Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Doc. No. AMS–SC–24–0050]

Almonds Grown in California; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible almond growers to determine whether they favor continuance of the marketing order regulating the handling of almonds grown in California.

DATES: The referendum will be conducted from December 4 through December 20, 2024. Only current growers of almonds within the production area that grew almonds during the period August 1, 2023, through July 31, 2024, are eligible to vote in this referendum. The U.S. Department of Agriculture (USDA) will provide the option for ballots to be returned electronically. Further detail will be provided in the ballot instructions. Ballots returned via express mail or electronic mail must show proof of delivery by no later than 11:59 p.m. Eastern time on December 20, 2024, to be counted.

ADDRESSES: Copies of the marketing order may be obtained from the West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721–3129; Telephone: (559) 487–5901; the Office of the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085; or on the internet: *https://www.ams.usda.gov/rules-regulations/moa/commodities.*

FOR FURTHER INFORMATION CONTACT: Peter Sommers, Marketing Specialist, or Abigail Maharaj, Branch Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, CA 93721–3129; Telephone: (559) 487–5901, or Email: *Peter.Sommers@usda.gov* or *Abigail.Maharaj@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 981, as amended (7 CFR part 981), hereinafter referred to as the ''Order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order is favored by growers. The referendum will be conducted from December 4 through December 20, 2024, among almond growers in the production area. Only current almond growers that were engaged in the production of almonds during the period of August 1, 2023, through July 31, 2024, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor the continuation of marketing order programs. USDA would consider termination of the Order if less than two-thirds of the growers voting in the referendum, or growers of less than two-thirds of the volume of almonds represented in the referendum, favor continuance. In evaluating the merits of continuance versus termination, USDA will not exclusively consider the results of the continuance referendum. USDA will also consider all other relevant information concerning the operation of the Order and the relative benefits and costs to growers, handlers, and consumers to determine whether continued operation of the Order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178, Fruit Crops. It has been estimated it will take an average of 20 minutes for each of the approximately 9,500 almond growers to cast a ballot. Participation is voluntary. Ballots postmarked after December 20, 2024, will not be included in the vote tabulation.

Abigail Maharaj, Jeffery Rymer, and Peter Sommers of the West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR part 900.400 *et seq.*).

Ballots and voting instructions will be sent by U.S. Postal Service, or through electronic mail to all growers of record and may also be obtained from the referendum agents or from their appointees.

List of Subjects in 7 CFR Part 981

Marketing agreements, Nuts, and Reporting and recordkeeping requirements.

(Authority: 7 U.S.C. 601–674)

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–26048 Filed 11–7–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2024–BT–STD–0002]

RIN 1904–AF69

Energy Conservation Program: Energy Conservation Standards for Dishwashers, Residential Clothes Washers, and Consumer Clothes Dryers

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

ACTION: Notification of proposed confirmation of withdrawal and request for comment.

SUMMARY: In light of the United States Court of Appeals for the Fifth Circuit granting a petition for review of a final rule published by the U.S. Department of Energy (''DOE'') on January 19, 2022, and remanding the matter to DOE for further proceedings, DOE issued a

request for information on whether ''short-cycle'' product classes for dishwashers, residential clothes washers, and consumer clothes dryers are warranted under the Energy Policy and Conservation Act. In this document, DOE considers the factors outlined by the Fifth Circuit and proposes to confirm the elimination of ''short-cycle'' product classes in the January 19, 2022, final rule.

DATES: DOE will accept comments, data, and information regarding this proposal no later than December 9, 2024. *See* section IV, ''Public Participation,'' for details.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number EERE–2024–BT–STD–0002. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments may submit comments, identified by docket number EERE–2024–BT–STD–0002, by any of the following methods:

(1) Email: ShortCycle2024STD0002@ee.doe.gov. Include the docket number EERE–2024–BT–STD–0002 in the subject line of the message.

(2) Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

(3) Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section IV of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket/EERE–2024–BT–STD–0002.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section IV for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Dr. Carl Shapiro, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 287–5649. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 961–1189. Email: *Peter.Cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The following sections briefly discuss the statutory authority underlying this proposed confirmation of withdrawal, as well as some of the historical background relevant to dishwashers, residential clothes washers (''RCWs''), and consumer clothes dryers.

A. Authority

The U.S. Department of Energy (''DOE'') must follow specific statutory criteria under the Energy Policy and Conservation Act, Public Law 94–163,[1] as amended, (''EPCA'') for prescribing new or amended standards for covered products, including dishwashers, RCWs, and consumer clothes dryers. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy (''Secretary'') determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

Moreover, DOE may not prescribe a standard if DOE determines by rule that the establishment of such standard will not result in significant conservation of energy (or, for certain products, water), or is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceeds its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact parts A and A–1 of EPCA.

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in 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 United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. A rule prescribing an energy conservation standard for a type (or class) of product must specify a different standard level for a type or class of products that has the same function or intended use if DOE determines that products within such group (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) 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. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE considers such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. (*Id.*) Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

B. Background

The Administrative Procedure Act (''APA''), 5 U.S.C. 551 *et seq.,* provides, among other things, that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e)) Pursuant to this provision of the APA, the Competitive Enterprise Institute (''CEI'') petitioned DOE for the issuance of a rule establishing a new product class under 42 U.S.C. 6295(q) that would cover dishwashers with a cycle time of less than 60 minutes from washing through drying, asserting that it is not technologically feasible to create dishwashers that both meet the current standards and have cycle times of 60 minutes or less.[2] On October 30, 2020, DOE published a final rule that established a product class for standard-size dishwashers with a cycle time for the normal cycle [3] of 60 minutes or less. 85 FR 68723 (''October 2020 Final Rule''). Contrary to CEI's claim in its petition that it is not technologically feasible for a dishwasher with a cycle time of 60 minutes or less to meet the current standards, in the October 2020 Final Rule DOE identified several dishwashers that had cycles that were less than 60 minutes and met the current standards, but asserted that establishing a product class for dishwashers with a normal cycle of 60 minutes or less could spur manufacturer innovation to generate additional product offerings. *Id.* at 85 FR 68726. The October 2020 Final Rule additionally specified that the current standards for dishwashers no longer apply to short-cycle products and that DOE intended to conduct the necessary rulemaking to determine standards that would provide the maximum energy efficiency that is technologically feasible and economically justified, and would result in a significant conservation of energy. *Id.* at 85 FR 68733, 68741.

Following the October 2020 Final Rule, having determined that similarities exist between the consumer use of dishwashers, RCWs, and consumer clothes dryers (*i.e.,* that these products offer several cycles with varying times, and that consumers run these cycles multiple times per week on average), DOE published a final rule on December 16, 2020, that established product classes for top-loading RCWs and certain classes of consumer clothes dryers with a cycle time of less than 30 minutes, and front-loading RCWs with a cycle time of less than 45 minutes (''December 2020 Final Rule''). 85 FR 81359. Similar to the October 2020 Final Rule, the December 2020 Final Rule also specified that the current standards for RCWs and consumer clothes dryers no longer apply to short-cycle products. 85 FR 68723, 68742; 85 FR 81359, 81376.

On January 19, 2022, DOE published a final rule (''January 2022 Final Rule'') revoking the October 2020 Final Rule and the December 2020 Final Rule (collectively, ''Short-cycle Final Rules''). In that rule, DOE noted that the appropriate time for establishing a new product class under 42 U.S.C. 6295(q) is during a rulemaking prescribing new or amended standards. 87 FR 2673, 2682. And, as the Short-cycle Final Rules stated that they were not applying the rulemaking analysis pursuant to the seven factors specified in 42 U.S.C. 6295(o) for the establishment of standards, DOE found that these rules were improperly promulgated. *Id.* at 87 FR 2673. The January 2022 Final Rule reinstated the prior product classes and applicable standards for these covered products. *Id.* at 87 FR 2686.

On March 17, 2022, various States filed a petition in the United States Court of Appeals for the Fifth Circuit (''Fifth Circuit'') seeking review of the January 2022 Final Rule, which eliminated the short-cycle product classes and reinstated the applicable energy conservation standards. The petitioners argued that the January 2022 Final Rule withdrawing the Short-cycle Final Rules violated EPCA and was arbitrary and capricious. On January 8, 2024, the Fifth Circuit granted the petition for review and remanded the matter to DOE for further proceedings consistent with the Fifth Circuit's opinion. In remanding the January 2022 Final Rule for further consideration, the Court held that even if the Short-cycle Final Rules were invalid, DOE was obligated to consider other remedies short of withdrawal. *See Louisiana, et al.* v. *United States Department of Energy, et al.,* 90 F.4th 461, 477 (5th Cir. 2024). Specifically, the Court noted that instead of withdrawing the Short-cycle Final Rules, DOE could have promulgated energy conservation standards for the short-cycle product classes. *Id.* at 476.

As a result, DOE is considering whether short-cycle product classes and standards can be established under the applicable statutory criteria. Under EPCA, DOE establishes product classes based on: (1) fuel type; or (2) performance-related features. (42 U.S.C. 6295(q)(1)) With regards to product classes based on performance-related features, the product must have a feature which other products within such type do not have and such feature must justify a different standard from that which applies to other products within such type. (*Id.).* In the Short-cycle Final Rules, DOE found that cycle time was a performance-related feature and that some products had shorter

[2] *See* document IDs 0006 and 0007 at *www.regulations.gov/docket/EERE-2018-BT-STD-0005.*

[3] The ''normal cycle'' is specifically defined in section 1 of the DOE test procedure at title 10 of the Code of Federal Regulations (''CFR''), part 430, subpart B, appendix C1 (''appendix C1''), as ''the cycle type, including washing and drying temperature options, recommended in the manufacturer's instructions for daily, regular, or typical use to completely wash a full load of normally soiled dishes including the power-dry feature,'' among other criteria.

cycle times than others. 85 FR 68723, 68726; 85 FR 81359, 81361. But the Short-cycle Final Rules did not determine whether cycle time justified different standards. Instead, the Short-cycle Final Rules stated DOE would determine specific standards in a separate rulemaking. *Id.* Therefore, to establish separate energy conservation standards for short-cycle product classes, DOE must first confirm the determination made in the Short-cycle Final Rules that cycle time is a performance-related feature for these three covered products. DOE must then determine that a different standard level is justified for short-cycle products as there is no basis for establishing a product class under 42 U.S.C. 6295(q) that would be subject to the same standard level. Finally, assuming DOE determines that cycle time is a performance-related feature and a different standard level is justified for short-cycle products, DOE must apply the criteria in 42 U.S.C. 6295(o) to prescribe energy conservation standards that, among other things, are technologically feasible and economically justified and would result in significant conservation of energy.

As part of this process, DOE published a request for information on March 11, 2024 (''March 2024 RFI''), seeking data and other information on, among other things, the presence of any short-cycle products in the market and any relationship between cycle time and performance. 89 FR 17338. DOE received comments in response to the March 2024 RFI from the interested parties listed in Table II.1.

TABLE II.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE MARCH 2024 RFI

Commenter(s)	Reference in this final rule	Comment number in the docket	Commenter type
Appliance Standards Awareness Project, Alliance for Water Energy, American Council for an Energy-Efficient Economy, Consumer Federation of America, Earthjustice, National Consumer Law Center, Natural Resources Defense Council, New York State Energy Research and Development Authority.	ASAP *et al.*	8	Efficiency Organizations.
Association of Home Appliance Manufacturers	AHAM	5	Trade Association.
Attorneys General of MT, AL, AR, FL, GA, ID, IA, KY, LA, MS, MO, NE, OH, SC, TN, TX, UT, VA.	AGs of MT *et al.*	9	State Government Officials.
California Investor-Owned Utilities (Pacific Gas and Electric, Southern California Edison, San Diego Gas and Electric).	CA IOUs	6	Utilities.
China via National Center of Standards Evaluation and State Administration for Market Regulation.	China	11	International Government.
LG Corporation	LG	7	Manufacturer.
Northwest Energy Efficiency Alliance	NEEA	4	Efficiency Organization.
Natural Resources Defense Council and Earthjustice	NRDC and Earthjustice	10	Efficiency Organizations.
New York State Energy Research and Development Authority and California Energy Commission.	NYSERDA and CEC	12	State Agencies.
U.S. Representative Stephanie Bice	Rep. Bice	2	Federal Government Official.
Joshua McCray	McCray	3	Individual.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[4]

II. Discussion

This discussion responds to the Fifth Circuit's January 8, 2024, decision remanding this matter to DOE for further proceedings consistent with its opinion. In remanding the January 2022 Final Rule for further consideration, the Fifth Circuit found the January 2022 Final Rule arbitrary and capricious for two principal reasons:

(1) It failed to adequately consider appliance performance, substitution effects, and the ''ample record evidence'' that DOE's conservation standards are causing Americans to use more energy and water rather than less; and

(2) It rested instead on DOE's view that the Short-cycle Final Rules were legally invalid—but even if true, that does not excuse DOE from considering other remedies short of repealing the Short-cycle Final Rules *in toto.*

Louisiana, 90 F.4th at 477.

With regards to the second reason, the Court noted that instead of withdrawing the Short-cycle Final Rules, DOE could have promulgated energy conservation standards for the short-cycle product classes. *Id.* at 476.

In the discussion that follows, DOE considers whether an alternative to withdrawing the Short-cycle Final Rules—establishing standards for the short-cycle product classes—would be justified under EPCA. As discussed below, DOE tentatively concludes that the short-cycle features of dishwashers, RCWs, and consumer clothes dryers do not justify standards different from those applicable to those products generally. DOE has also considered the effect of withdrawing the short-cycle product class on product performance and energy and water use savings, including cleaning and drying performance, the potential for increased substitution (*e.g.,* by hand washing or pre-washing), and the risk that standards are unintentionally increasing energy use (*e.g.,* via consumers relying on multiple cycles or unregulated cycles).

A. Dishwashers

The following sections apply DOE's authority under EPCA at 42 U.S.C. 6295(q) to determine whether a ''short-cycle'' feature for dishwashers is a performance-related feature that justifies the establishment of a separate product class. DOE considers a short-cycle feature for dishwashers to be a cycle that can completely wash a full load of normally soiled dishes in 60 minutes or less. DOE first reiterates its prior determinations that cycle time is a performance-related feature of dishwashers and details its specific consideration of the short-cycle feature (*see* section II.A.1 of this document). As

[4] The parenthetical reference provides a reference for information located in the docket for this rulemaking. (Docket No. EERE–2024–BT–STD–0002, which is maintained at: *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number at page of that document).

discussed in section II.A.2 of this document, DOE tentatively determines in this analysis that the short-cycle feature does not justify a different standard. Data and information from the Short-cycle Final Rules, March 2024 RFI, and dishwashers direct final rule published on April 24, 2024 (''April 2024 Dishwashers Direct Final Rule''; 89 FR 31398) show that products with a normal cycle of less than 60 minutes can meet the current energy conservation standards using the same design strategies as other dishwashers of comparable efficiency without a short-cycle feature. Finally, in section II.A.3 of this document, DOE addresses other pertinent comments received in response to the March 2024 RFI that pertain to the dishwasher topics discussed in this document.

1. Cycle Time as a Performance-Related Feature

DOE first considered whether cycle time is a performance-related feature of dishwashers in accordance with 42 U.S.C. 6295(q)(1)(B). Consistent with DOE's assessment in previous rulemakings, discussed as follows, DOE reiterates that cycle time is a performance-related feature of dishwashers.

In a notice of proposed rulemaking (''NOPR'') published on July 16, 2019 (''July 2019 NOPR''), DOE noted that while some individual consumers commented in response to the Notice of Petition for Rulemaking that was published on April 24, 2018 (83 FR 17768) that they were not concerned with a shorter cycle time, other individual consumers expressed dissatisfaction with the amount of time necessary to run their dishwashers. 84 FR 33869, 33873. In the July 2019 NOPR, DOE further discussed that the data and comments from dissatisfied consumers indicated that for many consumers, there is a utility in shorter cycle times to clean a normally soiled load of dishes. *Id.* Based on these considerations, DOE concluded that cycle time for dishwashers is a performance-related feature for the purposes of 42 U.S.C. 6295(q). *Id.*

DOE reiterated this conclusion in the October 2020 Final Rule. 85 FR 68723, 68726–68732. Specifically, DOE concluded in the October 2020 Final Rule that dishwashers with a normal cycle with a cycle time of 60 minutes or less have a performance-related feature that other dishwashers currently on the market lack. *Id.* at 85 FR 68726, citing 84 FR 33869, 33871. As defined in section 1 of appendix C1, the normal cycle refers to the cycle recommended to the consumer to completely wash a full load of normally soiled dishes.

As discussed, CEI petitioned DOE in March 2018 to establish a separate product class for dishwashers for which the normal cycle is less than 60 minutes. In the October 2020 Final Rule, DOE finalized the creation of a new product class for standard-size dishwashers with a normal cycle of 60 minutes or less. 85 FR 68723, 68733. In the January 2022 Final Rule, DOE did not question the validity of those prior determinations that short cycles provide a performance-related feature. 87 FR 2673, 2682.

In response to the March 2024 RFI, AHAM stated that cycle time is an important consumer feature. (AHAM, No. 5 at p. 1) The AGs of MT *et al.* stated that consumers find distinct utility in appliances that are actually capable of cleaning dishes on a short cycle. (AGs of MT *et al.,* No. 9 at p. 5)

The CA IOUs commented that short-cycle product classes for dishwashers are unwarranted because they do not meet the requirements for a separate product class under EPCA. The CA IOUs stated that ''cycle time'' is not a ''capacity or other performance-related feature'' that justifies a higher or lower standard as specified under 42 U.S.C. 6295(q)(1). The CA IOUs further noted that under 42 U.S.C. 6295(o)(4), the types of features that are considered for establishing a higher or lower standard, and thus, separate product class, include reliability, size, capacity, volume, and similar attributes. The CA IOUs further asserted that cycle time, for the products at issue, is outside the scope of what EPCA permits DOE to consider in establishing or maintaining separate product classes. (CA IOUs, No. 6 at p. 8) For the reasons stated in the July 2019 NOPR and October 2020 Final Rule, DOE reconfirms in this proposed confirmation of withdrawal that cycle time is a performance-related feature of dishwashers for the purposes of 42 U.S.C. 6295(q). The following paragraphs discuss DOE's specific consideration of the short-cycle feature for dishwashers.

Within the context of the CEI petition, in this document, DOE considers a dishwasher to have a ''short-cycle feature'' only if it provides a cycle with the capability of ''completely washing'' [5] a full load of normally soiled dishes in 60 minutes or less on any available cycle, as would be the consumer expectation for a normal cycle. DOE does not consider a cycle intended for washing only a partial load of dishes, or a cycle unable to completely wash a full load of normally soiled dishes, to be a short-cycle feature for the purpose of this analysis—even if such cycle has a cycle time of 60 minutes or less. In this regard, the analyses performed in support of this proposed confirmation of withdrawal differ from the analyses DOE performed in support of the January 2022 Final Rule, in which DOE considered all ''quick'' cycles with a cycle time of 60 minutes or less, regardless of dish load size or cleaning ability. By considering only cycles that can completely wash a full load of normally soiled dishes, DOE avoids considering ''quick'' cycles designed for addressing niche applications (*e.g.,* light soils, delicate items, *etc.*) that are not capable of washing a full load of normally soiled dishes, as would be the consumer expectation for a normal cycle.

In the sections that follow, DOE evaluates whether such a short-cycle feature justifies a separate product class in accordance with 42 U.S.C. 6295(q).

2. Justification of Different Standards for Dishwashers With a Short-Cycle Feature

As discussed, EPCA authorizes DOE to prescribe a higher or lower standard than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use if DOE determines that products within such group (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) 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. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE considers such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. (*Id.*)

A typical application of this provision of EPCA is for DOE to establish comparatively less stringent standards for classes of covered products that have a performance-related feature that

[5] As discussed further in section II.E.3.a of this document, DOE's test procedure for dishwashers at 10 CFR 430, subpart B, appendix C2 (''appendix C2''), which references the latest industry test standard, defines a minimum cleaning index of 70 as the level that represents ''completely washing'' a full load of normally soiled dishes—as measured on each of the three soil loads that are tested in the DOE test procedure (*i.e.,* the heavy, medium, and light soil loads). *See* 88 FR 3234, 3251–3263. For the purpose of this proposed confirmation of withdrawal, DOE considers ''completely washing a full load of normally soiled dishes'' to mean achieving a cleaning index of at least 70 on each of the three soil loads.

inherently uses more energy than products without such feature, and for which DOE has determined that such feature provides a utility to the consumer that justifies the comparatively less stringent standard. For example, when establishing standards for consumer refrigerators, DOE determined through-the-door ice service to be a performance-related feature of refrigerators that provides utility to the consumer and that affects efficiency; *i.e.,* inherently uses more energy (*see* discussion of product class segregation at 52 FR 46367, 46371 (Dec. 7, 1987)). Accordingly, DOE established comparatively less stringent standards for refrigerators with through-the-door ice service than for equivalent refrigerators without such a feature. 54 FR 47916, 47943–47944 (Nov. 17, 1989). DOE has maintained a product class distinction with comparatively less stringent standards for refrigerators with through-the-door ice service through successive amendments to the standards for consumer refrigerators.[6]

In the October 2020 Final Rule, DOE acknowledged that designing a dishwasher with a normal cycle time of 60 minutes or less is achievable and asserted that establishing a short-cycle product class could spur manufacturer innovation to generate additional product offerings to fill the market gap that exists for dishwashers with this feature (*i.e.,* the ability to clean a load of normally soiled dishes in under 60 minutes). DOE further stated its intent to determine the specific energy and water conservation standards of the new product class in a separate rulemaking. 85 FR 68723, 68724.

DOE has conducted an analysis of the energy and water use of a short-cycle feature for dishwashers to evaluate whether different (*i.e.,* comparatively less stringent) standards would be warranted for dishwashers that provide a short-cycle feature. As discussed in the previous section of this document, DOE has determined that a normal cycle of 60 minutes or less on a dishwasher is a performance-related feature that provides consumer utility for the purpose of consideration of potential product class distinction under the provisions of 42 U.S.C. 6295(q). DOE next evaluated whether dishwashers with a short-cycle feature necessitate more energy and water use than dishwashers without such feature, which could justify a comparatively less stringent standard for dishwashers that provide such a feature.

To evaluate the energy and water use of a short-cycle feature in comparison to the currently applicable energy and water standards, DOE considered all data available from recent rulemakings, including data from testing conducted in support of the October 2020 Final Rule[7] and the April 2024 Dishwashers Direct Final Rule and confidential data from AHAM. DOE notes that the test data published in support of the October 2020 Final Rule include cleaning indices calculated by scoring soil particles on all items as well as spots, streaks, and rack contact marks on glassware. However, in a final rule amending the test procedure for dishwashers published on January 18, 2023 (''January 2023 TP Final Rule''), DOE established a new test procedure at appendix C2, which specifies a minimum cleaning index threshold of 70 as a condition for a valid test cycle. 88 FR 3234, 3248. The test procedure at appendix C2 specifies that the cleaning index is calculated by scoring only soil particles, and that spots, streaks, and rack contact marks on glassware are not included in the cleaning index calculation. Accordingly, DOE reanalyzed the October 2020 Final Rule test data, revising the cleaning index for all test cycles at each soil load to include only soil particles and not spots, streaks, or rack contact marks, consistent with the adopted test procedure. The analyses presented in this document are based on these revised cleaning indices. While AHAM's data includes energy and water use data for standard-size dishwashers on the normal cycle and cycle time data for the same units on the normal cycle and quick cycle, it does not include cleaning performance for each unit.

From its test sample, DOE identified one unit that provides a ''short-cycle feature''—as DOE has described that term in this document—that uses less energy and water than the maximum allowable standard level for standard-size dishwashers. Specifically, this unit achieves a cleaning index of at least 70 on the heavy, medium, and light soil loads that are required for testing the normal cycle, with a cycle time less than 60 minutes; *i.e.,* provides a ''short-cycle feature'' consistent with consumer expectations of a normal cycle.[8] This unit's test results demonstrate that providing a short-cycle feature consistent with consumer expectations of a normal cycle (*i.e.,* a cycle that can completely wash a full load of normally soiled dishes in 60 minutes or less) does not necessitate using more energy and water than a dishwasher without such feature that meets the current standards. DOE further evaluated the technologies and design strategies used by this dishwasher and has tentatively concluded that this unit does not incorporate any proprietary technologies or design strategies and is designed no differently than other dishwashers of comparable efficiency without a short-cycle feature.

DOE has tentatively concluded that the availability of this feature currently on the market—at lower energy and water levels than the current standard allows—in a unit with no identifiable proprietary design or control strategy demonstrates that a dishwasher with a short-cycle feature does not inherently use more energy and water than a dishwasher without such feature to achieve an acceptable cleaning performance, and that the current dishwasher standards do not preclude manufacturers from offering a normal cycle of 60 minutes or less. This tentative conclusion is consistent with the October 2020 Final Rule, which found that manufacturers already offered ''quick'' cycles that were less than 60 minutes and could meet the current DOE standards. 85 FR 68724.

Further evaluation of consumer survey data and comments from dishwasher manufacturers (discussed further in section II.A.3.c of this document) indicates that the limited availability of short-cycle features on the current market is not indicative of energy conservation standards precluding or discouraging the availability of such feature, but rather reflects the prioritization of product offerings by manufacturers commensurate with a relatively low level of market demand for this feature in comparison to other features more important to consumers.

In response to the March 2024 RFI, DOE received the following comments regarding establishing a separate short-cycle product class for dishwashers.

AHAM stated that new product classes to protect the short-cycle feature

[6] Separate refrigerator product class distinctions are made for additional product features as well, such as automatic defrost and transparent doors. *See* 10 CFR 430.32(a).

[7] DOE test data are available at *www.regulations.gov/document/EERE-2018-BT-STD-0005-3213*.

[8] In consideration of the Fifth Circuit's opinion that in the short-cycle rulemakings DOE pointed to existing ''quick'' cycles that did not address the foundational concerns underlying these rules, DOE considers in this analysis that the other units in the test sample that provide a dishwasher cycle less than 60 minutes, but that do not ''completely wash'' a full load of normally soiled dishes, do not have what DOE is describing as a ''short-cycle feature'' in this document, and therefore do not factor into DOE's consideration of whether a separate product class is justified for dishwashers with a short-cycle feature. *See* Louisiana, 90 F.4th at 474–75.

are not justified at this time under 42 U.S.C. 6295(q) for the following reasons: (1) consumers are satisfied with existing normal cycle times based on AHAM's 2021 Consumer Research, which found that 81 percent of respondents were satisfied with the length of the normal cycle of their dishwasher; (2) most dishwashers already provide consumers with short cycle time options; and, (3) data shows that standards are not expected to increase cycle time significantly. (AHAM, No. 5 at p. 5)

NEEA commented that the short-cycle product class for dishwashers is unwarranted. NEEA stated that its comments build upon past NEEA letters submitted to DOE, which demonstrated that short-cycle product classes were not appropriate for these appliances. NEEA added that recent research clearly reinforces these conclusions. (NEEA, No. 4 at p. 2)

China commented that DOE should remove the short-cycle product classes. China commented that the short-cycle product class is not defined in the regulations and standards, which makes it difficult for manufacturers to clearly classify their products into this product class. (China, No. 11 at p. 2)

An individual commented expressing support for short-cycle product classes for dishwashers and stated that products with a ''short cycle'' as the normal cycle should be subject to different standards than products without a ''short cycle'' as the normal cycle. The individual noted that such a rulemaking would save consumers money by lowering the cost of their electric bills. (McCray, No. 3 at p. 1)

LG commented that, after internal discussions and discussions with industry partners to evaluate market changes since the January 2022 Final Rule, LG is supportive of DOE's decision in the January 2022 Final Rule and opposes new product classes for short-cycle products. LG added that for appliances to satisfy cleaning and drying performance in a shorter amount of time while achieving the same performance, it would be inevitable that they would consume more energy—an outcome that contradicts DOE's objective to adopt standards that would result in more energy conservation. (LG, No. 7 at pp. 1–2)

As noted earlier in this section, test data show that it is technologically feasible to design dishwashers with a short-cycle feature while meeting current standards. That is, dishwashers with shorter cycle times do not need to consume more energy than the current standard to provide the same performance.

Rep. Bice commented in opposition to multiple rulemakings recently published by DOE that add new regulations to consumer products. Rep. Bice asserted that the standards would increase costs for manufacturers and prices for consumers. Rep. Bice commented that regulation limits consumer choice and is onerous for American manufacturers, including many small businesses. (Rep. Bice, No. 2 at p. 1)

DOE notes that this proposed confirmation of withdrawal does not propose to add any new regulations for dishwashers. Instead, this proposed confirmation of withdrawal reanalyzes the provisions of a previous rulemaking (*i.e.,* the January 2022 Final Rule) that withdrew short-cycle product classes.

In conclusion, based on the available test data—which demonstrate that it is feasible to design a short-cycle feature while meeting current standards—as well as stakeholder comments and market survey data, DOE has tentatively determined that (1) a short-cycle feature that can completely wash a full load of normally soiled dishes in 60 minutes or less is technologically feasible; (2) current standards do not prevent dishwasher manufacturers from providing such a short-cycle feature; and (3) there is a dishwasher currently available on the market that provides such a short-cycle feature and meets the currently applicable energy and water standard. For these reasons, DOE has tentatively determined that a short-cycle feature for dishwashers does not justify a separate product class with separate standards under 42 U.S.C. 6295(q). DOE seeks comment on these proposed determinations.

3. Response to Other Comments

In the sections that follow, DOE addresses comments received in response to the March 2024 RFI that pertain to the dishwasher topics discussed in this document.

a. Prevalence of Quick Cycles on the Market

DOE received comments from stakeholders discussing the prevalence of quick cycle options in current dishwasher models.

ASAP *et al.* reiterated data that AHAM had previously presented in response to the July 2019 NOPR, which ASAP *et al.* summarized as indicating that 87 percent of dishwasher shipments in 2017 provided the option for a quick[9] cycle, and about half of those quick cycles were designed for normally soiled loads. ASAP *et al.* commented that short-cycle product classes are unwarranted, as there are many products with quick cycles that meet existing energy and water conservation standards on the market. (*ASAP et al., No. 8 at p. 2*)

NEEA stated that consumers can already access quick cycles on current dishwasher models. NEEA stated that its review of available products on Lowe's website indicated that 84 percent of 24-inch dishwasher models provided a quick-cycle program. NEEA further commented that consumers continue to be satisfied with existing products that provide the option of a quick cycle, and that consumers of one national retail chain highly rated more than 90 percent of dishwasher models with a quick cycle. NEEA asserted that selecting an available quick cycle by pressing a button or shifting a dial is not an unreasonable consumer burden when a faster cycle is preferred. (NEEA, No. 4 at p. 3)

Confidential data submitted to DOE by AHAM in response to the March 2024 RFI show that 92 percent of dishwasher models offer a quick cycle with cycle times ranging from 30 minutes to 124 minutes, and for 22 percent of these dishwasher models, the recommended soil level for the quick cycle is ''normal,'' ''heavy,'' or ''any'' soil loads.

The prevalence and variety of quick-cycle offerings, as reflected in these data presented by stakeholders, support DOE's conclusions in section II.A.1 of this document that cycle time is a performance-related feature for the purposes of 42 U.S.C. 6295(q).

In consideration of the Fifth Circuit's opinion that DOE's prior reasoning in the January 2022 Final Rule improperly relied upon the prevalence of ''quick'' cycles that do not address the foundational concerns underlying the October 2020 Final Rule, DOE considered in this analysis only those cycles that are consistent with consumer expectations of a normal cycle to completely wash a full load of normally soiled dishes and are 60 minutes or less (*i.e.,* cycles that achieved a cleaning index of at least 70 on the heavy,

[9] DOE notes that ASAP *et al.* referred to these cycles as ''short cycles.'' However, in this proposed confirmation of withdrawal, DOE uses the term ''quick cycles'' to refer to all cycles with a cycle time of around 60 minutes. DOE uses the term ''short-cycle feature'' only to refer to cycles that are 60 minutes or less in duration and can completely wash a full load of normally soiled dishes.

medium, and light soil loads and had a weighted-average cycle time of 60 minutes or less).

b. Historical Cycle Time Trends

In its March 2018 Petition, CEI presented dishwasher cycle time data compiled from annual Consumer Reports data. These data include the range of cycle times measured by Consumer Reports as well as an approximate market-average cycle time for each year. Based on the Consumer Reports data, CEI concluded that the historical increase in the average normal cycle time demonstrates that current standards have precluded manufacturers from offering products with short cycles as the normal cycle.[10] In particular, CEI noted that the average cycle time had not been about 1 hour since 1983, before any standards were adopted; average cycle time in 2018 was 2 hours and 20 minutes, and, according to CEI, had ''more than doubled due to current energy standards.'' CEI further asserted that ''when a new energy standard is adopted by the DOE, the result is an increase in dishwasher cycle time.'' CEI also asserted that dishwasher average cycle times of less than 1 hour had been eliminated from the marketplace.

Regarding CEI's conclusion that the historical increase in the average normal cycle time demonstrates that current standards have precluded manufacturers from offering products with short cycles as the normal cycle, DOE notes that market-average cycle time is not an appropriate indicator to demonstrate any causality with standards. Instead, the *minimum* available cycle time is a more appropriate indicator to assess any impact of standards on dishwasher cycle time, because the minimum available cycle time on the market can provide an indication of the technological feasibility of providing shorter cycle times while meeting more stringent standards. Trends in market-average cycle times have largely been driven by other factors, discussed in the following paragraphs.

Based on the data shared by CEI in its petition, minimum cycle times (as represented by the lowest cycle time measured by Consumer Reports each year) have generally increased only during periods when standards were not amended. For example, the minimum cycle time increased from 65 minutes in 1993 to 85 minutes in 2006, a period during which there were no changes to dishwasher standards. Furthermore, the minimum cycle time as measured by Consumer Reports has decreased over the past 15 years, even while standards became more stringent during that time period.

Additionally, the short-cycle feature currently available on the market has a cycle time (41 minutes) that is lower than the minimum cycle time measured by Consumer Reports in 1983 (55 minutes), prior to the introduction of any standards for dishwashers. This demonstrates that amended standards have not prevented the technological feasibility of providing a short-cycle feature even as dishwasher standards have become more stringent, and even as the market-weighted average cycle time has increased due to other factors (*see* discussion in the following paragraphs regarding potential impact of dishwasher sound levels and detergent formulation on cycle time). In other words, Consumer Reports data (as well as the other data discussed elsewhere in this document) show that current standards are not precluding manufacturers from offering dishwashers with a short-cycle feature.

Consistent with DOE's observations, in response to the March 2024 RFI, ASAP *et al.* noted that the Consumer Reports data presented in CEI's March 2018 Petition show that the greatest cycle-time increase came during a period when no new standards were adopted. ASAP *et al.* asserted that the increase in cycle time was likely driven by other factors, such as consumer preference for quieter products and changes to detergent formulation. ASAP *et al.* cited *Reviewed,*[11] which stated that older dishwashers had sound levels around 60 decibels, while modern dishwashers average between 40 and 50 decibels. ASAP *et al.* also cited *Reviewed* to explain that ''there are lots of ways to reduce noise, but most of them involve reducing the machine's cleaning power, and that in turn means lengthening cycle times to compensate.'' (ASAP *et al.,* No. 8 at p. 4)

ASAP *et al.* also stated that by 2010, many states had banned the sale of dishwasher detergents containing phosphates, which resulted in newer detergents that use enzymes. ASAP *et al.* cited information from *Reviewed* explaining that enzyme-based detergents require more time to work, lengthening cycle times. (*Id.*)

In summary, the available data demonstrate that amended standards have not affected the technological feasibility of providing a short-cycle feature, even as dishwasher standards have become more stringent, and that current standards are not precluding manufacturers from offering dishwashers with a short-cycle feature. Rather, the data provided by CEI in its petition are reflective of the expanding range of product availability on the market since the early 2000s, corresponding to a proliferation of other distinguishing features on the market.

c. Consumer Preferences

With regard to market competition and consumer preferences, the AGs of MT *et al.* referenced AHAM's comments from its Petition for Reconsideration of the October 2020 Final Rule [12] to state that consumers do not want what DOE and industry have offered historically and that distinct short-cycle product classes would increase competition and consumer choice. (AGs of MT *et al.,* No. 9 at p. 5)

The AGs of MT *et al.* noted that CEI's survey included 2,200 individual public comments in support of the short-cycle product class, with only 16 opposed, which the AGs of MT *et al.* assert is evidence that consumers find it important to clean dishes using a short cycle. (*Id.*)

Contrary to the claims made by the AGs of MT *et al.,* the CA IOUs asserted that the absence of dishwasher products with a normal cycle of 60 minutes or less is due to lack of consumer demand. The CA IOUs cited an LBNL report that studied dishwasher consumer preferences based on a survey of 1,201 consumers, ranking from most to least important attributes affecting consumers' purchase decision,[13] and provided a figure illustrating its findings that dishwasher cycle time ranked 14 out of 18 attributes, well below average importance for consumers and significantly lower than energy efficiency, which was ranked fifth, and energy bill cost savings, which was ranked sixth. The CA IOUs stated that based on multiple stakeholders'

[10] The March 2018 Petition is available at *www.regulations.gov/document/EERE-2018-BT-STD-0005-0006,* page 4.

[11] *Reviewed* is part of the USA TODAY Network. *See reviewed.usatoday.com.*

[12] Available at *www.regulations.gov/document/EERE-2018-BT-STD-0005-3224.* The Joint Attorneys General referenced AHAM's comment in this Petition for Reconsideration that the October 2020 Final Rule disrupted AHAM's members who ''have invested heavily in innovating to meet energy conservation standards for dishwashers,'' with the October 2020 Final Rule resulting in ''stranded investments as manufacturers are required to consider abandoning these innovations in efficiency.''

[13] Stratton, H., *et al.* 2021. Dishwashers in the Residential Section: A Survey of Product Characteristics, Usage, and Consumer Preferences (last accessed July 17, 2024). *eta-publications.lbl.gov/sites/default/files/osg_lbnl_report_dishwashers_final_4.pdf.*

comments,[14] [15] consumers prioritize cleaning performance, dish rack features, drying performance, energy and water efficiency, and low noise levels. (CA IOUs, No. 6 at pp. 5–6)

In accordance with the comment from the CA IOUs regarding the importance of energy efficiency to consumers, ASAP *et al.* noted that the market penetration of ENERGY STAR®-qualified dishwashers ranged between 84 percent and 100 percent between 2010 and 2022, which ASAP *et al.* asserted provides an indication that consumers are choosing to buy highly efficient dishwashers. (ASAP *et al.,* No. 8 at p. 4)

AHAM stated that manufacturers pay careful attention to consumer needs and desires for particular features and utilities. (AHAM, No. 5 at p. 4)

In addition to the data cited by commenters, DOE notes that according to the U.S. Energy Information Administration's (''EIA's'') 2020 *Residential Energy Consumption Survey* (''RECS''),[16] over 80 percent of consumers use normal cycles, as currently designed (*i.e.,* generally longer than 60 minutes) most of the time.

Based on the comments and data discussed in the preceding paragraphs, DOE tentatively concludes that consumers on the whole prioritize other attributes over cycle length, and product design is largely driven by these consumer preferences. To the extent that manufacturers prioritize other attributes of dishwasher performance over providing a short-cycle feature, such prioritization is a result of manufacturers targeting broad consumer preferences and not an indication that DOE's energy conservation standards are precluding manufacturers from offering a short-cycle feature.

B. Residential Clothes Washers

The following sections apply DOE's authority under EPCA at 42 U.S.C. 6295(q) to determine whether a ''short-cycle'' feature for RCWs is a performance-related feature that justifies the establishment of separate product classes. DOE considers a short-cycle feature for top-loading RCWs to be a cycle that can completely wash a full load of normally soiled cotton clothing in less than 30 minutes, and for front-loading RCWs to be a cycle that can completely wash a full load of normally soiled cotton clothing in less than 45 minutes.[17] DOE first reiterates its prior determinations that cycle time is a performance-related feature of RCWs and details its specific consideration of the short-cycle feature (*see* section II.B.1 of this document). As discussed in section II.B.2 of this document, DOE tentatively determines in this analysis that the short-cycle feature does not justify a different standard. Data and information from the Short-cycle Final Rules, the RCW direct final rule published on March 15, 2024 (''March 2024 RCW Direct Final Rule''; 89 FR 19026), and the March 2024 RFI show that RCWs currently available with a short normal cycle (*i.e.,* with a cycle time less than 30 minutes for top-loading RCWs and less than 45 minutes for front-loading RCWs) can meet the current energy conservation standards using the same design strategies as other RCWs of comparable efficiency without a short-cycle feature. Finally, in section II.B.3 of this document, DOE addresses other pertinent comments received in response to the March 2024 RFI that pertain to the RCW topics discussed in this document.

1. Cycle Time as a Performance-Related Feature

DOE first considered whether cycle time is a performance-related feature of RCWs in accordance with 42 U.S.C. 6295(q)(1)(B). Consistent with DOE's assessment in previous rulemakings, discussed as follows, DOE reiterates that cycle time is a performance-related feature of RCWs.

DOE has previously considered cycle time as a consumer utility for the purposes of establishing product classes for RCWs. In a direct final rule published on May 31, 2012, (''May 2012 Direct Final Rule'') DOE determined that the longer cycle times of front-loading RCWs versus cycle times for top-loading RCWs are likely to impact consumer utility. 77 FR 32308, 32319. Because the wash cycle times for front-loaders arise from the reduced mechanical action of agitation as compared to top-loaders, DOE stated that it believes that such longer cycles may be required to achieve the necessary cleaning, and thereby constitute a performance-related utility of front-loading versus top-loading RCWs pursuant to the meaning of 42 U.S.C. 6295(q). 77 FR 32308, 32319.

In a NOPR published on August 13, 2020 (''August 2020 NOPR''), DOE discussed that consumer use of RCWs is similar to that of dishwashers, in that the products provide consumer utility over discrete cycles with programmed cycle times, and consumers run these cycles multiple times per week on average. As such, the impact of cycle time on consumer utility identified by CEI in its petition regarding dishwashers is also relevant to RCWs. Based on these considerations, DOE concluded that cycle time for RCWs is a performance-related feature for the purposes of 42 U.S.C. 6295(q). 85 FR 49297, 49299.

DOE reiterated this conclusion in the December 2020 Final Rule. Specifically, DOE concluded in the December 2020 Final Rule that RCWs with a short normal cycle (*i.e.,* with a cycle time less than 30 minutes for top-loading RCWs and less than 45 minutes for front-loading RCWs) provide a distinct utility to consumers that other RCWs do not provide, and that consumers receive a utility from the short normal cycle feature to support the establishment of new product classes under 42 U.S.C. 6295(q)(1)(B). 85 FR 81359, 81363–81364. The ''normal cycle'' refers to the cycle recommended to the consumer for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing. In the January 2022 Final Rule, DOE did not question the validity of those prior determinations made that short cycles provide a performance-related feature. 87 FR 2673, 2682.

In response to the March 2024 RFI, AHAM stated that cycle time is an important consumer feature. (AHAM, No. 5 at p. 1). The AGs of MT *et al.* stated that consumers find distinct utility in appliances that are actually capable of washing clothes on a short cycle. (AGs of MT *et al.,* No. 9 at p. 5).

The CA IOUs commented that short-cycle product classes for RCWs are unwarranted because they do not meet the requirements for a separate product class under EPCA. The CA IOUs stated that ''cycle time'' is not a ''capacity or other performance-related feature'' that justifies a higher or lower standard as specified under 42 U.S.C. 6295(q)(1). The CA IOUs further noted that under 42 U.S.C. 6295(o)(4), the types of features that are considered for establishing a higher or lower standard, and thus, separate product class, include reliability, size, capacity,

[14] Comments from Electrolux Home Products, Inc. in response to the July 2019 NOPR. Available at *www.regulations.gov/comment/EERE-2018-BT-STD-0005-3134.*

[15] Comments from AHAM in response to the July 2019 NOPR. Available at *www.regulations.gov/comment/EERE-2018-BT-STD-0005-3188.*

[16] U.S. Department of Energy-Energy Information Administration, Residential Energy Consumption Survey, 2015 Public Use Microdata Files, 2020. Washington, DC. Available at *www.eia.gov/consumption/residential/data/2020/index.php?view=microdata.*

[17] This consideration corresponds to DOE's definition of ''normal cycle'' in section 1 of the DOE test procedure at 10 CFR 430, subpart B, appendix J2 (''appendix J2''), which is defined as ''the cycle recommended by the manufacturer [. . .] for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing,'' among other criteria.

volume, and similar attributes. The CA IOUs further asserted that cycle time, for the products at issue, is outside the scope of what EPCA permits DOE to consider in establishing or maintaining separate product classes. (CA IOUs, No. 6 at p. 8)

For the reasons stated in the May 2012 Direct Final Rule, August 2020 NOPR, and December 2020 Final Rule, DOE reconfirms in this proposed confirmation of withdrawal that cycle time is a performance-related feature of RCWs for the purposes of 42 U.S.C. 6295(q). In the sections that follow, DOE evaluates whether such a short-cycle feature justifies separate product classes in accordance with 42 U.S.C. 6295(q).

2. Justification of Different Standards for Residential Clothes Washers With a Short-Cycle Feature

As discussed, EPCA authorizes DOE to prescribe a higher or lower standard than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use if DOE determines that products within such group (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) 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. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE considers such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. (*Id.*)

DOE stated in the August 2020 NOPR, and reiterated in the December 2020 Final Rule, that it presumed manufacturers were implementing the shortest possible cycle times that enabled a clothes washer to achieve satisfactory cleaning performance (and other aspects of clothes washer performance) while meeting the applicable energy and water conservation standards. 85 FR 81359, 81361. DOE stated its belief that the current energy conservation standards may have been precluding or discouraging manufacturers from introducing models to the market with substantially shorter cycle times. *Id.* DOE further stated in the December 2020 Final Rule that its actions (*i.e.,* establishing short-cycle product classes for top-loading and front-loading RCWs) were intended to incentivize manufacturers to provide consumers with new options when purchasing RCWs, asserting that creation of these new product classes would incentivize manufacturers to develop innovative products with short cycle times for those consumers that receive a value from the time saved washing and drying their clothing. *Id.* at 85 FR 81360–81361. DOE further stated its intent to determine the specific energy and water consumption limits for the new product classes in a separate rulemaking. *Id.*

DOE has conducted an analysis of the energy and water use of a short-cycle feature for RCWs to evaluate whether different (*i.e.,* comparatively less stringent) standards would be warranted for RCWs that provide a short-cycle feature. As discussed in the previous section of this document, DOE has determined that a normal cycle of less than 30 minutes for top-loading RCWs and less than 45 minutes for front-loading RCWs is a performance-related feature that provides consumer utility for the purpose of consideration of potential product class distinction under the provisions of 42 U.S.C. 6295(q). DOE next evaluated whether RCWs with a short-cycle feature necessitate more energy and water use than RCWs without such feature, which could justify a comparatively less stringent standard for RCWs that provide such a feature.

To evaluate the energy and water use of a short-cycle feature in comparison to the currently applicable energy and water standards, DOE considered all data available from recent rulemakings, including DOE's data from testing conducted in support of the December 2020 Final Rule and the March 2024 RCW Direct Final Rule and confidential data received from AHAM.[18] All RCW test data evaluated in this manner was based on testing of the Normal cycle as defined in section 1 of appendix J2, corresponding to the cycle recommended by the manufacturer for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing.

From among DOE's test samples, DOE identified 3 top-loading RCWs and 9 front-loading RCWs that provide a short-cycle feature. Specifically, these units have a normal cycle time of less than 30 minutes for the top-loading RCWs and less than 45 minutes for the front-loading RCWs.

From AHAM's test sample, DOE identified 1 top-loading standard-size RCW with a normal cycle time of less than 30 minutes and 4 front-loading RCWs with a normal cycle time of less than 45 minutes.

DOE then assessed the energy and water use of the short-cycle feature on these units in comparison to the currently applicable DOE standards. For all of these units, the short-cycle feature uses no more energy and water than the maximum allowable standard levels for standard-size RCWs, demonstrating that providing a short-cycle feature consistent with consumer expectations of a normal cycle (*i.e.,* a cycle that can completely wash a full load of normally soiled cotton clothing in less than 30 or 45 minutes for top-loading and front-loading RCWs respectively) does not necessitate using more energy and water than an RCW without such feature that meets the current standards. DOE further evaluated the technologies and design strategies used by these RCW models and has tentatively concluded that these units do not incorporate any proprietary technologies or design strategies and are designed no differently than other RCW models of comparable efficiency without a short-cycle feature.

DOE has tentatively concluded that the availability of this feature currently on the market—at energy and water levels that comply with the current standards—in units with no identifiable proprietary designs or control strategies demonstrates that an RCW with a short-cycle feature does not inherently use more energy and water than an RCW without such feature, and that the current RCW standards do not preclude manufacturers from offering a short-cycle feature (*i.e.,* a normal cycle time of less than 30 minutes for top-loading RCWs and less than 45 minutes for front-loading RCWs). On the basis that both top-loading and front-loading RCWs with short-cycle features are currently available on the market with no identifiable proprietary designs or control strategies, DOE has tentatively determined that a short-cycle feature is technologically feasible and that current standards do not prevent manufacturers from providing a short-cycle feature.

In response to the March 2024 RFI, DOE received the following comments regarding establishing separate short-cycle product classes for RCWs.

AHAM stated that new product classes to protect the short-cycle feature are not justified at this time under 42 U.S.C. 6295(q) for the following reasons: (1) consumers are satisfied with existing normal cycle times based on AHAM's 2021 Consumer Research, which found that 78 percent of respondents were satisfied with the length of the normal

[18] DOE test data from the December 2020 Final Rule are available at *www.regulations.gov/document/EERE-2020-BT-STD-0001-0007.* Information on the March 2024 RCW Direct Final Rule models is available in the technical support document for the March 2024 RCW Direct Final Rule, which is available at *www.regulations.gov/document/EERE-2017-BT-STD-0014-0510.*

cycle of their laundry appliance; (2) most RCWs already provide consumers with short cycle time options; and, (3) data shows that standards are not expected to increase cycle time significantly. (AHAM, No. 5 at p. 5)

NEEA commented that short-cycle product classes for RCWs are unwarranted. NEEA stated that its comments build upon past NEEA letters submitted to DOE, which demonstrated that short-cycle product classes were not appropriate for these appliances. NEEA added that recent research clearly reinforces these conclusions. (NEEA, No. 4 at p. 2)

China commented that DOE should remove the short-cycle product classes. China commented that the short-cycle product class is not defined in the regulations and standards, which makes it difficult for manufacturers to clearly classify their products into this product class. (China, No. 11 at p. 2)

An individual commented expressing support for short-cycle product classes for RCWs and stated that products with a ''short cycle'' as the normal cycle should be subject to different standards than products without a ''short cycle'' as the normal cycle. The individual noted that such a rulemaking would save consumers money by lowering the cost of their electric bills. (McCray, No. 3 at p. 1)

LG commented that, after internal discussions and discussions with industry partners to evaluate market changes since the January 2022 Final Rule, LG is supportive of DOE's decision in the January 2022 Final Rule and opposes new product classes for short-cycle products. LG added that for appliances to satisfy cleaning and drying performance in a shorter amount of time while achieving the same performance, it would be inevitable that they would consume more energy—an outcome that contradicts DOE's objective to adopt standards that would result in more energy conservation. (LG, No. 7 at pp. 1–2)

As noted earlier in this section, both top-loading and front-loading RCWs with short-cycle features are currently available on the market with no identifiable proprietary designs or control strategies. That is, RCWs with shorter cycle times do not need to consume more energy than the current standard to provide the same performance.

Rep. Bice commented in opposition to multiple rulemakings recently published by DOE that add new regulations to consumer products. Rep. Bice asserted that the standards would increase costs for manufacturers and prices for consumers. Rep. Bice commented that regulation limits consumer choice and is onerous for American manufacturers, including many small businesses. (Rep. Bice, No. 2 at p. 1)

DOE notes that this proposed confirmation of withdrawal does not propose to add any new regulations for RCWs. Instead, this proposed confirmation of withdrawal reanalyzes the provisions of a previous rulemaking (*i.e.,* the January 2022 Final Rule) that withdrew short-cycle product classes.

In conclusion, based on the available test data—which demonstrate that it is feasible to design a short-cycle feature while meeting current standards—DOE has tentatively determined that (1) a short-cycle feature for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing is technologically feasible; (2) current standards do not prevent RCW manufacturers from providing such a short-cycle feature; and (3) multiple RCW models are currently available on the market that provide such a short-cycle feature that meet the currently applicable energy and water standards. For these reasons, DOE has tentatively determined that a short-cycle feature for RCWs does not justify separate product classes with separate standards under 42 U.S.C. 6295(q). DOE requests comment on these proposed determinations.

3. Response to Other Comments

DOE received comments in response to the March 2024 RFI from stakeholders discussing the prevalence of quick cycles on current RCW models.

NEEA stated that consumers can already access quick cycles on current RCW models. NEEA stated that its review of the 58 best-selling models in the northwest United States [19] indicated that 94 percent of RCW models provided a quick-cycle program, noting that quick cycles are widely available in both top-loading and front-loading models. NEEA further commented that consumer-use data found that the quick cycle is used relatively infrequently in RCWs, citing their previous letter [20] showing that the quick cycle is selected 8 percent of the time. (NEEA, No. 4 at p. 3)

LG commented that that there are RCWs currently on the market that have default cycles comparable to DOE's definition of short cycles while also offering additional short cycles as an option and because such products are already prevalent, it would be counterproductive to establish new product classes, which would involve simply setting a short cycle as the default cycle. (LG, No. 7 at p. 1)

The CA IOUs commented that short-cycle product classes for RCWs are unwarranted, as other products of the same type are already available with quick cycles that meet current and future DOE energy conservation standards. (CA IOUs, No. 6 at p. 1) The CA IOUs also stated that they could not find substantial evidence that consumers largely prefer shorter cycle times. The CA IOUs presented results from a 2024 in-store survey, showing that consumers were satisfied with a 45- to 60-minute RCW cycle. The CA IOUs additionally stated that survey results showed that 57 percent of consumers favored an ENERGY STAR-qualified RCW, 27 percent preferred a quiet RCW, and only 16 percent preferred an RCW with a cycle time of 30 minutes or less. (*Id.* at pp. 1–2)

Confidential data submitted to DOE by AHAM in response to the March 2024 RFI show that 91 percent of RCW models offer a quick cycle with cycle times ranging from 15 minutes to 59 minutes and the recommended soil level for the quick cycle is ''normal'' for 6 percent of these RCW models.

The prevalence and variety of quick-cycle offerings as reflected in these data presented by stakeholders support DOE's conclusions in section II.B.1 of this document that cycle time is a performance-related feature for the purposes of 42 U.S.C. 6295(q).

In consideration of the Fifth Circuit's opinion that DOE's prior reasoning in the January 2022 Final Rule improperly relied upon the prevalence of ''quick'' cycles that do not address the foundational concerns underlying the December 2020 Final Rule, DOE considered in this analysis only those cycles that are consistent with consumer expectations of a normal cycle (*i.e.,* a cycle for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing) and have a cycle time of less than 30 minutes for top-loading RCWs and less than 45 minutes for front-loading RCWs.

C. Consumer Clothes Dryers

The following sections apply DOE's authority under EPCA at 42 U.S.C. 6295(q) to determine whether a ''short-cycle'' feature for consumer clothes dryers is a performance-related feature that justifies the establishment of a separate product class. DOE considers a short-cycle feature for consumer clothes dryers to be a normal cycle that offers

[19] NEEA noted that these models represent 75 percent of the top-loading market, 80 percent of the front-loading market, and 77 percent of overall sales for 2023.

[20] Available at *www.regulations.gov/comment/EERE-2020-BT-STD-0001-0044.*

cycle times of less than 30 minutes. DOE first reiterates its prior determinations that cycle time is a performance-related feature of consumer clothes dryers and details its specific consideration of the short-cycle feature (*see* section II.C.1 of this document). As discussed in section II.C.2 of this document, DOE tentatively determines in this analysis that the short-cycle feature does not justify a different standard. Data and information from the Short-cycle Final Rules, the consumer clothes dryers direct final rule published on March 12, 2024 (''March 2024 Dryers Direct Final Rule''; 89 FR 18164), and the March 2024 RFI show that products with a normal cycle of less than 30 minutes can meet the current energy conservation standards using the same design strategies as other consumer clothes dryers of comparable efficiency without a short-cycle feature. Finally, in section II.C.3 of this document, DOE addresses other pertinent comments received in response to the March 2024 RFI that pertain to the consumer clothes dryer topics discussed in this document.

1. Cycle Time as a Performance-Related Feature

DOE first considered whether cycle time is a performance-related feature of consumer clothes dryers in accordance with 42 U.S.C. 6295(q)(1)(B). Consistent with DOE's assessment in previous rulemakings, discussed as follows, DOE reiterates that cycle time is a performance-related feature of consumer clothes dryers.

In the August 2020 NOPR, DOE discussed that consumer use of consumer clothes dryers is similar to that of dishwashers, in that the products provide consumer utility over discrete cycles with programmed cycle times, and consumers run these cycles multiple times per week on average. As such, the impact of cycle time on consumer utility identified by CEI in its petition regarding dishwashers is also relevant to consumer clothes dryers. Based on these considerations, DOE concluded that cycle time for consumer clothes dryers is a performance-related feature for the purposes of 42 U.S.C. 6295(q). 85 FR 49297, 49299.

DOE reiterated this conclusion in the December 2020 Final Rule. 85 FR 81359, 81363–81364. Specifically, DOE concluded in the December 2020 Final Rule that consumer clothes dryers with a short normal cycle (*i.e.,* with a cycle time of less than 30 minutes) provide a distinct utility to consumers that other consumer clothes dryers do not provide, and that consumers receive a utility from the short normal cycle feature to support the establishment of a new product class under 42 U.S.C. 6295(q)(1)(B). *Id.* at 85 FR 81363, 81364. The ''normal cycle'' refers to the cycle recommended by the manufacturer to the consumer for drying cotton or linen clothes, among other criteria. In the January 2022 Final Rule, DOE did not question the validity of those prior determinations made about whether that short cycles provide a performance-related feature. 87 FR 2673, 2682.

In response to the March 2024 RFI, AHAM stated that cycle time is an important consumer feature, (AHAM, No. 5 at p. 1).

The CA IOUs commented that short-cycle product classes for consumer clothes dryers are unwarranted because they do not meet the requirements for a separate product class under EPCA. The CA IOUs stated that ''cycle time'' is not a ''capacity or other performance-related feature'' that justifies a higher or lower standard as specified under 42 U.S.C. 6295(q)(1). The CA IOUs further noted that under 42 U.S.C. 6295(o)(4), the types of features that are considered for establishing a higher or lower standard, and thus, separate product class, include reliability, size, capacity, volume, and similar attributes. The CA IOUs further asserted that cycle time, for the products at issue, is outside the scope of what EPCA permits DOE to consider in establishing or maintaining separate product classes. (CA IOUs, No. 6 at p. 8). (CA IOUs, No. 6 at p. 8)

For the reasons stated in the August 2020 NOPR and December 2020 Final Rule, DOE reconfirms in this proposed confirmation of withdrawal its previous determinations that cycle time is a performance-related feature of consumer clothes dryers for the purposes of 42 U.S.C. 6295(q).

In the sections that follow, DOE evaluates whether such a short-cycle feature justifies separate product classes in accordance with 42 U.S.C. 6295(q).

2. Justification of Different Standards for Consumer Clothes Dryers With a Short-Cycle Feature

As discussed, EPCA authorizes DOE to prescribe a higher or lower standard than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use if DOE determines that products within such group (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) 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. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE considers such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. (*Id.*)

DOE stated in the August 2020 NOPR, and reiterated in the December 2020 Final Rule, that vented electric standard-size and vented gas clothes dryers that comply with the current energy conservation standards exhibit cycle times of approximately 30 minutes or longer. 85 FR 81359, 81361. Based on a presumption that manufacturers were already implementing the shortest possible cycle times that enabled a clothes dryer to achieve satisfactory drying performance (and other aspects of clothes dryer performance) while meeting the applicable energy conservation standards, DOE asserted that the standards may have discouraged manufacturers from developing clothes dryers for consumers that provide the utility of 30-minute-or-less cycle times. *Id.* DOE further stated in the December 2020 Final Rule that its actions (*i.e.,* establishing short-cycle product classes for consumer clothes dryers) were intended to incentivize manufacturers to provide consumers with new options when purchasing clothes dryers, asserting that creation of this new product class would incentivize manufacturers to develop innovative products with short cycle times for those consumers that receive a value from the time saved washing and drying their clothing. *Id.* at 85 FR 81360–81361. DOE further stated its intent to determine the specific energy conservation standards of the new product classes in a separate rulemaking. *Id.*

DOE has conducted an analysis of the energy use of a short-cycle feature for consumer clothes dryers to evaluate whether different (*i.e.,* comparatively less stringent) standards would be warranted for consumer clothes dryers that provide a short-cycle feature. As discussed in the previous section of this document, DOE has determined that a short-cycle feature on a consumer clothes dryer is a performance-related feature that provides consumer utility for the purpose of consideration of potential product class distinction under the provisions of 42 U.S.C. 6295(q). DOE next evaluated whether consumer clothes dryers with a short-cycle feature necessitate more energy use than consumer clothes dryers without such feature, which could justify a comparatively less stringent standard for consumer clothes dryers that provide such a feature.

To evaluate the energy use of a short-cycle feature in comparison to the currently applicable energy standards, DOE considered all data available from recent rulemakings, including DOE's data from testing conducted in support of the December 2020 Final Rule, the March 2024 Dryers Direct Final Rule, and confidential data from AHAM. All consumer clothes dryer test data evaluated in this manner was based on testing of the Normal cycle as defined in section 3.3.2 of appendix D2, corresponding to the program labeled ''normal'' or, for clothes dryers that do not have a ''normal'' program, the cycle recommended by the manufacturer for drying cotton or linen clothes. In addition, all test data represent cycles that achieve a final moisture content of 2 percent or less, which DOE has determined to be representative of the consumer-acceptable dryness level after completion of a drying cycle.

None of the units in DOE's test sample had a normal cycle time less than 30 minutes.[21] However, from the confidential data received from AHAM, DOE identified 3 electric standard-size clothes dryers and 1 vented gas standard-size clothes dryer with normal cycle times of less than 30 minutes.

DOE then assessed the energy use of the short-cycle feature on these units in comparison to the current applicable DOE standards. For all of these units, the short-cycle feature uses no more energy than the maximum allowable standard levels for standard-size consumer clothes dryers, demonstrating that providing a short-cycle feature consistent with consumer expectations of a normal cycle (*i.e.,* cycle recommended by the manufacturer to the consumer for drying cotton or linen clothes in less than 30 minutes) does not necessitate using more energy than a consumer clothes dryer without such feature that meets the current standards. In the engineering analysis conducted for the March 2024 Dryers Direct Final Rule, DOE did not identify any proprietary technologies in use among clothes dryers currently on the market. 89 FR 18164, 18178–18179. Therefore, although AHAM's data set did not identify specific model numbers associated with each data point, DOE has no reason to believe that any proprietary technologies or design strategies are being used in those clothes dryer models with cycle times of less than 30 minutes.

[21] Information on these models is available in the technical support document for the March 2024 Dryers Direct Final Rule, which is available at *www.regulations.gov/document/EERE-2014-BT-STD-0058-0059.*

DOE has tentatively concluded that the availability of a short-cycle feature currently on the market—at energy levels that comply with the current standards—in units with no identifiable proprietary designs or control strategies demonstrates that a consumer clothes dryer with a short-cycle feature does not inherently use more energy than a consumer clothes dryer without such a feature, and that the current consumer clothes dryer standards do not preclude manufacturers from offering a short-cycle feature (*i.e.,* a normal cycle time of less than 30 minutes). On the basis that both vented electric standard-size and vented gas clothes dryers with short-cycle features (*i.e.,* normal cycles less than 30 minutes) are currently available on the market with no identifiable proprietary designs or control strategies, DOE has tentatively determined that a short-cycle feature is technologically feasible and that current standards do not prevent manufacturers from providing a short-cycle feature.

In response to the March 2024 RFI, DOE received the following comments regarding establishing separate short-cycle product classes for consumer clothes dryers.

AHAM stated that new product classes to protect the short-cycle feature are not justified at this time under 42 U.S.C. 6295(q) for the following reasons: (1) consumers are satisfied with existing normal cycle times based on AHAM's 2021 Consumer Research, which found that 78 percent of respondents were satisfied with the length of the normal cycle of their laundry appliance; (2) most consumer clothes dryers already provide consumers with short cycle time options; and, (3) data shows that standards are not expected to increase cycle time significantly. (AHAM, No. 5 at p. 5)

NEEA commented that the short-cycle product class for consumer clothes dryers is unwarranted. NEEA stated that its comments build upon past NEEA letters submitted to DOE, which demonstrated that short-cycle product classes were not appropriate for these appliances. NEEA added that recent research clearly reinforces these conclusions. (NEEA, No. 4 at p. 2)

China commented that DOE should remove the short-cycle product classes. China commented that the short-cycle product class is not defined in the regulations and standards, which makes it difficult for manufacturers to clearly classify their products into this product class. (China, No. 11 at p. 2)

An individual commented expressing support for short-cycle product classes for consumer clothes dryers and stated that products with a ''short cycle'' as the normal cycle should be subject to different standards than products without a ''short cycle'' as the normal cycle. The individual noted that such a rulemaking would save consumers money by lowering the cost of their electric bills. (McCray, No. 3 at p. 1)

LG commented that, after internal discussions and discussions with industry partners to evaluate market changes since the January 2022 Final Rule, LG is supportive of DOE's decision in the January 2022 Final Rule and opposes new product classes for short-cycle products. LG added that for appliances to satisfy cleaning and drying performance in a shorter amount of time while achieving the same performance, it would be inevitable that they would consume more energy—an outcome that contradicts DOE's objective to adopt standards that would result in more energy conservation. (LG, No. 7 at pp. 1–2)

As noted earlier in this section, test data show that both vented electric standard-size and vented gas clothes dryers with short-cycle features (*i.e.,* normal cycles less than 30 minutes) are currently available on the market at energy levels that comply with the current standards with no identifiable proprietary designs or control strategies. That is, consumer clothes dryers with shorter cycle times do not need to consume more energy than the current standard to provide the same performance.

Rep. Bice commented in opposition to multiple rulemakings recently published by DOE that add new regulations to consumer products. Rep. Bice asserted that the standards would increase costs for manufacturers and prices for consumers. Rep. Bice commented that regulation limits consumer choice and is onerous for American manufacturers, including many small businesses. (Rep. Bice, No. 2 at p. 1)

DOE notes that this proposed confirmation of withdrawal does not propose to add any new regulations for consumer clothes dryers. Instead, this proposed confirmation of withdrawal reanalyzes the provisions of a previous rulemaking (*i.e.,* the January 2022 Final Rule) that withdrew short-cycle product classes.

In conclusion, based on the available test data—which demonstrate that it is feasible to design a short-cycle feature while meeting current standards—DOE has tentatively determined that (1) a short-cycle feature as the normal cycle for drying cotton or linen clothes is technologically feasible; (2) current standards do not prevent consumer clothes dryer manufacturers from

providing such a short-cycle feature; and (3) multiple consumer clothes dryer models are currently available on the market that provide such a short-cycle feature that meet the currently applicable energy and water standards. For these reasons, DOE has tentatively determined that a short-cycle feature for consumer clothes dryers does not justify separate product classes with separate standards under 42 U.S.C. 6295(q). DOE requests comment on these proposed determinations.

3. Response to Other Comments

DOE received comments in response to the March 2024 RFI from stakeholders discussing the prevalence of quick cycles on current consumer clothes dryer models.

NEEA stated that consumers can already access quick cycles on current consumer clothes dryer models. NEEA stated that its review of available products on Lowe's website indicated that 92 percent of standard-size clothes dryer models provided a quick cycle program. NEEA further commented that preliminary consumer clothes dryer field data from the 2024 NEEA Residential Building Stock Assessment Laundry Field Study revealed that the quick-dry program is used infrequently (1 percent of the time). NEEA also stated that consumers continue to be satisfied with existing products that provide the option of a quick cycle, and that consumers of one national retail chain highly rated more than 90 percent of consumer clothes dryer models with a quick cycle. NEEA asserted that selecting an available quick cycle by pressing a button or shifting a dial is not an unreasonable consumer burden when a faster cycle is preferred. (NEEA, No. 4 at p. 3) NEEA also commented that according to its market research, emerging combination washer-dryer models are gaining popularity, and according to NEEA data from its ENERGY STAR Residential Products Portfolio participation, one combination washer-dryer is among the top-selling models of RCWs and consumer clothes dryers on the market. NEEA commented that this option changes consumer views of cycle timing because it is no longer necessary to wait for a cycle to end to switch the load from the clothes washer into the clothes dryer. (*Id.* at p. 4)

LG commented that there are consumer clothes dryers currently on the market that have default cycles comparable to DOE's definition of short cycle while also offering additional short cycles as an option, and since such products are already prevalent, it would be counterproductive to establish ''new'' product classes, which would involve simply setting a short cycle as the default cycle. (LG, No. 7 at p. 1)

The CA IOUs commented that short-cycle product classes for consumer clothes dryers are unwarranted, as other products of the same type are already available with quick cycles that meet current and future DOE energy conservation standards. (CA IOUs, No. 6 at p. 1)

Confidential data submitted to DOE by AHAM in response to the March 2024 RFI show that 78 percent of consumer clothes dryer models offer a quick cycle with cycle times ranging from 23 minutes to 77 minutes, of which, 81 percent of the models are recommended for small load sizes and for 19 percent of these consumer clothes dryer models, the manufacturer did not recommend any specific load size for the quick cycle.

The prevalence and variety of quick-cycle offerings as reflected in these data presented by stakeholders support DOE's conclusions in section II.C.1 of this document that cycle time is a performance-related feature for the purposes of 42 U.S.C. 6295(q).

In consideration of the Fifth Circuit's opinion that DOE's prior reasoning in the January 2022 Final Rule improperly relied upon the prevalence of ''quick'' cycles that do not address the foundational concerns underlying the December 2020 Final Rule, DOE considered in this analysis only those cycles that are consistent with consumer expectations of a normal cycle (*i.e.,* a normal cycle or the cycle recommended by the manufacturer for drying cotton or linen clothes if a ''normal'' cycle is not available).

D. Other Comments

1. Process

China commented that the comment period for the March 2024 RFI was less than 60 days, but Article 6.3.1.8(a) of Agreement on Technical Barriers to Trade (Document No. G/TBT/1/Rev.15) specifies that ''the normal time limit for comments on notifications should be 60 days.'' Accordingly, China suggested extending the comment period for the March 2024 RFI. (China, No. 11 at p. 3)

In response, DOE notes that the time limits referenced in Article 6.3.1.8 of the Agreement on Technical Barriers to Trade apply to notified technical regulations and conformity assessment procedures and not to documents like the March 2024 RFI. DOE finds that the 30-day comment period in the March 2024 RFI was appropriate as stakeholders have already been afforded multiple opportunities to provide comments on this topic as part of the October 2020 Final Rule, the December 2020 Final Rule, and January 2022 Final Rule. 85 FR 68723; 85 FR 81359; 87 FR 2673.

2. Legal

NRDC and Earthjustice included as an attachment to their comments on the March 2024 RFI, their previous comments with ASAP *et al.* and commented that the creation of the short-cycle product classes violated numerous provisions of EPCA and standards of reasoned decision-making, including the statute's anti-backsliding provision, product class provision, and criteria for prescribing new or amended standards. NRDC and Earthjustice commented that if DOE were to attempt to unwind its revocation of the short-cycle product classes, DOE would be repeating these violations of the statute and compounding its unlawful prior actions. (NRDC and Earthjustice, No. 10 at p. 2)

The CA IOUs commented that the Short-cycle Final Rules reduced or removed efficiency standards for dishwashers, RCWs, and consumer clothes dryers, which conflicts with EPCA under 42 U.S.C. 6295(o)(1). (CA IOUs, No. 6 at p. 9)

As discussed elsewhere in this document, DOE applied EPCA's authority under 42 U.S.C. 6295(q) and has tentatively determined that separate product classes with separate standards are not justified for dishwashers, RCWs, and consumer clothes dryers that provide a short-cycle feature.

AHAM commented that while it remains opposed to new short-cycle product classes for dishwashers, RCWs, and consumer clothes dryers, AHAM questioned DOE's legal interpretation that the anti-backsliding provision in EPCA prohibits new product classes from having less-stringent standards. AHAM commented that Congress provided DOE the authority to develop separate classes that can have higher or lower standards and would not have included this provision if DOE could never use it. AHAM commented that the intent behind the creation of a new product class is to ensure features are protected and if standards threaten those features, DOE is authorized to create new product classes that have a less (or more) stringent standard than other products of that type. AHAM commented that if the anti-backsliding provision is interpreted to prohibit lower standards from being implemented, it would render this section of EPCA almost useless once initial product classes have been established, and that does not seem

consistent with Congressional intent. (AHAM, No. 5 at pp. 6–7)

In the January 2022 Final Rule, DOE concluded that it did not adequately consider EPCA's requirements, including the anti-backsliding provision in 42 U.S.C. 6295(o)(1), when it finalized the Short-cycle Final Rules. 87 FR 2673, 2680. DOE did not provide a legal interpretation on the anti-backsliding provision beyond that it was not adequately considered in the Short-cycle Final Rules. In this proposed confirmation of withdrawal, DOE applied EPCA's authority under 42 U.S.C. 6295(q) and tentatively determined that a short-cycle feature does not justify a separate product class with separate standards under 42 U.S.C. 6295(q) for dishwashers, RCWs, and consumer clothes dryers. As a result, the anti-backsliding provision is not applicable because DOE is not proposing to establish a separate product class requiring different standards.

DOE also received a comment regarding pending litigation, which is outside of the scope of this proposed confirmation of withdrawal.

3. Impacts on Average Lifetime

The AGs of MT *et al.* commented that increased energy efficiency tends to increase appliance complexity, which decreases mean time to failure and makes many appliances either not repairable in a cost-effective manner or not repairable at all. The AGs of MT *et al.* asserted that one method to increase reliability is to decrease time of continuous operation (*i.e.,* cycle time); another method is to operate components well short of their rated load—which would be less energy efficient but would be more reliable and last longer (*i.e.,* less downtime for repair and longer time before replacement), which would make overall costs lower. The AGs of MT *et al.* stated that a significant subset of consumers prefer, and find distinct utility in, more-functional and longer-lasting short-cycle appliances. The AGs of MT *et al.* asserted that the expected increased reliability and increased lifespan of short-cycle appliances likely aligns with lower life-cycle energy use vis-à-vis appliance models in the pre-existing classes. (AGs of MT *et al.,* No. 9 at p. 6)

In response, to the extent that any technology option considered by DOE as the basis for achieving higher levels of efficiency could result in an increase in repair frequency or cost, DOE's rulemaking analysis incorporates such impacts into the life-cycle cost analysis, where supported by data. For example, in the life-cycle cost analysis conducted for the April 2024 Dishwashers Direct Final Rule, DOE accounted for slightly higher repair frequency for efficiency levels above baseline and doubled the estimated repair frequency for products at the maximum technologically feasible efficiency level due to the increased complexity and less mature technologies required at those levels, based on discussions with manufacturers. DOE also modeled repair costs as being proportional to the equipment cost, based on manufacturers' inputs. 89 FR 31398, 31424.

However, DOE has not found any evidence of average product lifetime being correlated with any specific higher-efficiency design options or efficiency levels and did not receive any comments on the NOPR preceding the April 2024 Dishwashers Direct Final Rule (88 FR 32514 (May 19, 2023)) regarding DOE's dishwasher lifetime assumptions. Among the dishwasher standards rulemakings conducted over the course of the last 30 years, the data sources that DOE uses to derive estimates of average product lifetime have not provided any indication of a substantial change in lifetime during this time period. In fact, the data suggest that current product lifetimes are actually longer than the lifetime estimates used in 1991. Specifically, DOE's estimates of average lifetime for dishwashers have been as follows: 12.6 years in the May 1991 Final Rule, 12.3 years in the 2007 Advance Notice of Proposed Rulemaking, 15.4 years in the May 2012 Direct Final Rule, 15.2 years in the December 2016 Final Determination, and 15.2 years in the April 2024 Dishwashers Direct Final Rule. 56 FR 22250, 22276 (May 14, 1991); 72 FR 64432, 64435 (Nov. 15, 2007); 77 FR 31918, 31933 (May 30, 2012); 81 FR 90072, 90088 (Dec. 13, 2016); 89 FR 31398, 31430.

Similarly, in the life-cycle cost analysis conducted for the March 2024 RCW Direct Final Rule, DOE accounted for slightly higher repair costs for ENERGY STAR-qualified RCWs due to the increased complexity and less mature technologies required at those levels, based on discussions with manufacturers.

However, DOE has not found any evidence of average product lifetime being correlated with any specific higher-efficiency design options or efficiency levels and did not receive any comments on the NOPR preceding the March 2024 RCW Direct Final Rule (''May 2023 RCW NOPR''; 88 FR 26511 (May 1, 2023)) objecting to DOE's RCW lifetime assumptions. Among the RCW standards rulemakings conducted over the course of the last 30 years, the data sources that DOE uses to derive estimates of average product lifetime have not provided any indication of a substantial change in lifetime during this time period. DOE's estimates of average lifetime for RCWs have been as follows: 14.1 years in the May 1991 and January 2001 Final Rules, 14.2 years in the December 2012 Direct Final Rule, and 13.4 years in the March 2024 RCW Direct Final Rule. 56 FR 22250, 22270 (May 14, 1991); 77 FR 32308, 32342 (May 31, 2012); 89 FR 19026, 19060.

Further, in the life-cycle cost analysis conducted for the March 2024 Dryers Direct Final Rule, DOE accounted for slightly higher repair frequency for ENERGY STAR-qualified consumer clothes dryers due to the increased complexity and less mature technologies required at those levels, based on discussions with manufacturers.

However, DOE has not found any evidence of average product lifetime being correlated with any specific higher-efficiency design options or efficiency levels and did not receive any comments on the NOPR preceding the March 2024 Dryers Direct Final Rule (87 FR 51734 (August 22, 2022)) objecting to DOE's consumer clothes dryer lifetime assumptions. Among the consumer clothes dryer standards rulemakings conducted over the course of the last 30 years, the data sources that DOE uses to derive estimates of average product lifetime have not provided any indication of a substantial change in lifetime during this time period. DOE's estimates of average lifetime for consumer clothes dryers have been as follows: 17.1 years in the May 1991 Final Rule, 16 years in the April 2011 Direct Final Rule, and 14 years in the March 2024 Dryers Direct Final Rule. 56 FR 22250, 22273 (May 14, 1991); 76 FR 22454, 22514 (April 21, 2011); 89 FR 18164, 18166.

In summary, the best available data—which have been vetted publicly through multiple rounds of standards rulemakings since 1991—indicate a very stable trend in dishwasher, RCW, and consumer clothes dryer lifetimes over the past 30 years even as improvements in energy and water efficiency have been achieved through those rulemakings over that time.

E. Other Topics Addressed by the Fifth Circuit

1. Water Authority

In its opinion, the Fifth Circuit stated that ''[n]o part of [EPCA] indicates Congress gave DOE power to regulate

water use for energy-using appliances (like dishwashers and [RCWs]),'' and stated that it is unclear that DOE has any statutory authority to regulate water use in dishwashers and RCWs. *See Louisiana,* 90 F.4th at 470–471.

In response, DOE notes, as did the Fifth Circuit, that EPCA prescribed energy conservation standards with both energy and water use requirements for RCWs and dishwashers. (42 U.S.C. 6295(g)(9)(A) and (10)(A)). In establishing energy conservation standards with both energy and water use performance standards for RCWs and dishwashers, Congress also directed DOE to ''determin[e] whether to amend'' those standards. (42 U.S.C. 6295(g)(9)(B) and (10)(B)) Congress's directive, in section 6295(g)(9)(B), to consider whether ''to amend the standards in effect for RCWs,'' and in section 6295(g)(10)(B), to consider whether ''to amend the standards for dishwashers,'' refers to ''the standards'' established in the immediately preceding paragraphs, where Congress established energy conservation standards with *both* energy and water use performance standards for RCWs and dishwashers. Indeed, the energy and water use performance standards for RCWs (both top-loading and front-loading) are each contained within a single subparagraph, as are the energy and water use performance standards for dishwashers (both standard-size and compact-size). (*See id.*) Accordingly, DOE's authority, under 42 U.S.C. 6295(g)(9)(B) and (10)(B), includes consideration of amended energy and water use performance standards for RCWs and dishwashers, respectively.

Similarly, DOE's authority under 42 U.S.C. 6295(m) to amend ''standards'' for covered products includes amending both the energy and water use performance standards for RCWs and dishwashers. Neither section 6295(g)(9)(B) or (10)(B) nor section 6295(m) limit their application to ''energy use standards.'' Rather, they direct DOE to consider amending ''the standards,'' 42 U.S.C. 6295(g)(9)(B) and (10)(B), or simply ''standards,'' 42 U.S.C. 6295(m)(1)(B), which may include both energy and water use performance standards.

Accordingly, in conducting the analyses in this proposed confirmation of withdrawal, DOE has considered (where appropriate) whether the relevant short-cycle features justify both different water and energy standards.

2. Test Procedure Authority

The Fifth Circuit noted that DOE tests only some of the settings on dishwashers and ''laundry machines'' (*i.e.,* RCWs and consumer clothes dryers) and stated that DOE concluded in the January 2022 Final Rule that ''manufacturers are free to deploy *other, non-tested* settings that use as much energy and water as necessary to actually clean consumers' things,'' indicating that this could create a loophole for manufacturers to deploy unregulated cycles. *Louisiana,* 90 F.4th at 474.

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use or water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

DOE has established test procedures for dishwashers, RCWs, and consumer clothes dryers in 10 CFR part 430, subpart B, appendices C1 and C2, J and J2, and D1 and D2, respectively. For each test procedure, DOE has determined through its rulemaking process, which included ample manufacturer input, that the tested cycle(s)—*i.e.,* the normal cycle for dishwashers, RCWs, and consumer clothes dryers—produce representative measures of energy efficiency, energy use or water use, or estimated annual operating cost, as applicable for each product, without the undue burden that would be associated with requiring every available cycle to be tested.

To ensure that the normal cycle produces measures of energy use, efficiency, and estimated annual operating cost specifically for a representative average use cycle or period of use, DOE has developed definitions and testing instructions in each test procedure to guide the appropriate selection of cycles to be tested, which corresponds to a representative average use cycle of how such appliance are used by consumers in their households.

For dishwashers, the normal cycle is ''[t]he cycle type, including washing and drying temperature options, recommended in the manufacturer's instructions for daily, regular, or typical use to completely wash a full load of normally soiled dishes including the power-dry feature. If no cycle or more than one cycle is recommended in the manufacturer's instructions for daily, regular, or typical use to completely wash a full load of normally soiled dishes, the most energy intensive of these cycles shall be considered the normal cycle. In the absence of a manufacturer recommendation on washing and drying temperature options, the highest energy consumption options must be selected.'' Section 1 of 10 CFR part 430, subpart B, appendices C1 and C2.

In the January 2023 TP Final Rule, DOE noted that it was maintaining the dishwasher test cycle selections and cycle options to test on the normal cycle. DOE additionally added a cleaning performance requirement to validate that the tested cycle was representative of an average use cycle. 88 FR 3234, 3243. Prior to publishing this final rule, in a NOPR published on December 22, 2021, (''December 2021 TP NOPR'') DOE summarized and addressed stakeholder comments regarding the representative test cycle for dishwashers. Specifically, AHAM commented that consumers still most frequently select the normal cycle, and when consumers decide on a cycle selection, they typically use it for most of their cycles. Both GE Appliances and Whirlpool Corporation supported AHAM's comment that the normal cycle should remain the tested cycle. Both manufacturers submitted confidential data that supported the position that the manufacturer-designated normal cycle still represents consumer preference regarding cycle selection. These confidential data indicated, in the aggregate, that roughly 55 to 75 percent of all dishwasher cycles are conducted on the normal cycle. DOE further observed that among the other selected cycle types, some would be expected to be less energy-intensive than the normal cycle (*e.g.,* a glassware cycle type), while others would be expected to be more energy-intensive than the normal cycle (*e.g.,* a pots and pans cycle type). 86 FR 72738, 72757. The CA IOUs referenced PG&E's *2016 Home Energy Use Survey* to support their claim that the tested normal cycle including any power-dry feature, in the current test procedure, is still the cycle most representative of how consumers operate dishwashers. In this survey, PG&E found that 75 percent of households use the normal cycle. The CA IOUs further stated that consumers would be less likely to switch from using the normal cycle if DOE were to incorporate cleaning performance in the test procedure, and recommended DOE investigate incorporating a cleaning performance test. *Id.* at 86 FR 72747. In that NOPR, DOE noted that absent data

that reflects national use and frequency of use of other cycle types, DOE was not proposing changes to cycle selections for testing. Further, as noted in section II.A.3.c of this document, according to EIA's 2020 RECS, over 80 percent of consumers use normal cycles most of the time.

In the December 2021 TP NOPR, DOE noted that it was proposing a minimum cleaning index threshold for a test cycle to be considered valid. That is, if the normal cycle does not meet a specified threshold at any soil-load, DOE proposed that the most energy-intensive cycle be tested and used for certification purposes at that soil load. DOE noted that this alternative approach would better represent an average use cycle by capturing those consumers that may select other cycles for washing dishes if the cleaning performance of the normal cycle does not meet their expectations, because higher energy use provides increased thermal and mechanical action for removing soils, thus correlating generally with improved cleaning performance. *Id.* DOE adopted these proposals in the January 2023 TP Final Rule. 88 FR 3234, 3243.

Based on stakeholder comments, nationally representative survey data, and DOE's analyses, DOE concluded that the normal cycle is the representative average use cycle for dishwashers.

For RCWs, the normal cycle is ''the cycle recommended by the manufacturer (considering manufacturer instructions, control panel labeling and other markings on the clothes washer) for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing. For machines where multiple cycle settings are recommended by the manufacturer for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing, then the Normal cycle is the cycle selection that results in the lowest [energy efficiency] value.'' Section 1 of 10 CFR part 430, subpart B, appendices J and J2.

For the final rule that established appendix J1, which was a precursor to the current appendices J and J2, DOE reviewed Procter & Gamble data indicating that the normal cycle on a typical RCW is used approximately 75 percent of the time, and DOE noted that its test procedure uses the normal cycle to approximate typical use by consumers. 62 FR 45484, 45493 (Aug. 27, 1997). In a test procedure final rule published on August 5, 2015, DOE changed the draft language for the definition of the normal cycle from referencing ''the most common consumer cycle'' to referencing ''the cycle recommended by the manufacturer [. . .] for normal, regular, or typical use,'' noting that the updated phrasing represented the same intent. 80 FR 46730, 46742. In the most recently published test procedure for RCWs that established the current appendices J and J2 (''June 2022 TP Final Rule''), DOE noted that its test procedure identifies the ''normal cycle'' as the cycle representative of consumer use and requires testing using it. 87 FR 33316, 33351 (June 1, 2022).

For all consumer clothes dryers in the test procedure at 10 CFR part 430, subpart B, appendix D1 and for timer dryers in 10 CFR part 430, subpart B, appendix D2, the consumer clothes dryer is operated for the test cycle at the maximum temperature setting and, if equipped with a timer, at the maximum time setting. If the consumer clothes dryer does not have a separate temperature setting selection on the control panel, the maximum time settings is used for the drying test cycle. For automatic termination control dryers in the test procedure at 10 CFR part 430, subpart B, appendix D2, the ''normal'' program shall be selected for the test cycle. Automatic termination control dryers that do not have a ''normal'' program are tested using the cycle recommended by the manufacturer for drying cotton or linen clothes. Section 3.3 of 10 CFR part 430, subpart B, appendices D1 and D2.

In a NOPR published on January 2, 2013, DOE first proposed the use of the ''normal'' program for the drying test cycle in conjunction with test methods that would more accurately measure the energy use of automatic termination control dryers, which comprise the majority of consumer clothes dryer shipments. DOE determined this program to be most representative of consumer use based on data from NEEA's residential laundry field use study, which showed that the average household surveyed used the ''normal'' or an equivalent program cycle for nearly 60 percent of all drying. 78 FR 152, 170–171. DOE received comments from Samsung stating that the proposed test procedure would be representative of consumer use because it measures the energy use of the most commonly selected cycle (Normal/Cottons and Linens) for automatic termination control dryers. DOE adopted this proposal and established appendix D2 in a final rule published on August 14, 2013. 78 FR 49608, 49624.

DOE has thereby promulgated new and amended test procedures in accordance with EPCA's requirements to ensure that manufacturers are certifying dishwashers, RCWs, and clothes dryers that comply with the currently applicable energy conservation standards. As discussed in section II.E.3 of this document, DOE has also developed provisions within its test procedures for dishwashers, RCWs, and clothes dryers that ensure that the tested cycles maintain product utility that meets consumer expectations.

3. Preservation of Product Utility

In its opinion, the Fifth Circuit stated that ''Americans who want clean dishes or clothes may use more energy and more water to preclean, reclean, or handwash their stuff before, after, or in lieu of using DOE-regulated appliances,'' and that DOE did not adequately respond to this potential for more energy and water use in the January 2022 Final Rule. *Louisiana,* 90 F.4th at 472–473. In the following sections, DOE addresses stakeholder concerns regarding preservation of product utility for each product type.

a. Dishwashers

In addition to the Fifth Circuit's opinion on product utility, DOE also received stakeholder comments on this topic in response to the March 2024 RFI. The AGs of MT *et al.,* commented that, according to survey results presented by CEI in response to the July 2019 NOPR,[22] over 85 percent of consumers hand-wash dishes at least sometimes ''because the dishwasher takes too long''; roughly 33 percent of consumers reported that their dishwasher does not clean their dishes well; and 34 percent reported that they run their dishwasher multiple times to get their dishes clean. (AGs of MT *et al.,* No. 9 at p. 5)

DOE notes that the data and conclusions presented by the AGs of MT *et al.,* are contradicted by data and conclusions presented by other stakeholders in response to the March 2024 RFI.

With regard to handwashing dishes because the dishwasher takes too long, AHAM presented data[23] indicating that 81 percent of respondents were satisfied with the length of the normal cycle of their dishwashers. (AHAM, No. 5 at p. 3) AHAM also referenced a 2020 University of Michigan study[24] and

[22] CEI submitted results from a survey it conducted in late 2019 based on 1,062 respondents to understand consumers' dishwasher usage patterns as well as their opinions on dishwasher cycle length. Available as attachment B at *www.regulations.gov/comment/EERE-2021-BT-STD-0002-0239.*

[23] Appliance Impact Research—Regulatory Findings, conducted for AHAM by DIG Insights (February 2021).

[24] Gabriela Y Porras *et al.,* 2020. *A Guide to Household Manual and Machine Dishwashing*

Continued

commented that this study showed that recommended practices for dishwasher use are not always performed, with 67 percent of dishwasher owners typically prerinsing dishes before loading. However, AHAM stated that its member data do not indicate that consumers are choosing to wash their dishes by hand because of perceived longer cycle times. (*Id.,* at p. 5) AHAM further commented that consumers are satisfied with current cycle times, choosing to rely on their dishwashers regularly. (*Id.,* at p. 6)

In addition, DOE notes that the 2020 Michigan study cited by AHAM discussed the role of behavioral barriers in explaining why certain consumers may be reluctant to switch from handwashing to machine washing, as these consumers believe handwashing outperforms machine washing in terms of resource consumption and cleaning performance. Likewise, findings from the University of Bonn and the Impulse Reach national survey [25] [26] also suggest that the primary factor contributing to consumers hand-washing dishes is not the dishwasher cycle duration, but rather a misconception by consumers that dishwashers require more energy and water than handwashing.

With regard to the portion of consumers who report their dishwasher does not clean well or they run the dishwasher multiple times to get dishes clean, DOE noted in January 2023 TP Final Rule that the cleaning performance at the completion of a dishwasher cycle influences how a consumer uses the product. DOE acknowledged that if the cleanliness of the dishware after completion of a cleaning cycle does not meet consumer expectations, consumers may alter their use of the dishwasher by selecting a different cycle type that consumes more energy and water, operating the selected cycle type multiple times, or prewashing the dishware items. DOE recognized the need to ensure that the cycle type tested in the DOE test procedure is representative of consumer use as the dishwasher market continuously evolves to higher levels of efficiency. DOE therefore established a new cleaning performance threshold in the newly established appendix C2 test procedure that represents what constitutes ''completely washing'' a full load of normally soiled dishes (*i.e.,* a threshold below which the dishwasher would not meet consumer expectations of cleanability). 88 FR 3234, 3250–3267. Under appendix C2, a dishwasher must meet the cleaning performance threshold, and thus consumer expectations of cleanability. To the extent that any individual dishwashers on the market have not met consumer expectations for cleanability, such historical performance issues should be remedied moving forward, as the test procedure at appendix C2 ensures that any dishwasher tested for certification will have a valid energy and water representation only if the dishwasher also meets or exceeds a minimum level of cleaning performance.

Finally, as discussed previously, DOE's data demonstrate that dishwashers with a short-cycle feature can meet the current standards. That is, dishwasher cycles that achieve the cleaning performance requirements specified in appendix C2 and are 60 minutes or less in duration are technologically feasible. As noted by ASAP *et al.,* there are more than 400 dishwasher models on the current market that are certified to the current ENERGY STAR V. 7.0 specification—which DOE notes is more stringent than the current standards—and all ENERGY STAR-qualified products are required to meet a minimum cleaning index requirement. (See ASAP *et al.,* No. 8 at p. 6)

In response to the March 2024 RFI, ASAP *et al.,* commented that shorter cycle times would likely result in trade-offs with other aspects of dishwasher performance. ASAP *et al.,* asserted that there are many product attributes of dishwashers that are important to consumers, such as cleaning/drying performance, noise, efficiency, and cycle time, and that manufacturers have to balance these attributes. ASAP *et al.,* referenced DOE's dishwasher test data, noting that cycles with a cycle time of less than 60 minutes generally provided worse cleaning performance than the ''normal'' cycles on the same machines, in particular for the heavy and medium soil loads. ASAP *et al.,* further asserted that in addition to sacrificing cleaning performance, quick cycles would likely be noisier, because one way of reducing cycle time is to increase mechanical action, which in turn increases noise levels. (ASAP *et al.,* No. 8 at p. 6)

DOE recognizes that dishwasher manufacturers design dishwashers to achieve many different performance requirements (*e.g.,* cleaning performance, drying performance, noise, efficiency, cycle time). Manufacturers also provide multiple cycle types to meet different consumer needs (*e.g.,* normal, heavy, light, quick). However, DOE reiterates that 1 of the units in DOE's test sample meets the cleaning index threshold specified in appendix C2 while also having a cycle time of less than 60 minutes and meeting the current standards, demonstrating that current standards do not require manufacturers to trade off cleaning performance with cycle time.

Regarding ASAP *et al.,*s comment on the potential trade-off between cycle time and noise, DOE notes that it did not collect noise data in its previous testing. Accordingly, DOE cannot independently corroborate the extent to which there may be a trade-off between noise and cycle time.

In sum, DOE tentatively concludes that any consumer handwashing or pre-washing is unlikely to have been the result of past or current standards. Further, the amended test procedure at appendix C2 requires test samples to meet a cleaning index threshold consistent with consumer expectations. Accordingly, DOE does not expect increased handwashing or pre-washing (above levels resulting from consumer preferences or misunderstandings) in the future.

b. Residential Clothes Washers

In response to the March 2024 RFI, ASAP *et al.,* commented that shorter cycle times would likely result in trade-offs with other aspects of RCW performance. ASAP *et al.,* asserted that there are many product attributes of RCWs that are important to consumers, such as cleaning performance, noise, efficiency, and cycle time, and that manufacturers have to balance these attributes. ASAP *et al.,* referenced AHAM's petition for reconsideration of the December 2020 Final Rule,[27] wherein AHAM noted that in order to reduce cycle time, ''many manufacturers may elect to reduce clothes washer spin time.'' ASAP *et al.,* further noted that AHAM explained that reducing spin time would mean that clothes would come out of the clothes washer wetter, which would have the effect of increasing clothes dryer cycle time. (ASAP *et al.,* No. 8 at p. 6)

DOE recognizes that RCW manufacturers design RCWs to achieve many different performance requirements (*e.g.,* cleaning performance, rinsing performance, noise, efficiency, cycle time). Manufacturers also provide multiple

Through a Life Cycle Perspective. Environmental Research *Communications.* 2 021004.

[25] Berkholz, P., V. Kobersky, and R. Stamminger. 2011. ''Comparative analysis of global consumer behaviour in the context of different manual dishwashing methods.'' International Journal of Consumer Studies, 37(1), 46–58. *doi.org/10.1111/j.1470-6431.2011.01051.x.*

[26] Wolf, A. 2011. ''Consumers: Dishwashers Second to Kids in Noise.'' Twice: This Week in Consumer Electronics, 26(18), 64. *www.twice.com/product/consumers-dishwashers-second-kids-noise-37554.*

[27] Available at *www.regulations.gov/document/EERE-2021-BT-STD-0002-0002.*

cycle types to meet different consumer needs (*e.g.,* normal, heavy, light, quick, delicates). However, DOE reiterates that multiple top-loading RCW models currently on the market provide a cycle time of less than 30 minutes, and multiple front-loading RCW models provide a cycle time of less than 45 minutes, all of which meet the current standards—demonstrating that current standards do not require manufacturers to trade off cycle time with energy and water use.

Although DOE's current RCW test procedures do not include a measure of cleaning performance, DOE does consider multiple aspects of clothes washer performance as it evaluates potential energy and water conservation standards for RCWs to ensure that no lessening of the utility or performance of the product is likely to result from an amended standard. For example, in support of the May 2023 RCW NOPR, DOE conducted extensive testing to evaluate any potential impacts of amended standards on of several performance characteristics including cycle time, hot wash water temperature, soil and stain removal, and mechanical action.[28] 88 FR 26511.

Even though DOE's analyses conducted as part the standards rulemaking process have demonstrated that performance can be maintained under the current standards for RCWs, DOE has previously discussed, for example in the June 2022 TP Final Rule, that the cleaning performance at the completion of a wash cycle could influence how a consumer uses the product. If the cleanliness of the clothing after completion of a wash cycle were to not meet consumer expectations, consumers could be expected to alter their use of the clothes washer. For example, consumers could alter the use of the product by choosing cycle modifiers to enhance the performance of the selected cycle; selecting an alternate cycle that consumes more energy and water to provide a higher level of cleaning; operating the selected cycle multiple times; or pre-treating (*e.g.,* pre-soaking in water) clothing items before loading into the clothes washer to achieve an acceptable level of cleaning. 87 FR 33316, 33352.

As discussed, the dishwasher test procedure defines a cleaning performance threshold that represents what constitutes ''completely washing'' a full load of normally soiled dishes (*i.e.,* a threshold below which the dishwasher would not meet consumer expectations of cleanability). However, the current RCW test procedures do not define what constitutes ''washing'' up to a full load of normally soiled cotton clothing (*i.e.,* the cleaning performance). In the June 2022 TP Final Rule, DOE discussed its consideration of adding a cleaning performance metric to its RCW test procedures, but ultimately DOE was unable to make a determination whether existing test procedures for determining cleaning performance would produce results for DOE's purposes that are representative of an average use cycle, as required by EPCA. Furthermore, DOE was unable to assess whether the additional burden resulting from these additional tests would be outweighed by the benefits of incorporating these tests. Therefore, DOE did not include a measure of cleaning performance in the RCW test procedures in the June 2022 TP Final Rule. 87 FR 33316, 33352.

DOE continues, however, to evaluate the potential benefits and burdens of incorporating a measure of performance into its RCW test procedures, akin to the cleaning performance threshold incorporated into the appendix C2 test procedure for dishwashers. Any such amendments to the RCW test procedures would be considered in a separate rulemaking.

c. Consumer Clothes Dryers

In response to the March 2024 RFI, ASAP *et al.,* commented that shorter cycle times would likely result in trade-offs with other aspects of consumer clothes dryer performance. ASAP *et al.,* asserted that there are many product attributes of consumer clothes dryers that are important to consumers, such as drying performance, noise, efficiency, and cycle time, and that manufacturers have to balance these attributes. ASAP *et al.,* referenced AHAM's petition for reconsideration of the December 2020 Final Rule,[29] wherein AHAM noted that shorter cycle times than those available today would likely require higher heat levels and/or the use of high heat for longer periods of time, which could damage the clothes being dried. (ASAP *et al.,* No. 8 at p. 6)

DOE recognizes that consumer clothes dryer manufacturers design consumer clothes dryers to achieve many different performance requirements (*e.g.,* drying performance, noise, efficiency, cycle time). Manufacturers also provide multiple cycle types to meet different consumer needs (*e.g.,* normal, heavy, light, quick, delicates). However, DOE reiterates that multiple clothes dryer models currently on the market provide a cycle time of less than 30 minutes, all of which meet the current standards—demonstrating that current standards do not require manufacturers to trade off cycle time with energy use.

Similar to dishwashers, for consumer clothes dryers DOE noted in the test procedure final rule published on October 8, 2021, that drying performance at the completion of a clothes dryer cycle may influence how a consumer uses the product. 86 FR 56608. DOE acknowledged that if the dryness of the clothes after completion of a during cycle does not meet consumer expectations, consumers may alter their use of their consumer clothes dryer by selecting a different cycle type that consumers more energy, or operating the selected cycle type multiple times. DOE recognized the need to ensure that the cycle type tested in the DOE test procedure is representative of consumer use as the consumer clothes dryer market continuously evolves to higher levels of efficiency. DOE therefore established a 2-percent final moisture content dryness threshold in the appendix D2 test procedure that was shown to be representative of the consumer-acceptable dryness level after completion of a drying cycle. 86 FR 56608, 56627–56628. Under appendix D2, a consumer clothes dryer must achieve this dryness threshold in order for the tested cycle to be considered valid for certifying compliance with the applicable standard.

To the extent that any individual consumer clothes dryers on the market have not met consumer expectations for dryness, such historical performance issues should be remedied moving forward, as the test procedure at appendix D2 ensures that any consumer clothes dryer tested for certification will have a valid energy and water representation only if the consumer clothes dryer meets or exceeds this threshold of dryness performance.

III. Conclusion

In conclusion, and for the reasons discussed in the preceding sections of this document, DOE has tentatively determined that a short-cycle feature does not justify separate product classes with separate standards under 42 U.S.C. 6295(q) for dishwashers, RCWs, and consumer clothes dryers. As a result, there is no basis for remedying the Short-cycle Final Rules by establishing a different standard level for short-cycle products. Therefore, products with short-cycle features remain subject to the currently applicable standards as

[28] DOE published the results of this testing in a report available at *www.regulations.gov/document/EERE-2017-BT-STD-0014-0059.*

[29] Available at *www.regulations.gov/document/EERE-2021-BT-STD-0002-0002.*

specified in 10 CFR 430.32(f), (g), and (h), respectively.

IV. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the January 2022 Final Rule remain unchanged for this proposed confirmation of that rule. These determinations are set forth in the January 2022 Final Rule. 87 FR 2673, 2686–2688.

V. Public Participation

DOE will accept comments, data, and information regarding this proposed confirmation of withdrawal before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this document. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI''). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

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Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 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 via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed confirmation of withdrawal and request for comment.

Signing Authority

This document of the Department of Energy was signed on October 30, 2024, by Jeffrey Marootian, Principal Deputy 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 October 30, 2024.

Jennifer Hartzell,

Alternate Federal Register Liaison Officer, U.S. Department of Energy.

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