a)(3))

1 (DOE has Failed to Meet EPCA’s Statutory Deadlines for Walk-in Coolers and Freezers and
2 Uninterruptible Power Supplies)

3 83. Plaintiffs incorporate by reference all the preceding paragraphs.

4 84. EPCA required DOE to publish updated energy efficiency standards for walk-in
5 coolers and freezers that “achieve the maximum improvement in energy that the Secretary
6 determines is technologically feasible and economically justified” by no later than January 1,
7 2012. *Id.* § 6313(f)(4)(A).

8 85. EPCA required DOE to publish updated energy efficiency standards for
9 uninterruptible power supplies that “achieve the maximum improvement in energy that the
10 Secretary determines is technologically feasible and economically justified” by no later than July
11 1, 2011. *Id.* § 6295(u)(1)(E).

12 86. DOE published a final rule in June 2016 establishing energy conservation standards
13 for several classes of battery chargers. It did not, however, include in that rulemaking energy
14 efficiency standards for battery chargers such as uninterruptible power supplies. Nor did DOE
15 determine that no standard was technically feasible and economically justified. 81 Fed. Reg.
16 38,266 (June 13, 2016).

17 87. DOE has failed to publish energy efficiency standards for walk-in coolers and
18 freezers or for uninterruptible power supplies as required by EPCA.

19 88. DOE has violated the statutory deadline for publication of the final rule for walk-in
20 coolers and freezers required in 42 U.S.C. § 6313(f)(4)(A). DOE has thereby failed “to comply
21 with a nondiscretionary duty to issue a . . . final rule according to the schedules set forth in
22 section 6295.” *Id.* §§ 6305(a)(3); 6316(a) (making § 6305(a)(3) applicable to the schedule set
23 forth in § 6313(f)(4)(A)).

24 89. DOE has violated the statutory deadline for publication of the final rule for
25 uninterruptible power supplies, required in 42 U.S.C. § 6295(u)(1)(E)(i)(II). DOE has thereby
26 failed “to comply with a nondiscretionary duty to issue a . . . final rule according to the schedules
27 set forth in section 6295.” *Id.* § 6305(a)(3).

28 **THIRD CLAIM FOR RELIEF**

1 (Administrative Procedure Act, 5 U.S.C. § 552(a)(1)(D))
2 (DOE has Failed to Perform a Non-Discretionary Duty to
3 Timely Publish the New Standards in the Federal Register)

4 90. Plaintiffs incorporate by reference all the preceding paragraphs.

5 91. On December 5, 2016, DOE's Acting Assistant Secretary for Energy Efficiency
6 signed and dated the New Energy Conservation Standards for Air Compressors, Docket No.
7 EERE-2013-BT-STD-0040 (posted Dec. 5, 2016).

8 92. On December 28, 2016, DOE's Acting Assistant Secretary for Energy Efficiency
9 signed and dated the New Energy Conservation Standards for Portable Air Conditioners, Docket
10 No. EERE-2013-BT-STD-0033 (posted Dec. 28, 2016); Energy Conservation Standards for
11 Uninterruptible Power Supplies, Docket No. EERE-2016-BT-STD-0022 (posted Dec. 28, 2016);
12 Energy Conservation Standards for Walk-in Cooler and Freezer Refrigeration Systems, Docket
13 No. EERE-2015-BT-STD-0016 (posted Dec. 28, 2016); Energy Conservation Standards for
14 Commercial Packaged Boilers, Docket No. EERE-2013-BT-STD-0030 (posted Dec. 28, 2016).

15 93. Each New Standard states that the "Secretary of Energy has approved the publication
16 of this final rule."

17 94. The APA, 5 U.S.C. § 552(a)(1)(D), provides that "[e]ach agency shall separately state
18 and currently publish in the Federal Register...substantive rules of general applicability adopted
19 as authorized by law."

20 95. Having adopted and signed the New Standards as final rules, and the error correction
21 period having run without any action on the part of DOE, the APA, 5 U.S.C. § 552(a)(1)(D),
22 requires that DOE take the discrete step of publishing its New Standards in the Federal Register.

23 96. In the alternative, DOE's failure to submit the rules to the OFR for publication
24 violates 5 U.S.C. § 552(a)(1)(D), which states the agency "shall currently" publish rules which
25 have been adopted, and constitutes agency action "unlawfully withheld" and/or "unreasonably
26 delayed" in violation of the APA, 5 U.S.C. § 706(a). Section 704 of the APA permits review of
27 final agency action "for which there is no other adequate remedy in a court."

28 97. Plaintiffs have no adequate remedy at law.

FOURTH CLAIM FOR RELIEF

(Federal Register Act, 44 U.S.C. §1501 et seq.)
(DOE has failed to Publish the New Standards in the Federal Register
in violation of the Federal Register Act)

98. Plaintiffs incorporate by reference all the preceding paragraphs.

99. The Federal Register Act instructs that documents “required or authorized to be published by section 1505 of this title shall be filed with the Office of the Federal Register.” 44 U.S.C. § 1503.

100. Section 1505(a) of the Federal Register Act provides that “[t]here shall be published in the Federal Register... documents or classes of documents that may be required to be published by Act of Congress.”

101. APA, 5 U.S.C. § 552(a)(1)(D), is an act of Congress requiring that agencies “currently publish in the Federal Register... substantive rules of general applicability adopted as authorized by law.”

102. DOE’s failure to submit the rule to the OFR for publication violates 44 U.S.C. § 1505(a) and constitutes agency action “unlawfully withheld” and/or “unreasonably delayed” in violation of Section 706(a) of the APA. Section 704 of the APA permits review of final agency action “for which there is no other adequate remedy in a court.”

103. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Advance on the docket and expedite the decision of this case under 42 U.S.C. § 6305(a) related to DOE’s violation of statutory deadlines;

B. Declare, pursuant to 28 U.S.C. § 2201(a), that DOE has failed to submit the New Standards for publication in violation of EPCA, 42 U.S.C. §6295 et seq., § 6313, 10 C.F.R. § 430.5(f), or in the alternative, the APA, 5 U.S.C. § 552(a)(1)(D) and the Federal Register Act, 44 U.S.C. §1501 et seq.; and that DOE has violated EPCA’s deadlines and other requirements with respect to the issuance and amendment of energy efficiency standards for walk-in coolers and

1 freezers and uninterruptible power supplies;

2 C. Enter a mandatory injunction, pursuant to 42 U.S.C. §§ 6305(a), (a)(2), (a)(3), and
3 6316(a), (b)(1), (e)(1)(A), compelling DOE to send the New Standards to the OFR for immediate
4 publication;

5 D. Award to Plaintiffs their costs of litigation including, but not limited to, reasonable
6 attorneys' fees, pursuant to 42 U.S.C. § 6305(d), 28 U.S.C. § 2412, and any other applicable law;

7 E. Order such other and further relief as this Court deems just and appropriate.

8 Dated: June 13, 2017

Respectfully Submitted,

9
10 XAVIER BECERRA
Attorney General of California
11 SUSAN S. FIERING
Supervising Deputy Attorney General

12
13 /s/ Jamie Jefferson
JAMIE JEFFERSON
SOMERSET PERRY
14 Deputy Attorneys General
15 *Attorneys for the Plaintiff the People of the State
of California, by and through Attorney General
16 Xavier Becerra*

17 Dated: June 13, 2017

18 ERIC T. SCHNEIDERMAN
Attorney General of the
19 State of New York
Attorney for Plaintiff State of New York

20
21 /s/ Timothy Hoffman
TIMOTHY HOFFMAN, *pro hac vice pending*
22 LISA KWONG, *pro hac vice pending*
Assistant Attorneys General
23 Office of the Attorney General
Environmental Protection Bureau
24 The Capitol
Albany, New York 12224
25 Tel: (716) 853-8465
(518) 776-2422
26 Email: Timothy.Hoffman@ag.ny.gov
Lisa.Kwong@ag.ny.gov

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Dated: June 13, 2017

GEORGE JEPSEN
Attorney General of the
State of Connecticut
Attorney for Plaintiff State of Connecticut

/s/ Robert Snook
ROBERT SNOOK, *pro hac vice pending*
MATTHEW LEVINE, *pro hac vice pending*
Assistant Attorneys General
Office of the Attorney General
55 Elm Street
Hartford, Connecticut 06141-0120
Tel: (860) 808-5250
Email: Robert.Snook@ct.gov

Dated: June 13, 2017

LISA MADIGAN
Attorney General of the
State of Illinois
Attorney for Plaintiff State of Illinois

/s/ James P. Gignac
JAMES P. GIGNAC *pro hac vice pending*
Assistant Attorney General
Illinois Attorney General's Office
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
Tel: (312) 814-0660
Email: jgignac@atg.state.il.us

Dated: June 13, 2017

JANET T. MILLS
Attorney General of the
State of Maine
Attorney for Plaintiff State of Maine

/s/ Katherine Tierney
KATHERINE TIERNEY *pro hac vice pending*
Assistant Attorney General
Office of the Attorney General
State House Station 6
Augusta, ME 04333-0006
Tel: (207) 626-8800
Email: katherine.tierney@maine.gov

1 Dated: June 13, 2017

MAURA HEALEY
Attorney General of the
Commonwealth of Massachusetts
Attorney for Plaintiff Commonwealth of
Massachusetts

2
3
4
5 /s/ I. Andrew Goldberg
I. ANDREW GOLDBERG *pro hac vice pending*
Assistant Attorney General
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
Tel: (617) 963-2429
Email: andy.goldberg@state.ma.us

9
10 Dated: June 13, 2017

ELLEN F. ROSENBLUM
Attorney General of the
State of Oregon
Attorney for Plaintiff State of Oregon

11
12
13 /s/ Jesse Ratcliffe
JESSE RATCLIFFE *pro hac vice pending*
Office of the Attorney General
Oregon Department of Justice
1162 Court Street, N.E.
Salem, Oregon 97301-4096
Tel: (503) 947-4549
Email: jesse.d.ratcliffe@doj.state.or.us

14
15
16
17
18 Dated: June 13, 2017

JOSH SHAPIRO
Attorney General of the
Commonwealth of Pennsylvania
Attorney for Plaintiff Commonwealth of
Pennsylvania

19
20
21
22 /s/ Steven J. Santarsiero
STEVEN J. SANTARSIERO *pro hac vice pending*
MICHAEL J. FISCHER *pro hac vice pending*
Chief Deputy Attorneys General
Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120
Tel: (717) 787-3391
Email: ssantarsiero@attorneygeneral.gov
mfischer@attorneygeneral.gov

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Dated: June 13, 2017

THOMAS J. DONOVAN, JR.
Attorney General
Office of the Attorney General
Attorney for Plaintiff State of Vermont

/s/ Laura B. Murphy
LAURA B. MURPHY *pro hac vice pending*
Assistant Attorney General
Environmental Protection Division
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
Tel: (802) 828-1059
Email: laura.murphy@vermont.gov

Dated: June 13, 2017

BOB FERGUSON
Attorney General of Washington
Attorney for Plaintiff State of Washington

/S/ LAURA J. WATSON
LAURA J. WATSON, *pro hac vice pending*
Senior Assistant Attorney General
Washington State Office of the Attorney General
P.O. Box 40117
Olympia, WA 98504-0117
Tel: (360) 586-6743
Email: laura.watson@atg.wa.gov

Dated: June 13, 2017

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Plaintiff City of New York

/s/ Susan E. Amron
SUSAN E. AMRON, Chief, *pro hac vice pending*
Environmental Law Division
SARAH KOGEL-SMUCKER, Senior Counsel, *pro hac*
vice pending
New York City Law Department
100 Church Street, Room 6-146
New York, New York 10007
Tel: (212) 356-2070
(212) 356-2315
Email: samron@law.nyc.gov
skogel@law.nyc.gov

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Dated: June 13, 2017

BRIAN E. FROSH
Attorney General of the
State of Maryland

/s/ Steven M. Sullivan
STEVEN M. SULLIVAN, *pro hac vice pending*
Solicitor General
Office of the Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
Tel: (410) 576-6427
Email: ssullivan@oag.state.md.us

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