

members and their specific alternates are appointed by the Secretary of Agriculture from nominations submitted by certified producer organizations. The Secretary annually appoints half of the Board, nine members and nine alternates, for 2-year terms.

AMS published in the **Federal Register** (64 FR 8014; February 18, 1999) its plan to review certain regulations, including the Egg Research and Promotion Program (conducted under the Egg Research and Promotion Order), under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612). The plan was updated in the **Federal Register** on August 14, 2003 (68 FR 48574). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. Accordingly, this notice and request for comments is made for the Egg Research and Promotion Order.

The purpose of the review is to determine whether the Order should be continued without change, amended, or rescinded (consistent with the objectives of the Egg Research and Consumer Information Act of 1974) to minimize the impacts on small entities. AMS will consider the continued need for the Order; the nature of complaints or comments received from the public concerning the Order; the complexity of the Order; the extent to which the Order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local regulations; and the length of time since the Order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Order.

Written comments, views, opinions, and other information regarding the Order's impact on small businesses are invited.

Dated: January 31, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6–1563 Filed 2–3–06; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### 10 CFR Part 430

[Docket No. EE–RM–PET–100]

#### Energy Efficiency Program for Consumer Products: California Energy Commission Petition for Exemption From Federal Preemption of California's Water Conservation Standards for Residential Clothes Washers

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

**ACTION:** Petition for Exemption.

**SUMMARY:** The Department of Energy (hereafter “the Department”) announces the filing of the California Energy Commission's Petition for Exemption from Federal Preemption of California's Water Conservation Standards for Residential Clothes Washers (hereafter “California Petition”). To help the Department evaluate the California Petition's request, the Department invites interested members of the public to submit comments they may have on the California Petition and information related to the evaluation factors outlined in the Energy Policy and Conservation Act.

**DATES:** The Department will accept written comments, data, and information regarding the California Petition until, but no later than April 7, 2006.

**ADDRESSES:** A document entitled “California Preemption Exemption Petition” is available for review on the Internet at [http://www.eere.energy.gov/buildings/appliance\\_standards/state\\_petitions.html](http://www.eere.energy.gov/buildings/appliance_standards/state_petitions.html) or from Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, EE–2], Room 1J–018, 1000 Independence Ave., SW., Washington, DC 20585–0121, or by telephone (202) 586–2945.

Please submit comments, identified by docket number EE–RM–PET–100 by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** [California.Petition@ee.doe.gov](mailto:California.Petition@ee.doe.gov). Include either the docket number EE–RM–PET–100, and/or “California Preemption Exemption Petition” in the subject line of the message.

- **Mail:** Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building

Technologies Program, Mailstop EE–2], Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

- **Hand Delivery/Courier:** Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

**Instructions:** All submissions received must include the agency name and docket number for this proceeding. For detailed instructions on submitting comments and additional information on the proceeding, see section II. C of this document (Submission of Comments).

**Docket:** For access to the docket to read the background documents relevant to this matter, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: The California Petition; California's 2005 water plan, *California Water Plan Update 2005: Public Review Draft*; prior Department rulemakings regarding clothes washers or comments received. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room.

**Please note:** The Department's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials.

Electronic copies of the California Petition are available online at either the Department of Energy's Web site at the following URL address: [http://www.eere.energy.gov/buildings/appliance\\_standards/state\\_petitions.html](http://www.eere.energy.gov/buildings/appliance_standards/state_petitions.html) or the California Energy Commission's Web site at the following URL address: [http://www.energy.ca.gov/appliances/2005-09-13\\_PETITION\\_CLOTHES\\_WASHERS.PDF](http://www.energy.ca.gov/appliances/2005-09-13_PETITION_CLOTHES_WASHERS.PDF). An electronic copy of California's water plan update and related material is available online at the California Department of Water Resources Web site at the following URL address: <http://www.waterplan.water.ca.gov/>.

Electronic copies of prior Department rulemakings regarding clothes washers and of the Final Rule Technical Support Document for clothes washers are available from the Department's Building Technologies Program's Web site at the following URL address:

[http://www.eere.energy.gov/buildings/appliance\\_standards/residential/clothes\\_washers.html](http://www.eere.energy.gov/buildings/appliance_standards/residential/clothes_washers.html).

This notice also refers to California standards for residential clothes washers adopted by the California Energy Commission (CEC) in 2004.

Material related to this State regulation is available at the following URL address under Docket # 03-AAER-1(RCW): [http://www.energy.ca.gov/appliances/2003rulemaking/clothes\\_washers/index.html](http://www.energy.ca.gov/appliances/2003rulemaking/clothes_washers/index.html).

**FOR FURTHER INFORMATION CONTACT:** Bryan Berringer, 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, (202) 586-0371, or e-mail:

[Bryan.Berringer@ee.doe.gov](mailto:Bryan.Berringer@ee.doe.gov).

Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507, e-mail:

[Thomas.DePriest@hq.doe.gov](mailto:Thomas.DePriest@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:**

I. Introduction

A. Authority

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**I. Introduction**

A. Authority

Part B of Title III of the Energy Policy and Conservation Act, as amended (hereafter "Act" or EPCA) established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291-6309) Products covered under the program, including residential clothes washers, and the authority to regulate them, are listed in section 322. (42 U.S.C. 6292) Section 325(g) (42 U.S.C. 6295(g)) establishes standards for certain types of residential clothes washers and requires the Department to issue two rulemakings to consider further amendments.

Federal energy efficiency requirements for residential products generally preempt State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)-(c)) However, the Department can grant waivers of Federal preemption (hereafter "waiver" or "exemption") for particular State laws or regulations, in

accordance with the procedures and other provisions of section 327(d) of the Act. (42 U.S.C. 6297(d)) In particular, section 327(d)(1)(A) of EPCA provides that any State or river basin commission with a State regulation regarding energy use, energy efficiency, or water use requirements for products regulated by the Energy Conservation Program, may petition for an exemption from Federal preemption and seek to apply its own State regulation. (42 U.S.C. 6297(d)(1)(A))

B. Background

1. Department Rulemakings Regarding Clothes Washers

On January 12, 2001, the Department issued a final rule for energy efficiency and design standards for five product classes of clothes washers (hereafter referred to as the January 2001 final rule): Top-loading compact; Top-loading, standard; Front-loading; Top-loading, semi-automatic; and Top-loading, suds-saving. (66 FR 3314-3333) The January 2001 final rule set minimum energy efficiency standards that would become effective on January 1, 2004, and January 1, 2007. DOE standards for residential products are energy efficiency standards only; DOE has not set a water use requirement for residential clothes washers. (10 CFR 430.32(g))

TABLE I.1.—FEDERAL RESIDENTIAL CLOTHES WASHER STANDARD LEVELS

Product class	Capacity (ft. <sup>3</sup> )	Modified energy factor (ft. <sup>3</sup> /kWh/cycle)	
		Effective date 1/1/2004	Effective date 1/1/2007
Top-Loading, compact .....	<1.6	0.65 .....	0.65
Top-Loading, standard .....	≥1.6	1.04 .....	1.26
Front-Loading .....	.....	1.04 .....	1.26
Top-Loading, Semi-automatic .....	.....	Unheated rinse water option ....	Unheated rinse water option.
Suds-saving .....	.....	Unheated rinse water option ....	Unheated rinse water option.

The January 2001 final rule constituted the second residential clothes washer rulemaking required by EPCA. The initial standards prescribed in EPCA, as amended by the National Appliance Energy Conservation Act of 1987, required an unheated water option, and permitted a water rinse option for clothes washers manufactured on or after January 1, 1988. (42 U.S.C. 6295(g)) Subsequent standard amendments made by the Department established the five product classes in Table I.1 and set minimum energy efficiency standards.

The Energy Policy Act of 2005 amended the Act to adopt new energy

efficiency and water conservation standards for commercial clothes washers. The commercial clothes washer standards require products manufactured on or after January 1, 2007, to have a modified energy factor of at least 1.26 and a water factor of not more than 9.5. (42 U.S.C. 6313(e))

2. California Petition for Waiver of Federal Preemption and Summary of State Regulation

On September 16, 2005, the Department received a petition for an exemption from the California Energy Commission (CEC) (hereafter referred to as the California Petition), dated

September 13, 2005, pursuant to the requirements of section 327(d) of the Act (42 U.S.C. 6297(d)) and Title 10 Code of Federal Regulations (CFR) Part 430, Subpart D, and Sections 430.41(a)(1) and 430.42 of the CFR. However, by letter dated November 18, 2005, the Department notified the CEC that its petition had failed to comply with certain requirements set out in 10 CFR 430.42(c). The CEC responded on December 5, 2005, and provided the required information. By letter dated December 23, 2005, the Department notified the CEC that it had accepted the California petition as supplemented.

California Assembly Bill 1561, passed by the California legislature and signed into law in 2002, required the CEC to adopt water efficiency standards for residential clothes washers by January 2004, and to file a petition with the Department for a waiver by April 2004. The law also required that the new standards be at least as efficient as commercial clothes washers. (California Public Resources Code section 25402 (e)) California currently requires that commercial clothes washers meet a maximum water factor of 9.5 by January 1, 2007, the same standard as prescribed by Section 342 of EPCA, as amended by the Energy Policy Act of 2005 in August of 2005. (20 C.C.R. 1605.3(p) and 42 U.S.C. 6313(e)) (CEC, No. 1 at 2) <sup>1</sup>

In 2004, the CEC adopted water efficiency standards for Top- and Front-Loading residential clothes washers, setting a two-tier standard of 8.5 maximum water factor effective January 1, 2007, and of 6.0 maximum water factor, effective January 1, 2010. (20 C.C.R. 1605.2(p)) (CEC, No. 1 at 3)

### 3. Factors to Consider in Granting or Declining an Exemption

Section 327(d) of the Act sets forth factors that the Secretary of Energy (hereafter "Secretary") is to consider in evaluating whether to grant an exemption. (42 U.S.C. 6297(d)) Section 327 (d)(1)(B) requires the Secretary to grant an exemption if the Secretary determines that the proffered State regulation "is needed to meet unusual and compelling State or local water interests." (42 U.S.C. 6297(d)(1)(B)) According to section 327(d)(1)(C) of the Act, "unusual and compelling" interests are defined as interests which "(i) are substantially different in nature or magnitude than those prevailing in the United States generally; and (ii) are such that the costs, benefits, burdens, and reliability of energy or water savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy or water savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all products subject to the State regulation." (42 U.S.C. 6297(d)(1)(C))

<sup>1</sup> A notation in the form "CEC, No. 1 at p. 2" identifies a written comment the Department has received and has included in the docket of this rulemaking. This particular notation refers to a comment (1) By the California Energy Commission (CEC), (2) in document number 1 in the docket of this proceeding (maintained in the Resource Room of the Building Technologies Program), and (3) appearing on page 2 of document number 1.

According to sections 327(d)(3)-(4), the Secretary may not grant an exemption if the Secretary finds the State regulation would "significantly burden manufacturing, marketing, distribution, sale, or servicing of the covered product on a national basis," or "result in the unavailability" in the State of any covered product's "performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding, except that the failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types)." (41 U.S.C. 6297(d)(3) and (4)) To evaluate whether the State regulation will create a significant burden, the Secretary is to consider "all relevant factors," including the following:

"(A) The extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others;

(B) The extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State;

(C) The extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction—

(i) In the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the United States; or

(ii) In the current or projected sales volume of the covered product type (or class) in the State and the United States; and

(D) The extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have." (U.S.C. 6297(d)(3)(A) through (D))

## II. Discussion

### A. Summary of Reasons for Petition

The California Petition seeks waivers of Federal preemption for all classes of residential clothes washers that are covered products under the Act, "including but not necessarily limited to—Compact and Standard; Top-Loading and Front-Loading; Automatic and Semi-Automatic; and Suds-Saving

and Non-Suds-Saving." (CEC, No. 1 at p. 4)

According to the California Petition, the CEC states that California currently uses, and will continue to need, cost-effective water conservation strategies. The CEC states that every water supply source for the State is "over-appropriated" and water demand is projected to grow rapidly. (CEC, No. 1 at p. 1) Furthermore, the CEC claims that clothes washer standards are distinctly preferable to alternative approaches to water savings and production. (CEC, No. 1 at p. 26) The CEC additionally argues that California's local and state water interests are unusual and compelling, and that "California's water interests (and associated energy interest) are different in both nature and magnitude than those prevailing in the United States generally. \* \* \*" (CEC, No. 1 at p. 5)

The California Petition also provides information relating to the California standard's burden on manufacturing, marketing, distribution, sale, or servicing of the residential clothes washers on a national basis, and states that California's water efficiency standards will achieve benefits without significantly impacting the residential clothes washer industry or the consumer-usefulness of appliances. (CEC, No. 1 at pp. 37 through 41)

### B. Issues on Which the Department Seeks Comment

The Department is interested in receiving comments on all aspects of the California Petition and this notice. The Department is especially interested in public comment on information related to the evaluation of factors outlined in section 327 of the Act, including the following: whether the California Petition has established that California has unusual and compelling State or local water interests to warrant a waiver from Federal preemption; whether the State regulation will be burdensome; and whether the State regulation will affect the availability of covered products with features generally available in California. In that regard, the Department is particularly interested in receiving comment on the following questions:

- Are California's water interests "unusual and compelling," and how do they compare to those of the Nation and of other States? (42 U.S.C. 6297(d)(1)(B))

- Are there other factors and information in addition to the California Petition the Department should consider in determining whether California's water interests are "unusual and compelling"? (42 U.S.C. 6297(d)(1)(C))

- Are the water use issues “substantially different in nature or magnitude than those prevailing in the United States generally?” Should the phrase, “in the United States generally” be interpreted to include comparison to regions as well as national averages? Are the water use issues in California substantially different in nature or magnitude than those prevailing in other western states? (42 U.S.C. 6297(d)(1)(C)(i))
- Are there “alternative approaches to \* \* \* [clothes washer] water savings” that could achieve the same water savings in California as would be achieved by the California clothes washer standards? (42 U.S.C. 6297(d)(1)(C)(ii))
- Are there “alternative approaches to \* \* \* water savings or production” not considered in the California water plan that could achieve the same water savings in California as would be achieved by the California clothes washer standards? (42 U.S.C. 6297(d)(1)(C)(ii))
- Are there alternative policies or programs in California that can achieve the same water savings at the same or lower cost or burden, or with greater reliability and benefit? (42 U.S.C. 6297(d)(1)(C)(ii))
- Are there estimates of market-induced improvements in efficiency of all products subject to the California regulation? (42 U.S.C. 6297(d)(1)(C)(ii))
- Is the analysis used in the California Petition accurate? For example, are the State’s savings estimates correct? How valid are the State’s assumptions?
- Is California Petition’s statement that water supplies are not “fungible” and that it is very difficult to transfer any water savings from one sector of the State to another accurate? Are there ways California can transfer water savings more easily?
- What impacts would the State standards have on manufacturing, marketing, distribution, sale, or servicing of covered products on a national basis? (42 U.S.C. 6297(d)(3))
- What impact will the California clothes washer standard have on manufacturing or distribution costs of manufacturers, distributors and others? (42 U.S.C. 6297(d)(3)(A))
- Will the California clothes washer standard disadvantage smaller manufacturers, distributors, or dealers or lessen competition in California? (42 U.S.C. 6297(d)(3)(B))
- To what extent would the California standard cause a burden to manufacturers to redesign their residential clothes washers? (42 U.S.C. 6297(d)(3)(C))

- Would the California standard result in a reduction in product availability? (42 U.S.C. 6297(d)(3)(C)(i))
- Would the California standard result in a reduction in sales volume of clothes washers either in California or in the United States as a whole? (42 U.S.C. 6297(d)(3)(C)(ii))
- To what extent is the California regulation likely to contribute significantly to a proliferation of State appliance efficiency requirements? What cumulative impact would such requirements have? (42 U.S.C. 6297(d)(3)(D))
- Would the California regulation impact the availability in the State of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State? (42 U.S.C. 6297(d)(4))
- Would the California standard affect the availability of classes of clothes washers or clothes washer performance characteristics, reliability, features, sizes, capacities and volumes that are generally available in California? (42 U.S.C. 6297(d)(4))

After the period for written comments, the Department will consider the information and views submitted, and make a decision on whether to prescribe a waiver from Federal preemption for California with regard to water use standards for residential clothes washers.

### C. Submission of Comments

The Department will accept comments, data, and information regarding this notice no later than the date provided at the beginning of the notice. Please submit comments, data, and information electronically. Send them to the following e-mail address: [California.Petition@ee.doe.gov](mailto:California.Petition@ee.doe.gov). Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Identify comments in electronic format by the docket number EE-RM-PET-100 and wherever possible include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. DOE does not accept telefacsimiles (faxes).

In accordance with 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential,

and one copy of the document with the information believed to be confidential deleted. The Department will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to the Department when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on January 27, 2006.

**Douglas L. Faulkner,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 06-1041 Filed 2-3-06; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-23319; Directorate Identifier 2005-CE-52-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Raytheon Aircraft Company 65, 90, 99, and 100 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 92-07-05, which applies to certain Raytheon Aircraft Company (Raytheon) 65, 90, 99, and 100 series airplanes. AD 92-07-05 currently requires you to inspect the rudder trim tab for proper moisture drainage provisions, and if the correct drainage provisions do not exist, prior to further flight, modify the rudder trim tab. Since we issued AD 92-07-05, FAA has received and evaluated new service information that requires the