

March 21, 2018

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The Honorable Secretary Rick Perry
Office of the Secretary of Energy
U.S. Department of Energy
1000 Independence Ave. SW
Washington, D.C. 20585

RE: Petition for Rulemaking on a New Product Class of Fast Dishwashers

The Competitive Enterprise Institute (CEI), submits this petition for rulemaking under 5 U.S.C. § 553(e). We request that the Department of Energy (DOE) begin a rulemaking process to define a new product class under 42 U.S.C. § 6295(q) for residential dishwashers. The new product class would cover dishwashers with a cycle time of less than one hour from washing through drying. We are not proposing specific energy and water requirements for this new product class, in the belief that these details can be determined during the course of the rulemaking.

Dishwasher cycle times have become dramatically worse under DOE standards, and consumer satisfaction has dropped as a result. The DOE itself has acknowledged that this is caused by its regulations, noting that: “To help compensate for the negative impact on cleaning performance associated with decreasing water use and water temperature, manufacturers will typically increase the cycle time.”¹

A survey of 11,000 dishwasher owners by GE Appliances demonstrates that cycle time is one of the four biggest sources of dissatisfaction of consumers.² Excerpts from several dozen consumer complaints received by another organization are contained in an attachment to this petition.³ Some typical comments are:

- “The cycle time is way too long, running for 4 hours and still not cleaning the dishes. I am currently in the process of hand washing a number of dishes that did not clean in last night’s 4-hour cycle.”

¹ DOE, 2016-11-22 Final Rule Technical Support Document, chapter 3 at page 330 (Nov. 22, 2016), <https://www.regulations.gov/document?D=EERE-2014-BT-STD-0021-0029>.

² Kelley Kline, *GE Appliances Comments on DOE’s NOPR for Energy Conservation Standards for Residential Dishwashers*; Docket No. EERE-2014-BT-STD-0021; RIN 1904-AD24, page 4 (March 25, 2015), <https://www.regulations.gov/document?D=EERE-2014-BT-STD-0021-0026>.

³ Details of consumer complaints, including names and locations, discussed in this petition are attached in Appendix A. All the consumer complaints contained in this petition were provided directly by the consumers, without prompting, to Consumer Affairs, an online consumer resource center not affiliated with any government agency or other consumer organization, and are available on their website at <http://consumeraffairs.com/>.

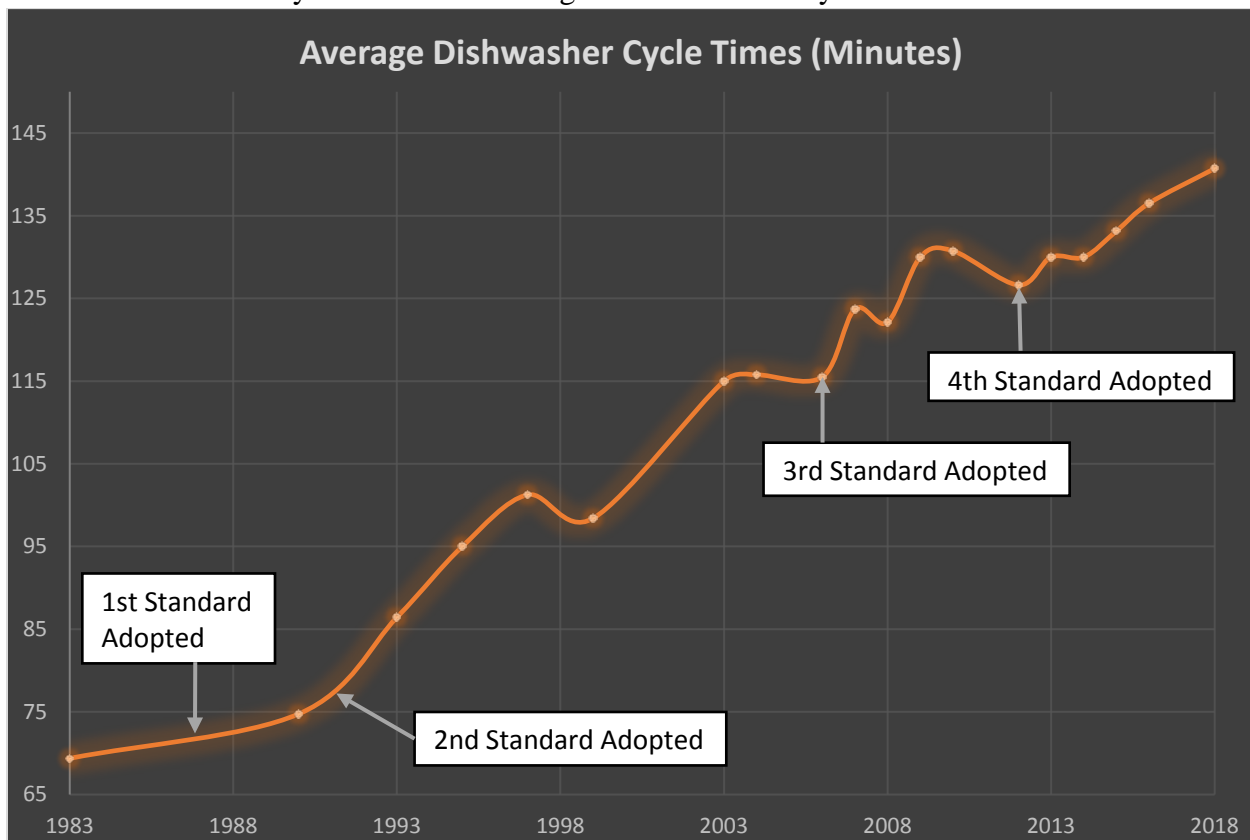
- “They take forever and forever to run the shortest cycle.”

Several other analysts have also noticed that dishwasher cycle times have increased due to the DOE regulations, such as the following publications attached to this petition:

- *Why do new dishwashers take so long to complete a normal cycle?*⁴
- *Why newer dishwashers run for an alarmingly long time.*⁵
- *Why it's the Government's Fault Your Dishwasher Cycle Is 2 or 3 Hours Long.*⁶

While the DOE had estimated the average cycle times of dishwashers to be about one hour in its most recent rulemaking,⁷ this figure appears to be decades out of date. As the chart below shows, the average cycle time has not been close to an hour since 1983, before any standards were adopted. The current average cycle time is actually 2 hours 20 minutes, and has more than doubled due to the current energy standards.⁸

We examined the *Consumer Reports'* evaluation of dishwasher cycles times for 19 of the last 35 years along with the cycle times of the current 177 models on the ConsumerReports.org website. This is how cycle times have changed over the last 35 years:



⁴ Ed Perratore, *Why do new dishwashers take so long to complete a normal cycle?*, Consumer Reports (April 23, 2014), <https://www.consumerreports.org/cro/news/2014/04/why-does-my-new-dishwasher-take-so-long/index.htm>.

⁵ Philip Jang, *Why newer dishwashers run for an alarmingly long time*, Times Colonist (June 24, 2014).

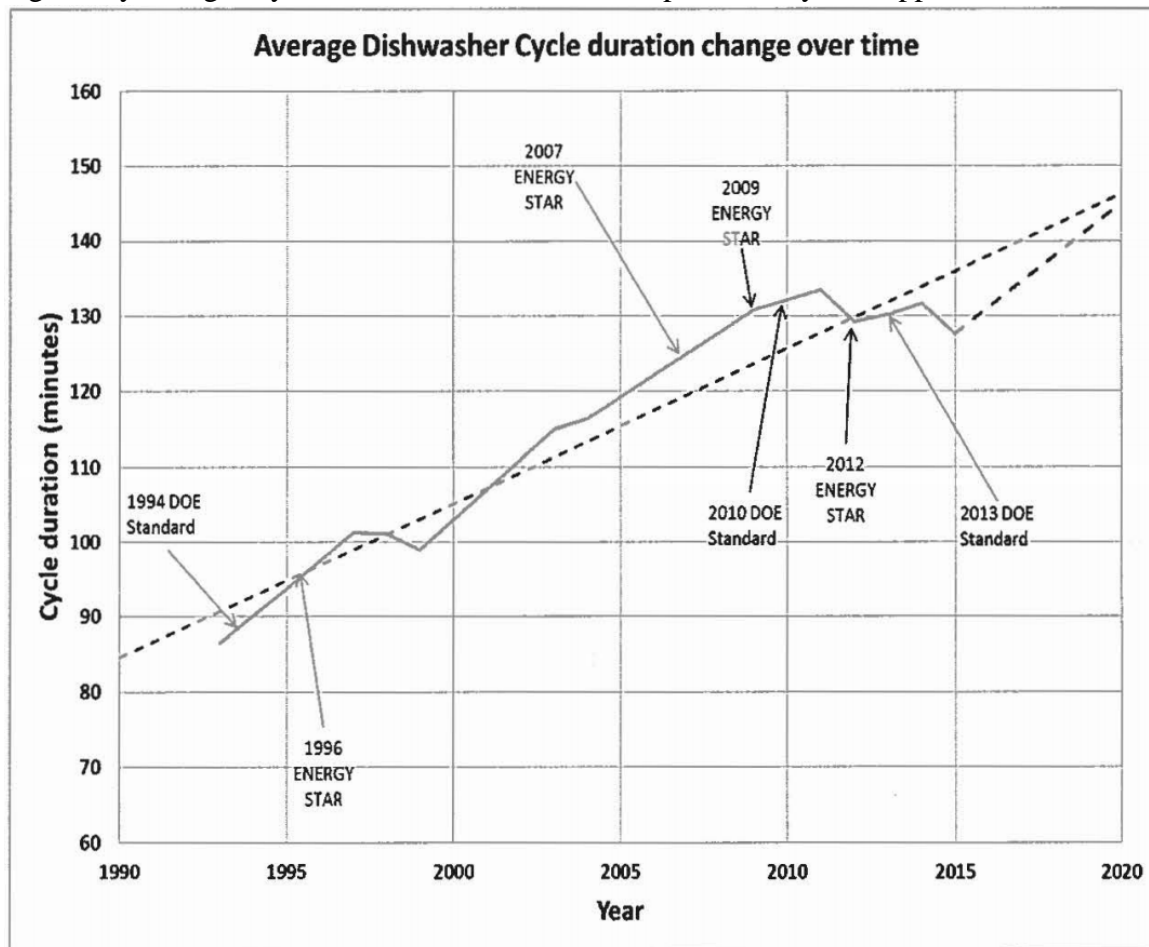
⁶ David Kreutzer, *Why it's the Government's Fault Your Dishwasher Cycle Is 2 or 3 Hours Long*, Daily Signal (July 12, 2015).

⁷ 81 FR 90087 n.22 (“The 1-hour cycle time is an estimate of the typical cycle time for a dishwasher.”).

⁸ On a per model basis as reviewed by Consumer Reports.

As this graph shows, when a new energy standard is adopted by the DOE, the result is an increase in dishwasher cycle time. In 1978, *Consumer Reports* found that “A dishwasher’s regular cycle time typically takes about an hour.”⁹ In 2014, ConsumerReports.org warns consumers: “don’t expect normal cycles to drop anytime soon from their 2- to 3-hour mark,” specifically citing the DOE regulations as the cause.¹⁰

CEI’s assessment is based on publically available sources such as *Consumer Reports*, but industry data provide further evidence of the degradation of cycle times. In the 2015-16 rulemaking, GE Appliances evaluated cycle time changes over time as they relate to various regulatory changes by the DOE. Below is the chart provided by GE Appliances¹¹:



The Association of Home Appliance Manufacturers (AHAM) collected data “from manufacturers making up over 90 percent of the market [which] show that as energy use decreases, cycle time (including dry time) gets longer.”¹² AHAM also analyzed shipment-weighted average cycle times, which weight each model by sales. It found the shipment-

⁹ Consumer Reports, May Issue, 281 (1976).

¹⁰ Perratore, *supra* note 4.

¹¹ Kline, *supra* note 2, at 3.

¹² Jennifer Cleary, *AHAM Comments on DOE’s NOPR for Energy Conservation Standards for Residential Dishwashers*; Docket No. EERE-2014-BT-STD-0021; RIN 1904-AD24, page 8 (March 25, 2015), <https://www.regulations.gov/document?D=EERE-2014-BT-STD-0021-0021>.

weighted average cycle time is 1.76 hours.¹³ As this is below the average-per-model cycle time, this demonstrates that consumers tend to prefer models with lower cycle times.

In addition to energy efficiency, consumers also want dish washers that clean better, clean quicker, clean quieter, and dry better. Congress understood that imposing energy standards could have a negative impact on these other features and tasked the DOE with making sure these other features stayed available to consumers. That is why 42 U.S.C § 6295(o)(4) requires that all new standards establish “by a preponderance of the evidence” that they will not result in the unavailability of any performance “characteristics (including reliability)” and “features.” Despite this, it appears that dishwasher speed cycles has been seriously impaired by the DOE standards and that many machines with shorter cycle times are no longer available to consumers.

In enacting the National Appliance Energy Conservation Act of 1987, Congress sought to ensure “that energy savings are not achieved through the loss of significant consumer features.” H.R. Rep. No. 100-11, 22 (1987). The “purpose of this provision is to ensure that an amended standard does not deprive consumers of product choices and characteristics, features, sizes, etc.” *Id.* at 23. This should “preclude[] DOE from promulgating a standard that manufacturers are only able to meet by adopting engineering changes that eliminate performance characteristics.” *Id.* at 23. Unfortunately for consumers, this has not happened.

We are now in a situation in which dishwashers average cycle times of less than one hour have been eliminated from the marketplace. Of the current 177 models reviewed by *ConsumerReports.org*, the fastest cycle time was the Frigidaire model FBD2400KS at 90 minutes. This is not due to consumer choice, but because it is not technologically feasible to create dishwashers that both meet the current standards and have cycle times of one hour or less. But Congress provided the DOE with discretion to deal with exactly this kind of situation.

Under 42 U.S.C. § 6295(q), Congress “permitted the Secretary to establish different standards within type of covered product . . . based upon performance-related features of the product.” National Energy Conservation Act 1978, H.R. Rep. 95-1751, 115 (1978). According to Congress, the “purpose of the provision is to permit the minimum energy efficiency standards to account for the varied performance-related features of appliances within a given type of product.” *Id.* Congress directed the Secretary to “use his discretion carefully, and establish separate standards only if the feature justifies a separate standard, based upon the utility to the consumer and other appropriate criteria.” *Id.* at 116. Given the degree of consumer dissatisfaction with dishwasher speed, we submit that exercising this discretion is fully warranted in this case.

This provision specifically allows the Secretary to “specify a level of energy use or efficiency . . . lower than that which applies (or would apply) for such type (or class).” 42 U.S.C § 6295(q)(1). The only relevant requirement is that it “have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class). In making a determination under this paragraph concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the

¹³ *Id.*

Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate.” 42 U.S.C § 6295(q)(1)(B).

A cycle time of less than one hour is a “performance-related feature” which justifies a lower standard based if there is “utility to the consumer of such a feature.” To demonstrate this utility, consider consumers’ views on the subject:

- “The cycles run FOREVER - Plan on letting it run all afternoon before your dishes are ready so you can use them for dinner!!”
- “It doesn't clean well, but has a very long cycle, well over two hours.”
- One consumer described a cycle time of one and a half hours as “extremely long,” but sadly this is the shortest cycle time on the market.
- Another consumer had a “technician come out to see why it took 6 hours to go through the cycle” and the technician told her she “needed to prewash my dishes before loading”. (This, however, is directly contrary to the advice of the DOE, which views prewashing as wasting energy and water.)
- “It spontaneously starts beeping, non-stop, the cycle takes FOREVER. I hate it, I hate it, I hate it.”
- When one consumer called a technician to complain of a 4.5 hour cycle time, she was told that the new machines just take longer than the old ones.

Given these consumer complaints, which are just a small sample, and the GE Appliances’ survey of 11,000 dishwasher owners, it is clear that cycle time is a “performance-related feature” that provides substantial “utility to the consumer” as required by the statute.

This petition proposes one hour as the defining characteristic for a new dishwasher class, because this is substantially below all current products on the market. This means that the energy efficiency standards for current models will not change with the addition of this new product class. Regardless of the standard set for this proposed new class, no backsliding would occur for the energy standards already in place as this new standard will not apply to current models.

Dishwasher speed is an important factor for huge numbers of consumers. Manufacturers clearly have the ability to satisfy these consumers, and the DOE has the discretion under the law to accommodate them. It should do so.

Sincerely,

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