



DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE-2020-BT-STD-0001]

RIN 1904-AE86

Energy Conservation Program: Establishment of New Product Classes for Residential Clothes Washers and Consumer Clothes Dryers; Correction

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

ACTION: Final rule; correction.

SUMMARY: On December 16, 2020, the U.S. Department of Energy (“DOE”) published a final rule establishing separate product classes for top-loading consumer clothes washers and consumer clothes dryers that offer cycle times for a normal cycle of less than 30 minutes, and for front-loading residential clothes washers that offer cycle times for a normal cycle of less than 45 minutes. This correction responds to specific comments submitted by the Pacific Gas and Electric Company (“PG&E”), San Diego Gas and Electric (“SDG&E”), and Southern California Edison (“SCE”) in response to DOE’s notice of proposed rulemaking (“NOPR”), which were inadvertently omitted from the final rule. DOE has considered the comments and determined that in most instances, these comments raise issues substantially similar to those raised by other commenters that DOE previously considered and addressed in the final rule. To the extent these comments raise issues not explicitly addressed in the preamble of the final rule, DOE determined that the comments submitted by PG&E, SDG&E, and SCE do not alter any of the conclusions reached in support of the final rule and would not have resulted in an outcome different than as set forth in the final rule.

DATES: Effective January 15, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn McIntosh, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586-2002. Email: *Kathryn.McIntosh@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: DOE published a final rule in the *Federal Register* on December 16, 2020 (the “December 2020 final rule”), establishing separate product classes for top-loading consumer clothes washers and consumer clothes dryers that offer cycle times for a normal cycle of less than 30 minutes, and for front-loading residential clothes washers that offer cycle times for a normal cycle of less than 45 minutes. 85 FR 81359. This document responds to comments unintentionally omitted from the final rule.

Correction

DOE received a submission from the Pacific Gas and Electric Company (“PG&E”), San Diego Gas and Electric (“SDG&E”), and Southern California Edison (“SCE”) (collectively referred to as the “CA IOUs”) in response to the notice of proposed rulemaking to establish separate product classes for consumer clothes washers and consumer clothes dryers, 85 FR 49297 (Aug. 13, 2020). Through an unintentional oversight, DOE did not make specific reference to the CA IOUs comments submitted in response to the notice of proposed rulemaking in the final rule. DOE considered the comments and determined that many of the substantive issues the CA IOUs comment brought to DOE’s attention were also raised by the other commenters and addressed by DOE in the final rule.

Like other commenters, CA IOUs opposed the rulemaking and expressed various arguments regarding DOE’s determination that cycle time was a performance related feature under the Energy Policy and Conservation Act (“EPCA”), 42 U.S.C. 6295(q), that justified the creation of the new product classes. Like other commenters, the CA IOUs also argued that, if

finalized, the product classes would result in illegal backsliding of the applicable energy conservation standards under 42 U.S.C. 6295(o)(1). (No. 0036, pp. 6-8) Commenters, including the CA IOUs, stated that the notice of proposed rulemaking (“NOPR”), 85 FR 68724 (Oct. 30, 2020), failed to provide evidence that the current energy and water conservation standards were precluding the shorter normal cycle products from being made available. (No. 0036, p. 1) Like other commenters, CA IOUs also noted that DOE’s data implied that multiple clothes washers on the market already met the proposed requirements for the new product classes while also meeting the current energy and water conservation standards. (No. 0036, at p. 3; see also NEEA, No. 0044, pp. 2-5) Commenters, including the CA IOUs, also challenged DOE’s determination regarding the environmental impact of the new product classes and urged DOE to conduct and publicly release the analysis to confirm that the proposed product classes should be granted an A5 Categorical Exclusion under the National Environmental Policy Act (“NEPA”) of 1969. (No. 0036, p. 11) Like other commenters, CA IOUs also opposed establishing the new product classes without accompanying test procedures and standards, explaining that the new product classes introduce potential market uncertainties and distortions. They continue that because cycle time is not a factor recorded in the current test procedure for either product and the NOPR lacked reference to reporting requirements, DOE should delay finalizing the rule until greater clarity is provided. (No. 0036, p. 5)

DOE responded to these concerns in the December 2020 final rule, concluding that cycle time was a performance related feature and that the establishment of the new product classes would not result in a violation of EPCA’s anti-backsliding provision, *see* 85 FR 81359, 81362-81368, 81368-81370. DOE maintains that the concerns raised by commenters regarding the overall applicability of EPCA’s anti-backsliding provision to clothes washers is too broad and ignores the limitations that EPCA itself places on the scope of the anti-backsliding provision, 42 U.S.C. 6295(o)(1). 85 FR 81369-81370.

DOE responded to those comments discussing the necessity of the new product classes in the final rule. 85 FR 81359, 81365-81366. DOE concluded that even if products with comparable cycle times were already on the market, products under the new product classes would be distinguishable because they are specifically characterized as offering short normal cycles and would be subject to manufacturer testing.

Additionally, DOE stated in the December 2020 final rule that the rulemaking, once finalized, would only establish new product classes, and would not cause adverse environmental impacts, therefore, leaving the rulemaking within the scope of the A5 Categorical Exclusion. 85 FR 81359, 81370.

DOE explained in the final rule that the product class provision under EPCA, 42 U.S.C. 6295(q)(1)(B), does not require the Department to simultaneously establish energy conservation standards in the same rulemaking as the determination of a new product class. The establishment of a new product class is functionally equivalent to the finalization of a coverage determination where a covered product would then exist without an applicable standard until the Department completes a test procedure rulemaking for that product. 42 U.S.C. 6292(b); 85 FR 81359, 81367.

Here, DOE is not acting inconsistently with past practices by establishing the new product classes without accompanying test procedures or standards. Commenters can look to the Department's 2009 beverage vending machines energy conservation standard rulemaking and the 2007 distribution transformer energy conservation standards rulemaking as examples of prior instances where DOE established a new product class without simultaneously prescribing an associated conservation standard. 81 FR 44914, 44920 (Aug. 31, 2009); 72 FR 58190, 58197 (Oct. 12, 2007). See 85 FR 81359, 81367-81368. DOE intends, as these commenters requested, to conduct the necessary rulemakings to consider and evaluate the energy and water consumption limits for the new product classes and determine the applicable standards that provide the

maximum energy efficiency that is technologically feasible and economically justified, and will result in a significant conservation of energy, 42 U.S.C. 6295(o)(2)(A). DOE will conduct these rulemakings following EPCA's requirements and the procedures set out in the Process Rule¹, which will provide the clarity these commenters requested regarding the implementation of this rulemaking. 85 FR 81359, 81368, 81372.

In addition to these shared concerns, the CA IOUs also raised unique comments that DOE addresses in the following paragraphs.

The CA IOUs, in challenging the validity of the short cycle thresholds, noted that DOE tested the 14 consumer clothes dryers for which data was presented according to the Appendix D2 test procedure, which is the optional test procedure for those products. The CA IOUs argued that Appendix D1, which is available for product certification, allows for shorter cycle times while maintaining compliance with the energy efficiency standard according to data produced through DOE-sponsored research at the Oak Ridge National Laboratory. To support their assertion of the unreasonableness of cycle thresholds proposed, CA IOUs continued that this research demonstrated that five products tested under Appendix D1 already offered a cycle time of less than 30 minutes (high temperature setting) while meeting the current standard, in addition to the one product that also had a cycle time of 30 minutes (high temperature setting) and met the standard when tested under Appendix D2. The CA IOUs also conducted independent testing, using Appendix D1, that showed there were multiple clothes dryers on the market offering a 30 minute or less cycle time (high temperature setting) that also met the current energy conservation standard. (No. 0036, pp. 3-4) These commenters concluded that based on this data, short cycle time was not a feature justifying a different a standard and the proposed product classes were not warranted for clothes washers and clothes dryers. (No. 0036, p. 5)

¹ Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment (“Process Rule”), 85 FR 8626 (Feb. 14, 2020); Appendix A to Subpart C of Part 430— Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/ Industrial Equipment.

DOE testing presented in the NOPR was conducted according to the Appendix D2 methodology because, unlike Appendix D1, it produces a cycle time that is representative of an average use cycle (even though cycle time is not currently recorded in either test procedure). The methodology in Appendix D1 will not allow for the measurement of a cycle time that is representative of average use, because the cycle is interrupted before completion. While cycle time measured using Appendix D1 would be shorter than the cycle time measured under Appendix D2, DOE maintains that this is not an accurate representation of how consumers would use these products.

As DOE explained in the December 2020 final rule, even if clothes washers and clothes dryers with short normal cycle times for were available, the product class provision, 42 U.S.C. 6295(q), would still be appropriately applied in this rulemaking. While there are some products on the market that may complete a cycle within the time thresholds, DOE is establishing these short cycle product classes to facilitate the development of products design to complete a normal cycle within the threshold times and be subject to testing by the manufacturer. DOE notes that the impact of this rulemaking is to establish product classes based on short normal wash or dry cycles, therefore incentivizing manufacturers to develop such products that can meet consumer needs. 85 FR 81359, 81367.

The CA IOUs reliance on the Oak Ridge study, and the CA IOUs own data, are also out of place in the context of this rulemaking because these data were generated using the test method set forth in Appendix D1. As DOE explained in the NOPR, Appendix D1 does not provide data that can be used to determine a “cycle time” as experienced by the consumer. This is because Appendix D1 requires manually stopping operation at a specified moisture content, normalizing, and applying a field use factor, therefore, the length of time that a clothes dryer is operated during an Appendix D1 test does not necessarily correspond to the length of time that a consumer would operate the clothes dryers (in contrast to the calculated energy use, which is representative of the energy use experienced by the consumer). 85 FR 49297, 49303. This

means that while testing under Appendix D1 may identify products on the market that could dry clothes in 30 minutes, it is not an accurate representation of how consumers would use these products because the cycle is manually stopped at the target remaining moisture content. DOE established these short cycle product classes so that consumers would have access to products that accomplish normal washing or drying within the specified cycle time, not just in control room settings.

The CA IOUs also present their review of 111 products in the Consumer Reports database that showed “no clear relationship between normal cycle time and consumer satisfaction” and requested DOE provide evidence of consumer demand. (No. 0036, p. 7) Comments submitted by the Competitive Enterprise Institute (“CEI”) and the 60 Plus Association demonstrated that consumers want and desire these faster products. CEI shared feedback it received from consumers that expressed a need for faster appliances and identified growing consumer dissatisfaction with the current length of cycles. 85 FR 81359, 81366 referencing No. 0031, pp. 2-3. The 60 Plus Association submitted comments, arguing on behalf of its senior citizen members, that the rulemaking offers a significant benefit to individuals looking to make the most of their time. This commenter noted that the time saved by utilizing future, short normal cycle products would make a noticeable difference in the lives of its underrepresented members. 85 FR 81363, referencing No. 0043, p. 1.

The CA IOUs also worried that some manufacturers may easily modify their current products to meet the requirements of the new product classes at the expense of the consumer. (No. 0036, p. 5) While DOE acknowledges these concerns, DOE has no information to support the contention, and does not anticipate that manufacturers would reengineer products already on the market in response to this rulemaking. Further, it remains the consumer’s choice ultimately to decide which product on the market that they will choose to purchase. The creation of the new product classes does not set a mandate that consumers must purchase products from these product classes.

DOE thanks the CA IOUs for their comments and directs them to the responses provided in the December 2020 final rule for the shared issues they raised. After considering the unique comments provided by the CA IOUs, DOE affirms the conclusions reached in the December 2020 final rule.

Signing Authority

This document of the Department of Energy was signed on January 11, 2021, by Daniel R Simmons, Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on January 12, 2021

Treena V. Garrett
Federal Register Liaison Officer,
U.S. Department of Energy

[FR Doc. 2021-00842 Filed: 1/15/2021 8:45 am; Publication Date: 1/19/2021]