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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–BT–PET–0053]

Energy Conservation Program for Consumer Products: Association of Home Appliance Manufacturers Petition for Reconsideration

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

ACTION: Notice of denial of petition for reconsideration.

SUMMARY: This document announces the U.S. Department of Energy's (DOE) denial of a petition from the Association of Home Appliance Manufacturers (AHAM) requesting reconsideration of DOE's final rule to amend the test procedures for residential dishwashers, dehumidifiers, and conventional cooking products, as well as the direct final rule to amend energy conservation standards for dishwashers.

DATES: This denial is effective April 10, 2013.

ADDRESSES: *Docket:* For access to the docket to read the petition or comments received thereon, go to the *Federal eRulemaking Portal* at *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-PET-0053.* In addition, electronic copies of the Petition are available online at DOE's Web site at *http://www1.eere.energy.gov/buildings/appliance_standards/current_rulemakings-notices.html.* For access to the docket for DOE's direct final rule to amend energy conservation standards for dishwashers, go to the *Federal eRulemaking Portal* at *http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-STD-0060-0005.* For access to the docket for the final rule to amend the test procedures for residential dishwashers, dehumidifiers, and conventional cooking products, go to the *Federal eRulemaking Portal* at *http://www.regulations.gov/#!documentDetail;D=EERE-2010-BT-TP-0039-0040.*

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This notice involves a petition by AHAM for reconsideration of DOE's final test procedure rule to amend the test procedures for dishwashers, dehumidifiers, and conventional cooking products (77 FR 65942, Oct. 31, 2012) and its direct final rule to amend the energy conservation standards applicable to dishwashers (77 FR 31918, May 30, 2012; 77 FR 59712, Oct. 1, 2012).[1] Specifically, AHAM requested that DOE stay the effectiveness of the test procedure final rule and final standards rule until DOE either: (1) Revises the standards in the final standards rule to account for the impact on measured energy resulting from test procedure amendments to measure fan-only mode and standby and off mode energy use; or (2) delays requirements regarding measurement of fan-only mode and standby and off mode energy use until promulgation of a revised standard for dishwashers. After carefully considering AHAM's request and the comments submitted in response to publication of the petition for comment, DOE declines to grant the request.

I. AHAM Petition Summary

In support of its request, AHAM asserts that the test procedure amendments for fan-only mode and standby and off mode energy use impact the measured energy use of dishwashers. As a result, AHAM states that the Energy Policy and Conservation Act of 1975 (EPCA), as amended, requires DOE to adjust the stringency of the energy conservation standards in the direct final rule accordingly or delay compliance with those test procedure amendments until a subsequent amended standard is promulgated for dishwashers. AHAM acknowledges that the standards established in the direct final rule were submitted to DOE in a consensus agreement to which it was a party and adopted pursuant to DOE's authority at 42 U.S.C. 6295(p)(4).

A. Fan-Only Mode

In support of AHAM's contention that the fan-only mode test procedure revisions require an adjustment of the standard, AHAM cited DOE's conclusion that measurement of fan-only mode energy use would increase the measured energy use of the dishwasher by 0.4–17 kilowatt-hours per year (kWh/year). In addition, AHAM cited a statement from a supplemental notice of proposed rulemaking (SNOPR) that the higher end of the range is greater than 5 percent of the maximum allowable annual energy consumption for a standard dishwasher. (77 FR 31444, May 25, 2012) (May 2012 SNOPR). (DOE notes that the percentage cited in the May 2012 SNOPR references the 355 kWh per year standard applicable to standard dishwashers until May 30, 2013. The statement should therefore read ''less'' than 5 percent because 17 kWh/year represents 4.8 percent of 355 kWh/year.)[2] AHAM stated that this conclusion was unchanged when DOE proposed a less burdensome method to measure the energy use in fan-only mode in response to public comment (77 FR 49064, Aug. 15, 2012) (August 2012 SNOPR). AHAM also stated that it collected data showing that measuring fan-only mode energy use would add a shipment-weighted average of 0.29 kWh per year in measured energy. According to AHAM, this increase in energy use could add up to 2 percent of the 2013 standard in measured energy for some models.

AHAM asserted that notwithstanding DOE's arguments that the energy use in

[1] DOE Docket No. EERE–2010–BT–TP–0039, 11/30/12, *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-PET-0053.*

[2] In addition, DOE emphasizes, as discussed in Section III of this notice, that adjustments, if any, required under 42 U.S.C. 6293(e)(2) would be made based on the average change in measured energy use. According to AHAM's data, this shipment adjusted average would be only a 0.29 kWh per year change, or 0.1 percent of the energy use for standard dishwashers allowed under the standards established in the direct final rule.

fan-only mode is *de minimis*—the fan-only mode energy use is estimated to be less than 5 percent of the total energy use of standard dishwashers, and 65 percent of dishwashers currently on the market meet the amended energy conservation standards adopted in the direct final rule—DOE is still required to ensure that the stringency of the amended standards adopted in the direct final rule remains unchanged. AHAM argued that DOE has not explained what it considers to be *de minimis,* and that Congress did not provide a *de minimis* exception to the standards amendment requirements in 42 U.S.C. 6293. AHAM also pointed out that the stakeholders to the consensus agreement, upon which the standards in the direct final rule were based, stated that if DOE amended the test procedure prior to the compliance date of the agreed-to standards, the stakeholders would recommend that DOE translate the standards to equivalent levels specified under revised test procedures, as specified in 42 U.S.C. 6293(e).

B. Standby and Off Mode

In support of AHAM's contention that the standby and off mode test procedure revisions require an adjustment of the standard, AHAM noted DOE's conclusion that while DOE did not expect the estimated annual energy use (EAEU) or estimated annual energy cost to be significantly affected by the proposed amendments to measure standby and off mode energy use, integrating such energy use into the overall efficiency metric would produce a measureable difference in EAEU (Public Meeting Transcript, Dec. 17, 2010).[3] AHAM also disagreed with DOE's conclusion, reiterated in the September 2011 SNOPR, that the proposed standby and off mode amendments would not measurably alter the existing energy efficiency and energy use metrics for dishwashers (76 FR 58346, 58355, Sept. 20, 2011). AHAM stated that because the proposed amendments change what energy will be measured (*i.e.,* the end of cycle energy, including cycle finished mode, would be measured under the proposed revisions), DOE should amend the standards to account for this change. AHAM also stated that it collected data showing that measuring standby and off mode energy use would add a shipment-weighted average of 1.10 kWh per year. In addition, because the 1.10 kWh is an average, AHAM stated that some manufacturers will be more significantly affected.

As with fan-only mode, AHAM pointed out that the stakeholders to the consensus agreement, upon which the standards in the direct final rule were based, agreed that if the test procedure were amended, the stakeholders would recommend that DOE translate the standards to equivalent levels specified under revised test procedures, as specified in 42 U.S.C. 6293(e). In addition, AHAM asserted that DOE took this approach in establishing revised standards for room air-conditioners and clothes dryers in its direct final rule establishing amended energy conservation standards (76 FR 22454, Apr. 21, 2011; 76 FR 52854, Aug. 24, 2011).

II. Discussion of Comments Received

DOE published AHAM's petition for comment on December 31, 2012 (77 FR 76952). DOE received five comments on the petition. These comments and DOE's responses are set forth in the paragraphs that follow.

BSH Home Appliances Corporation (BSH)[4] and General Electric Appliances (GE)[5] supported AHAM's petition and stated that DOE should determine the impacts on measured energy use resulting from the test procedure and adjust the applicable standards levels accordingly. BSH commented further that the impacts of the new standby power measurement ranged from 0–21 kWh/year for the BSH models tested, which BSH stated was not ''*de minimis*''.[6] BSH also stated that DOE should recognize: (1) Any reduction in energy consumption will have an influence on cleaning performance; (2) Changes in product ratings are expensive, difficult to manage on sales floors and cause confusion to the consumer and to rebate programs; (3) The changes could cause some units to fall off of the ''Energy Star'' list, which may result in discontinuing production of the impacted models and increased cost.

Further analysis of DOE's *de minimis* conclusion in light of the data submitted by AHAM and BSH, as well as DOE's analysis concerning the appropriateness of adjusting the energy conservation standard levels established in the direct final rule is set forth in Section III of this notice. In the paragraphs that follow, DOE provides information developed during the test procedure rulemaking in support of the *de minimis* conclusion and responds to the related comments offered by BSH.

For standby and off mode energy use, DOE proposed to measure such energy use in the December 2010 proposed test procedure amendments using IEC Standard 62301 ''Household electrical appliances—Measurement of standby power,'' First Edition 2005–06 (IEC 62301). 75 FR 75290 (Dec. 2, 2010). In the September 2011 SNOPR, DOE proposed to measure such energy use using the Second Edition of IEC 62301, as recommended by commenters. 76 FR 58346 (Sept. 20, 2011). DOE analyzed the change in measured energy use, if any, that would occur as a result of these proposed changes and concluded that these amendments would not measurably alter the energy use of dishwashers. 75 FR 75290, 75316–17; 76 FR 58346, 58355 (Dec. 2, 2010).

For fan-only mode energy use, DOE proposed a method to measure such energy use in the May 2012 SNOPR (71 FR 31444, 31447) and proposed an alternative method to measure such energy use in the August 2012 SNOPR based on comments received from interested parties, including manufacturers (77 FR 49064, 49067). DOE determined that the energy use measured in fan-only mode would represent less than 5 percent of the total energy use of standard dishwashers. Given that 65 percent of all standard dishwashers currently on the market meet or exceed the minimum energy conservation standards established in the direct final rule, inclusion of this small amount of energy use would have virtually no impact on compliance with the revised standard. As a result, DOE determined that the energy use in fan-only mode is *de minimis* and insufficient to alter in a material manner the measured energy use of dishwashers. 77 FR 65942, 65947 (Oct. 31, 2012).

In response to BSH's other comments, DOE considered impacts to consumer utility in adopting the standards established in the direct final rule and concluded that the standards adopted in that rule would not impact product utility. 77 FR 31918, 31956–57 (May 30, 2012). In addition, DOE takes no position on the business or marketing decisions made by manufacturers in response to amendments to applicable

[3] DOE held the public meeting to discuss its notice of proposed rulemaking to amend the test procedure for dishwashers, dehumidifiers and conventional cooking products (75 FR 75920, Dec. 2, 2010) (December 2010 NOPR).

[4] DOE Docket No. EERE–2012–BT–PET–0053, Comment 3, January 30, 2013.

[5] DOE Docket No. EERE–2012–BT–PET–0053, Comment 7, January 31, 2013.

[6] BSH also commented regarding the test procedure provisions for measuring the energy used during water softener regeneration. As stated in DOE's final test procedure rule, manufacturers have been required to measure this energy (and water) use to demonstrate compliance with existing standards. 77 FR 65942, 65946–47 (Oct. 31, 2012). As a result, such energy and water use would not be considered in determining whether standards adjustments may be required under 42 U.S.C. 6293(e).

DOE regulations, including whether to discontinue models that no longer meet ENERGY STAR standards. DOE further notes that changes to the ENERGY STAR compliance of certain models can occur with any amendment of DOE's energy conservation standards and are not specific to DOE's amendments to the standards for dishwashers in the direct final rule.

The California IOUs (Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison) and a number of energy efficiency advocates and consumer groups (Appliance Standards Awareness Project, American Council for an Energy Efficient Economy, Alliance to Save Energy, Consumer Federation of America, Natural Resources Defense Council, Northwest Energy Efficiency Alliance, Northwest Power and Conservation Council, and Earthjustice, hereinafter referred to as the ''Joint Commenters'') opposed staying the effective date of the direct final rule. These commenters also stated that if manufacturers provide data documenting non-compliance with the standard as a result of the test procedure changes, DOE could stay those portions of the test procedure specified in AHAM's petition.

The Joint Commenters also stated that AHAM has not shown that DOE was incorrect in concluding that any impact on measured energy consumption would be *de minimis*. Based on AHAM's data, the Joint Commenters concluded that the change in measured energy use as a result of the disputed test procedure provisions would only be one-half of one percent of the new standard levels, rather than the two percent noted by AHAM. In addition, because any adjustment to the standard pursuant to 42 U.S.C. 6293(e) would be made based on averages, the Joint Commenters concluded that any products that fall out of compliance with the new standards due to their significantly above-average fan-only and standby and off mode energy use would still be non-compliant even if DOE adjusted the standards. The Joint Commenters also offered that EPCA, as amended, does not authorize DOE to amend the standards in response to AHAM's petition because the test procedure rulemaking had concluded.

As explained in Section III of this notice, DOE declines to grant AHAM's request to stay the effective date of the standards established in the direct final rule until DOE: (1) Revises the standards in the final standards rule to account for the impact on measured energy resulting from test procedure amendments to measure fan-only mode and standby and off mode energy use; or (2) delays requirements regarding measurement of fan-only mode and standby and off mode energy use until promulgation of a revised standard for dishwashers. As part of this determination, DOE maintains its conclusion that the energy use in fan-only and standby and off mode is *de minimis*. DOE welcomes data on dishwasher performance under the amended test procedure at any time. Given DOE's conclusions, DOE does not reach the Joint Commenter's argument concerning compliance with 42 U.S.C. 6293(e) once a test procedure rulemaking has been completed.

DOE also received a comment from a private citizen asserting the need for energy efficient appliances as soon as possible at a reasonable cost. The commenter recommended that the Federal government provide incentives to the American manufacturers to produce these products. This comment is outside the scope of DOE's response to the AHAM petition.

III. Legal Analysis and Decision

EPCA requires DOE to determine to what extent, if any, proposed test procedure amendments would alter the measured energy efficiency, energy use, or water use of any covered product as determined under the existing test procedure. 42 U.S.C. 6293(e)(1). If DOE determines that the amended test procedure will alter the measured energy efficiency, energy use, or water use of a covered product, DOE must amend the applicable energy conservation standard. The amended standard is calculated as the average of the energy efficiency, energy use, or water use determined by testing a representative sample of products that minimally comply with the existing standard using the amended test procedure. 42 U.S.C. 6293(e)(2).[7] DOE's authority to amend energy conservation standards does not affect DOE's obligation to issue final rules as described in 42 U.S.C. 6295. 42 U.S.C. 6293(e)(4).

In applying these provisions to the energy conservation standards adopted in the direct final rule for dishwashers, DOE determined that no adjustment to the standard levels was warranted because the changes in measured energy use resulting from the test procedure amendments for the measurement of fan-only mode and standby and off mode energy use were *de minimis* and, therefore, the extent of change in measured energy use, if any, would not materially alter the standard levels.

AHAM argues in its petition that DOE must grant the requested relief, either adjusting the standard levels established in the direct final rule or delaying compliance with the test procedure provisions for measuring energy use in fan-only mode and standby and off mode, because Congress did not provide a *de minimis* exception to the requirements of 42 U.S.C. 6293(e)(2). In response, DOE emphasizes that 42 U.S.C. 6293(e)(1) requires DOE to determine ''to what extent, if any'' the proposed test procedure would alter the measured energy efficiency or energy or water use of a covered product. This provision, requiring DOE to determine ''the extent'', if any, of any alteration in measured energy use, means the provision must apply only beyond some minimum amount. That is, there would be no reason for the Secretary to determine ''the extent'' of the change if any alteration in measured energy use would trigger the requirements of 42 U.S.C. 6293(e)(2). Thus, DOE has the discretion to determine that the amount of change in measured energy use is so insignificant that the standard would not be materially altered. As such, when DOE determines the change in measured energy use is *de minimis,* amendment of the standard under 42 U.S.C. 6293(e)(2) would serve no purpose and would therefore not be required.

As noted in Section II of this notice, DOE analyzed the change in measured energy use, if any, that would occur as a result of the proposed changes to the measurement of standby mode and off mode energy use, and fan-only mode energy use. As discussed in the paragraphs that follow, DOE determined that the data submitted by manufacturer commenters does not change the conclusion that measurement of the energy use in fan-only mode and standby and off mode is insufficient to materially alter the measured energy use of dishwashers and therefore does not require an adjustment of the energy conservation standards established in the direct final rule.

DOE estimated fan-only mode energy use at 0.4–17 kWh per year, which even at the high end of the range is less than 5 percent of the energy use of standard dishwashers. DOE emphasizes, and agrees with the point made by the Joint Commenters, that a standards

[7] EPCA also states that models of covered products in use before the date on which the amended standard becomes effective (or revisions of such models that have the same energy efficiency, energy use, or water use characteristics) that comply with the energy standard applicable to those products are deemed to comply with the amended standard. 42 U.S.C. 6293(e)(3). Because DOE determined that amended standards were not warranted, this provision does not apply in this case.

adjustment required by 42 U.S.C. 6293(e)(2) would be based on the average change in measured efficiency, which would be less than the high end of the range estimated by DOE. In fact, based on the data AHAM collected, fan-only mode energy use would represent an estimated 0.29 kWh per year for a shipment-weighted average, which is less than the lower end of the range calculated by DOE and represents roughly only 0.1 percent of the energy use for standard dishwashers allowed under the standards established in the direct final rule. DOE assumes that the 2 percent increase in energy use cited by AHAM in its petition refers to units that used more than the shipment-weighted average energy use in fan-only mode. As noted, if any adjustment to an energy conservation standard were determined necessary under 42 U.S.C. 6293(e)(2), the adjustment would be based on the average change in measured efficiency, or the 0.1 percent figure. The data submitted by AHAM are therefore insufficient to change DOE's conclusion that the energy use in fan-only mode is *de minimis*.

DOE estimates standby and off mode energy use at 2 percent of total energy use of a standard dishwasher. As noted in the test procedure rulemaking and in Section II of this notice, DOE further estimated that the test procedure amendments made for appendix C1 would not materially alter that measured energy use. AHAM collected data showing that the updated test procedure for measuring standby and off mode energy use in Appendix C1 would add a shipment-weighted average of 1.10 kWh per year. BSH submitted data indicating that standby and off mode energy use could add up to 21 kWh per year for the BSH models tested. AHAM's figure of 1.10 kWh/year is only 0.4 percent of the May 2013 standard level for standard dishwashers. DOE notes that the BSH estimate of an additional 21 kWh per year of standby and off mode energy use would represent an increase in low-power mode consumption of 2 to 3 Watts compared to the standby power measured according to Appendix C, which is at least three times the maximum inactive or off mode power consumption that DOE measured in its sample of 14 dishwashers tested for the December 2010 proposed test procedure amendments. DOE also notes that its statement about a measurable difference in EAEU at the public meeting, noted in Section II of this notice, was meant to convey that integration of the standby and off mode energy use into the overall efficiency metric pursuant to 42 U.S.C. 6295(gg)(3) would still allow for calculation of this energy use, even though the energy use measurement was very small. After considering the data submitted by commenters, DOE maintains its conclusion that the amendments to measure standby and off mode energy use would not measurably alter the energy use of dishwashers.

AHAM also argues in its petition that DOE must adjust the standard levels established in the direct final rule or delay compliance with the test procedure provisions for measuring energy use in fan-only mode and standby and off mode because it has not provided a definition of *de minimis.* DOE does not believe that it is necessary or appropriate to, for example, specify an amount or percentage of energy use that would be *de minimis*. Such a concept necessarily depends on factors such as the product at issue, the total amount of energy used by the product, and the test procedure change at issue.

DOE has determined in at least one instance that adjustment of the standard levels based on test procedure amendments was warranted. As AHAM noted, in the direct final rule establishing energy conservation standards for clothes dryers and room air conditioners, DOE adjusted the standard for clothes dryers based on its estimate of the increase in average energy factor that would result from use of the amended test procedure, which ranged from 10.3–22.5 percent (77 FR 22454, 22477, Apr. 21, 2011). This range is significantly larger than the percentage increase DOE estimated for the dishwasher rule and the average percentage increase that AHAM estimated—0.29 kWh/year for fan-only mode and 1.10 kWh/year for standby and off mode, which represent in total approximately 0.45 percent of the May 2013 standards for dishwashers.

Regarding DOE's statement that 65 percent of standard dishwashers on the market would meet the standards established in the direct final rule, DOE intended to convey that the standard adopted in the direct final rule, which represented the maximum improvement in energy efficiency that was technologically feasible and economically justified, was not so stringent that only a very small percentage of dishwashers would comply. In such a case, DOE might consider whether a smaller change in measured energy use could trigger the requirements of 42 U.S.C. 6293(e)(2).

Even if DOE had determined that the change in measured energy use as a result of test procedure provisions for the measurement of standby and off mode energy use were not *de minimis,* DOE could not adjust the standard to account for the increase in measured energy use, which would result in lowering the current standard by a corresponding amount. Such an adjustment would be prohibited by EPCA's anti-backsliding provision, set forth in 42 U.S.C. 6295(o)(1). DOE's authority to amend energy conservation standards in 42 U.S.C. 6293(e) specifically does not affect DOE's obligation to issue any final rules as described in 42 U.S.C. 6295, including adherence to the anti-backsliding provision in 6295(o)(1). 42 U.S.C. 6293(e)(4).[8]

As a result of the above analysis, and in consideration of AHAM's petition and the comments received thereon, DOE declines to grant the petition.

Issued in Washington, DC on April 4, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CFPB–2012–0023]

Disclosure of Consumer Complaint Data

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final Policy Statement.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing a final policy statement (Policy Statement) to provide guidance on how the Bureau plans to exercise its discretion to publicly disclose certain consumer complaint data that do not include personally identifiable information. The Bureau receives complaints from consumers under the terms of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Policy Statement also identifies additional ways that the Bureau may disclose consumer complaint data but as to

[8] DOE notes that if a test procedure amendment would account for less energy use, thus raising the standard by some amount that DOE determined was not *de minimis,* 42 U.S.C. 6293(e)(3) would ''grandfather'' existing models in use on or before the date on which the amended energy conversation standard becomes effective (or revisions of such models that have the same energy efficiency, energy use or water use characteristics) that complied with the standard prior to the test procedure amendments that raised the standard.