

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

October 13, 2020

Mr. Bryan Berringer
U.S. Department of Energy
Office of Energy Efficiency and Renewable Energy
Building Technologies Office, EE-5B
1000 Independence Avenue SW
Washington, DC 20585

RE: Docket Number EERE–2020–BT–STD–0001 / RIN 1904–AE86: Notice of Proposed Rulemaking for Energy Conservation Standards for Clothes Washers and Clothes Dryers

Dear Mr. Berringer:

This letter constitutes the comments of the Appliance Standards Awareness Project (ASAP), Alliance for Water Efficiency (AWE), Consumer Federation of America (CFA), National Consumer Law Center, on behalf of its low-income clients (NCLC), and Natural Resources Defense Council (NRDC) on the notice of proposed rulemaking (NOPR) proposing separate product classes for clothes washers and clothes dryers with short cycle times. 85 Fed. Reg. 49297 (August 13, 2020). We appreciate the opportunity to provide input to the Department.

In the NOPR, DOE is proposing to establish separate product classes for top-loading and front-loading clothes washers with cycle times of less than 30 minutes and 45 minutes, respectively, and for clothes dryers with cycle times of less than 30 minutes. These product classes would not be subject to any efficiency standards.¹ We strongly oppose DOE’s proposal, which is unnecessary and would harm both consumers and manufacturers. While DOE’s own test data show that there are products available today with short cycle times on the “normal” cycle, DOE’s proposal would open the door to wasteful products, which could increase consumers’ utility bills and hurt domestic manufacturers and U.S. manufacturing jobs. Furthermore, DOE has not provided any data or information to support the proposal. In addition, DOE has neither properly reviewed this proposal under the National Environmental Policy Act nor provided a proper justification for why a review is not required. Finally, because DOE’s proposal would exempt products subject to existing standards, it would violate the appliance statute’s anti-backsliding provision. For all these reasons, we urge DOE to withdraw the NOPR.

DOE is putting at risk large gains in energy and water efficiency. A series of efficiency standards for clothes washers have driven huge declines in energy and water use. The first energy efficiency performance standard for clothes washers took effect in 1994, and updates to the standards took effect in 2004, 2007, 2015, and 2018. According to DOE, since 1990, the average energy use of new clothes

¹ “Such products would not be subject to the applicable DOE test procedure or energy conservation standards, **unless and until** DOE were to complete appropriate rulemaking to establish applicable test procedures and energy conservation standards. [emphasis added]” 85 Fed. Reg. 49300.

washers has declined by 70%.² The first water efficiency standard for clothes washers took effect in 2011, followed by updates that took effect in 2015 and 2018. According to *Consumer Reports*, a typical clothes washer from 20 years ago used more than 40 gallons of water to wash an average load, while typical clothes washers today use less than half that amount.³ While improvements in clothes dryer efficiency have been smaller, there have also been significant reductions in energy use. The current clothes dryer standards, which took effect in 2015, represented energy savings of 5% relative to the previous standards, which had been in effect since 1994.⁴ Dryers meeting the current ENERGY STAR specification use about 20% less energy than conventional models,⁵ and as of 2019, 36% and 45% of electric and gas dryers, respectively, met the ENERGY STAR specification.⁶ DOE is now putting at risk these large efficiency gains by proposing new product classes for clothes washers and clothes dryers that would not be subject to any efficiency standards. Consumers would ultimately be harmed by no longer having the assurance that clothes washers and clothes dryers meet minimum efficiency levels.

DOE's proposal is unnecessary. As described above, DOE is proposing to establish separate product classes for top-loading and front-loading clothes washers with cycle times of less than 30 minutes and 45 minutes, respectively, and for clothes dryers with cycle times of less than 30 minutes. However, DOE's own test data show that there are models on the market today that meet current standards that would fall under DOE's proposed new product classes. Specifically, for top-loading clothes washers, three models in DOE's test sample have average cycle times on the "normal" cycle of 29, 27, and 27 minutes.⁷ For front-loading clothes washers and for clothes dryers, there are current models with cycle times just above the thresholds DOE is proposing for the new product classes. Specifically, for front-loading clothes washers, four models in DOE's test sample have average cycle times between 45 and 48 minutes, and for clothes dryers, there are models on the market with cycle times as short as 34 minutes and 33 minutes for electric and gas dryers, respectively.⁸ These data illustrate that consumers today can purchase clothes washers and clothes dryers with short cycle times on the "normal" cycle that meet current efficiency standards, making DOE's proposal unnecessary.

DOE's proposal would harm both consumers and manufacturers. While consumers today can buy clothes washers and clothes dryers with short cycle times on the "normal" cycle that meet current DOE standards, DOE's proposal would open the door to wasteful products. As noted above, under DOE's proposal, the new product classes would not be subject to any efficiency standards. A consumer could therefore get stuck with a product that significantly increases their utility bills without providing a shorter cycle time than products that are available today. DOE's proposal could also encourage the introduction of wasteful products produced by low-cost foreign manufacturers, hurting domestic manufacturers and U.S. manufacturing jobs.

²https://www.energy.gov/sites/prod/files/2017/01/f34/Appliance%20and%20Equipment%20Standards%20Fact%20Sheet-011917_0.pdf.

³ <https://www.consumerreports.org/washing-machines/yes-your-washing-machine-is-using-enough-water/>.

⁴ The standards that took effect in 1994 were based on the Energy Factor (EF) metric, while the current standards are based on Combined Energy Factor (CEF). The 1994 standards expressed in terms of CEF were 3.55 and 3.14 lbs/kWh for vented electric standard and vented gas dryers, respectively, while the current standards are 3.73 and 3.30 lbs/kWh. 76 Fed. Reg. 22499 (April 21, 2011). Table IV.14.

⁵ https://www.energystar.gov/products/appliances/clothes_dryers.

⁶ <https://www.energystar.gov/sites/default/files/asset/document/2019%20USD%20Summary%20Report.pdf>.

⁷ 85 Fed. Reg. 49301. Table II.1.

⁸ 85 Fed. Reg. 49302-04. Tables II.2, II.4; <https://www.regulations.gov/document?D=EERE-2020-BT-STD-0001-0007>. Table 5.

DOE has not provided any supporting data or information. First, while DOE provides data in the NOPR summarizing the cycle times of clothes washers and clothes dryers tested by the Department and dryers certified to ENERGY STAR, as described above, these data do not support DOE’s proposal. Rather, these data illustrate that the proposal is unnecessary since there are models on the market today with cycle times that either fall below or just above the thresholds that DOE is proposing for the new product classes. For top-loading clothes washers, the data show that consumers can purchase products today with cycle times of less than 30 minutes on the “normal” cycle that meet current standards. For front-loading clothes washers, DOE provides no evidence that a product with a cycle time of 44 minutes (which would fall under the new product class) provides a utility that is not provided by a product with a cycle time of 45 minutes (which is available on the market today). Similarly, for clothes dryers, DOE provides no evidence that a product with a cycle time of 29 minutes (which would fall under the new product class) provides a utility that is not provided by products with a cycle time of 33 or 34 minutes (which are available on the market today).

Second, DOE provides no evidence that consumers are demanding products with shorter cycle times. Instead, to justify the proposal, DOE references assertions from the Competitive Enterprise Institute (CEI) in their petition to DOE to establish a separate product class for a different product—dishwashers—with short cycle times. Specifically, DOE cites the assertion from CEI that “dishwasher cycle times have become dramatically longer under existing DOE energy conservation standards, and that consumer satisfaction/utility has dropped as a result of these longer cycle times.”⁹ DOE then simply states that “consumer use of residential clothes washers and consumer clothes dryers is similar to that of residential dishwashers.”¹⁰ In our comments on the CEI dishwasher petition and DOE’s subsequent NOPR, we explained how CEI’s argument that standards have been the main driver of increased cycle times is flawed and that DOE inappropriately relied on CEI’s assertions rather than conducting their own research. We also explained that short cycles are widely available on dishwashers today.¹¹ Furthermore, DOE does not explain why CEI’s assertions with respect to dishwashers are relevant to clothes washers and clothes dryers.

Finally, DOE provides no evidence that existing standards for clothes washers and clothes dryers are inhibiting the introduction of products with shorter cycle times. In the NOPR, DOE states that the Department “presumes that the shortest possible cycle times currently available on the market represent the models for which manufacturers have prioritized cycle time while maintaining adequate performance across the other performance aspects. . . . Based on this presumption, the current energy conservation standards may be precluding manufacturers from bringing models to the market with substantially shorter cycle times.”¹² However, for clothes washers, data from *Consumer Reports* does not support the presumption that existing standards are inhibiting the introduction of products with shorter cycle times. In 1995, when a washer could use more than twice as much energy as permitted by the current standards and unlimited amounts of water,¹³ *Consumer Reports* reported that typical cycle

⁹ 85 Fed. Reg. 49298.

¹⁰ *Ibid.*

¹¹ <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-2237>;
<https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-3139>.

¹² 85 Fed. Reg. 49299.

¹³ The standards that took effect in 1994 established a minimum Energy Factor (EF) requirement of 1.18 cu.ft./kWh/cycle, which is equivalent to a Modified Energy Factor (MEF) of 0.817 cu.ft./kWh/cycle. 66 Fed. Reg. 3325 (January 12, 2001). The current standards require minimum Integrated Modified Energy Factor (IMEF) values of 1.57 and 1.84 cu.ft./kWh/cycle for top-loading and front-loading washers, respectively, which are equivalent to

times ranged from 38-50 minutes.¹⁴ In 2001, when washers could still use that much energy and unlimited amounts of water, *Consumer Reports* reported that a typical clothes washer had a cycle time of 40-60 minutes.¹⁵ The clothes washers with the fastest cycle times in *Consumer Reports* ratings from 2005, 2007, 2008, and 2012 had cycle times of 35, 35, 30, and 35 minutes, respectively.¹⁶ Current clothes washer ratings from *Consumer Reports* show that the products with the shortest cycle times have cycle times of 35 minutes.¹⁷ These data suggest that clothes washer cycle time is not limited by current energy and water efficiency standards.

For clothes dryers, we understand that providing shorter cycle times than those available today would require the use of higher heat levels and/or the use of high heat for longer periods of time, which could damage the clothes being dried.¹⁸ DOE provides no evidence that manufacturers could introduce clothes dryers with substantially shorter cycle times that would not damage the clothes.

DOE has not performed an analysis of the proposed rule under the National Environmental Policy Act. Instead, DOE cites 10 C.F.R. 1021, Subpart D, Appendix A, which contains DOE's list of activities that it considers categorically excluded from NEPA review. Specifically, DOE cites provision A5, Interpretive Rulemakings With No Change in Environmental Effect, which describes "[r]ulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended."

DOE argues that establishing "new product classes for residential clothes washers and consumer clothes dryers ... would not result in any environmental impacts." Unfortunately, this mischaracterizes DOE's proposed rule and therefore the applicability of A5. DOE is not proposing new classes in a vacuum—DOE's proposal would result in *no* efficiency standard being applicable to the newly created classes. Therefore, DOE's proposal would allow products in the new classes to use unlimited amounts of energy and water. It is simply inaccurate for DOE to claim that the proposal is necessary to allow increased offerings of appliances with shorter cycle times and higher energy and water consumption AND that this action would have no impact on the environment. Consequently, DOE is obligated to withdraw this proposal and conduct a proper NEPA review.

DOE's proposal would be illegal. As described above, DOE's proposal to create separate product classes is not justified. However, even if there were justification for separate product classes, DOE's proposal to eliminate standards for classes of clothes washers and clothes dryers would violate the anti-backsliding provision since current standards apply to all clothes washers and clothes dryers, regardless of cycle time.

Thank you for considering these comments.

MEF values of 2.0 and 2.2. 77 Fed. Reg. 32334 (May 31, 2012). The first water efficiency standard for clothes washers took effect in 2011.

¹⁴ *Consumer Reports*. 1995. Washing Machines: What's Ahead? What's in Stores Now? February. pp. 96-101.

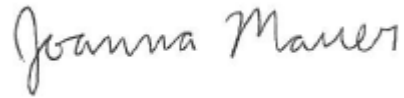
¹⁵ *Consumer Reports*. 2001. Product Updates: Top-loaders meet the front-loader challenge. January. pp. 45-47.

¹⁶ Mauer, J., A. deLaski, S. Nadel, A. Fryer, and R. Young. 2013. *Better Appliances: An Analysis of Performance, Features, and Price as Efficiency Has Improved*. Washington, DC: ACEEE; Boston: ASAP. [appliance-standards.org/sites/default/files/Better_Appliances_Report.pdf](https://www.appliance-standards.org/sites/default/files/Better_Appliances_Report.pdf). p. 25.

¹⁷ <https://www.consumerreports.org/cro/washing-machines.htm>. Accessed October 6, 2020.

¹⁸ <https://www.sciencedaily.com/releases/1999/08/990831080157.htm>;
<https://www.reviewed.com/laundry/features/how-dryers-destroy-your-clothes>.

Sincerely,



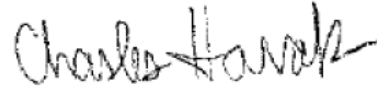
Joanna Mauer
Technical Advocacy Manager
Appliance Standards Awareness Project



Mary Ann Dickinson
President & CEO
Alliance for Water Efficiency



Mel Hall-Crawford
Energy Projects Director
Consumer Federation of America



Charles Harak, Esq.
National Consumer Law Center
(On behalf of its low-income clients)



Edward R. Osann
Senior Policy Analyst
Natural Resources Defense Council