

**DEPARTMENT OF ENERGY****10 CFR Parts 429 and 430****[Docket Number EERE-2008-BT-STD-0019]****RIN 1904-AB90****Energy Conservation Program: Energy Conservation Standards for Residential Clothes Washers****AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.**ACTION:** Notice of effective date and compliance dates for direct final rule.

**SUMMARY:** The U.S. Department of Energy (DOE) published a direct final rule to establish amended energy conservation standards for residential clothes washers in the **Federal Register** on May 31, 2012. DOE has determined that the adverse comments received in response to the direct final rule were not sufficiently adverse to provide a reasonable basis for withdrawing the direct final rule. Therefore, DOE provides this document confirming adoption of the energy conservation standards established in the direct final rule and announcing the effective date of those standards.

**DATES:** The September 28, 2012, effective date for the direct final rule published on May 31, 2012 (77 FR 32308) is confirmed. Compliance with the standards in the direct final rule will be required on March 7, 2015 and January 1, 2018, as set forth in Table 1 in the **SUPPLEMENTARY INFORMATION** section.

**ADDRESSES:** The docket is available for review at [regulations.gov](http://regulations.gov), including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the [regulations.gov](http://regulations.gov) index. Not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. The docket Web page can be found at [www.regulations.gov/](http://www.regulations.gov/) `#!docketDetail;D=EERE-2008-BT-STD-0019`.

For further information on how to submit or review public comments or view hard copies of the docket, contact Ms. Brenda Edwards at (202) 586-2945 or email: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen L. Witkowski, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue SW.,

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Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue SW., Washington, DC 20585-0121; telephone: (202) 586-7796; email: [Elizabeth.Kohl@hq.doe.gov](mailto:Elizabeth.Kohl@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:****I. Authority and Rulemaking Background**

As amended by Energy Independence and Security Act of 2007 (Pub. L. 110-140), the Energy Policy and Conservation Act (EPCA) authorizes DOE to issue a direct final rule establishing an energy conservation standard on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by the Secretary of Energy (Secretary), that contains recommendations with respect to an energy conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o). A notice of proposed rulemaking (NPR) that proposes an identical energy conservation standard must be published simultaneously with the direct final rule, and DOE must provide a public comment period of at least 110 days on the direct final rule. 42 U.S.C. 6295(p)(4). Not later than 120 days after issuance of the direct final rule, if one or more adverse comments or an alternative joint recommendation are received relating to the direct final rule, the Secretary must determine whether the comments or alternative recommendation may provide a reasonable basis for withdrawal under 42 U.S.C. 6295(o) or other applicable law. If the Secretary makes such a determination, DOE must withdraw the direct final rule and proceed with the simultaneously published NPR. DOE must publish in the **Federal Register** the reasons why the direct final rule was withdrawn. Id.

During the rulemaking proceeding to consider amending energy conservation standards for residential clothes washers, DOE received the "Agreement on Minimum Federal Efficiency Standards, Smart Appliances, Federal Incentives and Related Matters for Specified Appliances" (the "Joint Petition" or "Consensus Agreement"), a comment submitted by groups representing manufacturers (the Association of Home Appliance Manufacturers (AHAM), Whirlpool Corporation (Whirlpool), General

Electric Company (GE), Electrolux, LG Electronics, Inc. (LG), BSH Home Appliances (BSH), Alliance Laundry Systems (ALS), Viking Range, Sub-Zero Wolf, Friedrich A/C, U-Line, Samsung, Sharp Electronics, Miele, Heat Controller, AGA Marvel, Brown Stove, Haier, Fagor America, Airwell Group, Arcelik, Fisher & Paykel, Scotsman Ice, Indesit, Kuppersbusch, Kelon, and DeLonghi); energy and environmental advocates (American Council for an Energy Efficient Economy (ACEEE), Appliance Standards Awareness Project (ASAP), Natural Resources Defense Council (NRDC), Alliance to Save Energy (ASE), Alliance for Water Efficiency (AWE), Northwest Power and Conservation Council (NPCC), and Northeast Energy Efficiency Partnerships (NEEP)); and consumer groups (Consumer Federation of America (CFA) and the National Consumer Law Center (NCLC)) (collectively, the "Joint Petitioners"). This collective set of comments<sup>1 2</sup> recommends specific energy conservation standards for residential clothes washers that, in the commenters' view, would satisfy the EPCA requirements at 42 U.S.C. 6295(o).

After careful consideration of the Consensus Agreement, the Secretary determined that it was submitted by interested persons who are fairly representative of relevant points of view on this matter. DOE noted in the direct final rule that Congress provided some guidance within the statute itself by specifying that representatives of manufacturers of covered products, States, and efficiency advocates are relevant parties to any consensus recommendation. (42 U.S.C. 6295(p)(4)(A)) As delineated above, the Consensus Agreement was signed and submitted by a broad cross-section of the manufacturers who produce the subject products, their trade associations, and environmental, energy efficiency and consumer advocacy organizations. Although States were not signatories to the Consensus Agreement, they did not express any opposition to it from the time of its submission to DOE through the close of the comment period on the direct final rule. Moreover, DOE stated in the direct final rule that it does not interpret the statute as requiring absolute agreement among all interested parties before DOE may proceed with issuance of a direct final

<sup>1</sup> DOE Docket No. EERE-2008-BT-STD-0019, Comment 35.

<sup>2</sup> The Joint Petitioners submitted a second petition amending the recommended compliance dates for new residential clothes washer standards. DOE Docket No. EERE-2008-BT-STD-0019, Comment 39.

rule. By explicit language of the statute, the Secretary has discretion to determine when a joint recommendation for an energy or water conservation standard has met the requirement for representativeness (*i.e.*, “as determined by the Secretary”). Accordingly, DOE determined that the Consensus Agreement was made and submitted by interested persons fairly representative of relevant points of view.

Pursuant to 42 U.S.C. 6295(p)(4), the Secretary must also determine whether a jointly submitted recommendation for an energy or water conservation standard is in accordance with 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. As stated in the direct final rule, this determination is exactly the type of analysis DOE conducts whenever it considers potential energy conservation standards pursuant to EPCA. DOE applies the same principles to any consensus recommendations it may receive to satisfy its statutory obligation to ensure that any energy conservation standard that it adopts achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified and will result in significant conservation of

energy. Upon review, the Secretary determined that the Consensus Agreement submitted in the instant rulemaking comports with the standard-setting criteria set forth under 42 U.S.C. 6295(o). Accordingly, the Consensus Agreement levels, included as trial standard level (TSL) 3, were adopted as the amended standard levels in the direct final rule.

In sum, as the relevant statutory criteria were satisfied, the Secretary adopted the amended energy conservation standards for residential clothes washers set forth in the direct final rule. These standards are set forth in TABLE 1—AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS. The standards apply to all products listed in TABLE 1—AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS that are manufactured in, or imported into, the United States on or after March 7, 2015 for top loading clothes washers and January 1, 2018 for both top loading and front loading clothes washers. For a detailed discussion of DOE’s analysis of the benefits and burdens of the amended standards pursuant to the

criteria set forth in EPCA, please see the direct final rule. (77 FR 32308 (May 31, 2012)).

As required by EPCA, DOE also simultaneously published a NOPR proposing the identical standard levels contained in the direct final rule. DOE considered whether any comment received during the 110-day comment period following the direct final rule was sufficiently “adverse” as to provide a reasonable basis for withdrawal of the direct final rule and continuation of this rulemaking under the NOPR. As noted in the direct final rule, it is the substance, rather than the quantity, of comments that will ultimately determine whether a direct final rule will be withdrawn. To this end, DOE weighs the substance of any adverse comment(s) received against the anticipated benefits of the Consensus Agreement and the likelihood that further consideration of the comment(s) would change the results of the rulemaking. DOE notes that to the extent an adverse comment had been previously raised and addressed in the rulemaking proceeding, such a submission will not typically provide a basis for withdrawal of a direct final rule.

TABLE 1—AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS

Product class	Compliance date: March 7, 2015		Compliance date: January 1, 2018	
	Minimum IMEF *	Maximum IWF †	Minimum IMEF *	Maximum IWF †
1. Top-loading, Compact (less than 1.6 ft <sup>3</sup> capacity) .....	0.86	14.4	1.15	12.0
2. Top-loading, Standard .....	1.29	8.4	1.57	6.5
3. Front-loading, Compact (less than 1.6 ft <sup>3</sup> capacity) .....	1.13	8.3	N/A	
4. Front-loading, Standard .....	1.84	4.7	N/A	

\* IMEF (integrated modified energy factor) is calculated as the clothes container capacity in cubic feet divided by the sum, expressed in kilowatt-hours (kWh), of: (1) The total weighted per-cycle hot water energy consumption; (2) the total weighted per-cycle machine electrical energy consumption; (3) the per-cycle energy consumption for removing moisture from a test load; and (4) the per-cycle standby and off mode energy consumption. These IMEF standard levels are equivalent to the modified energy factor (MEF) standards proposed in the Consensus Agreement.

† IWF (integrated water factor) is calculated as the sum, expressed in gallons per cycle, of the total weighted per-cycle water consumption for all wash cycles divided by the clothes container capacity in cubic feet. These IWF standard levels are equivalent to the water factor (WF) standards proposed in the Consensus Agreement.

## II. Comments Received on the Direct Final Rule

### A. Comments Received in Support of the Direct Final Rule

Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison jointly expressed support for DOE’s adoption of the standard levels proposed in the Joint Petition,<sup>3</sup> as did AHAM.<sup>4</sup> Additionally,

ASAP, ASE, ACEEE, CFA, NCLC, NRDC, and NEEP commented in support of the standard levels in the direct final rule.<sup>5</sup> One private citizen also expressed support for the amended standards in the direct final rule.<sup>6</sup>

### B. Comments Requesting Withdrawal of the Direct Final Rule

DOE received one adverse comment from a private citizen.<sup>7</sup> The commenter does not support mandatory standards for residential clothes washers and believes energy efficiency standards should be voluntary and offered as a choice to the consumer. The commenter states that energy efficiency standards should consider clothes washer cleaning performance. Further, the commenter believes that energy efficiency standards

<sup>3</sup> DOE Docket No. EERE–2008–BT–STD–0019, Comment 48.

<sup>4</sup> DOE Docket No. EERE–2008–BT–STD–0019, Comment 50.

<sup>5</sup> DOE Docket No. EERE–2008–BT–STD–0019, Comment 51.

<sup>6</sup> DOE Docket No. EERE–2008–BT–STD–0019, Comment 49.

<sup>7</sup> DOE Docket No. EERE–2008–BT–STD–0019, Comment 52.

are negatively impacting cleaning performance, and that the standards should allow manufacturers to implement a user override option on the clothes washer.

Regarding whether the energy efficiency standards should be mandatory or voluntary, EPCA requires DOE to consider whether to amend existing energy efficiency standards for residential clothes washers. EPCA further requires DOE to adopt those standards that achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Manufacturers are required by EPCA to manufacture products that meet these standards. 42 U.S.C. 6295(g)(10), (o); 42 U.S.C. 6302. For the reasons stated in the direct final rule, DOE determined that the standards adopted for residential clothes washers meet the EPCA criteria. Manufacturers will be required to use these standards as of March 7, 2015 and January 1, 2018, as described in the direct final rule.

Regarding cleaning performance, in determining whether a new standard is economically justified, EPCA requires DOE to consider any lessening of the utility or the performance likely to result from the imposition of a new standard. 42 U.S.C. 6295(o)(2)(B)(i)(IV), (o)(4) DOE notes that the measurement of energy efficiency or energy or water use presumes the proper functioning of a product. DOE has considered performance generally in the development of these standards and has concluded that the TSL adopted in this direct final rule would not reduce the utility or performance of the clothes washers under consideration in this rulemaking.

Regarding the implementation of override features on a clothes washer, Federal regulations do not address any specific product features; rather, the standards specify allowable energy and water use. Manufacturers may use any product design, technology, or control strategy in their clothes washers as long as the products meet the amended minimum efficiency standards as measured according to DOE's test procedures at 10 CFR part 430, Subpart B, Appendix J2. Because manufacturers must produce clothes washers that comply with the minimum standards, however, including a feature that allowed the consumer to override the maximum allowable water use and minimally allowable energy use would not be consistent with EPCA.

### *C. Other Comments on the Direct Final Rule*

Although AHAM expressed support for the direct final rule, AHAM raised

several points that it stated were not intended as adverse comments.<sup>8</sup>

AHAM noted that the compliance date for the amended clothes washer standards represents an unusual case in which less lead time than usual is acceptable because manufacturers agreed to the shorter lead time as part of the Consensus Agreement. AHAM agreed to this date as part of the Consensus Agreement, but it noted that without such agreement, DOE must specify the three-year statutory lead time. DOE acknowledges AHAM's comment.

AHAM commented that it believes the standby power level of 0.08 Watts that DOE associated with the selected standard levels is quite low. AHAM stated that 1–2 Watts of standby power are required to power electronic controls and to provide consumers with the usability they expect. AHAM also disagreed with DOE's conclusion that the cost to achieve 0.08 Watts is lower than the cost of achieving higher wattages of standby power. AHAM stated that if this were true, industry would already have products on the market that use only 0.08 Watts of standby power.

DOE described its approach to incorporating standby power levels in the direct final rule and in chapter 5 of the accompanying Technical Support Document (TSD). 77 FR 32335 DOE conducted standby power testing on a sample of representative clothes washers to determine the standby power levels associated with each TSL. DOE measured standby power values of 0.08 Watts or less on multiple clothes washer models with electronic controls. DOE's methods for identifying the technologies associated with each standby power level, as well as the costs associated with each standby power level, are described in detail in chapter 5 of the TSD.

Regarding clothes washer performance, AHAM agrees that the efficiency levels in the direct final rule are not likely to adversely impact performance, but stated that more stringent levels could adversely impact performance. AHAM stated that, as efficiency and water standards levels become more stringent, it may be necessary to evaluate performance in DOE's analysis. DOE acknowledges AHAM's comment.

AHAM opposed DOE's use of the Residential Energy Consumption Survey (RECS) and similar data for its energy and water use analysis. DOE acknowledges AHAM's comment. DOE

used RECS data for the energy and water use analysis for the reasons explained in the direct final rule. 77 FR 32338–9 (May 31, 2012)

AHAM stated that the burden associated with reporting for certification is substantially more than 20 hours. AHAM encourages DOE to amend its certification, compliance, and enforcement rule to conform the scope of its annual report to the Federal Trade Commission report. DOE acknowledges AHAM's comment.

AHAM continues to oppose the use of experience curves in the projection of consumer product prices. DOE used experience curves to project product prices for residential clothes washers for the reasons stated in the direct final rule. 77 FR 32340

AHAM stated that it is not aware of a rebound effect for clothes washers, and it has no reason to believe that operating cost would change user behavior at the levels in the direct final rule. DOE acknowledges AHAM's comment.

AHAM stated that any CO<sub>2</sub> analysis should include CO<sub>2</sub> emissions that are caused indirectly, as well as directly, from a standards change, such as increased carbon emissions required to manufacture a product at a given standard level. DOE has begun to include CO<sub>2</sub> emissions that occur in the full fuel cycle, which includes emissions that occur in production and transportation of fuels. DOE continues to believe that it is inappropriate to include emissions that occur in manufacturing or transport of appliances. EPCA directs DOE to consider the total projected amount of energy savings likely to result directly from a standard, and DOE interprets this to include only energy consumed at the point of use and in the production, processing and transportation of fuels used by appliances or equipment.

### **III. Department of Justice Analysis of Competitive Impacts**

EPCA directs DOE to consider any lessening of competition that is likely to result from new or amended standards. It also directs the Attorney General of the United States (Attorney General) to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)) DOE published a NOPR containing energy conservation standards identical to those set forth the direct final rule and

<sup>8</sup> DOE Docket No. EERE–2008–BT–STD–0019, Comment 50.

transmitted a copy of the direct final rule and the accompanying TSD to the Attorney General, requesting that the U.S. Department of Justice (DOJ) provide its determination on this issue. DOE has published DOJ's comments at the end of this document.

DOJ reviewed the amended standards in the direct final rule and the final TSD provided by DOE. As a result of its analysis, DOJ concluded that the amended standards issued in the direct final rule are unlikely to have a significant adverse impact on competition. DOJ further noted that the amended standards established in the direct final rule were the same as recommended standards submitted in the Joint Petition signed by industry participants who believed they could meet the standards (as well as other interested parties).

#### IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) requires preparation of a 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. DOE has made its procedures and policies available on the Office of the General Counsel's Web site ([www.gc.doe.gov](http://www.gc.doe.gov)).

DOE reviewed the direct final rule and corresponding notice of proposed rulemaking pursuant to the RFA and the policies and procedures discussed above. Set forth below is DOE's final regulatory flexibility analysis for the standards established in the DFR. DOE has considered the comments received on the rule in adopting the standards set forth in the direct final rule; responses to these comments are provided in section II.

##### 1. Succinct Statement of the Need for, and Objectives of, the Rule

A succinct statement of the need for, and objectives of, the rule is provided in the DFR published on May 31, 2012 (77 FR 32308) and not repeated here.

##### 1. Summary of Significant Issues Raised by Public Comments

A summary of the comments received on the DFR is provided elsewhere in

today's document and not repeated here.

##### 2. Description and Estimated Number of Small Entities Regulated

For manufacturers of residential clothes washers, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf). Residential clothes washer manufacturing is classified under NAICS Code 335224, "Household Laundry Equipment Manufacturing." The SBA sets a threshold of 1,000 employees or less for an entity to be considered as a small business for this category.

To estimate the number of small businesses who could be impacted by the amended energy conservation standards, DOE conducted a market survey using all available public information to identify potential small manufacturers. DOE's research included the AHAM membership directory, product databases (Consortium for Energy Efficiency, California Energy Commission, and ENERGY STAR databases) and individual company Web sites to find potential small business manufacturers. DOE also asked interested parties and industry representatives if they were aware of any other small business manufacturers during manufacturer interviews and at previous DOE public meetings. DOE reviewed all publicly available data and contacted various companies, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered residential clothes washers. DOE screened out companies that did not offer products covered by this rulemaking, did not meet the definition of a "small business," or are foreign owned and operated.

The majority of residential clothes washers are currently manufactured in the United States by one corporation that accounts for approximately 64 percent of the total market. Together, this manufacturer and three other manufacturers that do not meet the definition of a small business

manufacturer comprise 92 percent of the residential clothes washer market. The small portion of the remaining residential clothes washer market (approximately 700,000 shipments) is supplied by a combination of 12 international and domestic companies, all of which have small market shares. Of the remaining 12 companies that manufacture residential clothes washers for sale in the United States, DOE identified only one manufacturer that is considered a small business under NAICS Code 335224.

DOE received no comments on its estimate of the number of small businesses and retains that estimate for this final regulatory flexibility analysis.

##### 3. Description and Estimate of Compliance Requirements

The one small business manufacturer of residential clothes washers covered by this rulemaking has one product platform. It makes a top-loading standard residential clothes washer that currently meets a 1.85 MEF and a 6.75 WF. The product meets the 2015 energy conservation standards proposed in this direct final rule, but falls short of the 2018 standard. The unit does not offer warm rinse and has electromechanical controls, making it likely that three wash temperatures (hot, warm, cold) are available on all settings including Normal for test procedure purposes. Thus, it is likely the unit will have to undergo alterations to its basic design to meet the 2018 efficiency requirements.

This company appears to manufacture its residential clothes washer with less automation and more labor than some of the larger competitors. To change the design of their current product to meet the 2018 efficiency standards, one available design pathway would be increasing the volume of the wash basket, assuming there is enough clearance within the cabinet. Increasing the drum's radius would involve cutting slightly larger octagonal pieces of metal and would not be a capital intensive solution. With this pathway, the assembly process and fabrication time would essentially remain the same. This solution would also prevent the small business manufacturer from bearing the cost of retrofitting their manufacturing process and could result in lower per-unit conversion costs relative to larger manufacturers.

Based on the engineering analysis and manufacturer interviews, if two full-time engineers took one year to implement a larger drum radius within the existing cabinet it could cost the manufacturer roughly \$200,000 to implement the design change for the 2018 compliance date. If the

manufacturer were to incur additional tooling costs to implement this change, this could lead to an additional \$200,000 in capital conversion costs. Because the small business manufacturer already meets the 2015 energy conservation standards, it would have 7 years from the announcement of today's direct final rule until it would have to make any changes to its current product in response to standards.

#### *4. Steps Taken To Minimize Economic Impact on Small Entities*

DOE rejected efficiency levels analyzed (TSLs 4 and 5) that would have achieved higher energy savings and other benefits than the standards set forth in the direct final rule. DOE determined that these TSLs were not economically justified, in significant part because of impacts to manufacturers.

DOE did not adopt TSLs 1 and 2, which would have further decreased the economic impacts to manufacturers. DOE determined based on its analysis, as explained in the DFR (77 FR 32308, May 31, 2012) that TSL3 achieves the maximum improvement in energy efficiency that was technologically feasible and economically justified. The direct final rule TSD also includes a regulatory impact analysis (RIA). For residential clothes washers, the RIA discusses the following policy

alternatives: (1) No new regulatory action; (2) consumer rebates; (3) consumer tax credits; (4) manufacturer tax credits; (5) voluntary energy efficiency targets; (5) early replacement; and (6) bulk government purchases. While these alternatives may mitigate to some varying extent the economic impacts on small entities compared to the amended standards, DOE determined that the energy savings of these regulatory alternatives are at least 3.8 times smaller than those that would be expected to result from adoption of the amended standard levels. Thus, DOE rejected these alternatives and adopted the amended standards set forth in the DFR. (See chapter 17 of direct final rule TSD for further detail on the policy alternatives DOE considered.)

#### **V. National Environmental Policy Act**

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the direct final rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. *See* 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and Appendix B, B(1)–(5). The rule fits within the category of actions because it is a rulemaking that establishes energy conservation standards for consumer

products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this rule. DOE's CX determination for this direct final rule is available at <http://cxnepa.energy.gov>.

#### **VI. Conclusion**

In summary, based on the discussion above, DOE has determined that the comments received in response to the direct final rule for amended energy conservation standards for residential clothes washers do not provide a reasonable basis for withdrawal of the direct final rule. As a result, the amended energy conservation standards set forth in the direct final rule were effective on September 28, 2012. Compliance with these standards is required on March 7, 2015 and January 1, 2018, as noted in Table 1.

Issued in Washington, DC, on September 25, 2012.

**David Danielson,**

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

The following will not appear in the Code of Federal Regulations:

**BILLING CODE 645–01–P**



**U.S. DEPARTMENT OF JUSTICE**  
Antitrust Division

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August 24, 2012

Eric Fygi  
Deputy General Counsel  
Department of Energy  
Washington, DC 20585

Dear Deputy General Counsel Fygi:

I am responding to your June 25, 2012 letter seeking the views of the Attorney General about the potential impact on competition of proposed energy conservation standards for residential clothes washers. Your request was submitted under Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended (ECPA), 42 U.S.C. 6295(o)(2)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR § 0.40(g).

In conducting its analysis the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice, by placing certain manufacturers at an unjustified competitive disadvantage, or by inducing avoidable inefficiencies in production or distribution of particular products. A lessening of competition could result in higher prices to consumers, and perhaps thwart the intent of the revised standards by inducing substitution to less efficient products.

We have reviewed the proposed standards contained in the Direct Final Rule (77 Fed. Reg. 33208, May 31, 2012). We have also reviewed supplementary information submitted to the Attorney General by the Department of Energy. Based on this review, our conclusion is that the proposed energy conservation standards for residential clothes washers are unlikely to have a significant adverse impact on competition. In reaching our

August 24, 2012

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conclusion, we note that these proposed energy standards were adopted from a Consensus Agreement signed by a broad cross-section of industry participants.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Wayland', with a long horizontal flourish extending to the right.

Joseph P. Wayland