

[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket Number EERE–2011–BT–STD–0060]

RIN: 1904–AC64

Energy Conservation Program: Energy Conservation Standards for Dishwashers

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 dishwashers in the Federal Register on May 30, 2012. DOE has determined that the adverse comments received in response to the direct final rule were not sufficiently “adverse” as 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 direct final rule published on May 30, 2012 (77 FR 31918) was effective on September 27, 2012. Compliance with the standards in the direct final rule will be required on May 30, 2013.

ADDRESSES: The docket is available for review at 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 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

<http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=25;po=0;D=EERE-2011-BT-STD-0060>.

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.

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., Washington, DC, 20585-0121; telephone: (202) 586-7463; e-mail: Stephen.Witkowski@ee.doe.gov.

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; e-mail: Elizabeth.Kohl@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Authority and Rulemaking Background

As amended by Energy Independence and Security Act of 2007 (EISA 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 (NOPR) that proposes an identical energy conservation standard must be published simultaneously with the 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 NOPR. 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 dishwashers, 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^{1,2} recommends specific energy conservation standards for dishwashers 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

¹ DOE Docket No. EERE-2011-BT-STD-0060, Comment 1.

² The Joint Petitioners submitted a second petition amending the recommended compliance dates for new dishwasher standards. DOE Docket No. EERE-2011-BT-STD-0060, Comment 4.

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 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) 2, 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 dishwashers set forth in the direct final rule. These standards are set forth in TABLE 1—AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DISHWASHERS

. The standards apply to all products listed in TABLE 1—AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DISHWASHERS

that are manufactured in, or imported into, the United States on or after May 30, 2013. 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 31918 (May 30, 2012))

As required by EPCA, DOE also simultaneously published a NOPR proposing the identical standard levels contained in the direct final rule. As discussed in section II-B of this notice, 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 DISHWASHERS

Product Class	Compliance date: May 30, 2013	
	Minimum annual energy use*	Maximum per-cycle water consumption
1. Standard (≥ 8 place settings plus 6 serving pieces)	307 kWh/year	5.0 gallons/cycle
2. Compact (< 8 place settings plus 6 serving pieces)	222 kWh/year	3.5 gallons/cycle

* Annual energy use, expressed in kilowatt-hours (kWh) per year, is calculated as: The sum of the annual standby electrical energy in kWh and the product of (1) the representative average dishwasher use cycles per year and (2) the sum of machine electrical energy consumption per cycle in kWh, the total water energy consumption per cycle in kWh, and, for dishwashers having a truncated normal cycle, the drying energy consumption divided by 2 in kWh. A truncated normal cycle is defined as the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse option.

II. Comments Received on the Direct Final Rule

A. Comments Received in Support of the Direct Final Rule

Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SCGC), San Diego Gas and Electric (SDG&E), and Southern California Edison (SCE) (collectively, the “California Utilities”) expressed support for DOE’s adoption of the

standard levels proposed in the Joint Petition,³ as did AHAM.⁴ Additionally, ASAP, ASE, ACEEE, CFA, NCLC, NRDC, and NEEP commented in support of the standard levels in the direct final rule.⁵

B. Adverse Comments Received on the Direct Final Rule

DOE received several adverse comments from private citizens. To make the comment summary and response easier to follow, the commenters are identified by their comment number.^{6,7,8}

Comment 15 stated that DOE should withdraw the direct final rule and move to a proposed rule because it failed to analyze several important factors. It stated that: (1) DOE did not examine the effects on two important demographics (wholesalers and retailers); (2) DOE did not adequately assess the significance of market and public institution failures that the rule attempts to correct; and (3) the life-cycle-cost savings for each individual dishwasher are so small that deviations from the agency's assumption of dishwashing habits or other mistakes could eliminate those savings.

Regarding the impacts of the standards on wholesalers and retailers, DOE estimated that the standards would likely cause a slight reduction in dishwasher unit

³ DOE Docket No. EERE-2011-BT-STD-0060, Comment 13

⁴ DOE Docket No. EERE-2011-BT-STD-0060, Comment 19

⁵ DOE Docket No. EERE-2011-BT-STD-0060, Comment 18

⁶ DOE Docket No. EERE-2011-BT-STD-0060, Comment 14

⁷ DOE Docket No. EERE-2011-BT-STD-0060, Comment 15

⁸ DOE Docket No. EERE-2011-BT-STD-0060, Comment 16

sales. Because the standards are expected to result in a small increase in price, however, the net effect on revenue of wholesalers and retailers should be negligible.

Regarding failures of private markets or public institutions, Section 1(b)(1) of Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action. DOE addressed this requirement in section VI.A of the direct final rule. In addition, in section V.C of the direct final rule, DOE discussed some of the reasons why consumers appear to undervalue energy efficiency improvements.

DOE acknowledges that there is uncertainty regarding the estimated cost savings. The methods and assumptions used by DOE, however, have been extensively reviewed and subject to public comment not only in the direct final rule to establish amended standards for dishwashers, but in other DOE rulemakings as well. The commenter did not provide any specific concerns with the assumptions used by DOE or offer any alternative assumptions for use in DOE’s analysis..

Two of the private citizens questioned the estimated payback period in the direct final rule. Comment 14 notes that DOE estimates a median payback period of 11.8 years for a new dishwasher, and that the Consortium for Energy Efficiency lists the average life of a residential dishwasher at 11 years, which is shorter than the estimated payback period. Comment 16 notes that external sources estimate dishwasher lifetime at 9–12

years. Because the basis for published dishwasher lifetime estimates is uncertain, DOE conducted an analysis of residential dishwasher lifetimes in the field. As described in chapter 8 of the direct final rule technical support document (TSD), the analysis yielded an estimate of mean age for residential dishwashers of approximately 15 years, longer than the median payback period for the adopted energy conservation standards for standard-size dishwashers.

Comment 14 noted that the benefits attributed to emissions reductions represent between 17 and 35 percent of the total benefits from the new standard, and because the long-term effects of carbon dioxide (CO₂) emissions are unclear, DOE should not justify the standards using benefits from emissions reductions. DOE used a wide range of estimates of the value of avoiding a ton of CO₂ emissions that had been prepared by an interagency process that included a thorough review of the relevant literature (see appendix 16-A of the direct final rule TSD for discussion). Furthermore, the benefits from emissions reductions are only one of a number of factors that DOE considers in assessing whether a standard is economically justified. In the direct final rule, the Secretary concluded that at trial standard level (TSL) 2 for residential dishwashers (which represents the standards adopted), the benefits of energy savings, water savings, positive net present value (NPV) of consumer benefits, emission reductions, and the estimated monetary value of the CO₂ emissions reductions would outweigh the impacts on manufacturers.

Comment 16 notes that the benefits attributed to emissions reductions represent a global, not a domestic, value. The interagency process that developed the Social Cost of Carbon (SCC) estimates used by DOE focused on a global measure of SCC because of the distinctive nature of the climate change problem. Under current Office of Management and Budget (OMB) guidance in OMB Circular A-4, agencies must analyze economically significant proposed and final regulations from the domestic perspective, and analysis from the international perspective is conducted as appropriate. A global measure of SCC is used in DOE rulemakings because climate change involves a global externality: emissions of most greenhouse gases (GHG) contribute to damages around the world even when they are emitted in the United States. Consequently, to address the global nature of the problem, the SCC must incorporate the full (global) damages caused by GHG emissions.

Comment 14 stated that the new standards may not represent a significant conservation of energy due to the presence of other energy efficiency programs, most notably the ENERGY STAR program. Comment 14 notes that the majority of dishwashers sold in the United States meet the ENERGY STAR specifications, which are more stringent than the new DOE energy conservation standards. DOE's analysis measures energy savings relative to a base case that includes the projected impacts of other energy efficiency programs. Although the term "significant" is not defined in EPCA, the U.S. Court of Appeals, in Natural Resources Defense Council v. Herrington, 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended "significant" energy savings in this context to be savings that were not "genuinely trivial." DOE

estimates that the new standards will save 0.07 quads of energy over the period from 2013 through 2047. DOE considers these to be significant reductions.

Comments 14 and 16 stated that due to the increased cost of a dishwasher under the new standards, some consumers will opt not to purchase a new dishwasher and will continue to use older less-efficient models or to hand wash, which would negatively impact the water and energy savings attributed to the new standard. DOE's analysis accounted for the possibility that some consumers may opt not to purchase new energy efficient dishwashers, and the estimated savings reflect this possibility.

C. Other Comments on the Direct Final Rule

Although AHAM expressed support for the direct final rule, AHAM raised several points that it clarified were not intended as adverse comments.⁹

First, AHAM noted that the compliance date for the amended dishwasher 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 noted that ordinarily, and going forward, the statutory lead time of 3 years from the date of publication of a final rule adopting new or amended standards is necessary for manufacturers to design and produce products that comply with the new or amended standards. DOE acknowledges AHAM's comment.

⁹ DOE Docket No. EERE-2011-BT-STD-0060, Comment 19

Regarding DOE's estimate of typical dishwasher cycle time, AHAM does not object to the 1-hour cycle time estimate for purposes of the direct final rule, but notes that it may need to be studied in the future and that the average cycle time could be longer than 1 hour. DOE acknowledges AHAM's comment.

Regarding dishwasher performance, AHAM agrees that the efficiency levels in the direct final rule are not likely to adversely impact performance, but states 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 uses RECS data for the energy and water use for the reasons explained in the direct final rule. 77 FR 31918, 31931 (May 30, 2012).

AHAM stated that the burden associated with reporting for certification is substantially more than 20 hours. It expressed hope that DOE will 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

dishwashers for the reasons stated in the direct final rule. 77 FR 31918, 31933 (May 30, 2012).

AHAM stated that any CO₂ analysis should include CO₂ emissions 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 CO₂ 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 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 notice.

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 (Aug. 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 website (www.gc.doe.gov).

DOE reviewed the direct final rule and corresponding NOPR pursuant to the RFA and the policies and procedures discussed above. DOE certifies that the standards in the direct final rule will not have a significant impact on a substantial number of small entities. The factual basis for this certification is set forth below. DOE has considered the comments received on the economic impacts of the rule in adopting the standards set forth in the direct final rule; responses to these comments are provided in section II.

For manufacturers of residential dishwashers, 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: www.sba.gov/sites/default/files/Size_Standards_Table.pdf. Residential dishwasher manufacturing is classified under NAICS 335228, “Other Major Household Appliance Manufacturing.” The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

To estimate the number of small businesses which 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 (CEE), California Energy Commission (CEC), and ENERGY STAR databases) and individual company websites 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 dishwashers. 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.

Almost half of residential dishwashers are currently manufactured in the United States by one corporation that accounts for approximately 49 percent of the total market. Together, this manufacturer and three other manufacturers that do not meet the definition of a small business manufacturer comprise 99 percent of the residential dishwasher market. The small portion of the remaining residential dishwasher market (approximately 57,000 shipments) is supplied by a combination of approximately 15 international and domestic companies, all of which have small market shares. These companies are either foreign owned and operated or exceed the SBA's employment threshold for consideration as a small business under the appropriate NAICS code. Therefore, DOE did not identify any small business manufacturers of dishwashers. DOE received no comments on its estimate and retains this estimate for the certification.

Based on the discussion above, DOE continues to certify that the standards for residential dishwashers set forth in today's rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE transmitted the certification to the SBA as required by 5 U.S.C. 605(b).

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.

A handwritten signature in black ink, appearing to read 'D. Danielson', is written over a horizontal line.

David Danielson
Assistant Secretary
Energy Efficiency and Renewable Energy



U.S. DEPARTMENT OF JUSTICE
Antitrust Division

Joseph F. Wayland
Acting Assistant Attorney General

RFK Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
(202)514-2401 / (202)616-2645 (Fax)

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 dishwashers. 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.

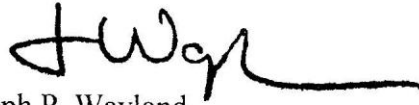
We have reviewed the proposed standards contained in the Direct Final Rule (77 Fed. Reg. 31918, May 30, 2012). We have also reviewed supplementary information submitted to the Attorney General by the Department of Energy. Based on this review, our conclusion is that the proposed energy conservation standards for residential dishwashers are unlikely to have a significant adverse impact on competition. In

August 24, 2012

2

reaching our 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

