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## I. Introduction

### A. Authority

Title III of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles (Program). The products currently subject to this Program ("covered products") include residential dishwashers, the subject of today's final rule. (42 U.S.C. 6291 *et seq.*)

Under the Act, the Program consists of three parts: Testing, labeling, and the Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology (NIST), may amend or establish test procedures as appropriate for each of the covered products. (42 U.S.C. 6293) The purpose of the test procedures is to measure energy efficiency, energy use, or estimated

annual operating cost of a covered product during a representative average use cycle or period of use. The test procedures must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

If DOE amends a test procedure, EPCA requires DOE to determine whether the new test procedure would change the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that a change would result, DOE must amend the applicable energy conservation standard during the rulemaking that establishes the new test procedure. (42 U.S.C. 6293(e)(2)) In setting any new energy conservation standard, DOE is required to measure, with the new test procedure, the energy efficiency or energy use of a representative sample of covered products that minimally comply with the existing standard. The average energy efficiency or energy use of these representative samples under the new test procedure shall constitute the amended energy conservation standard for the applicable covered products. (42 U.S.C. 6293(e)(2))

Effective 180 days after DOE prescribes or establishes an amended or new test procedure for a covered product, no manufacturer, distributor, retailer, or private labeler may make any representation with respect to the energy use, efficiency, or cost of energy consumed by the product, unless the product has been tested in accordance with such amended or new DOE test procedure and the representation fairly discloses the results of that testing. (42 U.S.C. 6293(c)(2)) This restriction on representations will take effect 180 days after the date this final rule is "prescribed" (*i.e.*, the date this rule is published in the **Federal Register**). Because this final rule itself will become effective 30 days after its publication in the **Federal Register**, a manufacturer, distributor, retailer, or private labeler may begin using the new test procedure to make representations with respect to the energy use, efficiency, or cost of energy consumed by the product beginning with the effective date of this rule.

### B. Background

On December 18, 2001, the Department published a final rule amending the dishwasher test procedure that had been in effect since 1987 (hereafter referred to as the "2001 final rule"). 66 FR 65091. That rulemaking tightened some testing specifications, changed the definitions of compact and standard models, and reduced the

average number of use cycles per year from 322 to 264. It did not, however, finalize the revised test procedure that the Department had proposed to measure the energy consumption of the newer soil-sensing models.

Manufacturers were unable to adequately test these models with the existing test load of clean dishes. In the 2001 final rule, the Department concluded that it needed to conduct additional research regarding how to test accurately the variety of soil-sensing technologies used, and to collect more data regarding consumer dishwasher behavior. In the following year, the Department worked with industry and other stakeholders to explore possible approaches and to collect additional data to support the development of a new test method. In addition, the Department hired an independent research organization, Arthur D. Little, Inc. (ADL), whose technology and innovation business has become known as TIAX LLC, to collect and evaluate all available surveys and studies regarding consumer dishwasher use. The ADL research addressed both frequency of use and frequency of pre-rinsing the dish load. DOE placed the December 18, 2001, ADL report and the March 5, 2002, ADL research addendum on its Building Research and Standards website for stakeholder review and comment.

The Department published a Notice of Proposed Rulemaking (NOPR) on September 3, 2002 (hereafter referred to as the September 2002 NOPR or NOPR), defining two types of dishwashers, soil-sensing and non-soil-sensing, according to whether a dishwasher could automatically adjust its wash cycle in response to the amount of food left on the dish load. 67 FR 56232. The Department did not propose any changes to the existing test procedure for non-soil-sensing dishwashers, which still would use clean dishes, tested during the normal cycle. However, using the recommendations from the ADL research, the Department proposed for soil-sensing dishwashers a new test procedure using soiled dishes instead of clean ones. The procedure required that manufacturers or private labelers run a series of three tests using heavy, medium, and light soil loads in order to test a dishwasher's soil-sensing mechanism at different soil levels. This procedure allowed the energy factor for a soil-sensing dishwasher to become an aggregated number, the average of the energy consumption figures from the three soiled test loads, weighted according to user frequency. For soiling the dishes, the test procedure required