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DEPARTMENT OF ENERGY

10 CFR Part 430

EERE-2019-BT-STD-0039

RIN 1904-AE32

**Energy Conservation Program: Energy Conservation Standards for Consumer Products;
Early Assessment Review; Dishwashers**

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

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (“DOE”) is undertaking an early assessment review to determine whether to amend energy conservation standards for dishwashers.

Specifically, through this request for information (“RFI”), DOE seeks data and information that could enable the agency to determine whether DOE should propose a “no new standard” determination because a more stringent standard: would not result in a significant savings of energy; is not technologically feasible; is not economically justified; or any combination of foregoing. DOE also seeks comment on the consideration of standards for a “short cycle” product class, as well as on any subject within the scope of this document (including those not topics not specifically raised in this RFI). DOE also requests submission of data and other relevant information concerning this early assessment review.

DATES: Written comments and information will be accepted on or before [INSERT DATE 75 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-2019-BT-STD-0039, by any of the following methods:

1. *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.
2. *E-mail*: Dishwashers2019STD0039@ee.doe.gov. Include the docket number EERE-2019-BT-STD-0039 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 telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III 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

<http://www.regulations.gov/#!docketDetail;D=EERE-2019-BT-STD-0039>. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III of this document 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.

Ms. 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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I. Introduction

DOE established an early assessment review process to conduct a more focused analysis of a specific set of facts or circumstances that would allow DOE to determine that, based on one or more statutory criteria, a new or amended energy conservation standard is not warranted. The purpose of this review is to limit the resources, from both DOE and stakeholders, committed to rulemakings that will not satisfy the requirements in EPCA that a new or amended energy conservation standard save a significant amount of energy, and be economically justified and technologically feasible. *See* 85 FR 8626, 8653–8654 (Feb. 14, 2020).

As part of the early assessment, DOE publishes an RFI in the *Federal Register*, announcing that DOE is considering initiating a rulemaking proceeding and soliciting comments, data, and information on whether a new or amended energy conservation standard would save a significant amount of energy and be technologically feasible and economically justified. Based

on the information received in response to the RFI and DOE’s own analysis, DOE will determine whether to proceed with a rulemaking for a new or amended energy conservation standard.

If DOE makes an initial determination based upon available evidence that a new or amended energy conservation standard would not meet the applicable statutory criteria, DOE would engage in notice and comment rulemaking before issuing a final determination that new or amended energy conservation standards are not warranted. Conversely, if DOE makes an initial determination that a new or amended energy conservation standard would satisfy the applicable statutory criteria or DOE’s analysis is inconclusive, DOE would undertake the preliminary stages of a rulemaking to issue a new or amended energy conservation standard. Beginning such a rulemaking, however, would not preclude DOE from later making a determination that a new or amended energy conservation standard cannot satisfy the requirements in EPCA, based upon the full suite of DOE’s analyses. *See* 85 FR 8626, 8654 (Feb. 14, 2020).

DOE is also considering the establishment of standards for a “short cycle” product class, if DOE were to finalize a “short cycle” product class in a separate rulemaking. *See* 84 FR 33869 (July 16, 2019). Additional background on DOE’s “short cycle” product class rulemaking is provided in section I.B of this document.

A. Authority

The Energy Policy and Conservation Act, as amended (“EPCA”),¹ among other things,

¹ All references to EPCA in this document refer to the statute as amended through America’s Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B² of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include residential dishwashers, the subject of this document. (42 U.S.C. 6292(a)(6))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (See 42 U.S.C. 6297(d))

EPCA requires that, not later than three years after the issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B)) DOE must

²For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2)) DOE is issuing this early assessment review pursuant to the requirements of 42 U.S.C. 6295(m)(3)(B).

B. Rulemaking History

In a direct final rule published on May 30, 2012 (“May 2012 direct final rule”), DOE prescribed energy conservation standards and water use standards consistent with the levels submitted in a petition by groups representing manufacturers, energy and environmental advocates, and consumer groups. 77 FR 31918. Compliance with the standards established in the May 2012 direct final rule was required beginning May 30, 2013. *Id.*

DOE subsequently published a NOPR on December 19, 2014, proposing amended standards. 79 FR 76141. In a final determination published on December 13, 2016 (“December 2016 final determination”), DOE concluded that the amended energy conservation standards would not be economically justified at any level above the standards established in the May 2012 direct final rule, and therefore determined not to amend the standards. 81 FR 90072. The current energy and water conservation standards are located in title 10 of the Code of Federal Regulations (“CFR”) part 430, section 430.32(f). The current applicable DOE test procedure for dishwashers appears at 10 CFR part 430 subpart B, appendix C1 (“Appendix C1”).

On July 16, 2019, in response to a petition for rulemaking submitted by the Competitive Enterprise Institute (“CEI”), DOE published a proposal (“July 2019 NOPR”) to establish a separate product class for dishwashers with a cycle time of less than one hour for the normal cycle (from washing through drying) (*i.e.*, a “short cycle” product class) . 84 FR 33869.

II. Request for Information and Comments

DOE is publishing this RFI to collect data and information during the early assessment review to inform its decision, consistent with its obligations under EPCA, as to whether the Department should proceed with an energy conservation standards rulemaking. Accordingly, in the following sections, DOE has identified specific issues on which it seeks input to aid in its analysis of whether amended standards for dishwashers would not save a significant amount of energy or be technologically feasible or economically justified. In particular, DOE is interested in any information indicating that there has not been sufficient technological or market changes since DOE last conducted an energy conservation standards rulemaking analysis for dishwashers to suggest more-stringent standards could satisfy these criteria. DOE also seeks data on the consideration of standards for a “short cycle” product class, if DOE were to finalize the proposed “short cycle” product class. DOE welcomes comments on other issues relevant to its early assessment that may not specifically be identified in this document.

A. Significant Savings on Energy

On December 13, 2016, DOE published a final determination that the standards established for dishwashers in 2012 did not need to be amended. 81 FR 90072. If DOE determines that more-stringent energy conservation standards would not result in an additional 0.3 quads of site energy savings or an additional 10-percent reduction in site energy use over a 30-year period, DOE would propose to make a no-new-standards determination. DOE seeks comment on energy savings that could be expected from more-stringent standards for existing product classes of dishwashers. DOE also seeks comments on energy savings that could be

expected with regard to the establishment of standards for a “short cycle” product class, if DOE were to finalize the proposed “short cycle” product class.

B. Technological Feasibility

During the most recent dishwasher rulemaking, which resulted in issuance of a “no-new standards” determination, DOE considered a number of technology options that manufacturers could use to reduce energy consumption in dishwashers. DOE seeks comment on any changes to these technology options that could affect whether DOE could again propose a “no-new-standards” determination, such as an insignificant increase in the range of efficiencies and performance characteristics of these technology options. DOE also seeks comment on whether there are any other technology options that DOE should consider in its analysis, including technology options that may be unique to a new “short cycle” product class. DOE also requests comment on whether any of these technologies may impact product features or consumer utility.

C. Economic Justification

In determining whether a proposed energy conservation standard is economically justified, DOE analyzes, among other things, the potential economic impact on consumers, manufacturers, and the Nation. DOE seeks comment on whether there are economic barriers to the adoption of more-stringent standard levels for dishwashers. DOE also seeks comment and data on any other aspects of its economic justification analysis from the December 2016 “no-new-standards” determination that may indicate whether a more-stringent energy conservation standard would not be economically justified or cost effective. DOE also seeks comments and information on economic justification with regard to the establishment of standards for a “short cycle” product class, if DOE were to finalize the proposed “short cycle” product class.

III. Submission of Comments

DOE invites all interested parties to submit in writing by the date specified previously in the **DATES** section of this document, comments and information on matters addressed in this document and on other matters relevant to DOE's consideration of amended energy conservations standards and water use standards for dishwashers. After the close of the comment period, DOE will review the public comments received and may begin collecting data and conducting the analyses discussed in this document.

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/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, 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 postal mail or hand delivery/courier, 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/courier 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 e-mail to *Dishwashers2019STD0039@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.

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*.

Signing Authority

This document of the Department of Energy was signed on September 22, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of

Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on September 22, 2020

9/22/2020

X Alexander N. Fitzsimmons

Signed by: ALEXANDER FITZSIMMONS
Alexander N. Fitzsimmons
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy