

Appliance Standards Awareness Project
Consumer Federation of America
National Consumer Law Center, on behalf of its low-income clients
Natural Resources Defense Council

October 16, 2019

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

RE: Docket Number EERE–2018–BT–STD–0005 / RIN 1904–AE35: Proposed Rule Granting a Petition for Rulemaking for Dishwashers

Dear Mr. Berringer:

This letter constitutes the comments of the Appliance Standards Awareness Project (ASAP), Consumer Federation of America (CFA), National Consumer Law Center, on behalf of its low-income clients (NCLC), and Natural Resources Defense Council (NRDC) on the proposed rule granting a petition for rulemaking for dishwashers. 84 Fed. Reg. 33869 (July 16, 2019). We appreciate the opportunity to provide input to the Department.

Since Congress established the first dishwasher standards in 1987, dishwasher energy and water use have declined by about 50%. DOE is now putting at risk those huge gains in efficiency by proposing to grant a petition from the Competitive Enterprise Institute (CEI) requesting that DOE establish a new product class for dishwashers with a cycle time of one hour or less. As proposed, this new product class would not be subject to *any* efficiency standards. We strongly oppose the creation of such a product class. A separate product class for dishwashers with a one-hour cycle time is unwarranted because such utility is already widely available to consumers, and there is no unique utility associated with having a short cycle be the “normal” cycle. DOE’s proposal would also be illegal. Furthermore, DOE has ignored many of our comments and those of other stakeholders opposed to CEI’s petition and has also failed to conduct their own research. Instead, the Department chose in many cases to rely solely on CEI’s assertions.

DOE is putting at risk huge gains in dishwasher efficiency. According to data from the Association of Home Appliance Manufacturers (AHAM), in 1987, dishwashers on average used 2.66 kWh of electricity per cycle. By 2010, when the third national standard took effect, average energy use had declined by almost 50% to 1.37 kWh/cycle.¹ In 2014, the year after the most recent standard took effect, average energy use had further declined to 1.25 kWh/cycle.² At the same time, real prices of dishwashers declined by 30% between 1987 and 2010.³ Water use has also declined by about 50%. According to *Consumer Reports*, 20 years ago it was common for dishwashers to use 10 gallons of water or more per

¹ http://appliance-standards.org/sites/default/files/Better_Appliances_Report.pdf. pp. 37-38.

² AHAM 2014 Trends in Energy Efficiency.

³ http://appliance-standards.org/sites/default/files/Better_Appliances_Report.pdf. pp. 37-38.

cycle.⁴ Dishwashers just meeting the current standards use 5 gallons/cycle, and the most efficient machines use less than 3 gallons/cycle. DOE is now putting at risk these huge gains in efficiency by proposing a new product class that would not be subject to *any* efficiency standards. Consumers would ultimately be harmed by no longer having the assurance that dishwashers meet minimum efficiency levels.

There is no unique utility associated with having a short cycle be the “normal” cycle. As we and many other commenters pointed out in response to CEI’s petition, dishwashers with a cycle time of one hour or less are widely available today. Therefore, the utility of a short cycle is already available to consumers, making a separate product class unwarranted. In the NOPR, DOE seems to argue that there is a unique utility associated with having a short cycle be the “normal” cycle. Specifically, DOE asserts that for some percentage of 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.”⁵

However, the only support that DOE provides for this argument are comments from three individuals, two of which are irrelevant. DOE quotes one commenter as saying their dishwasher “takes about two and a half hrs [sic] at the quickest cycle” and does not “clean as well as [she] would like” and another that said that while their dishwasher “has shorter cycles . . . [of] 2 ½ hours,” these cycles “do not get the dishes clean.”⁶ These comments say nothing related to DOE’s argument that there is a unique utility associated with a short cycle being the “normal” cycle.

DOE’s argument thus seems to rest on a single commenter who said that “[t]here is the option to cycle [the dishwasher] for 1 hour but that’s not the recommended or best cycle.”⁷ Aside from the fact that a comment from a single individual cannot be the basis for a significant change in policy, a review of dishwasher manuals does not support the assertion that manufacturers somehow are not recommending the use of short cycles. For example, a GE manual describes a “1-Hour Wash” cycle by saying: “For fast results, 1-Hour Wash will clean dishes using more water and energy. Select the Heat Dry option to provide best dry performance. May be used for all soil levels.”⁸ An LG manual describes their “Turbo” cycle by saying: “This cycle will clean heavily soiled dishes in an hour using slightly more energy and water.”⁹ These manuals simply say that if a consumer wants a shorter cycle, the short cycle options will provide that utility using more energy and water.

In sum, DOE has failed to provide any evidence that there is a unique consumer utility offered by having the “normal” selection on a dishwasher be a short cycle. Because dishwashers with the option of a short cycle are widely available today, a separate product class for dishwashers with a “normal” cycle of one hour or less would be unwarranted.

DOE’s proposal would be illegal. As the Natural Resources Defense Council, Sierra Club, and Earthjustice explain in their comments, DOE’s proposal to weaken standards for a class of dishwashers would violate

⁴ <https://www.consumerreports.org/cro/news/2013/09/kitchenaid-dishwasher-recycles-water-as-it-washes/index.htm>.

⁵ 84 Fed. Reg. 33875.

⁶ Ibid.

⁷ 84 Fed. Reg. 33875.

⁸ <https://images.homedepot-static.com/catalog/pdfImages/ce/cec6bc5f-3d3b-42ad-ad19-beb507f58320.pdf>.

⁹ <https://images.homedepot-static.com/catalog/pdfImages/b7/b750c344-4023-4357-b848-7ba204f442a0.pdf>.

the anti-backsliding provision since the current dishwasher standards apply to all dishwashers, regardless of cycle time. Furthermore, even if it were otherwise lawful for DOE to create a separate product class, DOE's proposal would violate the Energy Policy and Conservation Act (EPCA) since the Department is proposing that the new product class would not be subject to *any* standards.

DOE has inappropriately relied on CEI's assertions. In the proposed rule, DOE has ignored many of our comments and those of other stakeholders opposed to CEI's petition and has also failed to conduct their own research. Instead, in many cases DOE relies solely on CEI's assertions. For example, in attempting to justify the Department's proposed action, DOE states in the proposed rule that "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."¹⁰ As we pointed out in our comments on CEI's petition, the data presented by CEI do not support the argument that standards have been the main driver of increased cycle times. In fact, the greatest increase in average cycle time came during a long period when no new standard was adopted.¹¹ Specifically, between 1991, when the second standard was adopted, and 2007, when the third standard was adopted, average cycle time increased from about 75 minutes to more than 115 minutes. Even between the year after the second standard took effect (1995) and the year the third standard was adopted (2007), average cycle time increased by almost 30 minutes. While DOE cited these comments in the proposed rule, the Department provided no response other than to say "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."¹² DOE does not provide any support for the claim that dishwasher cycle times "have been impaired by the DOE standards," but rather relies solely on CEI's assertion.

In the same statement in the proposed rule, DOE also relies on CEI's assertion that "many machines with shorter cycle times are no longer available." But as we pointed out in our comments on CEI's petition, the data presented by CEI show that even before any standard for dishwashers was adopted, average cycle time was longer than one hour. DOE ignored this comment in the proposed rule.

DOE also chose to ignore the explanations we provided in our comments on CEI's petition for why average cycle time has likely increased. Specifically, we provided evidence that there appears to be clear consumer demand for quiet, efficient machines, which are both features that can be achieved in part by increasing cycle time. We also described how changes in detergents have likely contributed to increased cycle times in recent years since newer detergents use enzymes, which require time to work effectively.¹³ While DOE cited these comments in the proposed rule, the Department provided no response.

DOE also relied on CEI's assertions regarding the intended use of short cycles while ignoring comments from us and other stakeholders that clearly refute those assertions. In the proposed rule, DOE notes that we and other commenters pointed out that dishwashers with short cycles are widely available. DOE responded to this argument by claiming that these short cycles are for "lightly soiled" loads only. Yet DOE did not conduct any of their own research regarding these short cycles. Rather, the Department relies solely on CEI's assertions. The proposed rule says that "CEI stated that, based on a review of user

¹⁰ 84 Fed. Reg. 33873.

¹¹ <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-2237>, p. 3.

¹² 84 Fed. Reg. 33874.

¹³ <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-2237>, pp. 3-6.


manuals, manufacturers intend the quick cycles to be for lightly soiled dishes rather than normally soiled loads.” The proposed rule then cites specific dishwasher manuals referenced by CEI in which the manufacturer describes a short cycle as intended for lightly soiled loads. But DOE chose to ignore dishwasher manuals that we cited in our comments which do not support the claim that short cycles are designed only for lightly soiled loads. Specifically, we provided examples of three dishwasher manuals that describe short cycles for use with “everyday dishes,” “all soil levels,” and “heavily soiled dishes.”¹⁴ Yet in the proposed rule DOE references our comment by saying that we “pointed to several dishwashers on the market that advertise ‘1-Hour,’ ‘Turbo,’ and ‘Short Wash’ cycles” without citing the additional information we provided regarding how these cycles are described by manufacturers.¹⁵

DOE also ignored data from AHAM which refutes the claim that short cycles on dishwashers are intended only for lightly soiled loads. Specifically, AHAM provided data on 2017 dishwasher shipments encompassing almost 400 models which showed that “only 52 percent of the reported shipments indicated that the recommended soil level for the quick cycle was ‘light.’”¹⁶ Yet DOE ignored this data in the proposed rule.

In sum, we urge DOE to withdraw the proposed rule, which would put at risk huge gains in dishwasher efficiency and ultimately harm consumers. The creation of a separate product class for dishwashers with a cycle time of one hour or less would be both unwarranted and illegal. Consumers today have wide-ranging choices of dishwashers that provide the option of a short cycle, including short cycles that can be used with normally soiled (and even heavily soiled) dishes. Finally, by ignoring comments that we and other stakeholders provided in response to CEI’s petition and failing to conduct their own research, DOE has inappropriately substituted CEI’s judgment for their own.

Thank you for considering these comments.

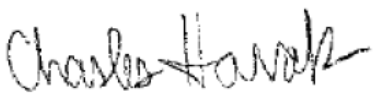
Sincerely,



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¹⁴ Ibid. pp. 1-2.

¹⁵ 84 Fed. Reg. 33875.

¹⁶ <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-2233>, p. 2.