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The Honorable Jennifer Granholm
Secretary of Energy
U.S. Department of Energy
1000 Independence Avenue SW
Washington, D.C. 20585-0121

Attention: Docket ID No. EERE-2021-BT-STD-0002

ARIZONA ATTORNEY GENERAL COMMENT

Secretary Granholm:

The Attorney General of Arizona, Mark Brnovich, submits this comment in opposition to the proposed rulemaking that would revoke the Department of Energy's ("Department") October 30, 2020, and December 16, 2020, final rules establishing a product class for dishwashers with a normal cycle time of 60 minutes or less and clothes washers and clothes dryers with cycle times of under 30 or 45 minutes, depending on format, under the Energy Policy and Conservation Act ("EPCA").¹

The Proposed Rule, if finalized, would be a detriment to consumers, who stand to benefit greatly from products produced under the new classes of machine and who expressed much support for the two rules the Department now seeks to revoke. Further, the Department is in error in its stated reasoning that the final rules were issued "without determining whether the relevant statutory criteria for amending standards were met." 86 Fed. Reg. 43970. First, the Department

had clear statutory authority to create such new product classes, and second, even in the absence of such a determination, the Department should seek comment on its authority and whether an alternative that preserves such classes is allowable rather than completely revoke its final rules.

Consumers and industry groups noticed that the prior standards led to machines that did not clean as well and took longer to do it, which created a burden on many including large families, working professionals, and seniors. *See, e.g., Comments of the Association of Home Appliance Manufacturers*, No. 2233, June 25, 2018, at p. 2 (“AHAM Comments”) (“AHAM raised lengthening cycle times for the normal cycle as a concern in [its] comments on the previous dishwasher rulemaking.”); and *Comments of the Appliance Standards Awareness Project, Consumer Federation of America, Natural Resources Defense Council, and Northeast Energy Efficiency Partnerships*, No. 2237, June 25, 2018, at p. 3 (“Joint Comments”) (noting average dishwasher cycle times over 140 minutes in 2018).² While the current Proposed Rule has only six other comments listed at the time of writing, the morning of the final day for comment submission, the proposed rules creating the new standards received numerous comments in support from consumers expressing their strong desire for more choice in the marketplace and a set of standards that allows for machines that meet their needs:

- Tim Bjorklund demanded on June 15, 2018: “Remove these worthless regulations and let us have products that get the job done quickly.”³
- Lora Sarza complained and requested on June 27, 2018: “I am tired of my dishwasher taking forever to clean the dishes, and even when it takes so long the dishes are still not clean. My dishwasher takes 2 – 3 hours to clean the dishes.” “Please allow

¹ *Energy Conservation Program: Product Classes for Residential Dishwashers, Residential Clothes Washers, and Consumer Clothes Dryers*, 86 Fed. Reg. 43970, Wednesday, August 11, 2021; Docket No. EERE-2021-BT-STD-0002 (“Proposed Rule”). All comment numbers provided herein are under this docket number.

² AHAM Comments, <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-2233>; Joint Comments, <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-2237>.

³ <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-0756>

manufacturers to make dishwashers good again so that it takes under 1 hour to clean the dishes.”⁴

- Diana McGuire commented on July 17, 2018: “Yes, I have noticed it takes forever to wash a load of dishes these days in our dishwasher, and yet our costs are not down nor are our dishes cleaner. In fact, the dishwasher and its filter are much more problematic, needing more attention than I ever had to give in the past. In other words, today our dishwasher is much less satisfactory than ever before. I’d love to see this fixed. Thank you!”⁵
- Laurel Kemper remarked on July 17, 2018: “My dishwasher, purchased in 2016, uses a minimal amount of water to ‘save’ water. But in order to get the dishes mostly clean, I have to use the sanitize cycle, which is 3 hours long. So, less water, but 3 times the electricity, and the dishes are still not completely clean, doesn’t seem like a good trade-off. We need the ‘old’ style dishwashers back, please!”⁶
- Clinton Beal stated on July 17, 2018: “I am tired of having a dishwasher that takes hours to cycle (the primary reason I turn it on before I go to bed), still requires towel drying of all the cups and glasses in the top rack, and occasionally has small food particles clinging to some of the silverware. My first dishwasher, ca. 1965, ran for approximately an hour and everything came out clean and dry.”⁷

And many others complained of the negative environmental impact of supposedly efficient machines that must have cycles repeated or extra pre-washing conducted before their use, as well as the waste of one of the most precious and completely unrenewable resources of all—people’s time:

- Kyle and Julie Barnett observed on July 17, 2018: “no one knows how much this savings is offset by people having to wash clothes/dishes twice in order to get the really tough stains out. What we are wasting, on the other hand, is a lot of human time.”⁸
- William Bromberg articulated on May 22, 2018: “Modern dishwashers are full of little conveniences and artful touches but fail in the single task for which they were indicated, actually cleaning the dishes due to the reduced water flows and temperatures. Having to run them multiple times eliminates any benefit of these purported savings.”⁹

⁴ <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-1252>

⁵ <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-2223>

⁶ <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-2218>

⁷ <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-2240>

⁸ <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-2228>

⁹ <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-0108>

- Anne Pagano asked on June 12, 2018: “How is it energy efficient to do the same task over and over again because [it] wasn’t done right the first time?”¹⁰
- Scott Clark questioned on May 22, 2018: “Why should the dishes have to be cleaned before [they’re] cleaned? Our virtually new dishwasher requires us to rinse thoroughly before it will get them clean. Energy savings? What about water waste?”¹¹

The Department took the opportunity to remedy these problems through creating a new class of machine its previous final rules, but the Proposed Rule seeks to destroy that progress and stifle the ability of industry to innovate for American consumers. The Department should listen to these consumer voices and allow for greater choice in the marketplace by leaving the current standards under the final rules intact, especially as the EPCA makes clear that the Department had the legal authority to create those new classes, as the State Attorneys General set out in their previous comment.¹²

The Department has the regulatory authority to empower consumers to buy residential dishwashers, washing machines, and clothes dryers that will fit their specific needs and time constraints. The law even authorizes the creation of a “higher or *lower*” energy conservation standard for a new class of machine provided that the Department determines that the class is characterized by a distinct performance-related feature. 42 U.S.C. § 6295(q)(1) (“a capacity or other performance-related feature which other products within such type (or class) do not have . . . justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class)”). In making that determination, 42 U.S.C. § 6295(q)(1) states, “[T]he Secretary shall consider such factors as the *utility to the consumer of such a feature*, and such other factors as the Secretary deems appropriate.” (Emphasis added). The utility to the consumer

¹⁰ <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-0610>

¹¹ <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-0141>

¹² <https://www.regulations.gov/comment/EERE-2018-BT-STD-0005-3131>.

has been well established by the Department's previous findings and the hundreds of comments in support in the docket for the current rules, a sampling of which are cited above.

For existing classes of such machines, the governing law generally prohibits “backsliding” through the *amendment* of existing standards. *See* 42 U.S.C. § 6295(o)(1) (“The Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product.”). But just as regions under environmental regulation can “shed anti-backsliding controls” applicable to an original designation through meeting the statutory requisites of a “redesignation,” the Department has statutory authority to designate a new class of dishwasher, allowing new standards to be promulgated within that class without regard to anti-backsliding controls otherwise applicable to existing classifications. *Cf. S. Coast Air Quality Mgmt. Dist.*, 882 F.3d at 1151 (D.C. Cir. 2018).

A 60-minute dishwasher cycle or 30- or 45-minute clothes washer or dryer cycle is a distinct performance feature not available in the market under the pre-2020 standards that provides a much-demanded utility to consumers. The Department had clear authority under the law to create these new classes and the statements in the Proposed Rule now that claim it did not sufficiently make this determination are in plain error.

Conclusion

The Arizona Attorney General is committed to protecting consumers and encourages the Department to do so as well. This is not done by limiting consumer choices and eliminating useful products that can help people with busy lives and all-too-little precious time in their days to wait for household chores to be completed. Consumers are best protected and served where government does not, and the Proposed Rule would, block innovation in technology and new

classes of products in the marketplace to meet citizens' demands. The technology exists for more helpful machines that meet the needs of modern lifestyles, and the Department should allow the current—and legally valid—final rules to stand rather than manufacture allegations of a defect in its previous rulemaking to fit a political agenda contrary to the real-life needs of the people.

Therefore, I urge the Department to reject the Proposed Rule in its entirety.

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