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[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE-2018-BT-STD-0005]

RIN 1904-AE35

**Energy Conservation Program: Energy Conservation Standards for Dishwashers, Grant of
Petition for Rulemaking**

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Energy (DOE) received a petition from the Competitive Enterprise Institute (CEI) to define a new product class under the Energy Policy and Conservation Act, as amended (EPCA), for residential dishwashers. The new product class would cover dishwashers with a cycle time for the normal cycle of less than one hour from washing through drying. DOE published this petition and request for comments in the *Federal Register* on April 24, 2018. Based upon its evaluation of the petition and careful consideration of the public comments, DOE has decided to grant this petition for rulemaking and propose a dishwasher product class with a cycle time for the normal cycle of less than one hour. DOE intends to consider appropriate energy and water use limits for such a product class, if adopted, in a separate rulemaking.

DATES: Written comments and information are requested on or before and will be accepted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2018-BT-STD-0005, by any of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
2. *E-mail:* Dishwashers2018STD0005@ee.doe.gov. Include the docket number EERE-2018-BT-STD-0005 in the subject line of the message.
3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 287-1445. If possible, please submit all items on a compact disc (“CD”), in which case it is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L’Enfant Plaza, SW., 6th Floor, Washington, DC, 20024. Telephone: (202) 287-1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section VI of this document.

Docket: The docket for this activity, which includes *Federal Register* notices, comments, and other supporting documents/materials, is available for review at <http://www.regulations.gov>. All documents in the docket are listed in the <http://www.regulations.gov> index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at <https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0005>. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VI for information on how to submit comments through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 586-0371. E-mail: ApplianceStandardsQuestions@ee.doe.gov.

Mrs. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-7796. E-mail: Elizabeth.Kohl@hq.doe.gov.

For further information on how to submit a comment or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by e-mail: *ApplianceStandardsQuestions@ee.doe.gov*.

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VIII. Approval of the Office of the Secretary

I. Introduction

A. Background

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, provides among other things, that "[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." (5 U.S.C. 553(e)) Pursuant to this provision of the APA, CEI petitioned DOE for the issuance of rule establishing a new product class under 42 U.S.C. 6295(q) that would cover dishwashers with a cycle time of less than one hour from washing through drying. (CEI Petition, No. 0006 at p. 1)¹

CEI stated that dishwasher cycle times have become dramatically longer under existing DOE energy conservation standards, and that consumer satisfaction/utility has dropped as a result of these longer cycle times. CEI also provided data regarding the increase in dishwasher cycle time, including data that, according to CEI, correlated increased cycle time with DOE's adoption of amended efficiency standards for dishwashers. (CEI Petition, No. 0006 at pp. 2–3)

CEI cited to 42 U.S.C. 6295(q) as the authority for DOE to undertake the requested

¹ A notation in this form provides a reference for information that is in the docket of this rulemaking (Docket No. EERE-2015-BT-STD-0005). <https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0005>. This notation indicates that the statement preceding the reference is included in document number 6 in the docket at page 1.

rulemaking. (CEI Petition, No. 0006 at pp. 4–5) Section 6295(q) requires that for a rule prescribing an energy conservation standard for a type (or class) of covered products, DOE specify a level of energy use or efficiency higher or lower than the level that applies (or would apply) to such type (or class) for any group of covered products that have the same function or intended use, if DOE determines that covered products within such group either: (1) consume a different kind of energy from that consumed by other covered products within such type (or class); or (2) have a capacity or other performance-related feature that other products within such type (or class) do not have, and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class). (42 U.S.C. 6295(q)(1)) In determining whether a performance related feature justifies a higher or lower standard, DOE must consider such factors as the utility to the consumer of the feature, and other appropriate factors. (*Id.*) In any rule prescribing a higher or lower level of energy use or efficiency, DOE must explain the basis on which the higher or lower level was established. (42 U.S.C. 6295(q)(2))

The current energy conservation standards distinguish between standard dishwashers and compact dishwashers. 10 CFR 430.32(f). In general, a *standard dishwasher* is a dishwasher that has a capacity equal to or greater than eight place settings plus six serving pieces. See, 10 CFR part 430 subpart B appendix C1 (“Appendix C1”), section 1.20. A *compact dishwasher* is, in general, a dishwasher that has a capacity of less than eight place settings plus six serving pieces. Appendix C1, section 1.4.

CEI requested that dishwashers be further divided based on cycle time. CEI asserted that

given the significant amount of consumer dissatisfaction with increased dishwasher cycle time, cycle time is a “performance-related feature” that provides substantial consumer utility, as required by EPCA for the establishment of a product class with a higher or lower energy use or efficiency standard than the standards applicable to other dishwasher product classes. (CEI Petition, No. 0006 at p. 5) CEI did not specify whether it was requesting the additional distinction be applied to both the standard and compact classes or just the standard class. For purposes of this proposal, DOE assumes that CEI requests the distinction only for the standard class, which represents a much larger percentage of dishwasher shipments. DOE seeks comment, however, on whether the one hour product class distinction should apply to both standard and compact dishwashers.

CEI also cited to 42 U.S.C. 6295(o)(4), which prohibits DOE from prescribing a standard that interested person have established by a preponderance of the evidence would likely result in the unavailability in the United States in any covered product type (or class) of performance characteristics, features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of DOE’s finding. (CEI Petition, No. 0006 at p. 4) CEI stated that despite this prohibition, it appears that dishwasher cycle times have been impaired by the DOE standards and that many machines with shorter cycle times are no longer available. (*Id.*)

In its petition, CEI suggested a cycle time of one hour as the defining characteristic for the suggested new product class, because one hour is substantially below the cycle times for all current products on the market. (CEI Petition, No. 0006 at p. 5) CEI stated that energy

efficiency standards for current products would therefore not change with the addition of the new product class, and that no backsliding would occur for the energy standards already in place.

(Id.) Specifically, 42 U.S.C. 6295(o)(1) (commonly referred to as the “anti-backsliding provision”) prohibits DOE from prescribing a standard that increases the maximum allowable energy use, or in the case of showerheads, faucets, water closets or urinals, water use, or decreases the minimum required energy efficiency, of a covered product. CEI did not suggest specific energy and water requirements for this new product class, stating that these details could be determined during the course of the rulemaking. (CEI Petition, No. 0006 at p. 1)

On April 24, 2018, DOE published a notice of receipt of CEI’s petition for rulemaking. 83 FR 17768 (April 2018 Notice of Petition for Rulemaking). DOE requested comments on the petition, as well as any data or information that could be used in DOE’s determination whether to proceed with the petition.

B. Summary of Public Comments

In response to the April 2018 Notice of Petition for Rulemaking, DOE received a wide range of comments, including comments from an industry association and dishwasher manufacturers, a state agency and state officials, consumer organizations, utilities, energy efficiency advocates, and individuals. Comments both favored and opposed granting CEI’s petition for rulemaking.

The Association of Home Appliance Manufacturers (AHAM) stated that at this time, a separate product class is not justified, because consumers already have access to shorter cycles,

and that a new product class with less stringent standards would cause stranded investments and additional costs for manufacturers. (AHAM, No. 2233 at p. 1) AHAM indicated, however, that lengthening cycle time is a “critical consumer welfare and policy issue...of enormous significance for future, possible DOE dishwasher energy conservation standards rulemakings.” (AHAM, No. 2233 at p. 2) Danby, Sub-Zero, and GE Appliances expressed support for AHAM’s comments. (Danby, No. 1785 at p. 2; Sub-Zero, No. 2235 at p. 1; GE Appliances, No. 1801 at p. 1)

The California Energy Commission (CEC) opposes the CEI petition, commenting that a short-cycle dishwasher does not meet the statutory requirements for establishing a separate product class and additionally that the anti-backsliding provision would prohibit establishing a less stringent standard for any such product class. (CEC, No. 2247 at p. 1) CEC commented that cycle times already exceeded one hour prior to the establishment of an energy conservation standard by Congress and that information provided by CEI does not demonstrate any causal relationship between cycle time and energy conservation standards. (CEC, No. 2247 at pp. 6–7) The State Attorneys General from Arizona, Arkansas, Louisiana, Oklahoma, and South Carolina (State Attorneys General) commented in support of the petition stating that it would provide improved consumer choice. (State Attorneys General, No. 2238 at p. 1)

The California Investor Owned Utilities² (CA IOUs) recommended DOE reject the petition, commenting that a separate product class for dishwashers with a shorter cycle is not

² The CA IOUs are the Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison.

permissible under statute and that longer cycle time is not being driven by energy conservation standards. (CA IOUs, No. 1800 at pp. 1 and 3)

The Consumers Union recommended that DOE deny the CEI petition for rulemaking, stating that there is no need for a separate product class and such a product class would risk undermining the current energy efficiency standard. (Consumers Union, No. 2250 at p. 1) The Sixty Plus Association supports the CEI petition to reduce the cycle time of dishwashers to reduce the costs associated with the time and electricity it takes to perform the current dishwasher cycles.³ (Sixty Plus, No. 2230 at p. 1)

The Northwest Energy Efficiency Alliance (NEEA) stated that based on the data it submitted, DOE cannot conclude that even a small number of households would place any value on a dishwasher that can wash dishes in an hour or less. (NEEA, No. 1789-1 at p. 2) The Appliance Standards Awareness Project, Consumer Federation of America, Natural Resources Defense Council, and Northeast Energy Efficiency Partnerships (Joint Commenters); Earthjustice and Sierra Club; and the Northwest Power and Conservation Council (NPCC) recommended that DOE deny the CEI petition, stating that a product class for such dishwashers is not justified under 43 U.S.C. 6295(q) and would violate EPCA's anti-backsliding provision. (Joint Commenters, No. 2237 at p. 1; Earthjustice and Sierra Club, No. 2245 at pp. 1–2; NPCC, No. 2232 at p. 1) NPCC stated that a separate product class as requested by CEI would increase

³ Sixty Plus Association also discussed the approved collection of information under Paperwork Reduction Act for the DOE Appliance Standards Program (OMB Control Number 1910-1400), which includes reporting requirements for manufacturers of dishwashers for the purpose of certifying compliance with the applicable standards. (Sixty Plus, No. 2230 at pp. 1–2) To the extent that establishment of a new product class for dishwashers would require a change in the current burden hours associated with compliance with the dishwasher energy conservation standards, DOE would address such change in a separate notice and provide additional opportunity for comment.

uncertainty in utility resource planning. (NPCC, No. 2232 at p. 1) The Joint Commenters stated that the energy conservation standards have not been the main driver in increased cycle times, noting that based on the data submitted by CEI, the greatest increase in cycle time occurred during a long period when no new standards were adopted. (Joint Commenters, No. 2237 at p. 3) The Joint Commenters added that the increase in cycle time was likely the result of manufacturer design choices intended to improve washing performance, detergent changes, and consumer demand for quiet and efficient machines. (Joint Commenters, No. 2237 at p. 3)

DOE also received numerous comments from individuals that addressed a wide range of issues.⁴ Some of the comments explicitly supported CEI's petition for rulemaking. Other comments expressed general disapproval with energy efficiency standards for appliances, dissatisfaction with the current cycle times and cleaning performance of dishwashers as compared to previously available models, as well as support for energy efficient dishwashers. One individual stated that the petition has not demonstrated that cycle time is a utility feature that warrants a separate product class. The commenter stated that a review of manufacturer literature shows that at least eight appliance manufacturers offer consumer-selected cycles with a duration of less than one hour and that having the option to select at least one cycle with a duration of an hour or less would seem to satisfy the petitioner's request. The commenter also expressed the view that standards for the product class requested by the petitioner would need to meet or exceed currently applicable dishwasher standards to satisfy EPCA's anti-backsliding provision. (McCabe, No. 0004 at 1-2)

⁴ Comments are available at <https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=EER E-2018-BT-STD-0005>.

II. Authority to Establish a Separate Class of Dishwashers

In evaluating CEI's petition and proposing to establish a separate product class for dishwashers that wash and dry dishes in less than an hour, DOE has determined that under 42 U.S.C. 6295(q), dishwashers with a "normal cycle" time of less than one hour as described by CEI have a performance-related feature that other dishwashers do not have and that justifies a separate product class subject to a higher or lower standard than that currently applicable to dishwashers. In any rulemaking to establish energy conservation standards for such a product class, DOE would be required to consider EPCA's anti-backsliding provision at 42 U.S.C. 6295(o)(1). DOE addresses these issues below.

A. Separate Product Class – One-Hour Normal Cycle

CEI petitioned DOE to establish a separate product class for dishwashers that have a cycle time of less than one hour from washing through drying. (CEI Petition, No. 0006 at p. 1) Under the current test procedure and energy conservation standards, dishwashers are tested and evaluated for compliance when operated on the "normal cycle." Appendix C1, sections 2.6.1, 2.6.2, 2.6.3. "Normal cycle" is the cycle, including washing and drying temperature options, recommended in the manufacturer's instructions for daily, regular, or typical use to completely wash a full load of normally soiled dishes, including the power-dry setting. Appendix C1, section 1.12. Manufacturers may add additional cycles to dishwashers, but those additional cycles are not tested. Although CEI's initial petition did not specify the cycle that would be limited to one hour under the separate product class, CEI provided information supplemental to

its petition clarifying the request for a new product class for dishwashers for which the normal cycle is less than one hour.⁵

EPCA directs that when prescribing an energy conservation standard for a type (or class) of a covered product DOE must specify -

[A] level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if DOE determines that covered products within such a group-

(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or

(B) have a capacity or other such performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type.

In making a determination concerning whether a performance-related feature justifies the establishment of a higher or lower standard, DOE must consider such factors as the utility to the consumer of such a feature, and such other factors as DOE deems appropriate.

(42 U.S.C. 6295(q)(1))

In prior rulemakings, DOE has taken the view that utility is an aspect of the product that is accessible to the layperson and based on user operation, rather than performing a theoretical function. This interpretation has been implemented in DOE's previous determinations of utility

⁵ See document ID EERE-2018-BT-STD-0005-0007 available on <http://www.regulations.gov>.

through the value the particular feature brings to the consumer, rather than through analyzing more complicated design features or costs that anyone, including the consumer, manufacturer, installer, or utility companies may bear. DOE has determined that this approach is consistent with EPCA requiring a separate and extensive analysis of economic justification for the adoption of any new or amended energy conservation standard. 80 FR 13120, 13137 (Mar. 12, 2015); 81 FR 65720, 65752-65755 (Sept. 23, 2016). Under this approach, DOE determined that the window in an oven door was a “feature” justifying a different standard.⁶ Similarly, DOE also determined that consumers may value other features such as the ability to self-clean⁷, size⁸, and configuration.⁹ In contrast, DOE determined that water heaters using electric resistance technology did not merit a product class separate from water heaters using heat pump technology.¹⁰ In both heat-pump and electric storage water heaters, the same utility (hot water) was provided by units using different technology.

In a rulemaking to amend standards applicable to commercial clothes washers, DOE determined that the “axis of loading” constituted a feature that justified separate product classes for top loading and front loading clothes washers. DOE also determined that “the longer average cycle time of front-loading machines warrants consideration of separate [product] classes.” 79 FR 74492, 74498 (Sept. 15, 2014). DOE stated that a split in preference between top loaders and front loaders would not indicate consumer indifference to the axis of loading, but rather that a certain percentage of the market expresses a preference for (*i.e.*, derives utility from) the top-

⁶ 63 FR 48038, 48041 (Sept. 8, 1998).

⁷ 73 FR 62034, 62048 (Oct. 17, 2008) (separating standard and self-cleaning ovens into different product classes).

⁸ 77 FR 32037, 32319 (May 31, 2012) (creating a separate product class for compact front-loading residential clothes washers).

⁹ 75 FR 59469 (Sept. 27, 2010) (creating a separate product class for refrigerators with bottom-mounted freezers).

¹⁰ 74 FR 65852, 65871 (Dec. 11, 2009).

loading configuration. DOE further noted that separation of clothes washer equipment classes by location of access is similar in nature to the equipment classes for residential refrigerator-freezers, which include separate product classes based on the access of location of the freezer compartment (*e.g.*, top mounted, side-mounted, and bottom-mounted). The location of the freezer compartment on these products provides no additional performance-related utility other than consumer preference. In other words, the location of access itself provides distinct consumer utility. *Id.* at 79 FR 74499. DOE also reasoned that top-loading residential clothes washers are available with the same efficiency levels, control panel features, and price points as front-loading residential clothes washers, and that given these equivalencies, purchase of top loaders indicates a preference among certain consumers for the top-loading configuration, *i.e.*, the top-loading configuration provides utility to those customers preferring one configuration over another, with all other product attributes being equal. *Id.*

DOE acknowledged that its determination of what constitutes a performance-related feature justifying a different standard could change depending on the technology and the consumer, and that as a result, certain products may disappear from the market entirely due to shifting consumer demand. DOE determines such value on a case-by-case basis through its own research as well as public comments received, the same approach that DOE employs in all other parts of its energy conservation standards rulemaking. (80 FR 13120, 13138, Mar. 12, 2015).

DOE applies this same approach to dishwashers in this proposed rule. Specifically, data provided by CEI indicate that dishwasher cycle times have increased significantly, from an average cycle time of 69 minutes in 1983 (the first year data was submitted) to 140 minutes in 2018. (CEI Petition, No. 0006, supporting data). In addition, while some consumers commented

that they were not concerned with a shorter cycle time, a significant number of consumers expressed dissatisfaction with the amount of time necessary to run their dishwashers. (See docket for this rulemaking at <https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0005>). The data and comments from dissatisfied consumers indicate that for many consumers, there is a utility in shorter cycle times to clean a normally-soiled load of dishes. Based on all of the comments, data and information received, DOE concludes, similar to its conclusion with respect to clothes washers, that cycle time for dishwashers is a performance-related feature for purposes of 6295(q) that justifies a higher or lower standard than that applicable to other dishwasher product classes. The average cycle time of 69 minutes specified in CEI's data for 1983 is just slightly longer than the 60 minutes offered in its petition, supporting DOE's proposal to establish a product class for dishwashers with a normal cycle of less than 1 hour. DOE seeks comment, however, on whether the one hour timeframe should be adjusted to avoid inadvertently eliminating dishwashers with short cycle times of, for example, 70-75 minutes or some other timeframe shorter than the current 140 minute average cycle time represented in CEI's data for 2018, so that DOE may consider whether a different cycle time is appropriate in the final rule.

B. EPCA's Anti-Backsliding Provision

In any rulemaking to establish standards for a separate product class as described in CEI's petition, DOE must consider EPCA's general prohibition against prescribing "any amended standard which increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product." (42 U.S.C. 6295(o)(1); the "anti-backsliding provision") The anti-backsliding provision must be read in conjunction with the authority

provided to DOE in 42 U.S.C. 6295(q) to specify “*a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type or class...*” if the Secretary determines that covered products within such group consume a different type of energy or have a capacity or other performance-related feature that justifies “*a higher or lower standard from that which applies (or will apply) to other products within such type (or class).*” 42 U.S.C. 6295(q) (emphasis added). EPCA explicitly acknowledges, therefore, that product features may arise that require designation of a product class with a standard lower than that applicable to other product classes for that covered product.

Specifically, by using the present tense, “a higher or lower standard than that which applies,” EPCA authorizes DOE to reduce the stringency of the standard currently applicable to the products covered under the newly established separate product class. The applicability of this provision to current standards is further evidenced by the additional reference to standards that are not yet applicable (*i.e.*, standards that “would apply.”) If 42 U.S.C. 6295(q)(1) were only to operate in instances in which standards have not yet been established, there would be no need to separately indicate the applicability to future standards. Nor would there be any purpose to calling out the potential for higher or lower standards since there would not be any standards against which to measure that potential. In this manner, 42 U.S.C. 6295(q) authorizes DOE to reduce the stringency of a currently applicable standard upon making the determinations required by 42 U.S.C. 6295(q).

This reading of the statutory text recognizes that section 6295(q) of EPCA cannot be read to prohibit DOE from establishing standards that allow for technological advances or product

features that could yield significant consumer benefits while providing additional functionality (*i.e.*, consumer utility) to the consumer. DOE relied on this concept when, in 2011, DOE established separate energy conservation standards for ventless clothes dryers, reasoning that the “unique utility” presented by the ability to have a clothes dryer in a living area where vents are impossible to install (*i.e.*, a high-rise apartment) merited the establishment of a separate product class. 76 FR 22454, 22485 (Apr. 21, 2011). Another example of this that DOE is just beginning to explore is network connectivity of covered products. *See* DOE’s Smart Products RFI at 83 FR 46886 (Sept. 18, 2018). Network connectivity is a technology that has only recently begun to appear on the market. Moreover, it clearly has a desirable consumer utility and is a fast-growing feature of new models of covered products. However, network connectivity comes with attendant energy use. EPCA’s anti-backsliding provision cannot be read to prohibit DOE from establishing standards that allow for covered products to be connected to a network simply because standards for those products were established prior to the time that network connectivity was even contemplated, and thereby eliminating the ability to implement this consumer-desired option. Similarly, for dishwashers, 42 U.S.C. 6295(q) authorizes DOE to establish standards for product features that provide consumer utility, such as shorter cycle times.

This interpretation is consistent with DOE’s previous recognition of the importance of technological advances that could yield significant consumer benefits in the form of lower energy costs while providing the same functionality to the consumer. 80 FR 13120, 13138 (Mar. 12, 2015); 81 FR 65720, 65752 (Sept. 23, 2016). In the proposed and supplemental proposed rule to establish standards for residential furnaces, DOE stated that tying the concept of feature to

a specific technology would effectively “lock-in” the currently existing technology as the ceiling for product efficiency and eliminate DOE’s ability to address such technological advances. *Id.*

Further, EPCA’s anti-backsliding provision is limited in its applicability with regard to water use to four specified products, *i.e.*, showerheads, faucets, water closets, or urinals. DOE’s existing energy conservation standard for dishwashers is comprised of both energy and water use components. As dishwashers are not one of the products listed in anti-backsliding provision with respect to water use, there is no prohibition on DOE specifying a maximum amount of water use for dishwashers that is greater than the existing standard without regard to whether DOE were to establish a separate product class for dishwashers as proposed in this proposed rule.

Finally, DOE recognizes that 42 U.S.C. 6295(o)(4) prohibits DOE from establishing standards that would result in the unavailability of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities and volumes that are substantially the same as those generally available at the time of the Secretary’s finding. CEI makes the point that despite this prohibition, it appears that dishwasher cycle times have been impaired by the DOE standards and that many machines with shorter cycle times are no longer available. (CEI Petition, No. 0006 at p. 4) Section 6295(q) of EPCA authorizes DOE to set standards that recognize new technologies and product features, or in this case, features that are no longer available in the market. This reading of the statute is consistent with DOE’s previous acknowledgement that its determination of what constitutes a performance-related feature justifying a different standard could change depending on the technology and the consumer utility, and that as a result, certain products may disappear from (or in the case of dishwashers,

reappear in) the market entirely due to shifting consumer demand. This reading is also consistent with DOE's statements that DOE determines this value on a case-by-case basis through its own research as well as public comments received. (80 FR 13120, 13138, Mar. 12, 2015). In addition, once DOE makes a determination that a certain product attribute is a feature, DOE cannot later set a standard that would eliminate that feature.

III. Conclusion

After reviewing CEI's petition and comments received on the petition, DOE has concluded it has legal authority to establish a separate product class as suggested by CEI pursuant to 42 U.S.C. 6295(q). DOE proposes to establish a separate product class for dishwashers with a cycle time of the cycle recommended by the dishwasher manufacturer for daily, regular, or typical use to completely wash and dry a full load of normally soiled dishes (*i.e.*, the normal cycle time) of less than one hour. DOE will consider energy conservation standards in a separate rulemaking, should such a product class (or classes) be established.

IV. Rulemaking Overview and Response to Comments

A. Rulemaking Overview

DOE proposes to establish a separate product class or classes pursuant to 42 U.S.C. 6295(q)(1) for dishwashers with a cycle time of the cycle recommended by the dishwasher manufacturer for daily, regular, or typical use to completely wash and dry a full load of normally soiled dishes (*i.e.*, the normal cycle time) of less than one hour. DOE seeks comment on other potential time limits or utilities to delineate the separate product class. DOE also seeks comment on whether a short-cycle product class should be established for standard dishwashers, compact dishwashers, or both.

Should DOE finalize a separate product class, DOE would then evaluate energy and water consumption limits to determine a standard for the product class that provides for the maximum energy efficiency that is technologically feasible and economically justified, and will result in a significant conservation of energy. (42 U.S.C. 6295(o)(2)(A)) DOE will provide additional opportunity for comment on any proposed energy conservation standard for short-cycle dishwashers.

B. Response to Comments

AHAM commented that while it did not currently support a separate product class for dishwashers with cycle times of one hour or less, CEI raised a “critical consumer welfare and policy issue” that is of “enormous significance for future, possible DOE dishwasher energy conservation standards rulemakings. AHAM noted that AHAM had raised lengthening cycle times for the normal cycle as a concern in a previous dishwasher rulemaking. (AHAM, No. 2333 at p. 2-4) Earthjustice and Sierra Club commented that DOE has already considered the utility of cycle time in prior rulemakings, finding that the current energy conservation standards do not impermissibly impact utility. (Earthjustice and Sierra Club, No. 2245 at p. 3)

AHAM cited U.S. Energy Information Administration’s (EIA) *Residential Energy Conservation Survey (RECS)* 2015 data, that show over 80 percent of U.S. households use the normal cycle. (AHAM, No. 2333 at p. 3) Consumers Union cited its *Consumer Reports’ 2017 Spring Dishwashers Survey* of 74,880 Consumer Reports members who purchased a new

dishwasher between 2007 and 2017, in which it found: 87 percent of survey respondents reported that their most frequently used cycle was the either the “Normal/Regular” or “Auto/Smart” cycle, and 66 percent of respondents reported using the “Normal/Regular” cycle more than 50 percent of the time; only 6 percent of survey respondents reported that their most frequently used cycle was the “Quick/Express/1-hour” cycle; 27 percent of survey respondents reported using the “Quick/Express/1- hour” cycle at least some of the time, and the reported usage of the “Quick/Express/1-hour” cycle was similar to reported usage of other non-normal cycles such as “Heavy Duty” or “Pots & Pans.” (Consumers Union, No. 2250 at p. 2) In response to an inquiry from CEI, Consumers Union stated that it had not yet decided whether to publish the survey results and underlying methodology on which these numbers are based.

The Joint Commenters and NEEA cited data from the *Residential Building Stock Assessment* showing that there are two peaks in daily dishwasher use, one around breakfast time and a larger one around dinner time. (Joint Commenters, No. 2237 at p. 2; NEEA, No. 1789-2 at p. 2) Similarly, the CA IOUs stated that 55 percent of dishwashers were run after 5 pm, 28 percent between 9 am and 5 pm, and 17 percent before 9 am, suggesting that cycle time does not have a significant impact on consumer utility. (CA IOUs, No. 1800 at p. 5) GE Appliances stated that data based on its Wi-Fi enabled dishwashers indicate that most consumers run the dishwasher in the evening after dinner time and that the average consumer waits approximately eight hours after the cycle is complete to unload the dishes, indicating that cycle time is not a primary concern for many consumers. (GE Appliances, No. 1801 at p. 2) Both NEEA and CA IOUs further stated that there did not appear to be any cases where multiple, consecutive loads

were run, indicating that multiple loads are a relatively rare event and do not need to be accounted for. (NEEA, No. 1789-2 at p. 4; CA IOUs, No. 1800 at p. 5)

The Joint Commenters stated that if cycle time was highly valued by consumers, it would be expected that most dishwashers would consume as much energy and water as is allowed by the minimum standards in order to reduce cycle time as much as possible, but that data show that almost all dishwasher sales meet ENERGY STAR requirements. (Joint Commenters, No. 2237 at p. 6) Earthjustice and Sierra Club commented that in DOE's prior analyses, it identified technologies that could provide improved cycle times while still enabling the dishwasher to meet the energy conservation standard (*e.g.*, soil sensors and alternative drying technologies), and that if consumers were demanding shorter cycle times, such technologies would be widely adopted. (Earthjustice and Sierra Club, No. 2245 at pp. 3-4)

A significant number of consumers, by contrast, indicated dissatisfaction with the length of time the dishwasher took to clean dishes. (See docket for this rulemaking at <https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0005>.) Approximately a third of the more than 2,000 commenters responding to the RFI referenced the extensive length of time required for the dishwasher to run a normal cycle. One commenter stated that their "new dishwasher takes 219 minutes to complete a cycle . . . far too long and the dishes don't seem to be as clean as with the old unit." (Ballard, No. 1827 p. 1) A number of commenters stated that they choose not to use their dishwasher because of the length of time it takes to clean dishes. One individual noted that they no longer own a dishwasher, and instead prefer to wash dishes by hand as it is "faster than waiting the 2 to 4 hours for the washing cycle to complete," (Harvey, No.

2227 p. 1)), another commenter noted that they have “resort[ed] to disposable plates and utensils due to current dishwasher specs” including a “run cycle [of] four hours,” (Weingrad, No. 85 p. 1), while a third commenter stated that they stopped using their dishwasher because “it takes so long . . . to do the job . . . and . . . raised the utilities so much that we can't afford to use them,” (Cravens, No. 54 p. 1).

In response to commenters, DOE refers to its discussion in section II.A. on the utility of cycle time. As described, data provided by CEI indicates that dishwasher cycle times have increased significantly, from an average cycle time of 69 minutes in 1983 (the first year data was submitted) to 140 minutes in 2018. (CEI Petition, No. 0006, supporting data). In addition, while some consumers commented that they were not concerned with a shorter cycle time, a significant number of consumers commented to express dissatisfaction with the amount of time necessary to run their dishwashers. (See docket for this rulemaking at <https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0005>.) Contrary to the assertions of some commenters that the available data on when dishwashers are run (*i.e.*, typically after breakfast or in the evening) suggest that cycle time is of little utility, a different interpretation could be that consumers already know that their dishwasher will take a long time to run, and therefore decide to wait and run it before bed and empty it in the morning, regardless of whether they would prefer to run it at a different time. The data and numerous comments from consumers dissatisfied with the length of time it takes to run their dishwasher indicate that for some significant percentage of consumers, there is a utility in shorter cycle times to clean a normally-soiled load of dishes.

Additionally, the data referenced by Consumers Union and AHAM do not indicate if and to what extent a segment of consumers relies on a reduced-time cycle for their typical dishwasher usage, or what percentage of consumers would rely on a reduced-time cycle if it were available in the “normal cycle”. The data submitted by Consumers Union nonetheless indicate that there is a segment of dishwasher consumers that rely on a reduced-time cycle as the “most frequently used” cycle and as the cycle used “some of the time,” suggesting that some portion of consumers finds utility in a reduced cycle time. What is not clear from the data is whether an even larger percentage of consumers would find such utility if the reduced cycle time were offered in the normal cycle.

The time-of-day data submitted by CA IOUs and NEEA do not indicate the cycle being chosen by consumers and do not indicate whether a segment of consumers chooses to operate dishwashers on reduced-time cycles. While commenters interpret the time-of-day data to show that a percentage of dishwasher use occurs when consumers may not be concerned with the length of the cycle, data also show that a percentage of dishwasher use occurs when length of cycle may be a concern (*e.g.*, use in late afternoon prior to dinner). In addition, the data may also suggest a different interpretation than that offered by commenters – *i.e.*, that the reason the time-of-day data show dishwasher use after breakfast or dinnertime is because consumers who might otherwise wash their dishes at a more convenient time are choosing to start the cycle early in the day, or wait until late in the day, because they already know their dishwasher will take a long time to operate.

Additionally, DOE does not find data indicating lack of consecutive dishwasher runs informative to its decision to propose a product class for short cycle dishwashers. The lack of consecutive runs does not indicate whether some consumers find utility in having a single load of dishes washed and dried in a shorter period of time. It also does not capture those consumers that may be unable to perform consecutive dishwasher runs because of the length of time it takes to perform a single run, requiring these consumers to rely on alternatives (*e.g.*, washing dishes by hand).

Commenters stated that in addition to the normal cycle, numerous dishwashers have a cycle that has a shorter cycle time. Consumers Union noted that the DOE test procedure requires testing of the normal cycle to meet the standards, but stated that manufacturers are free to add additional cycles that are not limited in energy and water consumption. (Consumers Union, No. 2250 at p. 2) The Joint Commenters pointed to several dishwashers on the market that advertise “1-Hour,” “Turbo,” and “Short Wash” cycles. (Joint Commenters, No. 2237 at pp. 1–2) AHAM commented that 86.7 percent of reported 2017 dishwasher shipments in a recent AHAM survey provided consumers with a cycle that can wash and dry the load in just over one hour. (AHAM, No. 2233 at p. 2) AHAM further commented that 96.5 percent of the reported shipments offering shorter cycles are ENERGY STAR-qualified, offering consumers energy and water efficiency on the normal cycle and the option to use a shorter cycle. (AHAM, No. 2233 at p. 3)

While dishwashers may offer reduced-time cycles, such cycles are not the normal cycle; these cycles are not recommended, as DOE currently defines the normal cycle, by the manufacturer for daily, regular, or typical use to completely wash a full load of normally soiled

dishes including the power-dry feature. CEI stated that, based on a review of user manuals, manufacturers intend the quick cycles to be for lightly soiled dishes rather than normally soiled loads. For example, CEI reports that the GE model PDT846SSJSS dishwasher has an express cycle that, according to its manual, “will quickly wash lightly soiled dishes.” The model’s normal cycle “is meant for daily, regular, or typical use to completely wash a full load of normally soiled dishes” The Frigidaire model FGCD2456QF1B has a Quick Wash cycle which is “for lightly soiled dishes and silverware.” The manuals for other models also describe their express cycles as not suitable for normally soiled dishes, and none of these models reportedly have cycles for everyday use for normally soiled dishes that take only an hour to run (drying time included). CEI, *Supplemental Information Regarding CEI’s Petition for Rulemaking on a New Product Class of Fast Dishwashers* (March 28, 2018) (citations omitted). The CEI petition therefore requested that DOE establish a product class that would cover dishwashers with a cycle time, for the cleaning of a full load of normally soiled dishes, of less than one hour from washing through drying.

Consumer comment and survey results submitted by CEI indicate that some percentage of the market finds utility in a dishwasher that completely washes a full load of normally soiled dishes in a period of time less than that provided by the normal cycle of products currently offered. For these consumers, the utility of the dishwasher is not just the ability to have dishes cleaned in a short period of time, but that operation of the dishwasher as recommended by the manufacturer would provide such function. One commenter noted that their dishwasher “takes about two and a half hrs [sic] at the quickest cycle” and does not “clean as well as [she] would like.” (Buchter, No.0295 at p. 1) Similarly, one commenter indicated that “[t]here is the option to

cycle [the dishwasher] for 1 hour but that's not the recommended or best cycle,” (Zahorchak, No. 1028 at p. 1) , and another added that while their dishwasher “has shorter cycles . . . [of] 2 1/2 hours,” these cycles “do not get the dishes clean,” (Bowen, No. 2191 at p. 1) .

V. Request for Comments, Data and Information

In this rulemaking, DOE proposes to establish a separate product class for dishwashers with a cycle time of the cycle recommended by the dishwasher manufacturer for daily, regular, or typical use to completely wash and dry a full load of normally soiled dishes (*i.e.*, the normal cycle time) of less than one hour. To inform its consideration of the proposal and any future energy conservation standards for such dishwashers, DOE requests additional data, including shipments data, on the cycle time of the normal cycle of dishwashers (both standard dishwashers and compact dishwashers) currently on the market. DOE also requests data on the cycle time of reduced-time cycles currently offered on standard and compact dishwashers and corresponding shipments data, as well as the energy and water use of the reduced-time cycles. DOE requests comment on whether any current technologies could provide a “normal” wash and dry cycle in less than one hour and that would allow a dishwasher to comply with the current energy conservation standards, and whether such technologies are available for standard and compact dishwashers.

In its petition, CEI requested use of a one-hour limit on the cycle time to define the new product class of dishwashers. (CEI, No. 0006 at p. 5) CEI stated that it was requesting one hour as the defining characteristic for a new dishwasher class because this cycle time is substantially

below the normal cycle time for all current products on the market. *Id.* DOE seeks comment on whether the 60 minutes offered by CEI in its petition or some other length of time is appropriate to delineate the short cycle product class.

To better understand the extent of the utility a short cycle would potentially provide consumers, DOE requests comment and data for each current product class on consumer use of reduced-time cycles as a percentage of individual consumer dishwasher use, the cycle time of the reduced-time cycles selected, and the cycle time of the normal cycle of that dishwasher. DOE also requests information on the operating demands that may favor shorter cycle times. DOE also asks for data and information on how dishwashers with express or quick wash cycles operate and how those cycles compare to a “normal cycle” with regard to cleaning dishes.

If DOE were to establish a separate product class (or classes) for dishwashers with a cycle time of the cycle recommended by the dishwasher manufacturer for daily, regular, or typical use to completely wash and dry a full load of normally soiled dishes (*i.e.*, the normal cycle time) of less than one hour, DOE would then determine the maximum improvement in energy or water efficiency that is technologically feasible and economically justified, and would result in a significant conservation of energy, in order to establish an energy conservation standard for such dishwashers. (42 U.S.C. 6295(o)) In analyzing the feasibility of potential energy conservation standards, DOE uses information about existing and past technology options and prototype designs to help identify technologies that manufacturers could use to meet and/or exceed a given set of energy conservation standards under consideration.

DOE seeks information on technologies currently used or that could be used to achieve cycles with reduced time. DOE is interested in information regarding their market adoption, costs, and any concerns with incorporating them into products (*e.g.*, impacts on consumer utility, potential safety concerns, manufacturing/production/implementation issues, *etc.*). DOE also seeks information on the range of efficiencies or performance characteristics that are associated with each technology option.

DOE also seeks input on the costs associated with incorporating particular technologies and/or design options. DOE requests information on the investments necessary to incorporate specific technologies and design options, including, but not limited to, costs related to new or modified tooling (if any), materials, engineering and development efforts to implement each design option, and manufacturing/production impacts.

DOE has identified a variety of issues on which it seeks input in this rulemaking to establish a separate product class or classes and the appropriate energy conservation standard for such a product class (or classes) should it be established. Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document. In particular, DOE notes that under Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. See 82 FR 9339 (Feb. 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its energy conservation standards rulemakings, recordkeeping and reporting

requirements, and compliance and certification requirements applicable to dishwashers while remaining consistent with the requirements of EPCA.

VI. Submission of Comments

DOE invites all interested parties to submit in writing by [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***], comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of a separate product class or classes for dishwashers with a cycle time of the cycle recommended by the dishwasher manufacturer for daily, regular, or typical use to completely wash and dry a full load of normally soiled dishes (*i.e.*, the normal cycle time) of less than one hour. DOE also seeks comment on potential energy conservation standards for such a class of dishwashers should one be established. After the close of the comment period, DOE will review the public comments received and begin collecting data and conducting the analyses necessary to consider appropriate energy conservation standard levels.

Submitting comments via <http://www.regulations.gov>. The <http://www.regulations.gov> web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies Office staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to <http://www.regulations.gov> information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through <http://www.regulations.gov> cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through <http://www.regulations.gov> before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that <http://www.regulations.gov> provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or postal mail. Comments and documents submitted via email, hand delivery, or postal mail also will be posted to <http://www.regulations.gov>. If you do not want your personal contact information to be publicly

viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public

disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. Submit these documents via email to *Dishwashers2018STD0005@ee.doe.gov* or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE’s policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing energy conservation standards. DOE actively encourages the participation and

interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process or would like to request a public meeting should contact Appliance and Equipment Standards Program staff at (202) 287-1445 or via e-mail at *ApplianceStandardsQuestions@ee.doe.gov*.

VII. Procedural Requirements

A. Review Under Executive Order 12866, "Regulatory Planning and Review"

This proposed rule is not a “significant regulatory action” under any of the criteria set out in section 3(f) of Executive Order 12866, “Regulatory Planning and Review.” 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review by the Office of Information and Regulatory Affairs (“OIRA”) in the Office of Management and Budget (“OMB”).

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” That Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued Executive Order 13777, “Enforcing the Regulatory Reform Agenda.” The Order required the head of each agency designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

- (i) Eliminate jobs, or inhibit job creation;
- (ii) Are outdated, unnecessary, or ineffective;
- (iii) Impose costs that exceed benefits;
- (iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
- (vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE has determined that this proposed rule is consistent with these Executive Orders. The proposed rule grants a petition submitted to DOE by the Competitive Enterprise Institute requesting that DOE establish a product class for dishwashers with “normal cycle” times of one hour or less from washing through drying. CEI asserted in its petition that “dishwasher cycle times have become dramatically worse under DOE standards, and consumer satisfaction has dropped as a result.” (CEI, No. 6 at p. 1) This proposed rule, if adopted, would establish the product class requested by CEI. DOE also seeks data to assist its determination of the appropriate standard levels for such product class in a subsequent rulemaking.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel’s website: <http://energy.gov/gc/office-general-counsel>. This proposed rule revises the Code of Federal Regulations to incorporate, without substantive change, statutorily-imposed definitional changes affecting coverage under current energy conservation standards, applicable timelines related to certain rulemaking requirements, and related provisions prescribed by Public Law 115-78 and Public Law 115-115, along with a separate correction to reflect the current

language found in the statute. This rulemaking grants a petition from CEI to establish a product class for dishwashers with a “normal cycle” of less than one hour from washing through drying. Appropriate standard levels would be established in a subsequent rulemaking. As a result, no economic impact is expected from the rulemaking.

D. Review Under the Paperwork Reduction Act of 1995

This rulemaking, which proposes to establish a product class for dishwashers with a “normal cycle” of less than one hour from washing through drying but does not set standards or establish testing requirements for such dishwashers, imposes no new information or record keeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

Manufacturers of covered products generally must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including ceiling fans. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910-1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions,

searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes to establish a product class for dishwashers with a “normal cycle” of one hour or less from washing through drying. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE’s implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would only establish a new product class for dishwashers, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132, "Federalism"

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

G. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure

that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. (Public Law 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments

before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at <http://www.gc.doe.gov>). This proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements under the Unfunded Mandates Reform Act do not apply.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights"

The Department has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This proposed rule,

which would establish a product class for dishwashers with a “normal cycle” of one hour or less from washing through drying, would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Incorporation by reference, and Small businesses.

Signed in Washington, DC, on June 28, 2019.



Daniel R Simmons
Assistant Secretary
Energy Efficiency and Renewable Energy

For the reasons set forth in the preamble, DOE proposes to amend part 430 of title 10 of the Code of Federal Regulations as set forth below:

PART 430 - ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291-6309; 28 U.S.C. 2461 note.

2. Section 430.32 is amended by revising paragraph (f) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(f) *Dishwashers.* (1) All dishwashers manufactured on or after May 30, 2013, shall meet the following standard—

- (i) Standard size dishwashers shall not exceed 307 kwh/year and 5.0 gallons per cycle.
- (ii) Compact size dishwashers shall not exceed 222 kwh/year and 3.5 gallons per cycle.
- (iii) Standard size dishwashers with a “normal cycle”, as defined in 10 CFR part 430, subpart B, Appendix C1, section 1.12, of 60 minutes or less are not currently subject to energy or water conservation standards.

Product class	Energy factor (cycles/kWh)
(A) Compact Dishwasher (capacity less than eight place settings plus six serving pieces as specified in ANSI/AHAM DW-1-2010 (incorporated by reference, see §430.3) using the test load specified in section 2.7 of appendix C in subpart B)	0.62
(B) Standard Dishwasher (capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM DW-1-2010 (incorporated by reference, see §430.3) using the test load specified in section 2.7 of appendix C in subpart B)	0.46

(2) [Reserved].

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